

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HWSS 15-06 At Risk Vessels

SPONSOR(S): Highway & Waterway Safety Subcommittee and Raschein

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Highway & Waterway Safety Subcommittee	13 Y, 0 N	Willson	Smith

SUMMARY ANALYSIS

The bill relates to vessels at risk of becoming derelict on waters of the state. Specifically, the bill:

- defines the term "at-risk vessel";
- authorizes law enforcement officers to issue citations
- provides conditions under which a vessel is considered derelict;
- provides that a failure to take certain corrective action is a noncriminal violation;
- provides for a graduated civil penalty;

The bill has an effective date of July 1, 2015.

The bill has not yet been scored by the REC.

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 vessel may occupy waters of the state. The marine environment is harsh and corrosive, and unmaintained vessels tend to deteriorate over time. However, unless the vessel is a hazard to navigation, discharges contaminants, or is in violation of another vessel safety laws, a vessel owner has no duty to maintain their vessel and may allow a vessel occupying waters of the state to deteriorate until it reaches a wrecked, junked, or substantially dismantled condition.

Chapter 327, F.S., contains various provisions pertaining to vessel safety in Florida; chapter 376, F.S., contains various provisions pertaining to pollutant discharge in Florida, which applies to abandoned and derelict vessels on public waters; and chapter 823, F.S., contains various provisions pertaining to public nuisance law in the state, which apply to derelict vessels that obstruct or threaten to obstruct navigation or pose a threat to the environment.

Vessel Removal

A “vessel” is defined as being synonymous with boat as referenced in Article VII, Section 1(b) of the Florida 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 the water.¹

The Florida Fish and Wildlife Conservation Commission (FWC) and other law enforcement agencies or officers² are authorized to relocate or remove a derelict vessel from public waters.³

Section 823.11, F.S. defines a “derelict vessel” as a vessel left, stored, or abandoned:

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

Violation of the derelict vessel provision is punishable by a misdemeanor of the first degree, and can also carry additional civil penalties.⁴ FWC or other law enforcement agencies are authorized to recover from the vessel owner all costs from the removal of any abandoned or derelict vessel⁵. The Department of Legal Affairs is required to represent FWC in these actions.⁶ In addition, any person who neglects or refuses to pay such costs is not entitled to be issued a certificate of registration for such vessel, or for any other vessel or motor vehicle, until the costs have been paid.⁷

¹ Section 327.70(2)(a), F.S.

² Pursuant to section 943.10, F.S., a law enforcement officer is “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.”

³ Sections 823.11 and 376.15(2), F.S.

⁴ Section 823.11(5), F.S.

⁵ Section 376.15(2), F.S.

⁶ Section 823.11(3), F.S.

⁷ *Id*

According to FWC,⁸ the removal of a derelict vessel costs an average of \$350 to \$450 per foot of vessel length. However, there are many variables that affect the costs of removing an individual vessel. Sunken vessels require professional divers and specialized equipment, resulting in costs in excess of the average. 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. Relocation may have no cost if a law enforcement officer is able to tow it to a suitable location. If professional towing services are called upon, costs in the neighborhood of \$200 per hour with a one-hour minimum (from the time the tow boat leaves their dock to the time they return) are standard. According to the At-Risk Vessel Statewide Database, a known total of 92 derelict vessels were removed in 2013 by local governments. Those local governments spent approximately \$325,000 on the removal of derelict vessels, resulting in an average of \$3,533 per vessel.

Section 327.44, F.S. authorizes law enforcement officers 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.⁹ A violation of this section is a noncriminal infraction, punishable by a civil infraction of \$50.¹⁰ If the vessel is unattended, a uniform boating citation may be mailed to the registered owner of the vessel.¹¹

Mooring Fields

A mooring field is a specifically delineated area of water, set aside by a local government, containing an array of permanently fixed buoys to which vessels may be secured.¹² Mooring fields must be permitted by FWC, and must be marked off using uniform waterway markers.¹³ Local governments may regulate the mooring or anchoring of vessels inside a mooring field, but are prohibited from regulating the anchoring of vessels (other than live-aboard vessels¹⁴) outside of legally permitted mooring fields.¹⁵

Effect of proposed changes

The bill creates s. 327.501, F.S., making it a noncriminal infraction for a vessel at risk of becoming derelict to occupy waters of the state. An at-risk vessel is a vessel which exhibits physical characteristics consistent with, indicative of, or attributable to a lack of reasonable maintenance, including:

- Vessel compartments designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time.
- Vessel has broken free, or is in danger of breaking free from anchor.
- 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.
- Vessel is taking on or has taken on water without an effective means of dewatering.

An at-risk vessel that continues to occupy waters of the state after 90 days following the issuance of a citation shall be considered a derelict vessel under s. 823.11, F.S.

The bill amends s. 327.70, F.S., providing for a noncriminal violation of s. 327.501, F.S. to 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.

⁸ FWC 2014 Agency Analysis on file with staff.

⁹ Section 327.44, F.S.

¹⁰ Section 327.73(1)(j), F.S.

¹¹ Section 327.70(2)(a)2., F.S.

¹² FWCC Anchoring and Mooring Pilot Program Questionnaire, 10-14-09

http://myfwc.com/media/106689/Boat_Anchoring_FieldQuestions.pdf (Last accessed February 11, 2015)

¹³ Section 327.40, F.S.

¹⁴ Section 327.02(19) defines “Live-aboard vessel” as a vessel that is used solely as a residence and not for navigation, 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. A commercial fishing boat is expressly excluded from the term “live-aboard vessel.”

¹⁵ Section 327.60, F.S.

The bill amends s. 327.73, F.S., providing for a noncriminal violation of s. 327.501, F.S., punishable by a graduated civil penalty.

B. SECTION DIRECTORY:

- Section 1 Creates s. 327.501, F.S., defining the term "at-risk vessel"; providing procedures for preventing certain vessels from becoming derelict; providing conditions under which a vessel is considered derelict; providing that failure to take certain corrective action is a noncriminal violation; providing penalties
- 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 a noncriminal 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:
None.
- 2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill has not yet been scored by REC.

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:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES