

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility –

The bill increases personal accountability for vessel owners to secure or move their vessel from marinas before the onset of a tropical storm or hurricane. Vessel owners whose abandoned or derelict vessels cause property damage to a marina are liable for costs incurred by the marina as well as the state and local governments.

In the interest of protecting lives over personal property, the bill does not require vessel owners to move their vessels before a storm, nor does it allow marina owners to require vessel owners move or secure their vessels during a storm warning.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Vessel Owner Liability

Section 327.59, F.S., addresses the issue of the relationship between Florida's marinas and persons who dock their vessels in the marina and the responsibilities of each should there be the issuance of a hurricane watch or warning. This section of Florida statutes was enacted following the devastation to South Florida caused by Hurricane Andrew. This section was designed to address concerns raised by the marina owners and boat owners as to the extent each is liable for damages done to marinas resulting from a hurricane.

Subsection (1) of s. 327.59, F.S., provides that after June 1, 1994, marinas are prohibited from adopting, maintaining, or enforcing any policy pertaining to the evacuation of vessels from a marina following the issuance of a hurricane watch or warning. Marinas may not require the removal of a vessel from the marina following the issuance of a hurricane watch or warning since according to the statute, the protection of lives and the safety of the owners of vessels is placed before the interests of protecting property.

Subsection (2) of s. 327.59, F.S., clarifies the responsibilities of marinas and vessel owners in terms of when a hurricane watch or warning is issued. The ability of a vessel owner to remove a vessel voluntarily from a marina at any time is not restricted by the text in subsection (1). Neither is a marina owner restricted by the text in subsection (1) from dictating the kind of cleats, ropes, fenders, and other measures that must be used on vessels as a condition of using the marina.

The question being addressed leading to the enactment of s. 327.59, F.S., was whether boats damage a marina's docks during a storm or whether the docks damage boats should the docking system fail. Marina owners pursued statutory language which would have given them the right to evacuate vessels from their marina prior to the arrival of a hurricane. Vessel owners objected to empowering marina owners with the authority to require the evacuation of vessels in advance of pending storm, arguing that the safety of persons ought to take precedence over the protection of property. Boat owners argue that some boat owners would have no safe place to go should a storm approach the state, nor are their sufficient safe anchorages, havens, or "hurricane holes" to accommodate the large number of vessels needing to seek shelter and safety from the arrival of a hurricane.

Section 327.59, F.S., states that it is the policy of the state to protect lives over property should the state face a severe storm or hurricane.

In 1995, s. 327.59, F.S., was challenged by a marina owner in court and the case was dismissed. A subsequent appeal of the case upheld the lower court's dismissal ruling (Burklow & Associates v. Belcher, 719 So.2d 31). In that case, the marina owner sued the owners of sixteen boats stored at the marina for breach of contract and negligence, seeking to recover damages allegedly caused by the boat owners' failure to move their vessels from the marina before a hurricane had moved ashore. The Circuit Court dismissed the complaint and the marina owner appealed. The District Court of Appeal upheld the dismissal and found the following:

- The marina owner's complaint was within admiralty jurisdiction and that federal maritime law applied;
- Federal maritime law did not preempt s. 327.59, F.S., providing that marinas may not adopt, maintain, or enforce evacuation policies requiring vessels to be removed from marinas following the issuance of a hurricane watch or warning; and
- Boat owners had no duty to remove their boats upon the request of the marina owner in the period prior to the issuance of a hurricane watch or warning.

The District Court of Appeal further stated that an owner of a boat which is lawfully docked at a marina, under a valid slip lease agreement that does not require the removal of a boat in the event of a hurricane threat, does not owe a duty to the marina owner to remove his or her boat upon the request of the marina owner during the period prior to the issuance of any hurricane watch or warning. The court stated that requiring such a duty was not logical given the insufficient probability, at any time prior to the issuance of an official hurricane watch or warning, of a hurricane causing a boat owner's vessel to damage a marina. The court further stated that boat owners whose boats were stored at a marina did owe a duty to the marina owner to exercise reasonable care for the protection of the marina property, but that duty did not include any obligation to remove their boats upon the request of the marina owner.

The court left unaddressed the question of whether a so-called "hurricane clause" in slip lease agreements, requiring a boat owner to remove the vessel from a marina upon the threat of a hurricane, would be void as against the public policy stated in s. 327.59, F.S.

