

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Environmental Preservation Committee

BILL: CS/SB 2156

SPONSOR: Transportation Committee and Senator Baker

SUBJECT: Vessels

DATE: April 13, 2005      REVISED: 04/18/05 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<b>Fav/CS</b>
2.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	<b>Fav/3 amendments</b>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see last section for Summary of Amendments**

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

This Committee Substitute (CS) provides marina operators may, upon the issuance of a tropical storm or hurricane watch, take efforts to secure vessels to prevent damage to the vessel, the marina, or the environment, and are held harmless for such actions. Further, marina owners may employ contract language allowing the removal of a vessel from its slip to protect marina property. The CS allows a marina operator to impose a lien upon a wrecked vessel that has been left at the marina without the marina operator’s consent and makes revisions to the notification and procedural requirements involving the nonjudicial sale of vessels by marinas. The CS expands the application of the Florida Coastal Protection Trust Fund to allow the removal of derelict vessels from public waters in all Florida counties. The CS expands the prohibition on the abandonment of a vessel at a private dock without permission to include groundings on private property. The CS exempts certain floating vessel platforms or floating boat lifts from environmental permitting requirements of chapter 373, F.S. The CS authorizes Florida Fish and Wildlife Conservation Commission officers, sheriffs of the various counties and their deputies, and other authorized law enforcement officer to remove derelict vessels from public waters.

This CS substantially amends the following sections of the Florida Statutes: s. 327.59, s. 328.17, s. 376.11, s. 376.15, s. 705.101, and s. 823.11.

## II. Present Situation:

### Securing Vessels

Section 327.59, F.S., prohibits marina operators from requiring the removal of vessels from a marina due to an approaching hurricane. Both the boat and the marina will likely suffer less damage if the boat is not left at the dock during a hurricane. Ideally, a vessel that cannot be hauled from the water should be relocated to a sheltered, safe harbor, or 'hurricane hole.' However, the practicality of relocating all susceptible vessels to a limited number of safe harbors is questionable. The inherent dangers of moving thousands of vessels to limited anchorages during a coastal evacuation are widely recognized. Current Florida law emphasizes the protection of life over property by prohibiting marinas from requiring vessel owners to remove their vessels from a marina once a hurricane watch or warning has been issued. A 1995 challenge to s. 327.59, F.S., was dismissed and a subsequent appeal upheld the dismissal. However, in *Burklow & Associates, Inc. v. Reagan, Belcher, et.al.*, 719 So.2d 31 (1<sup>st</sup> DCA 1998), the First District Court of Appeals noted that while boat owners were not obligated to move their vessels prior to a hurricane, they did "have a duty to take all other reasonable precautions to protect the marina from harm," including properly mooring the boat, removing loose objects and tying down items on the deck that could not be removed. According to a Marine Industries of Florida survey of their members, the 2004 hurricane season resulted in 78 marinas reporting damage, 52 of which provided damage estimates totaling \$39,698,105 for an average of \$763,425 in damages to each marina facility.

### Nonjudicial Sale of Vessels

Section 328.17, F.S., establishes the process directing the nonjudicial sale of vessels. Marinas may hold any vessel for unpaid costs, storage charges, dockage fees, or failure to pay costs related to removal due to unsanitary conditions, and may sell the vessel at a nonjudicial sale. A marina has a possessory lien for storage fees, dockage fees, repairs, improvements, work-related storage charges, expenses necessary for preservation of the vessel, and expenses reasonably incurred in the sale or other disposition of the vessel. The marina must provide written notice of the lien to the vessel owner and any perfected lienholders. If any amounts remain due 120 days after written notice, the marina may advertise the sale of the vessel. The sale must be conducted in a "commercially reasonable manner," as that phrase is defined by the Uniform Commercial Code. The owner may redeem the vessel by paying the amount required to satisfy the lien, and any reasonable expenses incurred prior to the sale.

