

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Judiciary Committee

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BILL: CS/CS/SB 2128

INTRODUCER: Environmental Preservation Committee, Transportation Committee, and Senator Baker

SUBJECT: Vessels

DATE: April 24, 2006

REVISED: 05/05/06 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Woods</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Molloy</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
3.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	<u>Pre-meeting</u>
4.	<u>                    </u>	<u>                    </u>	<u>DS</u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>GA</u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

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## I. Summary:

This bill specifies that local projects which may be funded by \$2.5 million in fuel taxes distributed annually to the State Game Trust Fund in the Fish and Wildlife Conservation Commission (FWC) include providing uniform waterway markers, public boat ramps, boat lifts and hoists, marine railways and other public boat launching facilities, and the removal of derelict vessels. The use of funds for aquatic plant control is repealed.

Marina owners, employees, operators, and agents are authorized to take actions to secure vessels after the issuance of tropical storm and hurricane watches, and may charge the vessel owner a fee for providing such service. Marina operators, employees, agents, or owners are held harmless for providing these services, but are responsible for intentional damage or negligence exercised in the process of storing the vessel.

Local governments are authorized to regulate the anchoring of vessels within the marked boundaries of mooring fields permitted under state law, but are specifically prohibited from the regulation of non-live-aboard vessels that anchor outside of a permitted mooring field. The Department of Highway Safety and Motor Vehicles (DHSMV) is directed to attach a notice of transfer form to each vessel title issued or renewed by the department.

The bill expands the purposes for which vessel registration fees distributed to the counties by the DHSMV may be used. Additionally, the bill preserves a funding source of the Save the Manatee Trust Fund, one of the first two dollars designated for counties from vessel registration fees. However, counties are no longer required to spend revenues from vessel registration fees on manatee and marine mammal protection and recovery.

The bill provides for the permanent payment of one of the first two dollars of vessel registration fees to the Marine Resources Conservation Trust Fund. Under existing law, those funds are returned to counties that file an accounting of the use of vessel registration fees. Under the bill, the dollar from each registration fee previously returnable to the counties remains in the Marine Resources Conservation Trust Fund. A county that fails to file the accounting may forfeit all vessel registration fees, otherwise due to the county, to the Marine Resources Conservation Trust Fund.

The FWC's derelict vessel removal grant program, funded from the Florida Coastal Protection Trust Fund, is expanded to allow all local governments to apply for grants to remove derelict vessels from the public waters of the state. The FWC also is authorized to recover costs incurred in the removal of any abandoned or derelict vessel from the owner of such vessel.

The bill creates a new exemption from the permitting requirements of chapter 373, F.S., for floating vessel platforms that are attached to bulkheads on parcels of land where no other docking structure exists. Also, limitations on the construction of floating vessel platforms in areas where no seagrasses are present are revised to allow such platforms where seagrasses are least dense adjacent to a dock or bulkhead. Local governments are prohibited from enacting permitting or registration requirements for floating vessel platforms that qualify for the permit exemption.

The bill substantially amends the following sections of the Florida Statutes: 206.606, 327.59, 327.60, 328.64, 328.72, 376.11, 376.15, 403.813, 705.101, 705.103, and 823.11.

## II. Present Situation:

### **State Game Trust Fund**

The State Game Trust Fund is created in s. 372.09, F.S., and is the depository for funds resulting from the operation of the Fish and Wildlife Conservation Commission (FWC), the administration of laws and regulations pertaining to birds, game, fur-bearing animals, freshwater fish, reptiles, and amphibians, and any other funds specifically provided for such purposes, and is used by the agency to fulfill its constitutional responsibilities to regulate fish and wildlife. The FWC may not obligate itself beyond the current resources of the State Game Trust Fund unless specifically so authorized by the Legislature.

### **Securing Vessels During Tropical Storm or Hurricane Conditions**

Section 327.59, F.S., provides that in order to ensure that the lives and safety of vessel owners have priority over the protection of property; marinas may not adopt, maintain, or enforce policies requiring that vessels be removed from marinas when a hurricane watch or warning has been issued. Tropical storm and hurricane watches are posted when tropical storm or hurricane conditions are possible within 36 hours. Tropical storm and hurricane warnings are issued when tropical storm or hurricane conditions are expected within a specified coastal area within 24 hours.

