

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill provides local regulation of anchoring within mooring fields. The bill clarifies the definition of “derelict vessel” and allows derelict vessel removal grants to be awarded to all local governments as opposed to just coastal local governments.

Safeguard Individual Liberty: The bill authorizes marina personnel to secure any vessel within the marina to minimize damage to the vessel, the marina property, private property and the environment, if the vessel is not removed once a tropical storm or hurricane watch has been issued. The bill authorizes local regulation of anchoring within mooring fields. The bill clarifies the definition of “derelict vessel” and allows derelict vessel removal grants to be awarded to all local governments as opposed to just coastal local governments.

Promote Personal Responsibility: The bill authorizes marina personnel to secure any vessel within the marina to minimize damage to the vessel, the marina property, private property and the environment, if the vessel is not removed once a tropical storm or hurricane watch has been issued. The bill increases personal accountability to vessel owners to secure their vessels from marinas before the onset of a tropical storm or hurricane.

Maintain Public Security: The bill authorizes marinas to secure any vessel within the marina to minimize damage to the vessel, the marina property, private property and the environment, if the vessel is not removed once a tropical storm or hurricane watch has been issued. The bill allows all law enforcement officers charged with enforcement of Florida's boating laws under section 327.70, F.S., to enforce the provisions pertaining to derelict and abandoned vessels and allows their agencies to recover the costs associated with removing these vessels.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

State Game Trust Fund

Section 206.606(1)(b), F.S., provides the State Game Trust Fund in the FWCC with \$2.5 million each fiscal year from state taxes imposed on motor fuel to be used for recreational boating activities and freshwater fisheries management and research. A minimum of \$1.25 million is directed to be utilized to fund local projects that provide recreational channel marking, public launching facilities, aquatic plant control, and other local boating activities.¹

Vessel Securement During A Storm

Hurricanes can cause catastrophic damage to marinas and vessels. During a storm event, changes in wind direction and fluctuations in wind intensity, excessive rain and storm surge cause moored vessels to repeatedly collide with stationary docks, and often culminate in extensive damage assessments which may evolve into a dispute between the vessel owner and the marina owner. The dispute often hinges on whether the vessel caused damage to the dock, or whether the dock caused damage to the vessel during the storm.

Florida law emphasizes the protection of life over property by prohibiting marinas from requiring vessel owners to remove their vessels from a marina once a hurricane watch or warning has been issued.² A

¹ s. 206.606(1)(b)(1), F.S.

² s. 327.59, F.S.

hurricane watch is posted when hurricane conditions are possible within 36 hours and a *hurricane warning* is posted when hurricane conditions are expected within 24 hours. A *tropical storm watch* is posted when tropical storm conditions are expected within 36 hours.

In 1995, the aforementioned law, was challenged by a marina owner in circuit court and the case was dismissed. A subsequent appeal of the case upheld the lower court's dismissal (Burklow & Associates v. Belcher, 719 So.2d 31(1stDCA, 1995)). In that case, the marina owner sued the owners of sixteen vessels stored at the marina for breach of contract and negligence, seeking to recover damages allegedly caused by the vessel 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 section 327. 59, F.S., therefore 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
- Vessel owners had no duty to remove their vessels upon the request of the marina owner in the period prior the issuance of a hurricane watch or warning.

In the Burklow case, the District Court of Appeal further stated that an owner of a vessel which is lawfully docked at a marina, under a valid slip lease agreement that does not require the removal of a vessel in the event of a hurricane threat, does not owe a duty to the marina owner to remove his or her vessel 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 vessel owner's vessel to damage a marina. The court further stated that vessel owners whose vessels 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 vessel upon the request of the marina owner.

Vessel Mooring Field Regulation

Section 327.60 (2), F.S., prohibits local governments from regulating the anchoring of non-live aboard vessels in the exercise of rights of navigation. Public rights on navigable waters are not restricted to navigation in the strict sense, but include such incidental rights as are necessary to render the right of navigation as reasonably available. The incidental rights include the right of a vessel to anchor so long as it does not unreasonably obstruct navigation. If it is a live-aboard vessel or floating structure, cities and counties can regulate their anchoring and mooring up to a flat prohibition.

Section 327.02(15), F.S., defines "Live-aboard vessel" to mean:

- (a) Any vessel used solely as a residence; or
- (b) Any vessel represented as a place of business, a professional or other commercial enterprise, or a legal residence.

A commercial fishing boat is expressly excluded from the term "live-aboard vessel."

Vessel Owner Notification Requirements

Section 328.64, F.S., requires a vessel owner to the notify the Department of Highway Safety and Motor Vehicles when a vessel owner transfers all or any part of their interest in a vessel registered or titled in Florida.

Vessel Registration Fee Distribution

Section 328.72(15), F.S., provides for the distribution of vessel registration fees to be returned to the appropriate county for the sole purposes of providing recreational channel marking and public launching facilities and other boating-related activities, for removal of vessels and floating structures deemed a hazard to public safety and health for failure to comply with marine sanitation, and for

manatee and marine mammal protection and recovery. Counties are required to provide an annual detailed report to the FWCC no later than November 1 of each year that a portion of the registration fees were spent on boating infrastructure. The commission has the authority to provide an exemption letter by December 15 of each year for qualifying counties.

Florida Coastal Protection Trust Fund

The Florida Coastal Protection Trust Fund, section 376.11, F.S., establishes 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. Money in the fund may be used to fund a grant to coastal local governments for the removal of derelict vessels from public waters of the state.

Derelict Vessel Removal From Public Waters

Section 376.11., F.S., established the Derelict Vessel Removal Program in 1980 which is currently operated by the 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. Funding for the program is appropriated by the Legislature each fiscal year.

Sections 376.15 and 823.11, F. S., authorizes FWCC only to remove derelict vessels from waters of the state. City police departments and county sheriffs' departments are authorized to enforce all of Florida's laws pertaining to vessels and have the authority to arrest the owner for allowing the vessel to become or remain derelict. Currently, cities and counties wanting to remove derelicts must petition the FWCC for the delegation of authority to cause such removals. This restriction produces substantial delays in the removal of these vessels. The delays, in turn, increase the costs of removal as the derelicts continue to deteriorate.

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

The FWCC has the authority to manage a grant program to assist counties with the removal of derelict vessels; however, the program has not been funded since 2002. The lack of funding for the removal of derelict vessels has forced local governments to utilize their own funds to remove such vessels or leave them in place. In meetings with the FWCC, some local governments have asked that their local officers be given the authority to declare vessels derelict, which would allow these governments to handle derelict vessels problems locally.

Floating Vessel Platforms or Floating Boat Lifts

Paragraph (s) 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 the Florida Statutes 1983, as amended, or part IV of ch. 373, 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 commercial purpose or for mooring vessels that remain in the water when not in use, and do not substantially impede the flow of water, create a navigational hazard, or unreasonably infringe upon the riparian rights of adjacent property owners;
- Are constructed and used so as to minimize adverse impacts to submerged lands, wetlands, shellfish areas, aquatic plant and animal species, and other biological communities, including locating such structures in areas where no sea grasses exist if such areas are present and 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. 403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of ch. 373, F.S., or other form of authorization issued by a local government.

Structures that qualify for this exemption are relieved from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund and are not subject to any more stringent regulation by any local government. The Department of Environmental Protection is required to adopt a general permit, by rule, for those floating vessel platforms which do not qualify for the exemption, but do not cause significant adverse impacts to occur individually or cumulatively. The general permit constitutes permission to use or occupy lands owned by the Board of Trustees. No local government may impose a more stringent regulation on floating vessel platforms covered by the general permit.

Abandoned Property

Section 705.101, F.S., defines abandoned property as all tangible property that does not have an identifiable owner and that has been disposed on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. Section 705.103(4), F.S., establishes procedures relating to abandoned property.

Effect of Proposed Change

State Game Trust Fund

The bill amends section 206.606, F.S., to direct funding for local projects regarding uniform waterway markers, boat ramps, boat lifts and hoists, marine railways, public boat launching facilities and derelict vessel removal. The bill deletes reference to aquatic plant control projects from receiving funding under this section and deletes reference to repealed Florida Administrative Code (Rules 62D-5.031 – 62D5.036). Aquatic plant control is performed by the Department of Environmental Protection.

Vessel Securement During A Storm

The bill authorizes marina personnel to take reasonable actions to further secure any vessel within the marina to minimize damage to the vessel, the marina property, private property and the environment, if the vessel is not removed once a tropical storm or hurricane watch has been issued. The marinas may charge reasonable fees for securing the vessel and held harmless for any damage that occurs as a result of securing the vessel or from any damage incurred to a vessel from such storms or hurricanes. The bill provides that no immunity is granted to the marina for any intentional acts or negligence that causes damage to the vessel during the removal or storage under this act. The bill provides noticing criteria in the contractual agreement which may be utilized by the marina and the vessel owner relating to the removal of the vessel once a tropical storm or hurricane watch has been issued and provides that a time frame be established for such vessel removal.