There is no such provision for a vessel simply abandoned in a marina. The only remedy presently available to a marina owner who discovers a vessel abandoned in his or her marina is to file an action in federal district court and have the vessel arrested (seized) by the United States Marshal. The vessel is then sold at a Marshal's auction and any proceeds remaining after court costs, the Marshal's fees and costs, and the cost of storing and auctioning the vessel, are available to the marina. Most often, however, the expense of the federal proceeding is greatly in excess of any recovery that may be obtained from the sale of an abandoned and deteriorating derelict vessel. As the marina does not have title to the vessel, it is left without any effective means of removing a vessel abandoned at its docks.

### Florida Coastal Protection Trust Fund

Section 376.11, F.S., establishes the Florida Coastal Protection Trust Fund. Among the Fund's allowable expenses are the funding of marine law enforcement, water pollution mitigation efforts, and a grant program to coastal local governments for the removal of derelict vessels. The major sources of revenue for the fund are excise taxes levied for the privilege of producing, importing, or causing to be imported into the state, pollutants for sale, use, or other purposes; and damages recovered from parties responsible for polluting state waters.

#### Derelict Vessels

Section 376.15, F.S., provides a prohibition on abandoning, storing, or leaving a wrecked, junked, or substantially dismantled vessel upon any public waters or port without consent of the agency having jurisdiction. This prohibition also applies to abandoned, wrecked, junked, or substantially dismantled vessels docked at private property without the owner's consent. The Florida Fish and Wildlife Conservation Commission (FWC) is authorized to remove any derelict vessel as described above and may establish a grant program to coastal governments for the purpose of performing this function. The Department of Legal Affairs represents the FWC in actions concerning removal of derelict vessels.

Prior to 2002, the FWC managed a grant program to assist counties with the removal of derelict vessels. The program has not been funded since 2002. The lack of funding for the removal of derelict vessels has forced local governments to utilize their own funds to remove such vessels or leave them in place.

#### Abandoned Property

Section 705.101, F.S., provides a definition of abandoned property. Vessels determined to be derelict by the FWC or a county or municipality are included in the definition.

#### Abandoned and Derelict Vessels – Penalties.

Section 823.11, F.S., provides a criminal penalty for abandoning, storing, or leaving a wrecked, junked, or substantially dismantled vessel upon any public waters or port without consent of the agency having jurisdiction, or docked at any private property without the owners consent. Violation of this statute is a first degree misdemeanor.

Under ss. 376.15 and 823.11, F.S., only the FWC is authorized to remove derelict vessels from waters of the state. City police department and county sheriffs' departments are authorized and have a duty to enforce all of Florida's laws pertaining to vessels (see s. 327.70, F.S.) but do not have the authority to take actions against derelict vessels or their owners other than to arrest the owner for allowing the vessel to become or remain derelict, in violation of s. 823.11, F.S. They have no authority to cause the removal of these vessels. Instead, cities and counties wanting to remove derelicts must petition the FWC for the delegation of authority to cause such removals. This anomaly produces substantial delays in the removal of these vessels. The delays, in turn, substantially increase the costs of removal as the derelict vessels continue to deteriorate. This delay allows a vessel that initially could have been towed to a ramp and trailered to a landfill for a few hundred dollars to deteriorate to the point a barge with a crane and clam-shell must be employed to remove the vessel and the remains of the vessel must be trucked to the landfill. This often escalates the costs from a few hundred dollars to several thousand dollars.

- Currently, there are 751 reported derelict vessel cases in Florida. This number may be low since all derelict vessels are not reported. Derelict vessels are navigational and environmental hazards. Some leak hazardous materials and pose a safety and health threat to state natural resources and users of public waterways.