According to the Florida Department of Environmental Protection, there are nearly 2,000 marinas operating in Florida with hundreds of thousands of boaters using Florida's waterways every day. According to the Marine Industries Association of Florida, boating is a \$14.2 billion dollar industry that includes marinas, boatyards, and boaters.

Possessory Lien

Currently, marina owners have a possessory lien (a lien with the right to retain possession of another's property as security for a debt or obligation) on any vessel for storage fees, dockage fees, repairs, improvements, or other work-related storage charges. The possessory lien also covers expenses necessary for preservation of the vessel or expenses reasonably incurred in the sale or other disposition of the vessel.¹ The possessory lien attaches (begins) on the date the vessel is brought to the marina, or the date when the vessel first occupies rental space at the marina.²

Derelict Vessel Removal Program

Section 376.11., F.S., established the Derelict Vessel Removal Program in 1980 which is currently operated by the Florida Fish and Wildlife Conservation Commission (FWCC). The program is a financial assistance grant program, providing funds to coastal local governments for the reimbursement of the removal of derelict vessels from coastal waters of the state. An abandoned vessel becomes a derelict vessel only after all available means to have the rightful owner remove the vessel have failed.

¹ s. 328.17 (4), F.S.

² s. 328.17 (4), F.S.

An investigation is conducted by the local FWCC office and can involve court orders requiring the removal of the vessel. Funding for the program is appropriated by the Legislature each fiscal year. An application process provides for coastal local governments to submit a grant application to the FWCC. In 2002-2003, twelve coastal local governments received financial assistance for the removal of 47 derelict vessels and the removal of 6 larger derelict vessels (over 100 feet in length). Funding requests for the removal of derelict vessels have averaged about \$1.6 million. Currently only FWCC law enforcement officers have the authority to remove derelict vessels from public waters.³

EFFECT OF PROPOSED CHANGES

Vessel Owner Liability

The bill makes vessel owners liable for damages caused to a marina by their vessel, if they failed to remove that vessel from the marina after a hurricane watch or warning is issued. A hurricane watch indicates the possibility that a particular section of the coast may experience hurricane conditions within 36 hours. The National Oceanic and Atmospheric Administration (NOAA) notes that when a watch is issued, "protective measures should be initiated, especially those actions that require extra time such as securing a boat." A hurricane warning indicates that winds of at least 74 mph are expected within 24 hours or less.⁴

The bill provides that after a tropical storm or hurricane watch has been issued, a marina owner, operator, employee, or agent may take further action to secure any vessel within the marina to minimize damage to a vessel, the marina property, and the environment. A tropical storm watch indicates the possibility that a particular section of the coast may experience tropical storm conditions within 36 hours. Tropical storm status is achieved when the storm reaches maximum sustained winds of at least 39 mph.⁵

Under the bill, a marina owner, operator, agent or employee: 1) may charge reasonable fees for securing vessels, 2) is not held liable for any damage to the vessel as a result of the storm, and 3) is held harmless as a result of such actions.

Possessory Lien

The bill extends the possessory lien that marinas currently have on a vessel to include any vessel in a wrecked, junked, or substantially dismantled condition that has been left docked, grounded, beached or otherwise abandoned at a marina without consent of the marina owner. The lien may claim expenses reasonably incurred for the removal and disposal of the wrecked vessel, and the lien begins from the date of the discovery of the vessel. A marina may sell the vessel, as well as any scrap. If the salvage value of the vessel does not cover the costs the marina reasonably incurred to remove the vessel, the marina may recover those costs from the vessel owner.

The Florida Coastal Protection Trust Fund was established to "provide a mechanism to have financial resources currently available for prevention of, and cleanup and rehabilitation after, a pollutant discharge, to prevent further damage by the pollutant, and to pay for damages."⁶ Money in the fund may be used to fund a grant to *coastal* local governments for the removal of derelict vessels from public waters.⁷ The bill extends this provision to *all* local governments.

³ s. 376.15 (2)(a), F.S.

⁴ <http://hurricanes.noaa.gov/>

⁵ <http://hurricanes.noaa.gov/>

⁶ s. 376.11 (1), F.S.

⁷ s. 376.11 (1) (g), F.S.

