

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: Transportation Committee

BILL: PCS/SB 2128

INTRODUCER: Committee on Transportation and Senator Baker

SUBJECT: Vessels

DATE: March 16, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Woods	Meyer	TR	Pre-meeting
2.			EP	
3.			JU	
4.			DS	
5.			GA	
6.				

I. Summary:

This Proposed Committee Substitute for Senate Bill (PCS) 2128 amends s. 206.606, F.S., to provide for local projects funded by the State Game Trust Fund to include projects providing uniform waterway markers, public boat ramps, boat lifts and hoists, marine railways, and derelict vessel removal.

Section 327.59, F.S., is amended to authorize marina owners, employees, operators, and agents to secure vessels after the issuance of tropical storm and hurricane watches and to charge a fee to the vessel owner for doing so. The PCS also provides for marina operators, employees, agents, or owners to be held harmless for these services. Marina operators, owners, employees, and agents are, however, to be responsible for intentional damage or negligence exercised in the process of storing the vessel.

Section 327.60, F.S., is amended to provide for local regulation of anchoring vessels within the marked boundaries of mooring fields and prohibits local regulation outside of mooring fields.

Section 328.64, F.S., is amended to require the Department of Highway Safety and Motor Vehicles (DHSMV) to create a change of interest and address form and attach such a form to every vessel title issued or reissued.

Section 328.72, F.S., is amended to provide for distribution of fees and surcharges and monies redistributed to the counties must provide for specified purposes and provides punishments for failure of counties to comply with this section.

Section 376.11, F.S., is amended to revise provisions in relation to the Florida Coastal Protection Trust Fund to conform to changes made by this act.

Section 376.15, F.S., is amended to revise provisions relating to derelict vessels, specifies officers authorized to remove vessels and authorizes the recovery of certain costs, and designates the Department of Legal Affairs as the legal representation for The Fish and Wildlife Conservation Commission (FWC) in matters concerning these actions.

Section 403.813, F.S., is amended to include an exemption of permit requirement for vessel platforms and floating boat lifts.

Section 705.103, F.S., is amended to conform to new terminology used in s. 823.11, F.S.

Section 823.11, F.S., is amended to define the term “derelict vessel” as referred to in s.705.101, F.S., by this PCS. The PCS also adds provisions to this section specifying officers with authority to remove vessels, provides removal of vessels may be funded by certain grants, removes language allowing the FWC to delegate authority to local governments, provides private property owners must comply with regulations for vessel removal, specifies presumption of “delivered notices”, specifies court jurisdiction over criminal violations of this section.

This bill substantially amends sections 206.606, 327.59, 327.60, 328.64, 328.72, 376.11, 376.15, 403.813, 705.101, 705.103, and 823.11 of the Florida Statutes.

II. Present Situation:

State Game Trust Fund

Section 372.09, F.S., establishes the State Game Trust Fund. The funds resulting from the operation of the FWC and from the administration of the laws and regulations pertaining to birds, game, fur-bearing animals, freshwater fish, reptiles, and amphibians, together with any other funds specifically provided for such purposes shall constitute the State Game Trust Fund and are used by the FWC as it deems fit in carrying out the responsibilities. The FWC may not obligate itself beyond the current resources of the State Game Trust Fund unless specifically so authorized by the Legislature.

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 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.

The FWC is authorized by statute to manage 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. Some local governments make requests for their officers to declare vessels derelict, which would allow these governments to handle derelict vessels problems locally.

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

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 departments 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 841 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 become dumping grounds for hazardous materials and pose a safety and health threat to users of public waterways and the State's natural resources.

The FWC uses grant programs to enhance boating access and other boating-related activities from the Florida Boating Improvement Program (FBIP), funding for transient tie-up facilities for boats 26 feet or longer from the Boating Infrastructure Grant Program (BigP), assistance for

removal of derelict vessels from the Derelict Vessels Removal Grant Program, and other boating-related grant programs.

III. Effect of Proposed Changes:

Section 1: Section 206.606 of the Florida Statutes, is amended to provide for local projects funded by the State Game Trust Fund to include projects providing uniform waterway markers, public boat ramps, lifts, and hoist, marine railways, and derelict vessel removal.

Section 2: Section 327.59, F.S., is amended to authorize marina owners, employees, operators, and agents to secure vessels after the issuance of tropical storm and hurricane watches and charge a fee to the vessel owner for doing so. Any additional costs associated with removal and or storage of the vessel may be passed on the vessel owner. The PCS also provides for marina operators, employees, agents, or owners to be held harmless for these services. Marina operators, owners, employees, and agents are, however, to be responsible for intentional damage or negligence exercised in the process of storing the vessel.

