

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Infrastructure and Security

BILL: CS/SB 826

INTRODUCER: Environment and Natural Resources Committee and Senator Mayfield

SUBJECT: Marina Evacuations

DATE: February 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Anderson</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 826 prohibits, upon the issuance of a hurricane watch that affects the waters of marinas located in a deepwater seaport, vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane. The CS requires that vessel owners promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

If the Coast Guard Captain of the Port sets the port condition to “Yankee”¹ and a vessel owner has failed to remove his or her vessel from the waterway, a marina owner, operator, employee, or agent, is required to remove the vessel, if reasonable, from its slip. The marina owner may charge the vessel owner a reasonable fee for the service of removing the vessel.

The CS provides that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane and is held harmless from removing the vessel from the waterways. However, the CS does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

¹ Gale force winds are predicted to arrive within 24 hours, and the port is closed to inbound traffic and vessel traffic control measures are in effect on vessel movements within the port.

The CS provides that after a watch has been issued, if an owner or operator has not removed the vessel pursuant to an order from the seaport, the owner or operator may be subject to existing civil penalties.

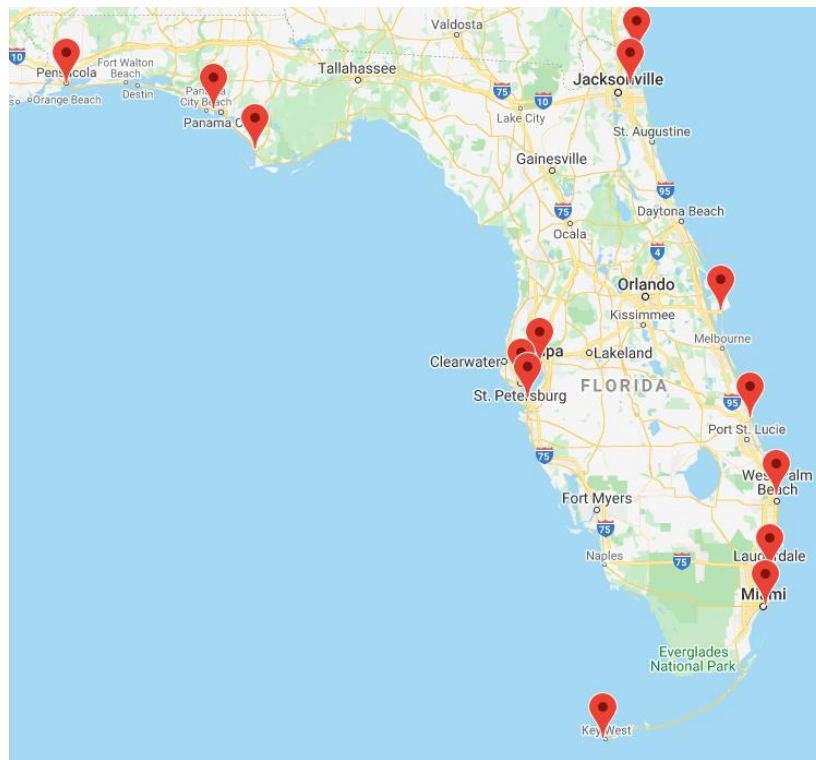
The CS has an effective date of July 1, 2020.

II. Present Situation:

Deepwater Ports in Florida

Under Florida law, a “port” means a port authority or district.² Ports are created by and given authority under general or special law. Each port, in agreement with the United States Coast Guard (Coast Guard), state pilots, and other ports in its operating port area, is required to adopt guidelines for minimum bottom clearance for each berth and channel, for the movement of vessels, and for radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels.³

There are 14 deepwater seaports in Florida, indicated in the map below:⁴



² Section 313.21, F.S.; *see also* s. 315.02, F.S. “Port authority” means a port authority in Florida created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law. “Port district” means any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities.

³ Section 313.23, F.S.

⁴ Florida Ports Council, *Seaports*, <https://flaports.org/seaports/> (last visited February 12, 2020).