In *Burklow v. Belcher*, 719 So. 2d 31 (Fla. 1st DCA 1998), a marina owner filed a complaint against 16 vessel owners who failed to move their vessels from the marina before Hurricane Opal came ashore in Santa Rosa. In the complaint, plaintiff alleged that the boat owners

breached the terms of their storage contracts by failing to “exercise due care in the occupation and use of marina premises” by ignoring requests to remove their vessels even though sufficient time existed for the vessels to be safely removed. The trial court dismissed the complaint as barred by s. 327.59, F.S. The appeals court upheld the trial court decision and found:

- The marina owner’s complaint was within admiralty jurisdiction<sup>1</sup>, and federal maritime law applied.
- Federal maritime law does not preempt Florida law providing the marinas may not adopt, maintain, or enforce evacuation policies requiring vessels to be removed from marinas following issuance of a hurricane watch or warning.
- Action was barred by statute to the extent that the marina owner’s action was based solely upon failure of the defendants to move their vessels from the marina after issuance of hurricane watch or warnings.
- Boat owners had no duty to remove their boats upon request of the marina owner in the period prior to the issuance of any hurricane watch or warning.

#### **Vessel Registration Fee Distribution**

Subsection (15) of s. 328.72, F.S., provides that, except for the first \$2 of vessel registration fees, fees from the registration of recreational vessels shall be distributed to the counties for the sole purpose of providing recreational channel marking and public launching facilities and other boat-related activities, for removal of vessels and floating structures deemed to be a hazard to public health and safety, and for manatee and marine mammal protection and recovery.

Of the first \$2 of vessel registration fees, \$1 is deposited into the Save the Manatee Trust Fund in the FWC, and \$1 is deposited into the Marine Resources Conservation Trust Fund in the FWC to be used to fund a grant program for public launching facilities, with priority to be given to counties with more than 35,000 registered vessels. Counties that submit a detailed annual report showing that at least \$1 of the vessel registration fees received by the county were spent on boating infrastructure are authorized to receive the \$1 earmarked for deposit into the Marine Resources Conservation Trust Fund.

#### **Florida Coastal Protection Trust Fund**

The Florida Coastal Protection Trust Fund is created in s. 376.11, F.S., and allowable expenses include the funding of marine law enforcement, water pollution mitigation efforts, and a derelict vessel removal grant program for coastal local governments. The major sources of revenue for the fund are excise taxes levied for the privilege of producing or importing pollutants for sale or use, and recoverable damages from persons responsible for polluting state waters.

Prior to 2002, the FWC managed the derelict vessel removal program through grants from the trust fund to local governments. Since 2002, state funds for the grant program have not been available.

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<sup>1</sup> Admiralty law or maritime law governs navigation and shipping including commerce; seamen; towage; wharves, piers, and docks; insurance; maritime liens; and piracy. Article III, s. 2 of the United States Constitution, and the Judiciary Act of 1789, granted original jurisdiction to U.S. federal courts over admiralty and maritime matters. States may not infringe on admiralty jurisdiction either judicially or legislatively.

**Derelict Vessels**

Section 376.15, F.S., contains a prohibition on abandoning, storing, or leaving a wrecked, junked, or substantially dismantled vessel upon any public waters or port without consent of the agency having jurisdiction. This prohibition also applies to abandoned, wrecked, junked, or substantially dismantled vessels docked on private property without the owner's consent. The FWC is authorized to remove any derelict vessel as described above, and may use the grant program funded out of the Florida Coastal Protection Trust Fund to achieve this purpose. The Department of Legal Affairs represents the FWC in actions concerning removal of derelict vessels.

**Abandoned Property**

Section 705.101, F.S., provides a definition of abandoned property. Vessels determined to be derelict by the FWC, a county, or a municipality are included in the definition.

**Abandoned and Derelict Vessels – Penalties**

Section 823.11, F.S., provides that it is a first-degree misdemeanor for anyone to abandon, store, or leave a wrecked, junked, or substantially dismantled vessel upon any public waters or port without consent of the agency having jurisdiction, or docked at any private property without the owner's consent. Persons violating this provision may receive a jail sentence of no more than 1 year, and/or a fine of up to \$1,000.

Pursuant to ss. 376.15 and 823.11, F.S., only the FWC is authorized to remove derelict vessels from waters of the state. Under s. 327.70, F.S., local law enforcement authorities have a duty to enforce all state laws pertaining to vessels, but do not have the authority to remove derelict vessels or take action against the owners of derelict vessels except to arrest an owner for allowing the vessel to become or remain derelict.

Local governments that want to remove derelict vessels must petition the FWC for a delegation of authority, which results in substantial delays in removal and a substantial increase in the costs of removal as the vessel continues to deteriorate. A vessel that initially could have been removed for a few hundred dollars can deteriorate to the point where a barge with a crane and clam-shell must be employed to remove the vessel and truck its remains to a landfill at a cost of several thousand dollars.

Currently, there are 841 reported derelict vessel cases in Florida. This number may be low since all derelict vessels are not reported. Derelict vessels are navigational and environmental hazards as some leak hazardous materials, and all pose a safety and health threat to users of the state's public waterways and natural resources.

**Floating Vessel Platforms or Floating Boat Lifts**

A paragraph of subsection (2) of s. 403.813, F.S., provides that a permit is not required for a floating vessel platform or floating boat lift if such structures:

- Float at all times in the water for the sole purpose of supporting a vessel so that the vessel is out of the water when not in use;
- Are wholly contained within a boat slip previously permitted under ss. 403.91-403.929, 1984 Supplement to Florida Statutes 1983, as amended, or part IV of chapter 73, F.S., or

- when associated with a dock that is exempt under s. 403.812(2), F.S., or a permitted dock with no defined boat slip, do not exceed a combined total of 500 square feet, or 200 square feet in an Outstanding Florida Water.
- Are not used for any commercial purpose or for mooring vessels that remain in the water when not in use;
  - Do not substantially impede the flow of water, create a navigational hazard, or unreasonably infringe upon the riparian rights of adjacent property owners, as defined in s. 253.141, F.S.;
  - Are constructed and used to minimize adverse impacts to submerged lands, wetlands, shellfish areas, aquatic plant and animal species, and other biological communities, including being located in areas where no seagrasses exist adjacent to the dock; and
  - Are not constructed in areas specifically prohibited for boat mooring under conditions of a permit issued in accordance with ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or other form of authorization issued by a local government.

Structures qualifying for the exemption do not have to obtain permission from the Board of Trustees of the Internal Improvement Trust Fund to use or occupy lands owned by the Board, and are not subject to more stringent regulation by any local government. Structures that do not qualify for the exemption may receive a general permit issued by the Department of Environmental Protection if the department determines that the structures do not individually or cumulatively cause significant adverse impacts. The issuance of the general permit constitutes permission to use Board of Trustee lands, and structures that receive the general permit are also not subject to more stringent regulation by any local government.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 206.606, F.S., to provide that fuel taxes deposited into the State Game Trust Fund in the Fish and Wildlife Conservation Commission (FWC) may be used to provide uniform waterway markers, public boat ramps, boat lifts and hoists, marine railways, other public boat launching facilities, and derelict vessel removal. Authority for the FWC to use such funds for aquatic plant control is repealed.

**Section 2.** Amends s. 327.59, F.S., to authorize that:

- After a tropical storm or hurricane watch has been issued, marina owners, operators, or employees, or agents of marina owners or operators, may take action to further secure any vessel within the marina to minimize damage to that vessel, the marina, private property, or the environment.
- Owners of vessels which need to be further secured may be charged a reasonable fee by the marina owner or operator for that service.
- Marina owners or operators, employees or agents who further secure vessels may not be held liable for damage to any vessel from a tropical storm or hurricane and shall be held harmless.
- Marina owners or operators, employees or agents that participate in a willful or negligent act which causes vessel damage during vessel removal or storage are not provided with immunity.
- Notwithstanding any other provision of the act and in order to minimize vessel damage and protect marina property, private property, and the environment, a marina owner may

include in a contract the ability to remove a vessel from the marina after a tropical storm or hurricane watch has been issued if the boat owner does not do so, and may take whatever actions are deemed necessary to minimize damage to the vessel and to protect marina property, private property, and the environment. The vessel owner may be charged for such service.

**Section 3.** Amends s. 327.60, F.S., to allow local government authorities to regulate the anchoring of vessels within permitted mooring fields, and prohibits local regulation outside of permitted mooring fields.

**Section 4.** Amends s. 328.64, F.S., to require the Division of Highway Safety and Motor Vehicles to create a notice of transfer form, and attach such form to every vessel title issued or reissued by that agency.

**Section 5.** Amends s. 328.72, F.S., to provide that vessel registration fees distributed by the DHSMV to the counties may be used for public boat ramps, boat lifts and hoists, marine railways, other public boat launching facilities, and derelict vessel removal.

Preserves a funding source of the Save the Manatee Trust Fund, one of the first two dollars designated for counties from vessel registration fees. However, counties are no longer required to spend revenues from vessel registration fees on manatee and marine mammal protection and recovery.

Provides that the payment of one of the first two dollars of vessel registration fees to the Marine Resources Conservation Trust Fund is no longer returnable to counties. Under existing law, those funds are returned to counties that file an accounting of the use of vessel registration fees. Under the bill, a county that fails to file the accounting may forfeit all vessel registration fees, otherwise due to the county, to the Marine Resources Conservation Trust Fund.

**Section 6.** Amends s. 376.11, F.S., to provide that grants under the derelict vessel removal program can be awarded to local governments in all counties, not just coastal local governments.

