

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7123 PCB HWSS 15-06 At-risk Vessels
SPONSOR(S): Highway & Waterway Safety Subcommittee, Raschein
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Highway & Waterway Safety Subcommittee	13 Y, 0 N	Willson	Smith
1) State Affairs Committee		Moore, R.	Camechis

SUMMARY ANALYSIS

Under current law, the Fish and Wildlife Conservation Commission (FWCC) does not have the authority to require vessel owners to maintain their vessels or otherwise regulate the condition of vessels that occupy the waters of the state, unless the vessel is a hazard to navigation, discharges contaminants, is derelict (wrecked, junked, or substantially dismantled), or is in violation of other vessel safety laws. Additionally, a vessel owner has no duty to maintain their vessel, and can allow a vessel occupying waters of the state to deteriorate until it reaches a derelict condition. Once a vessel is deemed derelict FWCC can remove or relocate the vessel, but it can become much more difficult and expensive once a vessel has deteriorated to the point that it meets the definition of a derelict vessel.

The bill provides the following regulations for vessels at risk of becoming derelict:

- Requires vessels that occupy the waters of the state to be maintained above the minimum level of care.
- Authorizes an officer of the FWCC or law enforcement agency to determine that a vessel occupying waters of the state is at risk of becoming a derelict vessel in an effort to prevent vessels in neglected or deteriorating condition from reaching a likely and foreseeable state of disrepair.
- Defines an "at-risk vessel" as a vessel which exhibits physical characteristics consistent with, indicative of, or attributable to a lack of reasonable maintenance, including:
 - The vessel having compartments designed to be enclosed that are incapable of being sealed off or remain open to the elements for extended periods of time.
 - The vessel has broken free or is in danger of breaking free from anchor.
 - The vessel is listing due to water intrusion, has sunk or is partially sunken, or is left or stored aground in such a state that would prevent the vessel from getting underway.
 - The vessel is taking on or has taken on water without an effective means of dewatering.
- Provides that a person, firm or corporation that violates provisions regarding at risk vessels commits a noncriminal infraction, punishable as follows: for a first offense, \$50; for a second offense occurring within 30 days after a prior conviction, \$250; for a third offense occurring within 60 days after a prior conviction, \$500; and for a fourth or subsequent offense occurring within 90 days after a prior conviction, \$1,000. A warning letter, in lieu of a penalty, can be issued at least once if the vessel is a recreational vessel, and is lawfully registered or exempt from registration. If an unattended vessel is determined to be at risk, a citation must be mailed to the registered owner of the vessel, and a highly visible, element-resistant tag or decal must be conspicuously posted on the vessel no more than 3 business days after the citation is mailed.
- Requires that a citation be accompanied by a notification that includes:
 - The location of the vessel at the time of the at-risk determination;
 - A list of the physical characteristics of the vessel that warranted the at-risk determination;
 - A statement explaining the prohibition against leaving a vessel that meets one or more at-risk conditions;
 - A penalty for failure to take corrective action; and
 - The contact information of the law enforcement officer and agency making the at-risk determination.
- Provides that a vessel is considered derelict if: the vessel is determined to be at risk; a citation is issued; and ninety or more days after the date that the citation was issued, the vessel occupies waters of the state and one or more of the at-risk conditions for which the citation was issued have not been corrected.
- Provides that the bill does not apply to a vessel that is moored to a structure or mooring buoy on state lands.

The bill may have an indeterminate positive fiscal impact on state and local government revenues by establishing a new noncriminal infraction relating to vessels at risk of becoming derelict and may have a negative impact on the private sector resulting from the assessment of these new civil penalties.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation

Background

Current law does not limit the length of time that a properly maintained vessel¹ may occupy waters of this state.² Current law also does not authorize the Fish and Wildlife Conservation Commission (FWCC) to require vessel owners to maintain their vessels or otherwise regulate the condition of vessels that occupy the waters of the state, unless the vessel is a hazard to navigation, discharges contaminants, is derelict (wrecked, junked, or substantially dismantled), or is in violation of other vessel safety laws. Additionally, a vessel owner has no duty to maintain their vessel, and can allow a vessel occupying waters of the state to deteriorate until it reaches a wrecked, junked, or substantially dismantled condition. Once a vessel is deemed derelict FWCC can remove or relocate the vessel, but it can become much more difficult and expensive once a vessel has deteriorated to the point that it meets the definition of a derelict vessel.

Local governments are authorized to enact and enforce regulations regarding the mooring or anchoring of vessels that are located within marked boundaries of a mooring field³ within their jurisdiction.⁴ However, local governments are prohibited from regulating the anchoring of vessels, other than live-aboard vessels,⁵ that are located outside of mooring fields.⁶

The unregulated anchoring and mooring of vessels outside of mooring fields has created issues regarding:

- Vessels being left unattended or unsupervised;
- Vessels that have broken free or are in danger of breaking free; and
- Vessels that are not properly maintained, are listing, or taking on water, but are not to the point of deterioration that they can be deemed derelict.⁷

Derelict Vessels

¹ A "vessel" is defined in s. 327.02(43), F.S., to be synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

² "Waters of this state" is defined in s. 327.02(44), F.S., to mean any navigable waters of the United States within the territorial limits of this state, the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers, and canals under the jurisdiction of this state.