Port Canaveral

One example of a deepwater seaport impacted by the CS is Port Canaveral, which was dedicated on November 4, 1953.⁵ It is a gateway for Central Florida and the world's second busiest cruise port.⁶ Annually, Port Canaveral moves nearly 4 million tons of cargo and sees 4 million cruise passengers.⁷ It also houses United States Army, Navy, and Air Force facilities.⁸ Port Canaveral is a key part of Florida's gasoline supply system. Gasoline and other petroleum products are primarily delivered by marine tankers and barges to the state's ports, including Port Canaveral, where the products are offloaded and later stored and distributed around the state.⁹ Additionally, 200 small businesses ranging from marinas, restaurants, retail, and charter boats currently lease and operate at Port Canaveral.¹⁰

In fiscal year 2018, Port Canaveral reported \$103.8 million in revenues, the highest in its history.¹¹

Canaveral Port Authority

The Canaveral Port District (Port District) was created by the Legislature by special act in 1953, as amended in 2014.¹² It is an independent special taxing district and political subdivision of the state.¹³ The Canaveral Port Authority (Port Authority) has the power to make rules and regulations for the promotion and conduct of navigation, commerce, and industry in the Port District.¹⁴ The Port Authority also has the power to make rules and regulations governing the docking, storing, mooring, and anchoring of vessels within the Port District and to remove all obstacles to navigation, commerce, and industry in the waters of the port.¹⁵

The Port Canaveral Tariff No. 16 provides the current rates, rules, and regulations governing its marine and port services.¹⁶ Anyone who uses the waterways and facilities under the jurisdiction of the Port Authority consents to the terms and conditions of the tariff.¹⁷ According to the tariff, Port Canaveral is not a suitable refuge during hurricanes or tropical storms. All Port Canaveral

⁵ Port Canaveral, *History*, <https://www.portcanaveral.com/About/History> (last visited February 12, 2020).

⁶ Port Canaveral, *Port and Cruise Facts*, <https://www.portcanaveral.com/Cruise/Port-Cruise-Facts> (last visited February 12, 2020).

⁷ *Supra*, note 5.

⁸ Port Canaveral, *About Us*, <https://www.portcanaveral.com/About/> (last visited February 12, 2020).

⁹ Office of Program Policy Analysis and Government Accountability, Florida Legislature, *Feasibility Analysis for Petroleum Distribution Centers*, 11 (Nov. 29, 2018), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/18-PETRO.pdf>.

¹⁰ *Supra*, note 8.

¹¹ Florida Ports Council, *Port Canaveral*, <https://flaports.org/ports/port-canaveral/> (last visited February 12, 2020).

¹² Ch. 2014-241, Laws of Fla. Each special district in existence at the time was required to submit to the Legislature a draft codified charter so that its special acts could be codified into a single act for reenactment by the Legislature.

¹³ Section 189.403(1), F.S., defines a "special district" as a confined local government unit established for a special purpose. The public policy intent of special districts is to provide private and public sectors an alternative governing method to "manage, own, operate, construct and finance basic capital infrastructure, facilities and services."

¹⁴ Art. IV, s. 9 of the Canaveral Port Authority Charter, as amended by Ch. 2014-241, Laws of Fla.

¹⁵ Art. IV, s. 10 of the Canaveral Port Authority Charter, as amended by Ch. 2014-241, Laws of Fla.

¹⁶ Canaveral Port Authority, *Tariff No. 16 – Governing Rates, Rules, & Regulations of the Marine and Port Services*, Rule 520 (Oct. 1, 2019), available at [https://www.portcanaveral.com/getattachment/Tariffs/CPA-Tariff-16-FY20-\(2\).pdf.aspx?lang=en-US](https://www.portcanaveral.com/getattachment/Tariffs/CPA-Tariff-16-FY20-(2).pdf.aspx?lang=en-US).

¹⁷ *Id.*, Rule 100.

waterway tenants and users must comply with evacuation orders and storm preparation directives given by the Port Authority, the Coast Guard, the Brevard County Sheriff's Office, and Canaveral Fire Rescue.¹⁸

The tariff specifically states that recreational and commercial vessels under 500 gross tons are not eligible to remain in Port and must be removed from the waters of the Port, at the expense of the vessel owner or operator, before hurricane condition Zulu is set by the Coast Guard (see discussion below of Hurricane Season Port Conditions and Categories).¹⁹ The Port Authority is authorized to issue penalties to vessel owners or operators in accordance with statutory provisions (see discussion below of Vessel Movements and Penalties for Delay).²⁰

Vessel Movements and Penalties for Delay

Pursuant to Florida law, each port may regulate vessel movements within its jurisdiction, whether involving public or private facilities or areas, by:

- Scheduling vessels for use of berths, anchorages, or other facilities at the port.
- Ordering and enforcing a vessel, at its own expense and risk, to vacate or change position at a berth, anchorage, or facility, whether public or private, in order to facilitate navigation, commerce, protection of other vessels or property, or dredging of channels or berths.
- Designating port facilities for the loading or discharging of vessels.
- Assigning berths at wharves for arriving vessels.²¹

Ports are authorized to establish fees and compensation for the services regulating vessel movements provided by the port.²²

A port may impose and collect a penalty from a vessel that unnecessarily delays in moving under an order to vacate or change position. This penalty may not exceed \$1,000 per hour or fraction thereof, plus 150 percent of the demurrage costs incurred by a waiting vessel, until the order is complied with.²³

Marinas

A marina is a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis.²⁴ There are five marinas within Port Canaveral, with approximately 260 wet slips hosted on Port property for recreational vessels under 500 gross tons.²⁵ This

¹⁸ *Id.*, Rule 520.

¹⁹ *Id.*

²⁰ Section 313.22(3), F.S.

²¹ Section 313.22(1), F.S.

²² Section 313.22(2), F.S.

²³ *Supra*, note 20.

²⁴ Section 327.02(25), F.S.

²⁵ Email from Caitlin Lewis, Government Relations Manager, Canaveral Port Authority, to Senate Environment and Natural Resources Committee (Jan. 22, 2020), available at http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4857/8671_MeetingPacket_4857.03.20.pdf on page 218-219 (last visited February 12, 2020).

number does not include boats in marina storage within Port property. The map below shows Port Canaveral, including its marina district.²⁶



Marina Evacuations

Storm Condition Effects on Vessels and Marinas

Hurricanes and storm conditions can include high winds, storm surges, wave action, and heavy rainfall.²⁷ These conditions can cause catastrophic damage to marinas and vessels. Vessels that are left in a marina during hurricane and storm conditions can lead to problems in the port, including the inability to secure docks, causing potential damage to infrastructure such as piers, and other harm to persons or property. Weather during a storm event can force a vessel into an obstruction, propel objects into the vessel, or sink or damage a boat.²⁸ A moored vessel can repeatedly collide with a stationary dock, leading to damage to both the vessel and dock. Storm surges can even lift entire floating docks above their pilings or knock boats off their cradles.²⁹

Vessels left in the harbor can also pose navigational issues and cause problems and delays in clearing channels. However, boater preparedness education and preparation can reduce the loss of property for both the vessel owner and others.³⁰ To this end, marinas and ports have an interest in requiring vessel owners to secure their vessels during a storm to prevent damage to persons or property.

Safe Haven

Some marina docking contracts contain “safe haven” or “hurricane” clauses. These clauses provide that, when a hurricane watch is issued, boat owners shall immediately remove their vessels and all personal property from the marina and seek safe haven somewhere else. Failure to

²⁶ *Supra*, note 6.

²⁷ UF/IFAS, *Hurricane Manual for Marine Interest*, available at [https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf) (last visited February 12, 2020).

²⁸ *Id.*; Florida Keys National Marine Sanctuary, *Protect your Boat in a Hurricane: Making a Plan (Part I)*, <https://floridakeys.noaa.gov/whatsnew/around/2015/boathurricane1.html> (last visited February 12, 2020).

²⁹ *Id.*

³⁰ *Supra*, note 27.

comply with this requirement, according to the clauses, will result in the boat owner being liable for all damage to docks, piers, other vessels, or any other property damage directly caused by the owner's vessel or resulting from its presence in the marina.³¹

Marina Evacuation Statute

Florida enacted a law designed to prevent marinas from using safe haven clauses as a basis for recovering their property damage from vessel owners after a hurricane.³² Florida law emphasizes the protection of life over property by prohibiting marinas from requiring vessel owners to remove their vessels from a marina following the issuance of a hurricane watch or warning.³³

However, after a tropical storm or hurricane watch has been issued, a marina owner or operator, or their employee or agent, may take reasonable actions to further secure a vessel within the marina to minimize damage to the vessel and to protect marina property, private property, and the environment.³⁴ The owner or operator may charge a reasonable fee for such services.³⁵ A marina owner may include this in a contractual agreement with a vessel owner.³⁶ Marina owners are not able to be held liable for damage to a vessel from a storm or hurricane, but may be liable for damage due to intentional acts or negligence when removing or securing a vessel.³⁷

Burklow & Associates, Inc. v. Belcher is the only Florida state court decision that specifically mentions Florida's marina evacuation statute.³⁸ A marina owner sued owners of 16 stored vessels for damages allegedly caused by the vessel owners' failure to move their vessels after a hurricane warning was issued as was required by their marina contracts.³⁹ The court upheld the state statute and found that the vessel owners had no duty, contractually or otherwise, to move their vessels following the issuance of a hurricane watch or warning.⁴⁰ The court's analysis pointed to the clear legislative policy "to ensure that protecting lives and safety of vessel owners is placed before interests of protecting property" when a hurricane approaches.⁴¹

Hurricane Season Port Conditions and Categories

Port conditions are set by the Coast Guard Captain of the Port of a sector, or regulated area. Port conditions are explained in the table below.⁴² "Gale force winds" mean winds of 34 knots or 39 miles per hour.

³¹ Mercante, James, *Hurricanes and Act of God: When the Best Defense is a Good Offense*, 18 U.S.F. MAR. L.J. (2006).

³² Ch. 93-211, s. 22, Laws of Fla. (creating s. 327.59, F.S.).

³³ Section 327.59(1), F.S.

³⁴ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(2), F.S., effective Jul. 1, 2006).

³⁵ *Id.*

³⁶ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(3), F.S., effective Jul. 1, 2006).

³⁷ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(4), F.S., effective Jul. 1, 2006).

³⁸ 719 So.2d 31 (Fla. Dist. Ct. App. 1998).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 33 C.F.R. s. 165.720; 33 C.F.R. 165.781; see also Brazos Pilots Association, *Hurricane Season Port Conditions and Categories*, available at <http://www.brazospilots.com/Hurricane-Season.pdf> (last visited February 12, 2020).

Port Condition	Storm Status	Port Status
Whiskey	Gale force winds are predicted to arrive within 72 hours	Open to all commercial and recreational traffic
X-Ray	Gale force winds are predicted to arrive within 48 hours	Open to all commercial and recreational traffic
Yankee	Gale force winds are predicted to arrive within 24 hours	Closed to inbound traffic and vessel traffic control measures in effect on vessel movements within the port
Zulu	Gale force winds are predicted to arrive within 12 hours	Closed to all inbound and outbound traffic
Recovery	The storm is no longer a threat to the area, but response and recovery operations may be in progress to address damage.	Reopened to outbound traffic at completion of port survey; vessel traffic control measures remain in effect on vessel movements within the port

III. Effect of Proposed Changes:

The CS amends s. 327.59, F.S., to prohibit, upon the issuance of a hurricane watch that affects the waters of marinas located in a deepwater seaport, vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane.

The CS requires that vessel owners promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport. If the Coast Guard Captain of the Port sets the port condition to “Yankee” and a vessel owner has failed to remove his or her vessel from the waterway, a marina owner, operator, employee, or agent, regardless of any existing contractual provisions between the marina owner and vessel owner, is required to remove the vessel, or cause the vessel to be removed, if reasonable, from its slip. The marina owner may charge the vessel owner a reasonable fee for the service of removing the vessel.

The CS provides that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane and is held harmless from removing the vessel from the waterways. However, the CS does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

The CS provides that after a hurricane watch has been issued, if an owner or operator of a vessel has not removed the vessel pursuant to an order from the seaport, the owner or operator may be subject to existing penalties under s. 313.22, F.S.

The existing penalties provide that until an order is complied with, a vessel that unnecessarily delays in moving under an order to vacate a vessel or change its position may be penalized as follows:

- In an amount not exceeding \$1,000 per hour or fraction thereof; and
- 150 percent of the demurrage costs incurred by a waiting vessel for exceeding the time allotted to the vessel to be in a specific area.

The penalty is imposed and collected by the port issuing the movement order.

The CS provides the bill will take effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Vessel owners may incur increased costs from moving their vessel pursuant to a movement order, from fees charged by a marina owner for the service of moving a vessel, or due to penalties incurred from noncompliance with a movement order.

C. **Government Sector Impact:**

Ports may see a positive fiscal impact due to increased collection of penalties from vessel owners that do not comply with a movement order and cost savings associated with prevention of damage to port facilities and infrastructure.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This CS substantially amends the following section of the Florida Statutes: 327.59

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources Committee on February 3, 2020:

- Requires that owners of vessels under 500 gross tons remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport;
- Requires a marina owner, operator, employee, or agent to remove a vessel from its slip if the Coast Guard Captain of the Port sets the port condition to “Yankee” and the vessel owner has not removed the vessel from the waterway as required;
- Authorizes the marina owner, operator, employee, or agent to charge the vessel owner a reasonable fee for the service of moving the vessel; and
- Clarifies that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane or from removing the vessel as required under this section; however, the amendment does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence.

B. **Amendments:**

None.