**Section 7.** Amends s. 376.15, F.S., pertaining to derelict and abandoned vessels, to conform the definition of derelict vessels to s. 823.11, F.S. Allows all law enforcement officers charged with enforcing state boating laws to enforce provisions relating to derelict and abandoned vessels. Authorizes agencies to recover costs associated with removing abandoned and derelict vessels. Clarifies that the Department of Legal Affairs will represent the FWC in actions to recover costs.

**Section 8.** Amends s. 403.813, F.S., to authorize a permit exemption for floating vessel platforms and floating boat lifts that are attached to a bulkhead on a parcel of land where there is no other docking structure. Revises requirements that floating vessel platforms and floating boat lifts be constructed in areas where no seagrasses exist if such areas are present adjacent to a dock to provide that floating vessel platforms and floating boat lifts may be constructed in areas where seagrasses are least dense adjacent to a dock or bulkhead.

Local governments are authorized to require either a permit or a one-time registration requirement of floating vessel platforms as necessary to ensure compliance with the state permit

exemption criteria and the state general permit requirements, in order to ensure that floating platforms comply with local ordinances, codes, or regulations relating to building or zoning codes, and to ensure proper installation of floating vessel platforms or floating boat lifts. However, local ordinances may not be more stringent than the state permit exemption criteria or general permit requirements.

**Section 9.** Amends s. 705.101, F.S., to include “derelict vessels” as defined in s. 823.11(1), F.S., as abandoned property.

**Section 10.** Amends s. 705.103, F.S., to clarify that procedures for abandoned or lost property apply to vessels as defined in s. 327.02, F.S.

**Section 11.** Amends s. 823.11, F.S., to:

- Define a “derelict vessel” as one that is 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 over the port; or
  - At a dock or beach on another person’s property without consent of the property owner.
- Clarify that the FWC, its officers, the sheriffs of the various counties and their deputies, and any other authorized law enforcement officer can remove or cause to be removed abandoned or derelict vessels from the public waters of the state.
- Clarify that derelict vessel removal may be funded through grants of funds from motor fuel taxes deposited into the State Game Trust Fund, or funds appropriated to the Florida Coastal Protection Trust Fund for derelict vessel removal.
- Clarify that the FWC and other law enforcement agencies may recover costs for removal of abandoned or derelict vessels.
- Provide that when a derelict vessel is docked or grounded at or beached upon private property without the consent of the private property owner, the private property owner may have the derelict vessel removed at the expense of the vessel owner after providing written notice to the vessel owner pursuant to s. 328.17(5), F.S.
  - The private property owner may not hinder reasonable efforts by the vessel owner or agent to remove the vessel.
  - Creates a presumption of notice delivered when written notice is deposited with the U.S. Postal Service certified and properly addressed, with postage prepaid.
- Provide that a conviction for a person who unlawfully stores, leaves, or abandons a derelict vessel within the state does not bar assessment and collection of civil penalties of up to \$50,000 per day/per violation which may be imposed by the court having jurisdiction over the criminal action.

**Section 12.** Provides that the bill takes effect upon becoming a law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

A vessel owner will be liable for costs associated with actions taken by marina owners to secure the vessel to minimize damage to the vessel, marina property, or the environment after a tropical storm or hurricane watch or warning has been issued.

Marina owners are authorized to include vessel securing provisions, including fees which may be assessed for such services, in contracts for wet and dry dock storage. The notice provision in the contract must be in at least a 10-point font and in a specific form. This may require marina owners to expend some funds for contract revisions.

Private property owners will be allowed to remove derelict vessels from their property 60 days after providing notice to the vessel owner. While private property owners must pay the costs to notice by certified mail, those costs and costs to remove abandoned or derelict vessels may be recovered from the vessel owners.

Any person who neglects or refuses to pay costs associated with the removal of an abandoned or derelict vessel may not be issued a certificate of registration for that vessel or any other vessel, or for a motor vehicle, until such costs have been paid.

Civil penalties of up to \$50,000 per day, per violation, may be assessed by a court having jurisdiction over criminal actions relating to failure to remove abandoned or derelict vessels.

**C. Government Sector Impact:**

The bill requires that a tax collector remit vessel registration fees to the state for deposit into the Marine Resources Conservation Trust Fund if a county fails to provide a report to the FWC detailing boating-related expenditures for the previous calendar year. The FWC



must return those moneys to the county if the county fully complies with funding marine issues described in s. 328.72(15), F.S., within that calendar year. If the county fails to comply with the reporting requirement, the fees shall remain within the Marine Resources Conservation Trust Fund to be used as grants for public boat launching facilities.

One of the first two dollars from vessel registration fees deposited in the Marine Resources Conservation Trust Fund is no longer returnable to counties. Under existing law, these funds are returned to counties that file a report accounting for their use of vessel registration fees.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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