#### Floating Vessel Platforms or Floating Boat Lifts

Paragraph (s) of subsection (2) of s. 403.813, F.S., provides that a permit is not required for a floating vessel platform or floating boat lift if such structures:

- Float at all times in the water for the sole purpose of supporting a vessel so that the vessel is out of the water when not in use;
- Are wholly contained within a boat slip previously permitted under ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of ch 373, F.S., or, when associated with a dock that is exempt under s. 403.812(2), F.S., or a permitted dock with no defined boat slip, do not exceed a combined total of 500 square feet, or 200 square feet in an Outstanding Florida Water;
- Are not used for commercial purpose or for mooring vessels that remain in the water when not in use, and do not substantially impede the flow of water, create a navigational hazard, or unreasonably infringe upon the riparian rights of adjacent property owners;
- Are constructed and used so as to minimize adverse impacts to submerged lands, wetlands, shellfish areas, aquatic plant and animal species, and other biological communities, including locating such structures in areas where no seagrasses exist if such areas are present and adjacent to the dock; and
- Are not constructed in areas specifically prohibited for boat mooring under conditions of a permit issued in accordance with ss. 403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of ch. 373, F.S., or other form of authorization issued by a local government.

Structures that qualify for this exemption are relieved from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund and are not subject to any more stringent regulation by any local government.

The Department of Environmental Protection was required to adopt a general permit, by rule, for those floating vessel platforms which do not qualify for the exemption, but do not cause significant adverse impacts to occur individually or cumulatively. The general permit constitutes permission to use or occupy lands owned by the Board of Trustees. No local government may impose a more stringent regulation on floating vessel platforms covered by the general permit.

### **III. Effect of Proposed Changes:**

**Section 1.** This section amends s. 327.59, F.S., to authorize marinas, after the issuance of a tropical storm or hurricane watch, to secure any vessel within the marina to minimize damage to the vessel, the marina property, and the environment. The marina may charge reasonable fees for such actions and is exculpated and held harmless for any damage occurring as a result of securing the vessel or from the storm. Additionally, marina owners may include language in the slip-rental contract allowing the marina to remove a vessel from its slip in order to protect marina

property if a vessel owner has not done so after the issuance of a hurricane watch or warning. Marinas may charge a reasonable fee for removing the vessel. Vessel owners must be notified of the intent to add this provision to the contract. Sample notification language is provided in the CS.

**Section 2.** This section amends s. 328.17(4), F.S., pertaining to the nonjudicial sale of vessels, to add a new paragraph (b). This new paragraph provides a possessory lien upon any vessel in a wrecked, junked, or substantially dismantled condition, which has been left docked, grounded, beached, or otherwise abandoned at a marina without consent of the marina owner, for expenses reasonably incurred in the removal and disposal of the vessel. The possessory lien attaches as of the date the vessel is discovered at the marina facility. If the funds recovered from the sale of such a vessel, whether sold as an intact vessel or for scrap or salvage, are insufficient to cover the removal and disposal expenses reasonably incurred, the marina may recover the costs in excess nonjudicial sale proceeds from the owner of the vessel.

The bill deletes a provision requiring marina owners to provide notice to lienholders of a vessel under the UCC in case of default. Instead, the bill requires a marina owner give notice to the vessel owner and each person or entity that:

- Holds a security interest on the vessel as shown in the records of the Department of Highway Safety and Motor Vehicles (DHSMV).
- Holds a preferred ship mortgage or has filed a claim of lien with the United States Coast Guard Vessel Documentation Center.
- Holds a security interest against the vessel under the UCC.
- Has filed a judgment lien certificate in order to perfect a lien against the vessel.

In instances where a vessel displays either a foreign country identification or a registration from a state other than Florida, a marina is required to conduct a reasonable lien search of the vessel registration records in the jurisdiction where the vessel is registered in order to determine if there is a lienholder entitled to notice. If the result of the search shows there is no foreign or non-Florida lienholder, the vessel may be sold or removed and a purchaser of the vessel would not be prohibited from taking the title of the vessel.

A marina with a possessory lien on a vessel, in order to satisfy a lien, can obtain a copy of the title for the vessel and trailer from DHSMV or an agency where the vessel is registered; obtain an abstract from the United States Coast Guard for vessels that are documented; conduct a current UCC lien and Florida judgment lien certificate search; comply with the requirements for a lien search of vessel registration records for vessels either displaying foreign country identification or registration numbers from a state other than Florida.