In order to minimize damage to a vessel, protect marina property, and the environment, a marina owner by contract may provide that if a boat owner fails to promptly remove a vessel from a marina after issuance of a tropical storm or hurricane watch, the marina owner, operator, or an employee or agent of the owner or operator may remove the vessel from its slip or take whatever actions are deemed necessary in order to minimize damage to a vessel, protect marina property, and the environment. In order to add such a provision to a contract, the marina owner must include it in any such contract, in a font of at least 10-point type. An example of such a notice is provided in the PCS.

Section 3: Section 327.60, F.S., is amended to provide for local regulation of anchoring vessels within mooring fields and prohibits local regulation outside of mooring fields.

Section 4: Section 328.64, F.S., is amended to require the DHSMV to create a change of interest and address form and attach such a form to every vessel title issued or reissued.

Section 5: Section 328.72, F.S., is amended to provide for distribution of revenues from registration fees and surcharges and monies redistributed to the counties must provide for specified purposes including: boat ramps, boat lifts and hoists, marine railways, and other public boat derelict vessel removal.

The PCS removes language directing revenues from registration fees to the Save the Manatee Trust Fund.

The PCS also provides for counties to turn in a report detailing the county's compliance with state regulations for uses of the distributed funds (of the previous calendar year). Tax collectors will be instructed to remit moneys, designated for uses specified in statute, to the state for deposit into the Marine Resources Conservation Trust Fund if counties fail to provide timely reports. The FWC shall return those moneys to the county if the county fully complies with this section within that calendar year. If the county does not fully comply with this section within that

calendar year, the moneys shall remain within the Marine Resources Trust Fund and may be appropriated for the purposes specified in this subsection.

Section 6: Section 376.11, F.S., is amended to revise provisions in relation to the Florida Coastal Protection Trust Fund to conform to changes made by this act.

Section 7: Section 376.15, F.S., is amended to revise provisions relating to derelict vessels, specifies officers authorized to remove vessels and authorizes recovery of certain costs, as FWC officers and all officers described in s. 327.70, F.S.

The Department of Legal Affairs is designated as the legal representation for FWC in matters concerning these actions.

Section 8: Section 403.813, F.S., is amended to include an exemption of permit requirements for vessel platforms and floating boat lifts. This change will allow for floating vessel platforms and boat lifts that are associated with bulkheads without an existing dock to be exempt from permitting. In addition, the PCS would exempt larger vessel platforms and boat lifts at bulkheads than is allowed for vessel platforms and boat lifts at docks under the current exemption.

Section 9: Section 705.101, F.S., is amended to conform to terminology used in s. 823.11, F.S.

Section 10: Section 705.103, F.S., is amended to substitute the word “vessel” in place of the word “boat”.

Section 11: Section 823.11, F.S., is amended to define the term “derelict vessel” as referred to in s. 705.101, F.S., by this PCS. The PCS also adds provisions to this section specifying officers with authority to remove vessels, provides removal of vessels may be funded by certain grants. Language allowing the FWC to delegate authority to local governments is removed as this authority would no longer be needed as per this PCS.

The PCS provides private property owners must comply with regulations for vessel removal. Presumption of “delivered notices” is specified as “deposited with the United States Postal Service, certified, and properly addressed with postage prepaid.”

The PCS provides for court jurisdiction over criminal violations of this section do not in any way effect civil penalties for violations of this section.

The date of enactment of this PCS is specified as the day the PCS becomes 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:

Vessel owners will be liable for costs associated with actions taken by marina owners to secure the vessels. The legislation does not specify how marina owners will identify which vessels have done specific damage or how such damage costs would be assessed or assigned. This could create additional costs to vessel owners.

Private property owners and marina owners, being in compliance with statute, will be allowed to remove derelict vessels after 60 days at the vessels owners' expense. Vessel owners who fail to reimburse marinas or private property owners, and or pay fees for removal of derelict vessels or vessels being moved or stored by marina operators for when a tropical storm or hurricane watch is in effect, will not be allowed to register any marine vessel or motor vehicle until their debt has been settled.

C. Government Sector Impact:

Tax collectors will be instructed to remit moneys, designated for uses specified in statute, to the state for deposit into the Marine Resources Conservation Trust Fund if counties fail to provide a report detailing the county's compliance with state regulations for uses of the distributed funds (of the previous calendar year). The commission shall return those moneys to the county if the county fully complies with this section within that calendar year. If the county does not fully comply with this section within that calendar year, the moneys shall remain within the Marine Resources Trust Fund and may be appropriated for the purposes specified in this subsection.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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