Vessel Mooring Field Regulation

The bill amends section 327.60(2), F.S., to allow local regulation of anchoring within mooring fields.

Vessel Owner Notification Requirements

Section 328.64(1), F.S., is amended to direct the Department of Highway Safety and Motor Vehicles to provide forms for giving notification concerning change of interest and address of the vessel owner.

Vessel Registration Fee Distribution

The bill amends section 328.72(15), F. S., which provide for the distribution of vessel registration fees to counties. The bill provides for the distribution of such moneys to be returned to the counties for the express purposes of providing recreational channel marking and other uniform waterway markers, public boat ramps, lifts and hosts, marine railways, and other public boat launching facilities, derelict vessel removal and removal of vessels and floating structures deemed a hazard to public safety and health for failure to comply with marine sanitation. The bill amends the requirement for an annual report to the FWCC from the counties regarding their expenditures boat registration fees. The bill further provides that if the annual report is not submitted by January 1 of each calendar year, the tax

collector of that county shall not distribute the moneys designated for use by the counties, but shall instead for the next calendar year remit such moneys to the state for deposit into the Marine Resources Conservation Trust Fund. The FWCC shall return those moneys to the county if the county fully complies with this section within that calendar year. If the county does not fully comply within that calendar year, the moneys shall remain within the Marine Resources Trust Fund and may be appropriated for the purposes specified in this subsection.

Florida Coastal Protection Trust Fund

The bill amends section 376.11, F.S., to allow derelict vessel removal grants to be awarded to all local governments as opposed to just coastal local governments.

Derelict Vessel Removal From Public Waters

The bill amends section 376.15, F.S., pertaining to derelict and abandoned vessels to conform the definition of derelict vessel in section 823.11, F. S. The bill allows all law enforcement officers charged with enforcement of Florida's boating laws under section 327.70, F.S., to enforce the provisions pertaining to derelict and abandoned vessels and allows their agencies to recover the costs associated with removing these vessels.

The bill amends the definition of derelict vessel in section 823.11, F.S., to mean any vessel, as defined in section 327.02, F.S., that is left, stored, or abandoned:

- (a) In a wrecked, junked, or substantially dismantled condition upon any public waters of this state; or
- (b) At any port in this state without the consent of the agency having jurisdiction thereof; or
- (c) Docked or grounded at or beached upon the property of another without the consent of the owner of the property.

The bill provides that it is unlawful for any person, firm, or corporation to store, leave, or abandon any derelict vessel within this state. The bill specifies which officers may remove such vessels and provides for funding of such removal by certain grants. The bill directs FWCC to implement a plan to seek federal disaster funds relating to the removal of derelict vessels. The bill deletes a provision authorizing the FWCC to delegate authority for derelict vessel removal to local governments.

The bill provides that when a derelict vessel is docked or grounded at or beached upon the private property of another without the consent of the owner of the property, the owner of the property may remove the vessel at the vessel owner's expense 60 days after compliance with certain notice requirements. The bill specifies that any person, firm, or corporation violating this act commits a misdemeanor of the first degree and shall be punished as provided by law. The court having jurisdiction over the criminal offense is authorized to impose civil penalties in addition to any sentence imposed for the criminal offense.

Floating Vessel Platforms or Floating Boat Lifts

The bill amends section 403.813(2)(s), F.S., to provide that the exemption for floating vessel platforms includes those that are associated with a permitted dock with no defined boat slip or are attached to a bulkhead on a parcel of land where there is no other docking structure and which do not exceed a combined total of 500 square feet or 200 square feet in Outstanding Florida Water. The bill requires all floating vessel platforms to be located where sea grasses adjacent to the dock or bulkhead are least dense. The bill provides that exempt floating vessel platforms are not subject to any permitting requirement, registration requirement, or other more stringent regulation by any local government. The bill allows local governments authority to require either permitting or one-time registration of floating vessel platforms as necessary to ensure compliance with the exemption criteria or general permit, to ensure compliance with local ordinances, codes, or regulations relating to building or zoning, which are no more stringent than the exemption criteria or general permit; and to ensure proper, installation, and maintenance of a floating vessel platform or floating boat lift that is proposed to be attached to a bulkhead or parcel of land where there is no other docking structure.

Abandoned Property

The bill amends section 705.101(3), F.S., to provide for a conforming amendment relating to the definition of derelict vessel as defined in section 823.11(1), F.S. The bill amends section 705.103(4), F.S., to provide a conforming amendment relating to vessels.

C. SECTION DIRECTORY:

- Section 1 Amends s. 206.606, F.S., to provide funding for local projects regarding uniform waterway markers, boat ramps, boat lifts and hoists, marine railways, public boat launching facilities and derelict vessel removal.
- Section 2 Amends s. 327.59, F.S., to allow an authorized employee to take steps and charge reasonable fees to secure a vessel in a marina after the issuance of a tropical storm or hurricane watch has been issued and requires marina owners to give contractual notice of such authority.
- Section 3 Amends s. 327.60(2), F.S., to allow local regulation of anchoring within mooring fields.
- Section 4 Amends s. 328.64, F.S., to provide direction to the Department of Highway Safety and Motor Vehicles to provide forms for giving notification concerning change of interest and address of the vessel owner.
- Section 5 Amends s. 328.72(15), F.S., provides for the distribution of vessel registration fees to counties and specifies the utilization of such funds relating to boat access.
- Section 6 Amends s. 376.11(4)(g), F.S., to extend grant program funding for the removal of derelict vessels to local governments.
- Section 7 Amends s. 376.15, F.S., relating to derelict vessels removal and authorization of such removal extended to all law enforcement officers.
- Section 8 Amends s. 403.813(2)(s), F.S., to exempt certain floating vessel structures from environmental resource permitting.
- Section 9 Amends s. 705.101(3), F.S., to provide for a conforming amendment relating to the definition of derelict vessel as defined in section 823.11(1), F.S.
- Section 10 Amends s. 705.103(4), F.S., to provide technical change for clarification relating to vessels.
- Section 11 Amends s. 823.11, F.S., to revise provisions relating to abandoned and derelict vessels and the removal of such vessels; to provide penalties for nonremoval of such vessels; and to provide removal provisions for derelict vessels located on private property.
- Section 12 Provides the act will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures:

State government may experience a cost savings as a result of expediting the removal of derelict vessels.

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.

2. Expenditures:

Authorized local law enforcement officers are authorized to remove any abandoned or derelict vessels. The bill provides that removal costs are recoverable against the vessel owner.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The vessel owner who fails to remove its vessel from the marina after a tropical storm or hurricane watch has been issued may incur an expense imposed by the marina to remove such vessel.

The exemption for floating vessel platforms is expanded to allow those platforms attached to a bulkhead or a parcel of land where no other docking structures exist and may allow for more floating vessel platforms to qualify for a permit exemption.

D. FISCAL COMMENTS:

The bill allows a portion of moneys collected from the boat registration fees to be redirected from section 327.47, F.S.,³ to section 206.606, F.S.,⁴ which allows funding for the removal of derelict vessels.

The bill amends the requirement for an annual report to the FWCC from the counties regarding their expenditures of the boat registration fees. The bill provides that if the annual report is not submitted by January 1 of each calendar year, the tax collector of that county shall not distribute the moneys designated for use by the counties, but shall instead for the next calendar year remit such moneys to the state for deposit into the Marine Resources Conservation Trust Fund. The FWCC shall return those moneys to the county if the county fully complies with this section within that calendar year. If the county does not fully comply within that calendar year, the moneys shall remain within the Marine Resources Trust Fund and may be appropriated for the purposes specified in this subsection.

FWCC reports the fiscal impact of this legislation to be negligible.⁵

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

³ Competitive grant programs (Note: derelict vessel removal is not included as a provision within this section of statute.)

⁴ State Game Trust Fund (Note: derelict vessel removal is included as a provision within this section of statute.)

⁵ FWCC Bill Analysis

2. Other: None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the State Resources Council favorably adopted three amendments to HB 7175:

- Amendment No. 1 - Conforming amendment to replace the word "feasible" with the word "reasonable" relating to the removal of vessels by a marina owner upon the issuance of a tropical storm or hurricane watch.
- Amendment No. 2 - Clarifying amendment relating to statutory cross reference (s. 206.606 F.S.) for the utilization of boat registration funds to improve boating access.
- Amendment No. 3 - Clarifying amendment to further specify local government authority as it relates to floating vessel platforms.

The analysis has been amended to reflect the adoption of these amendments.