

By the Committee on Transportation; and Senator Baker

596-1955-05

1 A bill to be entitled
2 An act relating to vessels; amending s. 327.59,
3 F.S.; authorizing marina owners, operators,
4 employees, and agents to take actions to secure
5 vessels during severe weather and to charge
6 fees and be held harmless for such service;
7 authorizing contract provisions and notice
8 relating to removing or securing vessels;
9 amending s. 328.17, F.S.; providing for
10 possessory liens for marinas on certain
11 abandoned vessels; providing for attachment of
12 the lien and recovery of certain costs under
13 certain circumstances; providing that a marina
14 may satisfy its possessory lien by giving
15 notice to certain individuals; requiring the
16 marina to conduct a good-faith lien search of
17 vessel registration records for vessels
18 registered outside this state; authorizing the
19 marina to sell the vessel if the fees, costs,
20 and interest are not paid within a specified
21 time after the marina gives notice to the
22 vessel owner; authorizing the owner or the
23 lienholder to satisfy the lien; amending s.
24 376.11, F.S.; revising provisions relating to
25 the Florida Coastal Protection Trust Fund to
26 conform to changes made by the act; amending s.
27 376.15, F.S.; revising provisions relating to
28 the removal of abandoned and derelict vessels;
29 specifying officers authorized to remove such
30 vessels; providing that certain costs shall be
31 recoverable; requiring the Department of Legal

1 Affairs to represent the Fish and Wildlife
2 Conservation Commission in certain actions;
3 expanding eligibility for disbursement of grant
4 funds for the removal of derelict vessels;
5 amending s. 403.813, F.S.; providing exemptions
6 from permitting for certain floating vessel
7 platforms; amending s. 705.101, F.S.; defining
8 certain vessels as abandoned property; amending
9 s. 823.11, F.S.; revising provisions relating
10 to abandoned and derelict vessels and the
11 removal of such vessels; specifying officers
12 authorized to remove such vessels; providing
13 that vessel removal may be funded by certain
14 grants; requiring the Department of Legal
15 Affairs to represent the Fish and Wildlife
16 Conservation Commission in certain actions;
17 deleting a provision authorizing the commission
18 to delegate certain authority to local
19 governments under certain circumstances;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 327.59, Florida Statutes, is
25 amended to read:

26 327.59 Marina evacuations.--

27 (1) After June 1, 1994, marinas may not adopt,
28 maintain, or enforce policies pertaining to evacuation of
29 vessels which require vessels to be removed from marinas
30 following the issuance of a hurricane watch or warning, in
31

1 order to ensure that protecting the lives and safety of vessel
2 owners is placed before interests of protecting property.

3 (2) Nothing in this section may be construed to
4 restrict the ability of an owner of a vessel or the owner's
5 authorized representative to remove a vessel voluntarily from
6 a marina at any time or to restrict a marina owner from
7 dictating the kind of cleats, ropes, fenders, and other
8 measures that must be used on vessels as a condition of use of
9 a marina. After a tropical storm or hurricane watch has been
10 issued, a marina owner, operator, employee, or agent may take
11 actions to further secure any vessel within the marina to
12 minimize damage to a vessel, the marina property, and the
13 environment. The marina owner, operator, employee, or agent
14 may charge reasonable fees for further securing of a vessel,
15 shall not be held liable for any damage incurred to a vessel
16 from such storms or hurricanes, and are held harmless as a
17 result of such actions.

18 (3) Notwithstanding any other provision of this
19 section, in order to protect marina property a marina owner by
20 contract may provide that if a boat owner fails to promptly
21 remove a vessel from a marina after issuance of a hurricane
22 watch or warning, the marina owner, operator, or an employee
23 or agent of the owner or operator may remove the vessel from
24 its slip or take whatever actions are deemed necessary in
25 order to properly secure the vessel. A marina owner, operator,
26 employee, or agent may charge the boat owner a reasonable fee
27 for any such services rendered. Any marina seeking to add such
28 a provision to a contract must provide notice to the boat
29 owner in any such contract in a font of at least 10-point
30 type. The notice must be in substantially the following form:
31

1 NOTICE TO BOAT OWNER

2
3 The undersigned hereby informs you that in the
4 event you fail to remove your vessel from the
5 marina promptly after the issuance of a
6 hurricane watch or warning for _____,
7 Florida, under Florida law the undersigned or
8 his or her employees or agents are authorized
9 to remove your vessel from its slip or take any
10 and all other actions deemed appropriate by the
11 undersigned or his or her employees or agents
12 in order to secure your vessel and protect
13 marina property. You are further notified that
14 you may be charged a reasonable fee for any
15 such action.

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

18 328.17 Nonjudicial sale of vessels.--

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

20 (a) A possessory lien upon any vessel for storage
21 fees, dockage fees, repairs, improvements, or other
22 work-related storage charges, and for expenses necessary for
23 preservation of the vessel or expenses reasonably incurred in
24 the sale or other disposition of the vessel. The possessory
25 lien shall attach as of the date the vessel is brought to the
26 marina, or as of the date the vessel first occupies rental
27 space at the marina facility.

28 (b) A possessory lien upon any vessel in a wrecked,
29 junked, or substantially dismantled condition which has been
30 left docked, grounded, beached, or otherwise abandoned at a
31 marina, without the consent of the marina owner, for the

1 expenses reasonably incurred by the marina in the removal and
2 disposal of the vessel. The possessory lien attaches on the
3 date the vessel is discovered at the marina facility. If the
4 funds recovered from the sale of the vessel or from the scrap
5 or salvage value of the vessel are insufficient to cover the
6 expenses reasonably incurred by the marina in removing and
7 disposing of the vessel, all costs in excess of funds
8 recovered shall be recoverable from the owner of the vessel.
9 ~~However, in the event of default, the marina must give notice~~
10 ~~to persons who hold perfected security interests against the~~
11 ~~vessel under the Uniform Commercial Code in which the owner is~~
12 ~~named as the debtor.~~

13 (5) A marina's possessory lien may be satisfied as
14 follows:

15 (a)1. The marina shall provide written notice to the
16 vessel's owner, delivered in person or by certified mail to
17 the owner's last known address. The notice shall also be and
18 conspicuously posted at the marina and on the vessel.

19 2. In addition to the notice provided to the vessel
20 owner under subparagraph 1., the marina shall provide written
21 notice to each person or entity that:

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

25 b. Holds a preferred ship mortgage or has filed a
26 claim of lien with the United States Coast Guard Vessel
27 Documentation Center;

28 c. Holds a security interest against the vessel under
29 the Uniform Commercial Code; or

30 d. Has perfected a lien against the vessel by filing a
31 judgment lien certificate under ss. 55.201-55.209.

1 3. When a vessel displays a foreign country
2 identification or displays registration numbers from a state
3 other than this state, the marina shall conduct a reasonable
4 lien search of the vessel registration records in the
5 jurisdiction of registry to determine if there is a lienholder
6 who is entitled to notice under subparagraph 2. Failure to
7 discover a foreign national or non-Florida United States
8 lienholder after making a good-faith effort to conduct a lien
9 search does not prevent the sale or removal of a vessel from
10 the marina to satisfy the possessory lien of the marina or a
11 purchaser, in good faith, from taking title of the vessel,
12 under subsections (7) or (11).

13 4. The requirements of subparagraph 2. are satisfied
14 if the marina:

15 a. Obtains a copy of the title for the vessel and
16 trailer, if applicable, from the Department of Highway Safety
17 and Motor Vehicles or other agency where the vessel is
18 registered;

19 b. Obtains an abstract from the United States Coast
20 Guard for a vessel that is documented as defined in 46 U.S.C.
21 s. 301.01;

22 c. Performs a search of liens as provided under the
23 Uniform Commercial Code;

24 d. Performs a search of current judgment lien
25 certificates as provided under state law; and

26 e. Complies with subparagraph (5)(a)3. with regard to
27 vessels registered in a foreign country or in a state other
28 than this state.

29 5. The written notice to the vessel owner and
30 lienholders required by this paragraph must be made at least
31 60 days before any sale of the vessel under this section.

1 ~~recorded lienholder of such vessel registered with this state~~
2 ~~as shown by the records of the Department of Highway Safety~~
3 ~~and Motor Vehicles, at least 30 days prior to the proposed~~
4 ~~sale.~~

5 (b) The notice shall include:

- 6 1. An itemized statement of the marina's claim,
7 showing the sum due at the time of the notice and the date
8 upon which the sum became due.
- 9 2. A description of the vessel.
- 10 3. A demand for payment.
- 11 4. A conspicuous statement that, unless the claim is
12 paid within the time stated in the notice, the vessel will be
13 advertised for sale or other disposition and will be sold or
14 otherwise disposed of at a specified time and place.
- 15 5. The name, street address, and telephone number of
16 the marina that the owner may contact to respond to the
17 notice.

18 (7) If the fees, ~~and~~ costs, and late-payment interest
19 that give rise to ~~such~~ a lien are due and unpaid 60 ~~120~~ days
20 after the vessel owner and lienholder are ~~is~~ given written
21 notice, the marina may sell the vessel, including its
22 machinery, rigging, and accessories as provided for in
23 subsection (8), or the marina may, at its option, remove the
24 vessel from the marina or from the waters of the state at the
25 owner's expense under paragraph (4)(b).

26 (10) Before any sale or other disposition of the
27 vessel under ~~pursuant to~~ this section, the owner or lienholder
28 may pay the amount necessary to satisfy the lien and the
29 reasonable expenses and late-payment interest incurred under
30 this section and thereby redeem and take possession of the
31 vessel. Upon receipt of the ~~such~~ payment, the marina shall

1 return the property to the owner or lienholder making the
2 payment and thereafter shall have no liability to any person
3 with respect to such vessel.

4 (11) Unless otherwise provided by law, a purchaser in
5 good faith of a vessel sold to satisfy a lien provided for in
6 this section takes the property free of any claims other than
7 a prior lien perfected under state or federal law ~~the Uniform~~
8 ~~Commercial Code, despite noncompliance by the marina with the~~
9 ~~requirements of this section.~~

10 (12) In the event of a sale under this section, the
11 marina may satisfy its lien from the proceeds of the sale,
12 provided the marina's lien has priority over all other liens
13 on the vessel ~~other than a prior lien perfected under the~~
14 ~~Uniform Commercial Code.~~ The lien rights of secured
15 lienholders ~~are~~ automatically also attach ~~transferred~~ to the
16 remaining proceeds of the sale. The balance, if any, shall be
17 held by the marina for delivery on demand to the owner. A
18 notice of any balance shall be delivered by the marina to the
19 owner in person or by certified mail to the last known address
20 of the owner. If the owner does not claim the balance of the
21 proceeds within 1 year after the date of sale, the proceeds
22 shall be deemed abandoned, and the marina shall have no
23 further obligation with regard to the payment of the balance.
24 In the event that the marina's lien does not have priority
25 over all other liens, the sale proceeds shall be held for the
26 benefit of the holders of those liens having priority. A
27 notice of the amount of the sale proceeds shall be delivered
28 by the marina to the owner or secured lienholder in person or
29 by certified mail to the owner's or the secured lienholder's
30 last known address. If the owner or the secured lienholder
31 does not claim the sale proceeds within 1 year after the date

1 of sale, the proceeds shall be deemed abandoned, and the owner
2 or the secured lienholder shall have no further obligation
3 with regard to the payment of the proceeds.

4 Section 3. Paragraph (g) of subsection (4) of section
5 376.11, Florida Statutes, is amended to read:

6 376.11 Florida Coastal Protection Trust Fund.--

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

10 (g) The funding of a grant program to ~~coastal~~ local
11 governments, pursuant to s. 376.15(2)(b) and (c), for the
12 removal of derelict vessels from the public waters of the
13 state.

14 Section 4. Section 376.15, Florida Statutes, is
15 amended to read:

16 376.15 Derelict vessels; removal from public waters.--

17 (1) It is unlawful for any person, firm, or
18 corporation to store or leave any vessel, as defined in s.
19 327.02(37), in a wrecked, junked, or substantially dismantled
20 condition or abandoned upon any public waters or at any port
21 in this state without the consent of the agency having
22 jurisdiction thereof or docked or grounded at any private
23 property without the consent of the owner of the private
24 property.

25 (2)(a) The Fish and Wildlife Conservation Commission
26 and its officers and all law enforcement officers as specified
27 in s. 327.70 are ~~is hereby designated as the agency of the~~
28 ~~state~~ authorized and empowered to remove any derelict vessel
29 as described in subsection (1) from public waters. All costs
30 incurred by the commission or other law enforcement agency in
31 the removal of any abandoned or derelict vessel shall be

1 recoverable against the owner of the vessel. The Department of
2 Legal Affairs shall represent the commission in such actions.

3 (b) The commission may establish a program to provide
4 grants to ~~coastal~~ local governments for the removal of
5 derelict vessels from the public waters of the state. The
6 program shall be funded from the Florida Coastal Protection
7 Trust Fund. Notwithstanding the provisions in s. 216.181(11),
8 funds available for grants may only be authorized by
9 appropriations acts of the Legislature.

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

14 1. The number of derelict vessels within the
15 jurisdiction of the applicant.

16 2. The threat posed by such vessels to public health
17 or safety, the environment, navigation, or the aesthetic
18 condition of the general vicinity.

19 3. The degree of commitment of the local government to
20 maintain waters free of abandoned and derelict vessels and to
21 seek legal action against those who abandon vessels in the
22 waters of the state.

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

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

28 Section 5. Paragraph (s) of subsection (2) of section
29 403.813, Florida Statutes, is amended to read:

30 403.813 Permits issued at district centers;
31 exceptions.--

1 (2) A permit is not required under this chapter,
2 chapter 373, chapter 61-691, Laws of Florida, or chapter 25214
3 or chapter 25270, 1949, Laws of Florida, for activities
4 associated with the following types of projects; however,
5 except as otherwise provided in this subsection, nothing in
6 this subsection relieves an applicant from any requirement to
7 obtain permission to use or occupy lands owned by the Board of
8 Trustees of the Internal Improvement Trust Fund or any water
9 management district in its governmental or proprietary
10 capacity or from complying with applicable local pollution
11 control programs authorized under this chapter or other
12 requirements of county and municipal governments:

13 (s) The construction, installation, operation, or
14 maintenance of floating vessel platforms or floating boat
15 lifts, provided that such structures:

16 1. Float at all times in the water for the sole
17 purpose of supporting a vessel so that the vessel is out of
18 the water when not in use;

19 2. Are wholly contained within a boat slip previously
20 permitted under ss. 403.91-403.929, 1984 Supplement to the
21 Florida Statutes 1983, as amended, or part IV of chapter 373;
22 ~~are, or, when~~ associated with a dock that is exempt under this
23 subsection or a permitted dock with no defined boat slip ~~and~~
24 do not exceed a combined total of 500 square feet, or 200
25 square feet in an Outstanding Florida Water; or are attached
26 to a bulkhead on a parcel of land where there is no other
27 docking structure and do not exceed a combined total of 1,000
28 square feet outside of Outstanding Florida Waters, 500 square
29 feet within an Outstanding Florida Water that is not an
30 aquatic preserve, or 200 square feet within an aquatic
31 preserve;

1 3. Are not used for any commercial purpose or for
2 mooring vessels that remain in the water when not in use, and
3 do not substantially impede the flow of water, create a
4 navigational hazard, or unreasonably infringe upon the
5 riparian rights of adjacent property owners, as defined in s.
6 253.141;

7 4. Are constructed and used so as to minimize adverse
8 impacts to submerged lands, wetlands, shellfish areas, aquatic
9 plant and animal species, and other biological communities,
10 including locating such structures in areas where ~~no~~
11 seagrasses are least dense ~~exist if such areas are present~~
12 adjacent to the dock or bulkhead; and

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

19
20 Structures that qualify for this exemption are relieved from
21 any requirement to obtain permission to use or occupy lands
22 owned by the Board of Trustees of the Internal Improvement
23 Trust Fund and shall not be subject to any permitting
24 requirements, registration requirements, or other more
25 stringent regulation by any local government. The exemption
26 provided in this paragraph shall be in addition to the
27 exemption provided in paragraph (b). By January 1, 2006 ~~2003~~,
28 the department shall adopt a general permit by rule for the
29 construction, installation, operation, or maintenance of those
30 floating vessel platforms or floating boat lifts that do not
31 qualify for the exemption provided in this paragraph but do

1 not cause significant adverse impacts to occur individually or
2 cumulatively. The issuance of such general permit shall also
3 constitute permission to use or occupy lands owned by the
4 Board of Trustees of the Internal Improvement Trust Fund.
5 Structures that qualify for ~~Upon the adoption of the rule~~
6 ~~creating~~ such general permit are not subject to any permitting
7 requirement, registration requirement, or other more stringent
8 regulation by any, ~~no~~ local government ~~shall impose a more~~
9 ~~stringent regulation on floating vessel platforms or floating~~
10 ~~boat lifts covered by such general permit.~~

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

13 705.101 Definitions.--As used in this chapter:

14 (3) "Abandoned property" means all tangible personal
15 property that does not have an identifiable owner and that has
16 been disposed on public property in a wrecked, inoperative, or
17 partially dismantled condition or has no apparent intrinsic
18 value to the rightful owner. Vessels determined to be derelict
19 by the Fish and Wildlife Conservation Commission or a county
20 or municipality in accordance with the provisions of s. 376.15
21 or s. 823.11 are included within this definition.

22 Section 7. Section 823.11, Florida Statutes, is
23 amended to read:

24 823.11 Abandoned and derelict vessels; removal;
25 penalty.--

26 (1) It is unlawful for any person, firm, or
27 corporation to store or leave any vessel as defined in s.
28 327.02(37) ~~by maritime law~~ in a wrecked, junked, or
29 substantially dismantled condition or abandoned upon or in any
30 public water or at any port in this state without the consent
31 of the agency having jurisdiction thereof, ~~or~~ docked or

1 grounded at any private property without the consent of the
2 owner of the private ~~such~~ property.

3 (2) The Fish and Wildlife Conservation Commission and
4 its officers and all law enforcement officers as specified in
5 s. 327.70 ~~are is designated as the agency of the state~~
6 authorized and empowered to remove or cause to be removed any
7 abandoned or derelict vessel from public waters in any
8 instance when the same obstructs or threatens to obstruct
9 navigation or in any way constitutes a danger to the
10 environment. Removal of vessels pursuant to this section may
11 be funded by grants provided pursuant to s. 376.15. All costs
12 incurred by the commission in the removal of any abandoned or
13 derelict vessel as set out above shall be recoverable against
14 the owner thereof. The Department of Legal Affairs shall
15 represent the commission in such actions. ~~Pursuant to an~~
16 ~~agreement with the governing body of a county or municipality,~~
17 ~~and upon a finding by the commission that the county or~~
18 ~~municipality is competent to undertake said responsibilities,~~
19 ~~the commission may delegate to the county or municipality its~~
20 ~~authority to remove or cause to be removed an abandoned or~~
21 ~~derelict vessel from public waters within the county or~~
22 ~~municipality.~~

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

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

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2156

This CS removes language establishing a vessel owner's liability to a marina for damages caused by the vessel after the issuance of a hurricane watch or warning.

The CS provides marina owners may by contract allow for the removal of a vessel from its slip to protect marina property.

The CS makes revisions to the notification and procedural requirements involving the nonjudicial sale of vessels by marinas.

The CS exempts certain floating vessel platforms or floating boat lifts from environmental permitting requirements of Chapter 373, F.S.