Derelict Vessels

A derelict vessel is considered to be a vessel left in a wrecked, junked, or substantially dismantled condition or abandoned on any public waters or ports without the consent of the agency having jurisdiction over those waters.⁸ The bill references the statutory definition of a “vessel”, which is identical to the definition of a vessel under maritime law, for the purpose of clarifying subsequent statutory references.⁹ The bill also amends the derelict vessel statute to include vessels that have been grounded on public or private property without the consent of the agency or property owner.

The bill amends s. 376.15, F.S., to authorize Fish and Wildlife Conservation Commission (FWCC) law enforcement officers, as well as county sheriffs and deputies, and all other authorized law enforcement officers to remove derelict vessels from public waters. Any costs law enforcement incurs may be recovered against the owner of the vessel. The Department of Legal Affairs may represent the FWCC in such actions. Currently, only the FWCC has such authority. However, the FWCC reports that, because of lack of funding of the grant program, local governments have had to spend their own funds to remove derelict vessels.¹⁰ Local governments in southwest Florida have requested from the FWCC the authority to remove derelict vessels.¹¹

The bill amends the abandoned and derelict vessel provision of the public nuisance statute (Ch. 823, F.S.) to conform to the changes to s. 376.15, F.S.

C. SECTION DIRECTORY:

- Section 1: Amends s. 327.59, F.S., and to make vessel owners liable for damage to a marina their vessel caused should the owner have failed to remove it prior to a hurricane watch or warning, and to allow an authorized marina employee to take steps and charge reasonable fees to secure any vessel in the marina after a tropical storm or hurricane watch has been issued.
- Section 2: Amends s. 328.17 (4), F.S., to grant marina owners a possessory lien on any vessel abandoned without the consent of the marina owner.
- Section 3: Amends s. 376.11 (4) (g), F.S., to extend grant program funding for the removal of derelict vessels to local governments.
- Section 4: Amends s. 376.15, F.S., to clarify a cross-reference to the statutory definition of a vessel; to include derelict vessels that are grounded on private property without the consent of the property owner; grants authority to the FWCC and other authorized law enforcement officers to remove derelict vessels from public waters; makes costs of derelict vessel removal recoverable against the vessel owner; directs the Department of Legal Affairs to represent the FWC in such actions.
- Section 5: Amends s. 705.101 (3), F.S., to include derelict vessels under the definition of abandoned property.
- Section 6: Amends s. 823.11, F.S., to clarify a cross-reference to the definition of vessel; includes vessels grounded on private property without the consent of the property owner as an abandoned and derelict vessel; designates the authority to remove abandoned and derelict vessels to FWCC and other authorized law enforcement officers; allows grant program funding for the removal of derelict vessels; directs the Department of Legal Affairs to represent the FWCC in such actions.
- Section 7: Provides an effective date

⁸ s. 376.15 (1), F.S.

⁹ Personal communication, Alan Richard, F.W.C.

¹⁰ FWCC, Legislative Analysis, HB 1121

¹¹ FWCC, Legislative Analysis, HB 1121

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The bill extends disbursement of grant funds dedicated to cleanup and removal of derelict vessels to local governments. The Florida Coastal Protection Trust Fund is designated to fund such cleanup projects, however, only to coastal local governments. The FWCC reports that the grant program has not been funded since 2002, and that the program generally received \$300,000 annually.¹² There are currently 751 reported derelict vessel cases in the state. The FWCC estimates a cost of \$1.48 million to remove these vessels.¹³

Under the bill, local law enforcement officers are given the authority to remove any abandoned or derelict vessels. The bill, however, makes costs associated with the removal recoverable against the vessel owner. The Department of Legal Affairs will incur any legal costs associated with such actions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill extends disbursement of grant funds dedicated to cleanup and removal of derelict vessels to all local governments. The Florida Coastal Protection Trust Fund funds such cleanup only to coastal local governments.

2. Expenditures:

Authorized local law enforcement officers are given the authority to remove any abandoned or derelict vessels. The bill, however, makes costs associated with the removal recoverable against the vessel owner.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Counties and cities may be required to spend funds to conduct the immediate removal of abandoned and derelict vessels. However, these costs are recoverable against the vessel owners.

3. Other:

None

¹² FWCC, Legislative Analysis, HB 1121

¹³ FWCC, Legislative Analysis, HB 1121

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES