

CHAMBER ACTION

1 The Water & Natural Resources Committee recommends the
2 following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to vessels; amending s. 327.59, F.S.;
8 authorizing marina owners, operators, employees, and
9 agents to take actions to secure vessels during severe
10 weather and to charge fees and be held harmless for such
11 service; authorizing contract provisions and notice
12 relating to removing or securing vessels; amending s.
13 328.17, F.S.; providing for possessory liens for marinas
14 on certain abandoned vessels; providing for attachment of
15 the lien and recovery of certain costs under certain
16 circumstances; requiring marina owners to provide vessel
17 owners with written notice and to obtain certain
18 documentation prior to the sale or disposition of certain
19 vessels; amending s. 376.11, F.S.; revising provisions
20 relating to the Florida Coastal Protection Trust Fund to
21 conform to changes made by the act; amending s. 376.15,
22 F.S.; revising provisions relating to the removal of
23 abandoned and derelict vessels; specifying officers

HB 1121

2005
CS

24 | authorized to remove such vessels; providing that certain
 25 | costs shall be recoverable; requiring the Department of
 26 | Legal Affairs to represent the Fish and Wildlife
 27 | Conservation Commission in certain actions; expanding
 28 | eligibility for disbursement of grant funds for the
 29 | removal of derelict vessels; amending s. 403.813, F.S.;
 30 | revising the date the department is required to adopt a
 31 | general permit by rule for the construction, installation,
 32 | operation, or maintenance of certain floating vessel
 33 | platforms or floating boat lifts; providing exemptions
 34 | from permitting for certain structures; amending s.
 35 | 705.101, F.S.; defining certain vessels as abandoned
 36 | property; amending s. 823.11, F.S.; revising provisions
 37 | relating to abandoned and derelict vessels and the removal
 38 | of such vessels; specifying officers authorized to remove
 39 | such vessels; providing that vessel removal may be funded
 40 | by certain grants; requiring the Department of Legal
 41 | Affairs to represent the Fish and Wildlife Conservation
 42 | Commission in certain actions; deleting a provision
 43 | authorizing the commission to delegate certain authority
 44 | to local governments under certain circumstances;
 45 | providing an effective date.

46 |
 47 | Be It Enacted by the Legislature of the State of Florida:

48 |
 49 | Section 1. Section 327.59, Florida Statutes, is amended to
 50 | read:

51 | 327.59 Marina evacuations.--

52 (1) After June 1, 1994, marinas may not adopt, maintain,
 53 or enforce policies pertaining to evacuation of vessels which
 54 require vessels to be removed from marinas following the
 55 issuance of a hurricane watch or warning, in order to ensure
 56 that protecting the lives and safety of vessel owners is placed
 57 before interests of protecting property.

58 (2) Nothing in this section may be construed to restrict
 59 the ability of an owner of a vessel or the owner's authorized
 60 representative to remove a vessel voluntarily from a marina at
 61 any time or to restrict a marina owner from dictating the kind
 62 of cleats, ropes, fenders, and other measures that must be used
 63 on vessels as a condition of use of a marina. After a tropical
 64 storm or hurricane watch has been issued, a marina owner,
 65 operator, employee, or agent may take actions to further secure
 66 any vessel within the marina to minimize damage to a vessel, the
 67 marina property, and the environment. The marina owner,
 68 operator, employee, or agent may charge reasonable fees for
 69 further securing of a vessel, shall not be held liable for any
 70 damage incurred to a vessel from such storms or hurricanes, and
 71 is held harmless as a result of such actions.

72 (3) Notwithstanding any other provisions of this section,
 73 in order to protect marina property, a marina owner may provide
 74 by contract that in the event a vessel owner fails to promptly
 75 remove a vessel from a marina after a hurricane watch or warning
 76 has been issued, the marina owner, operator, employee, or agent
 77 may remove the vessel from its slip or take whatever actions
 78 deemed necessary in order to properly secure the vessel and may
 79 charge the vessel owner a reasonable fee for any such services

HB 1121

2005
CS

80 rendered. A marina seeking to add such a provision to a contract
 81 must provide notice to the vessel owner in any such contract in
 82 a font size of at least 10 points. The notice shall be in
 83 substantially the following form:

84
 85 NOTICE TO VESSEL OWNER

86 The undersigned hereby informs you that in the event you
 87 fail to remove your vessel from the marina promptly after
 88 a hurricane watch or warning has been issued for (insert
 89 geographic area), Florida, under Florida law, the
 90 undersigned or his or her employees or agents are
 91 authorized to remove your vessel from its slip and take
 92 any and all other actions deemed appropriate by the
 93 undersigned or his or her employees or agents in order to
 94 secure your vessel and protect the marina property. You
 95 are further notified that you may be charged a reasonable
 96 fee for any such action.

97 Section 2. Subsections (4), (5), (7), (10), (11), and (12)
 98 of section 328.17, Florida Statutes, are amended to read:

99 328.17 Nonjudicial sale of vessels.--

100 (4) A marina, as defined in s. 327.02(19), shall have:

101 (a) A possessory lien upon any vessel for storage fees,
 102 dockage fees, repairs, improvements, or other work-related
 103 storage charges, and for expenses necessary for preservation of
 104 the vessel or expenses reasonably incurred in the sale or other
 105 disposition of the vessel. The possessory lien shall attach as
 106 of the date the vessel is brought to the marina, or as of the

HB 1121

2005
CS

107 | date the vessel first occupies rental space at the marina
108 | facility.

109 | (b) A possessory lien upon any vessel in a wrecked,
110 | junked, or substantially dismantled condition, which has been
111 | left docked, grounded, beached, or otherwise abandoned at a
112 | marina without consent of the marina owner, for expenses
113 | reasonably incurred in the removal and disposal of the vessel.
114 | The possessory lien shall attach as of the date the vessel is
115 | discovered at the marina facility. If the funds recovered from
116 | the sale of such a vessel, or from the scrap or salvage value of
117 | such a vessel, are insufficient to cover the expenses reasonably
118 | incurred by the marina in removing and disposing of the vessel,
119 | all costs in excess of recovery shall be recoverable against the
120 | owner of the vessel ~~However, in the event of default, the marina~~
121 | ~~must give notice to persons who hold perfected security~~
122 | ~~interests against the vessel under the Uniform Commercial Code~~
123 | ~~in which the owner is named as the debtor.~~

124 | (5) A marina's possessory lien may be satisfied as
125 | follows:

126 | (a)1. The marina shall provide written notice to the
127 | vessel's owner, delivered in person or by certified mail to the
128 | owner's last known address. The notice shall also be ~~and~~
129 | conspicuously posted at the marina and on the vessel.

130 | 2. In addition to the notice provided to the vessel owner
131 | under subparagraph 1., the marina shall provide written notice
132 | to each person or entity that:

HB 1121

2005
CS

133 a. Holds a security interest on the vessel as shown in the
 134 records of the Department of Highway Safety and Motor Vehicles
 135 with respect to state-titled vessels;

136 b. Holds a preferred ship mortgage or has filed a claim of
 137 lien with the United States Coast Guard Vessel Documentation
 138 Center;

139 c. Holds a security interest against the vessel under the
 140 Uniform Commercial Code; or

141 d. Has perfected a lien against the vessel by filing a
 142 judgment lien certificate pursuant to ss. 55.201-55.209.

143 3. If a vessel displays a foreign country identification
 144 or displays registration numbers from a state other than
 145 Florida, the marina shall conduct a reasonable lien search of
 146 the vessel registration records in the jurisdiction of registry
 147 to determine if there is a lienholder who is entitled to notice
 148 pursuant to subparagraph 2. Failure to discover a foreign
 149 national or non-Florida United States lienholder after a good
 150 faith effort to conduct such a lien search shall not prevent the
 151 sale or removal of a vessel from the marina to satisfy the
 152 marina's possessory lien or a purchaser, in good faith, from
 153 taking title of the vessel pursuant to subsections (7) and (11).

154 4. The requirements of subparagraph 2. shall be satisfied
 155 if the marina:

156 a. Obtains a copy of the title for the vessel and trailer,
 157 if applicable, from the Department of Highway Safety and Motor
 158 Vehicles or other agency where the vessel is registered.

HB 1121

2005
CS

159 b. Obtains an abstract from the United States Coast Guard
 160 for a vessel that is documented as defined in 46 U.S.C. s.
 161 301.01.

162 c. Obtains a current Uniform Commercial Code lien search.

163 d. Obtains a current Florida judgment lien certificate
 164 search.

165 e. Complies with subparagraph 3. with regard to vessels
 166 registered in a foreign country or in a state other than
 167 Florida.

168 5. The written notice to the vessel owner and lienholders
 169 required by this paragraph shall be made at least 60 days prior
 170 to any sale of the vessel under this section ~~recorded lienholder~~
 171 ~~of such vessel registered with this state as shown by the~~
 172 ~~records of the Department of Highway Safety and Motor Vehicles,~~
 173 ~~at least 30 days prior to the proposed sale.~~

174 (b) The notice shall include:

175 1. An itemized statement of the marina's claim, showing
 176 the sum due at the time of the notice and the date upon which
 177 the sum became due.

178 2. A description of the vessel.

179 3. A demand for payment.

180 4. A conspicuous statement that, unless the claim is paid
 181 within the time stated in the notice, the vessel will be
 182 advertised for sale or other disposition and will be sold or
 183 otherwise disposed of at a specified time and place.

184 5. The name, street address, and telephone number of the
 185 marina that the owner may contact to respond to the notice.

HB 1121

2005
CS

186 (7) If the fees, ~~and costs,~~ and late payment interest that
 187 give rise to such a lien are due and unpaid 60 ~~120~~ days after
 188 the vessel owner and lienholder are ~~is~~ given written notice, the
 189 marina may sell the vessel, including its machinery, rigging,
 190 and accessories as provided for in subsection (8), or the marina
 191 may, at its option, remove the vessel from the marina or from
 192 the waters of the state at the owner's expense pursuant to
 193 paragraph (4)(b).

194 (10) Before any sale or other disposition of the vessel
 195 pursuant to this section, the owner or lienholder may pay the
 196 amount necessary to satisfy the lien and the reasonable expenses
 197 and late payment interest incurred under this section and
 198 thereby redeem and take possession of the vessel. Upon receipt
 199 of such payment, the marina shall return the property to the
 200 owner or lienholder making such payment and thereafter shall
 201 have no liability to any person with respect to such vessel.

202 (11) Unless otherwise provided by law, a purchaser in good
 203 faith of a vessel sold to satisfy a lien provided for in this
 204 section takes the property free of any claims other than a prior
 205 lien perfected under state or federal law ~~the Uniform Commercial~~
 206 ~~Code, despite noncompliance by the marina with the requirements~~
 207 ~~of this section.~~

208 (12) In the event of a sale under this section, the marina
 209 may satisfy its lien from the proceeds of the sale, provided the
 210 marina's lien has priority over all other liens on the vessel
 211 ~~other than a prior lien perfected under the Uniform Commercial~~
 212 ~~Code.~~ The lien rights of secured lienholders ~~are~~ automatically
 213 also attach ~~transferred~~ to the remaining proceeds of the sale.

HB 1121

2005
CS

214 The balance, if any, shall be held by the marina for delivery on
 215 demand to the owner. A notice of any balance shall be delivered
 216 by the marina to the owner in person or by certified mail to the
 217 last known address of the owner. If the owner does not claim the
 218 balance of the proceeds within 1 year after the date of sale,
 219 the proceeds shall be deemed abandoned, and the marina shall
 220 have no further obligation with regard to the payment of the
 221 balance. In the event that the marina's lien does not have
 222 priority over all other liens, the sale proceeds shall be held
 223 for the benefit of the holders of those liens having priority. A
 224 notice of the amount of the sale proceeds shall be delivered by
 225 the marina to the owner or secured lienholder in person or by
 226 certified mail to the owner's or the secured lienholder's last
 227 known address. If the owner or the secured lienholder does not
 228 claim the sale proceeds within 1 year after the date of sale,
 229 the proceeds shall be deemed abandoned, and the owner or the
 230 secured lienholder shall have no further obligation with regard
 231 to the payment of the proceeds.

232 Section 3. Paragraph (g) of subsection (4) of section
 233 376.11, Florida Statutes, is amended to read:

234 376.11 Florida Coastal Protection Trust Fund.--

235 (4) Moneys in the Florida Coastal Protection Trust Fund
 236 shall be disbursed for the following purposes and no others:

237 (g) The funding of a grant program to ~~eastal~~ local
 238 governments, pursuant to s. 376.15(2)(b) and (c), for the
 239 removal of derelict vessels from the public waters of the state.

240 Section 4. Section 376.15, Florida Statutes, is amended to
 241 read:

HB 1121

2005
CS

242 376.15 Derelict vessels; removal from public waters.--
 243 (1) It is unlawful for any person, firm, or corporation to
 244 store or leave any vessel, as defined in s. 327.02(37), in a
 245 wrecked, junked, or substantially dismantled condition or
 246 abandoned upon any public waters or at any port in this state
 247 without the consent of the agency having jurisdiction thereof or
 248 docked or grounded at any private property without the consent
 249 of the owner of the private property.

250 (2)(a) The Fish and Wildlife Conservation Commission and
 251 its officers and all law enforcement officers as specified in s.
 252 327.70 are ~~is hereby designated as the agency of the state~~
 253 authorized and empowered to remove any derelict vessel as
 254 described in subsection (1) from public waters. All costs
 255 incurred by the commission or other law enforcement agency in
 256 the removal of any abandoned or derelict vessel shall be
 257 recoverable against the owner of the vessel. The Department of
 258 Legal Affairs shall represent the commission in such actions.

259 (b) The commission may establish a program to provide
 260 grants to ~~eastal~~ local governments for the removal of derelict
 261 vessels from the public waters of the state. The program shall
 262 be funded from the Florida Coastal Protection Trust Fund.
 263 Notwithstanding the provisions in s. 216.181(11), funds
 264 available for grants may only be authorized by appropriations
 265 acts of the Legislature.

266 (c) The commission shall adopt by rule procedures for
 267 submitting a grant application and criteria for allocating
 268 available funds. Such criteria shall include, but not be limited
 269 to, the following:

HB 1121

2005
CS

270 1. The number of derelict vessels within the jurisdiction
271 of the applicant.

272 2. The threat posed by such vessels to public health or
273 safety, the environment, navigation, or the aesthetic condition
274 of the general vicinity.

275 3. The degree of commitment of the local government to
276 maintain waters free of abandoned and derelict vessels and to
277 seek legal action against those who abandon vessels in the
278 waters of the state.

279 (d) This section shall constitute the authority ~~of the~~
280 ~~commission~~ for such removal, but is not intended to be in
281 contravention of any applicable federal act.

282 ~~(e) The Department of Legal Affairs shall represent the~~
283 ~~Fish and Wildlife Conservation Commission in such actions.~~

284 Section 5. Paragraph (s) of subsection (2) of section
285 403.813, Florida Statutes, is amended to read:

286 403.813 Permits issued at district centers; exceptions.--

287 (2) A permit is not required under this chapter, chapter
288 373, chapter 61-691, Laws of Florida, or chapter 25214 or
289 chapter 25270, 1949, Laws of Florida, for activities associated
290 with the following types of projects; however, except as
291 otherwise provided in this subsection, nothing in this
292 subsection relieves an applicant from any requirement to obtain
293 permission to use or occupy lands owned by the Board of Trustees
294 of the Internal Improvement Trust Fund or any water management
295 district in its governmental or proprietary capacity or from
296 complying with applicable local pollution control programs

HB 1121

2005
CS

297 | authorized under this chapter or other requirements of county
298 | and municipal governments:

299 | (s) The construction, installation, operation, or
300 | maintenance of floating vessel platforms or floating boat lifts,
301 | provided that such structures:

302 | 1. Float at all times in the water for the sole purpose of
303 | supporting a vessel so that the vessel is out of the water when
304 | not in use;

305 | 2. Are wholly contained within a boat slip previously
306 | permitted under ss. 403.91-403.929, 1984 Supplement to the
307 | Florida Statutes 1983, as amended, or part IV of chapter 373;
308 | ~~are, or, when~~ associated with a dock that is exempt under this
309 | subsection or a permitted dock with no defined boat slip and, do
310 | not exceed a combined total of 500 square feet, or 200 square
311 | feet in an Outstanding Florida Water; or are attached to a
312 | bulkhead on a parcel of land where there is no other docking
313 | structure and do not exceed a combined total of 1,000 square
314 | feet outside of an Outstanding Florida Water, 500 square feet
315 | within an Outstanding Florida Water that is not an aquatic
316 | preserve, or 200 square feet within an aquatic preserve;

317 | 3. Are not used for any commercial purpose or for mooring
318 | vessels that remain in the water when not in use, and do not
319 | substantially impede the flow of water, create a navigational
320 | hazard, or unreasonably infringe upon the riparian rights of
321 | adjacent property owners, as defined in s. 253.141;

322 | 4. Are constructed and used so as to minimize adverse
323 | impacts to submerged lands, wetlands, shellfish areas, aquatic
324 | plant and animal species, and other biological communities,

HB 1121

2005
CS

325 including locating such structures in areas where ~~no~~ seagrasses
 326 are least dense ~~exist if such areas are present~~ adjacent to the
 327 dock or bulkhead; and

328 5. Are not constructed in areas specifically prohibited
 329 for boat mooring under conditions of a permit issued in
 330 accordance with ss. 403.91-403.929, 1984 Supplement to the
 331 Florida Statutes 1983, as amended, or part IV of chapter 373, or
 332 other form of authorization issued by a local government.

333
 334 Structures that qualify for this exemption are relieved from any
 335 requirement to obtain permission to use or occupy lands owned by
 336 the Board of Trustees of the Internal Improvement Trust Fund and
 337 shall not be subject to any permitting requirements,

338 registration requirements, or other more stringent regulation by
 339 any local government. The exemption provided in this paragraph
 340 shall be in addition to the exemption provided in paragraph (b).

341 By January 1, 2006 ~~2003~~, the department shall adopt a general
 342 permit by rule for the construction, installation, operation, or
 343 maintenance of those floating vessel platforms or floating boat

344 lifts that do not qualify for the exemption provided in this
 345 paragraph but do not cause significant adverse impacts to occur
 346 individually or cumulatively. The issuance of such general

347 permit shall also constitute permission to use or occupy lands
 348 owned by the Board of Trustees of the Internal Improvement Trust
 349 Fund. Structures that qualify for ~~Upon the adoption of the rule~~

350 ~~creating~~ such general permit shall not be subject to any
 351 permitting requirement, registration requirement, or other more
 352 stringent regulation by any, ~~no local government shall impose a~~

HB 1121

2005
CS

353 ~~more stringent regulation on floating vessel platforms or~~
 354 ~~floating boat lifts covered by such general permit.~~

355 Section 6. Subsection (3) of section 705.101, Florida
 356 Statutes, is amended to read:

357 705.101 Definitions.--As used in this chapter:

358 (3) "Abandoned property" means all tangible personal
 359 property that does not have an identifiable owner and that has
 360 been disposed on public property in a wrecked, inoperative, or
 361 partially dismantled condition or has no apparent intrinsic
 362 value to the rightful owner. Vessels determined to be derelict
 363 by the Fish and Wildlife Conservation Commission or a county or
 364 municipality in accordance with the provisions of s. 376.15 or
 365 s. 823.11 are included within this definition.

366 Section 7. Section 823.11, Florida Statutes, is amended to
 367 read:

368 823.11 Abandoned and derelict vessels; removal; penalty.--

369 (1) It is unlawful for any person, firm, or corporation to
 370 store or leave any vessel as defined in s. 327.02(37) ~~by~~
 371 ~~maritime law~~ in a wrecked, junked, or substantially dismantled
 372 condition or abandoned upon or in any public water or at any
 373 port in this state without the consent of the agency having
 374 jurisdiction thereof, or docked or grounded at any private
 375 property without the consent of the owner of the private ~~such~~
 376 property.

377 (2) The Fish and Wildlife Conservation Commission and its
 378 officers and all law enforcement officers as specified in s.
 379 327.70 ~~are is designated as the agency of the state~~ authorized
 380 and empowered to remove or cause to be removed any abandoned or

HB 1121

2005
CS

381 derelict vessel from public waters in any instance when the same
 382 obstructs or threatens to obstruct navigation or in any way
 383 constitutes a danger to the environment. Removal of vessels
 384 pursuant to this section may be funded by grants provided
 385 pursuant to s. 376.15. All costs incurred by the commission or
 386 other law enforcement agency in the removal of any abandoned or
 387 derelict vessel as set out above shall be recoverable against
 388 the owner thereof. The Department of Legal Affairs shall
 389 represent the commission in such actions ~~Pursuant to an~~
 390 ~~agreement with the governing body of a county or municipality,~~
 391 ~~and upon a finding by the commission that the county or~~
 392 ~~municipality is competent to undertake said responsibilities,~~
 393 ~~the commission may delegate to the county or municipality its~~
 394 ~~authority to remove or cause to be removed an abandoned or~~
 395 ~~derelict vessel from public waters within the county or~~
 396 ~~municipality.~~

397 (3) Any person, firm, or corporation violating this act is
 398 guilty of a misdemeanor of the first degree and shall be
 399 punished as provided by law.

400 Section 8. This act shall take effect upon becoming a law.