³ Mooring fields are permitted by the FWCC, under ch. 327, F.S. A mooring field is an area of waters of this state set aside for the mooring of vessels to mooring buoys. The area must have delineated boundaries that are marked with uniform waterway markers as provided in s. 327.40, F.S., and must have mooring buoys installed in a planned array, taking into consideration the following factors: vessel lengths and swing radii; vessel drafts and available water depths; vessel sizes, weights, and wind-loading characteristics; buoy sizes and types; anchor sizes and types; and holding characteristics of the bottom. See *Anchoring and Mooring Pilot Program Questionnaire* (Oct. 14, 2009), available at http://myfwc.com/media/106689/Boat_Anchoring_FieldQuestions.pdf (Last accessed April 9, 2015.)

⁴ Section 327.60(3), F.S.

⁵ A "live-aboard vessel" is defined in s. 327.02(19), F.S., as a vessel that is used solely as a residence and not for navigation, represented as a place of business or a professional or other commercial enterprise, or for which a declaration of domicile has been filed pursuant to s. 222.17, F.S. A commercial fishing boat is expressly excluded from the term "live-aboard vessel."

⁶ Section 327.60(3), F.S.

⁷ *Anchoring and Mooring Pilot Program Report of Findings and Recommendations*, available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf>. (Last accessed April 9, 2015.); FWCC 2015 Agency Bill Analysis for SB 1548, on file with staff.

A derelict vessel is defined in s. 823.11(1)(b), F.S., as a vessel that is left, stored, or abandoned:

- In a wrecked, junked, or substantially dismantled condition upon any public waters of this state.
- At a port in this state without the consent of the agency having jurisdiction thereof.
- Docked, grounded, or beached upon the property of another without the consent of the property owner.

It is unlawful for a person, firm, or corporation to store, leave, or abandon any derelict vessel in this state.⁸ The FWCC, officers of the FWCC, and any law enforcement agency or officer specified in s. 327.70, F.S.,⁹ are authorized and empowered to relocate, remove, or cause to be relocated or removed a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.¹⁰ Additionally, the FWCC and other officers acting under s. 823.11(3), F.S., are held harmless for all damages to the derelict vessel resulting from the relocation or removal unless the damage results from gross negligence or willful misconduct.¹¹ All costs, including costs owed to a third party, incurred by the FWCC or other law enforcement agency in the relocation or removal of a derelict vessel are recoverable against the vessel owner.¹² A person who neglects or refuses to pay such costs may not be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until such costs have been paid.¹³

Additionally, a person, firm, or corporation violating s. 823.11, F.S., commits a first degree misdemeanor.¹⁴ Further, a conviction under s. 823.11, F.S., does not bar the assessment and collection of civil penalties provided in s. 376.16, F.S.¹⁵

The removal of a derelict vessel costs an average of \$350 to \$450 per foot of vessel length.¹⁶ However, there are many variables that affect the costs of removing a vessel.¹⁷ Sunken vessels require professional divers and specialized equipment, resulting in costs in excess of the average.¹⁸ On the other hand, a floating vessel may be towed to a boat ramp or hoist and pulled from the water at much lower cost.¹⁹ Relocation may have no cost if a law enforcement officer is able to tow the vessel to a suitable location.²⁰ If professional towing services are called upon, costs in the neighborhood of \$200 per hour with a one-hour minimum, beginning from the time the tow boat leaves the dock to the time it returns, are standard.²¹ According to the At-Risk Vessel Statewide Database, a known total of 92 derelict vessels were removed in 2013 by local governments.²² Those local governments spent approximately \$325,000 on the removal of derelict vessels, resulting in an average of \$3,533 per vessel.²³

⁸ Section 823.11(2), F.S.

⁹ Section 327.70, F.S., identifies the Division of Law Enforcement of the FWCC and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer as defined in s. 943.10, F.S.; Section 943.10(1), F.S., defines a "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

¹⁰ Section 823.11(3), F.S.

¹¹ Id.

¹² Section 823.11(3)(b), F.S.

¹³ Sections 823.11(3)(b) and 705.103(4), F.S.

¹⁴ Section 823.11(5), F.S.; A first degree misdemeanor is punishable by a term of imprisonment not to exceed one year pursuant to s. 775.082(4)(a), F.S., and may be fined \$1,000 pursuant to s. 775.083(1)(d), F.S.

¹⁵ Section 376.16, F.S., provides penalties for discharges of pollutants, such as gasoline or diesel.

¹⁶ FWCC 2014 Agency Bill Analysis for HB 1363, on file with staff.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

Navigational Hazard

Section 327.44, F.S., authorizes law enforcement officials to relocate, remove, or cause to be relocated or removed any vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. A violation of s. 327.44, F.S., is a noncriminal infraction, punishable by a civil penalty of \$50.²⁴ If the vessel is unattended, a uniform boating citation may be mailed to the registered owner of the vessel.²⁵

Noncriminal Infractions for Violations of Vessel Laws

Section 327.73(1), F.S., provides that a person cited for a violation of the vessel laws of the state under this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is \$50, except as otherwise provided in the section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the vessel laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S.²⁶ or s. 775.083, F.S.²⁷ A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Effect of proposed changes

The bill creates s. 327.501, F.S., regarding vessels at risk of becoming derelict, and provides that:

- Vessels that occupy the waters of the state must be maintained above the minimum level of care. In an effort to prevent vessels in neglected or deteriorating condition from reaching a likely and foreseeable state of disrepair, an officer of the FWCC or law enforcement agency can determine that a vessel occupying waters of the state is at risk of becoming a derelict vessel. The bill defines an “at-risk vessel” as a vessel that exhibits physical characteristics consistent with, indicative of, or attributable to a lack of reasonable maintenance, including:
 - The vessel has compartments designed to be enclosed that are incapable of being sealed off or remain open to the elements for extended periods of time.
 - The vessel has broken free or is in danger of breaking free from anchor.
 - The vessel is listing due to water intrusion, has sunk or is partially sunken, or is left or stored aground in such a state that would prevent the vessel from getting underway.
 - The vessel is taking on or has taken on water without an effective means of dewatering.
- A person, firm or corporation that violates this provision commits a noncriminal infraction punishable as follows:
 - For a first offense, \$50.
 - For a second offense occurring within 30 days after a prior conviction, \$250.
 - For a third offense occurring within 60 days after a prior conviction, \$500.
 - For a fourth or subsequent offense occurring within 90 days after a prior conviction, \$1,000.

A warning letter, in lieu of a penalty, may be issued at least once if the vessel is a recreational vessel²⁸ and is lawfully registered or exempt from registration.

- If an attended or occupied vessel is determined to be at risk, the person in control of the vessel must sign and accept the citation issued under this provision. If an unattended vessel is determined to be at risk, a citation must be mailed to the registered owner of the vessel, and a highly visible, element-resistant tag or decal must be conspicuously posted on the vessel no more than 3 business days after the citation is mailed.

²⁴ Section 327.73(1)(j), F.S.

²⁵ Section 327.70(2)(a)2., F.S.

²⁶ Section 775.082, F.S., provides that a second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days.

²⁷ Section 775.083, F.S. provides that a second degree misdemeanor is punishable by a fine not to exceed \$500.

²⁸ A “recreational vessel” is defined in s. 373.02(37), F.S., as a vessel that is manufactured and used primarily for noncommercial purposes, or is leased, rented, or chartered to a person for his or her noncommercial use.

- A citation issued under this provision must be accompanied by a notification that includes:
 - The location of the vessel at the time of the at-risk determination;
 - A list of the physical characteristics of the vessel that warranted the at-risk determination;
 - A statement explaining the prohibition against leaving a vessel that meets one or more of the at-risk conditions on waters of the state;
 - A penalty for failure to take corrective action; and
 - The contact information of the law enforcement officer and agency making the at-risk determination.
- A vessel is considered derelict for purposes of s. 823.111, F.S., if:
 - The vessel is determined to be at risk in accordance with s. 327.501, F.S.;
 - A citation is issued under s. 327.501, F.S.; and
 - Ninety or more days after the date that the citation was issued, the vessel occupies waters of the state and one or more of the at-risk conditions for which the citation was issued have not been corrected.
- Section 327.501, F.S., does not apply to a vessel that is moored to a structure or mooring buoy authorized under ch. 253, F.S.²⁹

The bill amends s. 327.70, F.S., regarding enforcement, to provide that a violation of s. 327.501, F.S., is a noncriminal violation that may be enforced by a uniform boating citation mailed to the registered owner of an unattended vessel anchored, aground, or moored on the waters of the state.

The bill amends s. 327.73, F.S., providing for a noncriminal infraction relating to vessels that are at risk of becoming derelict punishable by a graduated penalty.

B. SECTION DIRECTORY:

- Section 1. Creates s. 327.501, F.S., providing for vessels at risk of becoming derelict; defining the term "at-risk vessel;" providing that failure to take corrective action is a noncriminal violation; providing penalties; providing conditions under which an at risk vessel is considered derelict.
- Section 2. Amends s. 327.70, F.S., authorizing a uniform boating citation to be issued for a violation of s. 327.501, F.S.
- Section 3. Amends s. 327.73, F.S., providing for penalties for a violation of s. 327.501, F.S.
- Section 4. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See Fiscal Comments, section D., below.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

²⁹ Chapter 253, F.S., regards state owned lands.
 STORAGE NAME: h7123.SAC
 DATE: 4/10/2015

1. Revenues:

See Fiscal Comments, section D., below.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a potentially negative impact on persons who are subject to the additional civil penalties provide for in this bill.

D. FISCAL COMMENTS:

The bill appears to have an indeterminate positive fiscal impact on state and local government revenues by establishing a new noncriminal infraction relating to vessels at risk of becoming derelict.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A