

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7123 PCB HWSS 15-06 At-risk Vessels

**SPONSOR(S):** State Affairs Committee, Highway & Waterway Safety Subcommittee, Raschein

**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Highway & Waterway Safety Subcommittee	13 Y, 0 N	Willson	Smith
1) State Affairs Committee	15 Y, 0 N	Moore	Camechis

### SUMMARY ANALYSIS

Under current law, the Fish and Wildlife Conservation Commission (FWCC) does not have the authority to require vessel owners to maintain their vessels or otherwise regulate the condition of vessels that occupy the waters of the state, unless the vessel is a hazard to navigation, discharges contaminants, is derelict (wrecked, junked, or substantially dismantled), or is in violation of other vessel safety laws. Additionally, a vessel owner has no duty to maintain their vessel, and can allow a vessel occupying waters of the state to deteriorate until it reaches a derelict condition. Once a vessel is deemed derelict FWCC can remove or relocate the vessel, but it can become much more difficult and expensive once a vessel has deteriorated to the point that it meets the definition of a derelict vessel.

The bill provides the following regulations for vessels that are at risk of becoming derelict on the waters of this state:

- Prohibits a vessel that is at risk of becoming derelict to anchor on, moor on, or occupy the waters of this state.
- Authorizes an officer of the FWCC or law enforcement agency to determine that a vessel is at risk of becoming a derelict vessel if any of the following conditions exist:
  - The vessel is taking on or has taken on water without an effective means to dewater.
  - Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time.
  - The vessel has broken loose or is in danger of breaking loose from its anchor.
  - The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, is listing due to water intrusion, or is sunk or partially sunk.
- Provides that a person who anchors or moors a vessel that is at risk of becoming derelict on the waters of this state or allows such a vessel to occupy the waters of this state commits a noncriminal infraction in which civil penalties may be assessed.
- Provides that a civil penalty for a violation of a vessel that is at risk of becoming derelict is in addition to other penalties provided by law.
- Provides that the bill would not apply to a vessel that is moored to a private dock or wet slip with the consent of the owner for the purpose of receiving repairs.
- Provides that a uniform boating citation may be mailed to the registered owner of an unattended vessel that is at risk of becoming derelict, which is anchored, aground, or moored on the waters of this state.
- Provides the following civil penalties for a violation of vessel laws relating to a vessel that is at risk of becoming derelict on waters of this state:
  - For a first offense, \$50;
  - For a second offense occurring 30 days or more after a first offense, \$100;
  - For a third or subsequent offense occurring 30 days or more after a previous offense, \$250.

The bill may have an indeterminate positive fiscal impact on state and local government revenues by establishing a new noncriminal infraction relating to vessels at risk of becoming derelict on waters of this state, and may have a negative impact on the private sector resulting from the assessment of these new civil penalties.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present situation

##### Background

Current law does not limit the length of time that a properly maintained vessel<sup>1</sup> may occupy waters of this state.<sup>2</sup> Current law also does not authorize the Fish and Wildlife Conservation Commission (FWCC) to require vessel owners to maintain their vessels or otherwise regulate the condition of vessels that occupy the waters of the state, unless the vessel is a hazard to navigation, discharges contaminants, is derelict (wrecked, junked, or substantially dismantled), or is in violation of other vessel safety laws. Additionally, a vessel owner has no duty to maintain their vessel, and can allow a vessel occupying waters of the state to deteriorate until it reaches a wrecked, junked, or substantially dismantled condition. Once a vessel is deemed derelict FWCC can remove or relocate the vessel, but it can become much more difficult and expensive once a vessel has deteriorated to the point that it meets the definition of a derelict vessel.

Local governments are authorized to enact and enforce regulations regarding the mooring or anchoring of vessels that are located within marked boundaries of a mooring field<sup>3</sup> within their jurisdiction.<sup>4</sup> However, local governments are prohibited from regulating the anchoring of vessels, other than live-aboard vessels,<sup>5</sup> that are located outside of mooring fields.<sup>6</sup>

The unregulated anchoring and mooring of vessels outside of mooring fields has created issues regarding:

- Vessels being left unattended or unsupervised;
- Vessels that have broken free or are in danger of breaking free; and
- Vessels that are not properly maintained, are listing, or taking on water, but are not to the point of deterioration that they can be deemed derelict.<sup>7</sup>

##### Derelict Vessels

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<sup>1</sup> A "vessel" is defined in s. 327.02(43), F.S., to be synonymous with boat as referenced in s. 1(b), Art. VII of the State 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 water.

<sup>2</sup> "Waters of this state" is defined in s. 327.02(44), F.S., to mean any navigable waters of the United States within the territorial limits of this state, the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers, and canals under the jurisdiction of this state.

<sup>3</sup> Mooring fields are permitted by the FWCC, under ch. 327, F.S. A mooring field is an area of waters of this state set aside for the mooring of vessels to mooring buoys. The area must have delineated boundaries that are marked with uniform waterway markers as provided in s. 327.40, F.S., and must have mooring buoys installed in a planned array, taking into consideration the following factors: vessel lengths and swing radii; vessel drafts and available water depths; vessel sizes, weights, and wind-loading characteristics; buoy sizes and types; anchor sizes and types; and holding characteristics of the bottom. See *Anchoring and Mooring Pilot Program Questionnaire* (Oct. 14, 2009), available at [http://myfwc.com/media/106689/Boat\\_Anchoring\\_FieldQuestions.pdf](http://myfwc.com/media/106689/Boat_Anchoring_FieldQuestions.pdf). (Last accessed April 9, 2015.)

<sup>4</sup> Section 327.60(3), F.S.

<sup>5</sup> A "live-aboard vessel" is defined in s. 327.02(19), F.S., as a vessel that is used solely as a residence and not for navigation, represented as a place of business or a professional or other commercial enterprise, or for which a declaration of domicile has been filed pursuant to s. 222.17, F.S. A commercial fishing boat is expressly excluded from the term "live-aboard vessel."

<sup>6</sup> Section 327.60(3), F.S.

<sup>7</sup> *Anchoring and Mooring Pilot Program Report of Findings and Recommendations*, available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf>. (Last accessed April 9, 2015.); FWCC 2015 Agency Bill Analysis for SB 1548, on file with staff.

A derelict vessel is defined in s. 823.11(1)(b), F.S., as a vessel that is left, stored, or abandoned:

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

It is unlawful for a person, firm, or corporation to store, leave, or abandon any derelict vessel in this state.<sup>8</sup> The FWCC, officers of the FWCC, and any law enforcement agency or officer specified in s. 327.70, F.S.,<sup>9</sup> are authorized and empowered to relocate, remove, or cause to be relocated or removed a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.<sup>10</sup> Additionally, the FWCC and other officers acting under s. 823.11(3), F.S., are held harmless for all damages to the derelict vessel resulting from the relocation or removal unless the damage results from gross negligence or willful misconduct.<sup>11</sup> All costs, including costs owed to a third party, incurred by the FWCC or other law enforcement agency in the relocation or removal of a derelict vessel are recoverable against the vessel owner.<sup>12</sup> A person who neglects or refuses to pay such costs may not be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until such costs have been paid.<sup>13</sup>

Additionally, a person, firm, or corporation violating s. 823.11, F.S., commits a first degree misdemeanor.<sup>14</sup> Further, a conviction under s. 823.11, F.S., does not bar the assessment and collection of civil penalties provided in s. 376.16, F.S.<sup>15</sup>

The removal of a derelict vessel costs an average of \$350 to \$450 per foot of vessel length.<sup>16</sup> However, there are many variables that affect the costs of removing a vessel.<sup>17</sup> Sunken vessels require professional divers and specialized equipment, resulting in costs in excess of the average.<sup>18</sup> 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.<sup>19</sup> Relocation may have no cost if a law enforcement officer is able to tow the vessel to a suitable location.<sup>20</sup> If professional towing services are called upon, costs in the neighborhood of \$200 per hour with a one-hour minimum, beginning from the time the tow boat leaves the dock to the time it returns, are standard.<sup>21</sup> According to the At-Risk Vessel Statewide Database, a known total of 92 derelict vessels were removed in 2013 by local governments.<sup>22</sup> Those local governments spent

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<sup>8</sup> Section 823.11(2), F.S.

<sup>9</sup> Section 327.70, F.S., identifies the Division of Law Enforcement of the FWCC and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer as defined in s. 943.10, F.S.; Section 943.10(1), F.S., defines a "law enforcement officer" as 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.

<sup>10</sup> Section 823.11(3), F.S.

<sup>11</sup> Id.

<sup>12</sup> Section 823.11(3)(b), F.S.

<sup>13</sup> Sections 823.11(3)(b) and 705.103(4), F.S.

<sup>14</sup> Section 823.11(5), F.S.; A first degree misdemeanor is punishable by a term of imprisonment not to exceed one year pursuant to s. 775.082(4)(a), F.S., and may be fined \$1,000 pursuant to s. 775.083(1)(d), F.S.

<sup>15</sup> Section 376.16, F.S., provides penalties for discharges of pollutants, such as gasoline or diesel.

<sup>16</sup> FWCC 2014 Agency Bill Analysis for HB 1363, on file with staff.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

approximately \$325,000 on the removal of derelict vessels, resulting in an average of \$3,533 per vessel.<sup>23</sup>

### Navigational Hazard

Section 327.44, F.S., authorizes law enforcement officials to relocate, remove, or cause to be relocated or removed any vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. A violation of s. 327.44, F.S., is a noncriminal infraction, punishable by a civil penalty of \$50.<sup>24</sup> If the vessel is unattended, a uniform boating citation may be mailed to the registered owner of the vessel.<sup>25</sup>

### Noncriminal Infractions for Violations of Vessel Laws

Section 327.73(1), F.S., provides that a person who violates certain vessel laws of the state commits a noncriminal infraction, will be cited for the infraction, and be cited to appear before the county court. The civil penalty for any such infraction is \$50, except as otherwise provided in the section. A person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the vessel laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S.<sup>26</sup> or s. 775.083, F.S.<sup>27</sup> A written warning to this effect will be provided at the time such uniform boating citation is issued.

### **Effect of proposed changes**

The bill creates s. 327.4107, F.S., regarding vessels at risk of becoming derelict on the waters of this state, as follows:

- Provides that a vessel that is at risk of becoming derelict may not anchor on, moor on, or occupy the waters of this state.
- Authorizes an officer of the FWCC or law enforcement agency to determine that a vessel is at risk of becoming a derelict vessel if any of the following conditions exist:
  - The vessel is taking on or has taken on water without an effective means to dewater.
  - Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time.
  - The vessel has broken loose or is in danger of breaking loose from its anchor.
  - The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, is listing due to water intrusion, or is sunk or partially sunk.
- Provides that a person who anchors or moors a vessel at risk of becoming derelict on the waters of this state or allows such a vessel to occupy waters of this state commits a noncriminal infraction for which civil penalties may be assessed.
- Provides that a civil penalty for a violation of a vessel at risk of becoming derelict is in addition to other penalties provided by law.
- Provides that the bill would not apply to a vessel that is moored to a private dock or wet slip with the consent of the owner for the purpose of receiving repairs.

The bill amends s. 327.70, F.S., regarding enforcement, to provide that a uniform boating citation may be mailed to the registered owner of an unattended vessel that is anchored, aground, or moored on the waters of this state that is at risk of becoming derelict.

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<sup>23</sup> Id.

<sup>24</sup> Section 327.73(1)(j), F.S.

<sup>25</sup> Section 327.70(2)(a)2., F.S.

<sup>26</sup> Section 775.082, F.S., provides that a second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days.

<sup>27</sup> Section 775.083, F.S. provides that a second degree misdemeanor is punishable by a fine not to exceed \$500.

The bill amends s. 327.73, F.S., regarding noncriminal infractions, to provide for the following graduated civil penalties for vessels at risk of becoming derelict, which anchor on, moor on, or occupy the waters of this state:

- For a first offense, \$50;
- For a second offense occurring 30 days or more after a first offense, \$100;
- For a third or subsequent offense occurring 30 days or more after a previous offense, \$250.

**B. SECTION DIRECTORY:**

Section 1. Creates s. 327.4107, F.S., relating to vessels at risk of becoming derelict on the waters of this state.

Section 2. Amends s. 327.70, F.S., providing for a uniform boating citation to be issued for a violation relating to vessels at risk of becoming derelict on the waters of this state.

Section 3. Amends s. 327.73, F.S., providing for tiered civil penalties for a violation relating to vessels at risk of becoming derelict on the waters of this state.

Section 4. Provides an effective date of July 1, 2015.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See Fiscal Comments, section D., below.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See Fiscal Comments, section D., below.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have a potentially negative impact on persons who are subject to the civil penalties created by this bill.

**D. FISCAL COMMENTS:**

The bill appears to have an indeterminate positive fiscal impact on state and local government revenues by establishing a new noncriminal infraction relating to vessels at risk of becoming derelict on the waters of this state.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

A strike all amendment to the bill was adopted by the State Affairs Committee (SAC) on April 14, 2015. The strike all amendment removed provisions authorizing an officer of FWCC or law enforcement agency to determine that an at risk vessel has become a derelict vessel, which would allow FWCC or law enforcement agency to remove the vessel from the waters of this state. The strike all also removed the associated notice and civil penalty provisions related to a derelict vessel determination.

In addition, the strike all amendment authorized FWCC or law enforcement agency to determine that a vessel occupying waters of this state is at risk of becoming a derelict vessel if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater.
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time.
- The vessel has broken loose or is in danger of breaking loose from its anchor.
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, is listing due to water intrusion, or is sunk or partially sunk.

The strike all amendment also provides for the following civil penalties for a violation of vessel laws relating to a vessel at risk of becoming derelict on waters of this state:

- For a first offense, \$50;
- For a second offense occurring 30 days or more after a first offense, \$100;
- For a third or subsequent offense occurring 30 days or more after a previous offense, \$250.

This analysis is drafted to reflect the bill as amended by the SAC.