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DATE: February 13, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 899

RELATING TO: Vessels

SPONSOR(S): Representative Barreiro

STATUTE(S) AFFECTED: ss. 125.0103, 166.043, 327.02, 327.52, 327.73, 713.78, 715.07, F.S.

COMPANION BILL(S): SB 1892 by Senator Ostalkiewicz (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CIVIL JUSTICE & CLAIMS YEAS 8 NAYS 0
- (2) FINANCE AND TAXATION
- (3)
- (4)
- (5)

I. SUMMARY:

CS/HB 899 would modify several sections of the statutes concerning the disposition of unclaimed motor vehicles. It would add undocumented vessels to these statutes. The bill would allow storage facilities and towing services to recover costs through the nonjudicial sale of unclaimed vessels. It would also set forth certification procedures and impose fees for the destruction or modification of unclaimed vessels. Finally, it would add vessels to existing statutes which regulate the removal of motor vehicles parked on private property.

CS/HB 899 would produce an indeterminate fiscal impact to state and local trust funds.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Several statutes currently provide guidelines for the towing, nonjudicial sale, and disposition of unclaimed motor vehicles.

Section 328.17, F.S., provides procedures for the nonjudicial sale of certain unclaimed vessels. It authorizes the Department of Highway Safety and Motor Vehicles to certify the nonjudicial sale of unclaimed vessels, vessels held for unpaid costs of repairs, work, or storage charges, vessels held for failure to pay removal costs incurred for a marine sanitation violation, and any undocumented vessel in default of marine storage fees.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 899 would add undocumented vessels to the statutes which currently regulate the towing, nonjudicial sale, and disposition of unclaimed motor vehicles. It would allow storage facilities and towing services to impose a lien on such vessels for towing, recovery, or storage services. It would also set forth procedures for notifying the vessel's owner or lienholder prior to disposition. Towing services or storage facilities wishing to destroy or dismantle unclaimed vessels would be required to obtain a certificate of destruction from the Department of Highway Safety and Motor Vehicles.

Finally, CS/HB 899 would substantially amend s. 327.52 F.S. This change would bring certain boating safety regulations into conformity with federal law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

CS/HB 899 prescribes the steps which towing services or storage facilities must take to locate and notify the owner or lienholder of an unclaimed vessel. To a limited extent, the bill could affect the responsibilities of the Department of Highway Safety and Motor Vehicles, the clerks of the circuit courts, and law enforcement.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA.

(2) what is the cost of such responsibility at the new level/agency?

NA.

(3) how is the new agency accountable to the people governed?

NA.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

Yes. CS/HB 899 authorizes the Department of Highway Safety and Motor Vehicles to charge a fee of \$3 for issuing a certificate of destruction for vessels also. Currently, only vehicles are subjected to these fees.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

Yes. CS/HB 899 authorizes the tax collector to levy a \$4.25 service charge for processing the application for a certificate of destruction for vessels also. Currently, only vehicles are subjected to these fees.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. Those seeking a certificate of destruction must pay a processing fee.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. It would allow certain businesses to dispose of unclaimed vessels in a more efficient manner.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

NA.

(2) Who makes the decisions?

NA.

(3) Are private alternatives permitted?

NA.

(4) Are families required to participate in a program?

NA.

(5) Are families penalized for not participating in a program?

NA.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

NA.

(2) service providers?

NA.

(3) government employees/agencies?

NA.

D. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Department of Highway Safety and Motor Vehicles could incur some costs connected with CS/HB 899.

2. Recurring Effects:

Indeterminate. CS/HB 899 would require the Department of Highway Safety and Motor Vehicles to regulate activities connected with the removal of unclaimed vessels. The bill would also require the Department of Highway Safety and Motor Vehicles to process "certificates of destruction" for vessel in addition to vehicles.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. Although tax collectors would receive a \$4.25 fee for each certificate of destruction processed, it is not known whether this fee would cover associated costs.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

CS/HB 899 could divest certain boat owners of their ownership interests within a reduced time frame. It would require towing services and storage facilities to pay \$3 to the Department of Highway Safety and Motor Vehicles and \$4.25 to the tax collector for processing applications for certificates of destruction for vessels also.

2. Direct Private Sector Benefits:

CS/HB 899 would allow towing services and others to recover costs in a more expeditious manner. The bill would reduce storage costs by facilitating rapid disposition of unclaimed vessels. Finally, it would give private property owners a procedure for the removal and disposition of vessels wrongfully present on their property.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill would not reduce the percentage of a state tax shared with counties or municipalities. Therefore, It would not contravene the requirements of Article VII, Section 18, of the state constitution.

V. COMMENTS:

1. **Question Presented** - *Should the Legislature attempt to expedite the disposition of unclaimed vessels and if so, does HB 899 provide a reasonable procedure?*
2. **The Bill as Originally Filed** - The original bill would have amended s. 328.17, F.S., which provides procedures for the nonjudicial sale of unclaimed vessels.
 - a. **Advancement of Sales and Dispositions** - The original bill would have permitted early disposition of unclaimed vessels held for nonpayment of storage fees, repairs, improvements, or other work.
 - b. **Exemption from Encumbrances** - The original bill would have provided that when an unclaimed vessel is disposed of through nonjudicial sale, the purchaser for value takes the vessel free of all claims, liens, and encumbrances, unless a court orders otherwise. While this provision would have provided purchasers with an immediate assurance of ownership, it might have interfered with some federal liens.
 - c. **Application to Storage Facilities** - The original bill would have allowed storage facilities to dispose of unclaimed vessels to recover unpaid costs. Presently, only marinas and vessel towing services are permitted to sell vessels to recover costs.

- d. **Imposition of a "Reasonable" Standard of Care** - The original bill would have imposed a reasonable standard of care on activities connected with recovering, towing, or storing vessels. This arrangement might have modified current law. The general maritime standard of care for salvage and towing operations requires "workmanlike performance." Although a reasonable standard of care applies to negligence actions, the standard does not apply to all causes of action.
- 3. **Committee Substitute** - The Committee on Civil Justice & Claims, at its meeting on March 27, 1997, adopted a committee substitute. The committee substitute addressed the concerns detailed above by placing unclaimed/undocumented vessels within the statutes relating to the towing and disposition of unclaimed motor vehicles.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE & CLAIMS:

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