A written notice has to be made at least 60 days prior to the sale of the vessel. In addition, the lienholder and vessel owner has 60 days to pay the costs giving rise to the lien, including late payment interest, after the written notice is given or the marina may sell the vessel, including its machinery, rigging, and other accessories. The marina owner also has the option of removing the vessel from the marina or the waters of the state at the vessel owner's expense. If the funds recovered from the sale of the vessel are inadequate to cover the expenses incurred by the marina, the amount in excess can be recovered from the owner of the vessel.

This bill allows the marina to provide the purchaser of a vessel through a nonjudicial sale a title subject only to prior liens under state and federal law. However, the owner or holder of any perfected lien who is entitled to possession of the vessel may defray the lien, reasonable expenses and late payment interest incurred in order to redeem and take possession of the vessel. Once payment is received, the marina must return the property to the owner or lienholder making the payment and is released from any liability for the vessel.

**Section 3.** This section amends s. 376.11(4)(g), F.S., to allow grants for the removal of derelict vessel to be awarded to all local governments as opposed to only coastal local governments.

**Section 4.** This section amends s. 376.15, F.S., pertaining to derelict and abandoned vessels, to conform the definition of derelict vessel to the definition in s. 823.11, F.S. (See also section 6 of this CS.) This section also allows all law enforcement officers charged with enforcement of Florida's boating laws under s. 327.70, F.S., to enforce the provisions pertaining to derelict and abandoned vessels and allows their agencies to recover the costs associated with removing these vessels. This section directs the Department of Legal Affairs to represent the FWC in such actions and expands eligibility for disbursement of grant funds for the removal of derelict vessels to all local governments.

**Section 5.** This section amends s. 403.813, F.S., to provide that the exemption for floating vessel platforms includes those that are attached to a bulkhead on a parcel of land where there is no other docking structure and that do not exceed a combined total of 1,000 square feet outside of Outstanding Florida Waters, 500 square feet within an Outstanding Florida Water that is not an aquatic preserve, or 200 square feet within an aquatic preserve. All exempt floating platforms must be located where seagrasses adjacent to the dock or bulkhead are least dense. Exempt floating platforms are also not subject to any permitting requirement, registration requirement, or other more stringent regulation by any local government.

**Section 6.** This section provides a conforming amendment to s. 705.101(3), F.S.

**Section 7.** This section conforms the provisions of s. 823.11, F.S., pertaining to derelict and abandoned vessels, to s. 376.15, F.S., as revised in section 4 of this CS.

**Section 8.** This section provides an effective date of upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill reduces the response time given to lienholders from 120 to 60 days; therefore, creating a potential positive impact for lienholders seeking to satisfy their liens by nonjudicial sales. The amount of this impact is indeterminate. Owners of abandoned or derelict vessels will be liable for costs associated with the removal of such vessels.

The exemption for floating vessel platforms is broadened to allow those platforms attached to a bulkhead or a parcel of land where no other docking structures exist. More platforms would qualify for the exemption.

C. Government Sector Impact:

State and local governments may experience cost savings as a result of expediting the removal of derelict vessels.

Local governments are prohibited from registering or adopting more stringent requirements for floating vessel platforms.

**VI. Technical Deficiencies:**

The conforming language in Section 7 omitted verbiage allowing other law enforcement agencies to recover the cost of derelict vessel removal. On page 14, line 12, following the word “commission” insert: “or other law enforcement agency”.

**VII. Related Issues:**

None.



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## VIII. Summary of Amendments:

**Barcode 221832 by Environmental Preservation:**

Clarifies that a marina operator, employee, or agent will not have immunity for any intentional acts or negligence that causes damage to the vessel during the removal or storage permitted under this bill.

**Barcode 142936 by Environmental Preservation:**

Deletes Section 5 of the bill which provides an exemption from permitting for certain floating vessel platforms.(WITH TITLE AMENDMENT)

**Barcode 381610 by Environmental Preservation:**

Technical amendment to allow other law enforcement agencies to recover costs incurred in the removal of any abandoned or derelict vessel.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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