

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1363 Vessel Safety

SPONSOR(S): State Affairs Committee; Agriculture & Natural Resources Subcommittee; and Van Zant

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 1594

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Renner	Blalock
2) State Affairs Committee	13 Y, 0 N, As CS	Renner	Camechis

SUMMARY ANALYSIS

Current law prohibits a person from anchoring or operating a vessel in a manner that constitutes a navigational hazard or interferes with another vessel, except in the case of an emergency, and from carrying on any prohibited activity that constitutes a navigational hazard or interferes with another vessel. The Division of Law Enforcement of the Fish and Wildlife Conservation Commission (FWC) and its officers and other law enforcement officers are authorized to remove, but not relocate, vessels deemed to be an interference or hazard to public safety. However, current law does not authorize the recovery of costs associated with the removal of such vessels. FWC and its officers and all law enforcement officers are authorized to remove, but not relocate, abandoned or derelict vessels from public waters, including where the vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment. All costs incurred by FWC or another law enforcement agency in the removal of any abandoned or derelict vessel are recoverable against the owner of the derelict vessel, and the Department of Legal Affairs is required to represent FWC in these actions. Any person who neglects or refuses to pay such costs is not entitled to be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until the costs have been paid.

The bill defines "gross negligence" to mean conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct. The bill also defines "willful misconduct" to mean conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner.

The bill specifies that contractors that perform the relocation or removal of a vessel at the direction of FWC or a law enforcement agency or officer must meet certain requirements.

The bill amends the vessel safety statutes to authorize FWC, officers of FWC, and any law enforcement agency or officer to relocate a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The bill exempts FWC or any other law enforcement agency or officer from liability for damages caused by the relocation or removal of a vessel, unless the damage results from gross negligence or willful misconduct. Furthermore, the bill authorizes FWC or another law enforcement agency to recover from the vessel owner all costs, including costs owed to a third party, resulting from the relocation or removal of a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The bill requires the Department of Legal Affairs to represent FWC in actions to recover such costs.

The bill also amends the public nuisance and pollutant discharge statutes to specify that, in addition to being authorized to remove a derelict vessel, FWC, an officer of FWC, and certain law enforcement agencies or officers are authorized to relocate or cause to be relocated a derelict vessel from public waters. The bill also exempts FWC or a law enforcement agency from liability for damages caused by the relocation or removal of a derelict vessel authorized by the bill, unless the damage results from gross negligence or willful misconduct. In addition, the bill authorizes FWC or other law enforcement agency to recover from the vessel owner all costs, including costs owed to a third party, incurred by FWC or other law enforcement agency for relocating a derelict vessel, and specifies that all third-party costs that are incurred by the FWC or other law enforcement agency in the relocation or removal of the derelict vessel can be recovered from the vessel owner.

The bill has an insignificant positive fiscal impact on state and local governments that perform the removal or relocation of a derelict vessel because under the bill, the state and local law enforcement will be able to recover all costs incurred in the removal or relocation of certain vessels.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1363c.SAC

DATE: 4/7/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 327, F.S., contains various provisions pertaining to vessel safety in Florida; chapter 376, F.S., contains various provisions pertaining to pollutant discharge in Florida, which applies to abandoned and derelict vessels on public waters; and chapter 823, F.S., contains various provisions pertaining to public nuisance law in the state, which apply to derelict vessels that obstruct or threaten to obstruct navigation or poses a threat to the environment.

Vessels that Constitute a Navigational Hazard or Interfere with Another Vessel

The vessel safety statutes prohibit a person from anchoring or operating a vessel in a manner that constitutes a navigational hazard or interferes with another vessel, except in the case of an emergency, and from carrying on any prohibited activity that constitutes a navigational hazard or interferes with another vessel.¹ A “vessel” is defined as being synonymous with boat as referenced in Article VII, Section 1(b) of the Florida Constitution, and includes every description of watercraft, barge, and airboat, other than a seaplane on the water used or capable of being used as a means of transportation on the water.²

The Division of Law Enforcement of the Florida Fish and Wildlife Conservation Commission (FWC) and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers³ are authorized to *remove* vessels deemed to be an interference or hazard to public safety.⁴ Current law does not authorize the recovery of costs associated with the removal of such vessels.

In addition, the statutes do not authorize the FWC or other law enforcement agencies to *relocate* and attempt to secure a vessel in a more appropriate location if the vessel creates a navigational hazard or that interfere with other vessels. An unoccupied vessel may break free of its anchor or mooring and either remain adrift, come to rest in a location that is unsafe for other vessel traffic, or cause damage to other boats or maritime infrastructure. Relocating the vessel would benefit the boat owner, the operators and owners of boats in the area, and the owners of maritime infrastructure.⁵

Derelict Vessels

Florida’s public nuisance statutes define a “derelict vessel” as any vessel that is left, stored, or abandoned:

- In a wrecked, junked, or substantially dismantled condition upon any public waters of the state;⁶
- At any port in the state without the consent of the agency having jurisdiction of the port;⁷ or

¹ Section 327.44, F.S.

² Section 327.02(39), F.S.

³ Pursuant to s. 943.10, F.S., a law enforcement officer is “any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.”

⁴ Section 327.70(1), F.S.

⁵ FWC Agency Analysis on file with staff.

⁶ Section 823.11(1)(a), F.S.

⁷ Section 823.11(1)(b), F.S.

- Docked or grounded at or beached upon the property of another without the consent of the owner of the property.⁸

It is unlawful for any person, firm, or corporation to store, leave, or abandon any derelict vessel in Florida, and it is a first degree misdemeanor⁹ to do so.¹⁰ In addition, anyone who stores, leaves, or abandons a derelict vessel is subject to a fine of up to \$50,000 per day.¹¹ A criminal conviction does not prevent the assessment of a civil penalty¹² and gives the court in charge of a criminal derelict vessel proceeding the power to impose a civil penalty.¹³

The FWC and its officers and all law enforcement officers are authorized to remove, but not relocate, an abandoned or derelict vessel from public waters where the vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment.¹⁴ All costs incurred by FWC or other law enforcement agency in the removal of any abandoned or derelict vessel are recoverable against the owner of the derelict vessel, and the Department of Legal Affairs is required to represent FWC in these actions.¹⁵ In addition, any person who neglects or refuses to pay such costs is not entitled to be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until the costs have been paid.¹⁶

Pursuant to s. 376.15(2), FWC and its officers and all law enforcement officers are authorized to *remove* any derelict vessel from public waters *at any time*, as long as the vessel meets the definition of derelict vessel, discussed above.¹⁷ FWC or other law enforcement agencies are authorized to recover from the vessel owner all costs from the removal of any abandoned or derelict vessel.¹⁸ The Department of Legal Affairs is required to represent FWC. According to FWC,¹⁹ this statute is broader in scope than s. 823.11, F.S., which only allows for the removal of a derelict vessel from public waters in any instance when the vessel threatens to, or obstructs navigation or in any way constitutes a danger to the environment.

According to FWC,²⁰ the removal of a derelict vessel costs an average of \$350 to \$450 per foot of vessel length. However, there are many variables that affect the costs of removing an individual vessel. Sunken vessels require professional divers and specialized equipment, resulting in costs in excess of the average. On the other hand, a floating vessel may be towed to a boat ramp or hoist and pulled from the water at much lower cost. Relocation may have no cost if a law enforcement officer is able to tow it to a suitable location. If professional towing services are called upon, costs in the neighborhood of \$200 per hour with a one-hour minimum (from the time the tow boat leaves their dock to the time they return) are standard. According to the At-Risk Vessel Statewide Database, a known total of 92 derelict vessels were removed in 2013 by local governments. Those local governments spent approximately \$325,000 on the removal of derelict vessels, resulting in an average of \$3,533 per vessel.

Effect of Proposed Changes

Definition of “gross negligence” and “willful misconduct”

⁸ Section 823.11(1)(c), F.S.

⁹ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ Sections 823.11(4) and 376.15(1), F.S.

¹¹ Sections 376.15 and 376.16, F.S.

¹² See s. 376.16, F.S. This statute also gives the Department of Environmental Protection independent power to assess a civil penalty of up to \$50,000 per violation per day for storing, leaving, or abandoning a derelict vessel in Florida.

¹³ Section 823.11(4), F.S.

¹⁴ Section 823.11(2), F.S.

¹⁵ Section 823.11(3), F.S.

¹⁶ Section 823.11(3)(a), F.S.

¹⁷ Section 376.15(2), F.S. See *also* FWC Agency Analysis on file with staff.

¹⁸ Section 376.15(2), F.S.

¹⁹ FWC 2014 Agency Analysis on file with staff.

²⁰ FWC 2014 Agency Analysis on file with staff.

The bill provides a definition of gross negligence and willful misconduct in ss 327.44, 376.15, and 823.11, F.S. The bill defines "gross negligence" to mean conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct. The bill also defines "willful misconduct" to mean conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner.

Vessels that Constitute a Navigational Hazard or Interfere with Another Vessel

The bill amends s. 327.44, F.S., authorizing FWC, officers of FWC, and any law enforcement agency or officer to relocate a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The bill exempts FWC and any other law enforcement agency or officer from liability for damages caused by the relocation or removal of a vessel, unless the damage results from gross negligence or willful misconduct. The bill also specifies that contractors that perform the relocation or removal of a vessel at the direction of FWC or, officers of FWC, or a law enforcement agency or officer must be licensed in accordance with applicable U.S. Coast Guard regulations where required; obtain and carry a policy from a licensed insurance carrier in Florida to insure against any accident, loss, injury, property damage, or other casualty caused by the contractor's actions; and be properly equipped to perform the services to be provided. Furthermore, the bill authorizes FWC or another law enforcement agency to recover from the vessel owner all costs, including costs owed to a third party, resulting from the relocation or removal of a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The bill requires the Department of Legal Affairs to represent FWC in actions to recover the costs.

Derelict Vessels

The bill amends s. 376.15, F.S., clarifying that the term “commission” means the Fish and Wildlife Conservation Commission. The bill specifies that, in addition to being authorized to *remove a derelict vessel* from public waters, FWC and certain law enforcement officers are authorized to *relocate, or cause to be relocated or removed* any derelict vessel from public waters. The bill authorizes FWC or another law enforcement agency to recover from the vessel owner all costs, including costs owed to a third party, resulting from the relocation or removal of any abandoned or derelict vessel. The bill exempts FWC, officers of FWC, and any other law enforcement agency or officer from liability for damages caused by the relocation or removal of a derelict vessel from public waters, unless the damage results from gross negligence or willful misconduct. The bill also specifies that contractors that perform the relocation or removal of a vessel at the direction of FWC or, officers of FWC, or a law enforcement agency or officer must be licensed in accordance with applicable U.S. Coast Guard regulations where required; obtain and carry a policy from a licensed insurance carrier in Florida to insure against any accident, loss, injury, property damage, or other casualty caused by the contractor’s actions; and be properly equipped to perform the services to be provided.

The bill amends s. 823.11, F.S., to specify that, in addition to being authorized to *remove a derelict vessel*, FWC, an officer of FWC, and certain law enforcement agencies or officers are authorized to *relocate, or cause to be relocated*, a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or poses a danger to the environment, property or persons (current law allows removal of a derelict vessel that poses a danger to the environment). The bill also exempts FWC or any other law enforcement agency from liability for damages caused by such relocation or removal of a derelict vessel, unless the damage results from gross negligence or willful misconduct. In addition, the bill authorizes the recovery from the vessel owner of all costs incurred by FWC or another law enforcement agency for relocating a derelict vessel, and authorizes the recovery from the vessel owner of all costs owed to a third party that are incurred by the FWC or other law enforcement agency in the relocation or removal of the derelict vessel. The bill also specifies that contractors that perform the relocation or removal of a vessel at the direction of FWC or, officers of FWC, or a law enforcement agency or officer must be licensed in accordance with applicable U.S. Coast Guard regulations where required; obtain and carry a policy from a licensed insurance carrier in Florida to insure against any accident, loss, injury, property damage, or other casualty caused by the contractor’s actions; and be properly equipped to perform the services to be provided.

B. SECTION DIRECTORY:

Section 1. Amends s. 327.44, F.S., relating to vessel interference with navigation.

Section 2. Amends s. 376.15, F.S., relating to the removal of derelict vessels from public waters.

Section 3. Amends s. 823.11, F.S., relating to the relocation and removal of derelict vessels.

Section 4. Amends s. 376, 11, F.S., conforming cross-references.

Section 5. Amends s. 705.101, F.S., conforming cross-references.

Section 6. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

The bill may have an insignificant positive fiscal impact on FWC because, if a vessel must be removed or relocated, the bill requires the owner of a vessel to pay all costs incurred by the FWC in the removal or relocation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill may have an insignificant positive fiscal impact on local governments that remove or relocate certain vessels because the bill requires the owner of the vessel to pay all costs incurred in the removal or relocation of the vessel.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Vessel owners will be liable for all costs incurred by the FWC or a law enforcement agency and any third party costs associated with relocating or removing a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Agriculture & Natural Resources Subcommittee adopted one strike-all amendment and reported the bill favorably with a committee substitute. The amendment:

- Provides definitions for “gross negligence” and “willful misconduct”;
- Limits the liability protection in the bill to damages to certain vessels not caused by gross negligence or willful misconduct;
- Adds “officer” to the entities covered by the liability protection in s. 823.11, F.S.;
- Clarifies “commission” to mean the Fish and Wildlife Conservation Commission; and
- Adds a section to the bill, amending s. 376.15, F.S., authorizing FWC and law enforcement to relocate any abandoned or derelict vessel on public waters.

On April 4, 2014, the State Affairs Committee adopted one strike-all amendment and reported the bill favorably with a committee substitute. The amendment specifies that contractors that perform the relocation or removal of a vessel at the direction of FWC or a law enforcement agency or officer must meet certain requirements. The amendment also conforms cross-references.