

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 487 Lost and Abandoned Property

**SPONSOR(S):** Judiciary Committee, Chaney and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N	Leshko	Hall
2) Judiciary Committee	19 Y, 0 N, As CS	Leshko	Kramer

### SUMMARY ANALYSIS

A derelict vessel is a vessel that is in a wrecked, junked, or substantially dismantled condition upon any waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property. Under s. 823.11(2)(a) and (6), F.S., a person who leaves a derelict vessel upon the waters of this state commits a first-degree misdemeanor. Section 327.4107, F.S., also prohibits vessels that are at risk of becoming derelict from anchoring on, mooring on, or occupying state waters. 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 such waters commits a noncriminal infraction. A vessel that has been the subject of three or more at-risk vessel violations within an 18-month period that result in dispositions other than acquittal or dismissal is declared a public nuisance.

Section 705.103, F.S., requires a law enforcement officer who ascertains that an article of lost or abandoned property, or a derelict vessel or a vessel declared a public nuisance, is present on public property or in public waters, to affix a notice to such property or vessel informing the owner and any other interested parties that: the property or vessel must be removed within a specified period of time, the consequences for failure to remove the property or vessel, and in the case of a vessel, the right to a hearing to dispute the designation of the vessel as derelict or as a public nuisance. In addition to posting the notice on the property or vessel, the officer must:

- For lost or abandoned property, make a reasonable effort to ascertain the name and address of the owner, and if such information is obtained, the officer must mail a copy of such notice to the owner on or *before* the date of posting.
- For a vessel, contact the Department of Highway Safety and Motor Vehicles in order to determine the name and address of the owner and any person who has filed a lien on the vessel. Upon receipt of this information, the law enforcement agency must mail a copy of the notice by certified mail, return receipt requested, to the vessel's owner and to any lienholders on or *before* the date of posting.

The Florida Fish and Wildlife Conservation Commission reports that because s. 705.103, F.S., currently requires a law enforcement officer to mail a copy of the required notice, after obtaining the name and address of the vessel's owner and any lienholders, on or *before* the date of posting such notice on a vessel, its officers frequently must make a second trip to affix the notice to the vessel in question *after* mailing a copy of the notice to the owner and any lienholders.

CS/HB 487 amends s. 705.103, F.S., to change the time period within which a law enforcement officer, who has ascertained the name and address of the owner of lost or abandoned property or the name and address of the owner and any lienholders of a derelict vessel or a vessel declared a public nuisance, must mail a copy of the required notice to the owner and any lienholders, if applicable, from on or *before* the date of posting to on the date of posting *or as soon thereafter as is practical*. The bill should eliminate the frequent need for law enforcement to make multiple trips to a vessel to comply with statutory notice requirements.

The bill provides an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Florida Fish and Wildlife Conservation Commission

The Florida Fish and Wildlife Conservation Commission (FWC) is responsible for regulating boating in the state.<sup>1</sup> Through its Division of Law Enforcement, FWC works to enforce boating rules and regulations, coordinate boating safety campaigns and education, manage public waters and access to them, conduct boating accident investigations, identify and remove derelict vessels, and investigate vessel theft and title fraud.<sup>2</sup>

##### Derelict Vessels

A derelict vessel is a vessel<sup>3</sup> that is in a wrecked,<sup>4</sup> junked,<sup>5</sup> or substantially dismantled<sup>6</sup> condition upon any waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.<sup>7</sup> Under s. 823.11(2)(a) and (6), F.S., a person who leaves<sup>8</sup> a derelict vessel upon the waters of this state commits a first-degree misdemeanor.<sup>9</sup>

##### At-risk Vessels

Section 327.4107, F.S., also prohibits vessels that are at risk of becoming derelict from anchoring on, mooring on, or occupying state waters.<sup>10</sup> A vessel is considered at risk of becoming derelict 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.
- The vessel has broken loose or is in danger of breaking loose from its anchor.
- The vessel is listing due to water intrusion.
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic notice, in-person notice recorded on an agency-approved body camera, or written notice, which may be provided by facsimile, electronic mail, or other electronic means, stating such from an officer, and the vessel owner or operator is

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<sup>1</sup> Ch. 327, F.S.

<sup>2</sup> FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Dec. 12, 2023).

<sup>3</sup> A "vessel" is 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. S. 327.02(47), F.S.

<sup>4</sup> A vessel is wrecked if it is sunken or sinking; aground without the ability to extricate itself absent mechanical assistance; or remaining after a marine casualty, including, but not limited to, a boating accident, extreme weather, or a fire. S. 823.11(1)(b)1.a., F.S.

<sup>5</sup> A vessel is junked if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. Attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no longer be junked if such motor is not an effective means of propulsion as required by s. 327.4107(2)(e) and associated rules. S. 823.11(1)(b)1.b., F.S.

<sup>6</sup> A vessel is substantially dismantled if at least two of the three following vessel systems or components are missing, compromised, incomplete, inoperable, or broken: 1) the steering system; 2) the propulsion system; or 3) the exterior hull integrity. Attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer be substantially dismantled if such motor is not an effective means of propulsion as required by s. 327.4107(2)(e) and associated rules. S. 823.11(1)(b)1.c., F.S.

<sup>7</sup> S. 823.11(1)(b), F.S.

<sup>8</sup> "Leave" means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours. S. 823.11(2)(a), F.S.

<sup>9</sup> S. 823.11(2)(a) and (6), F.S. A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>10</sup> S. 327.4107(1), F.S.

unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.

- The vessel is tied to an unlawful or unpermitted structure or mooring.<sup>11</sup>

Under s. 327.4107, F.S., 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 such waters commits a noncriminal infraction.<sup>12</sup> A vessel that has been the subject of three or more at-risk vessel violations within an 18-month period that result in dispositions other than acquittal or dismissal is declared a public nuisance.<sup>13</sup>

### Procedure for Abandoned or Lost Property

#### *Lost or Abandoned Property*

Under s. 705.103, F.S., whenever a law enforcement officer ascertains that an article of lost or abandoned property, other than a derelict vessel or a vessel declared to be a public nuisance, is present on public property and is of such a nature that it cannot be easily removed, the officer shall affix a notice to the lost or abandoned property that states:

- The property is unlawfully upon public property;
- The property must be removed within five days;
- If the property is not removed within five days, it will be removed and disposed of pursuant to ch. 705, F.S.; and
- The owner will be liable for the costs of removal, storage, and publication of notice.<sup>14</sup>

#### *Derelict Vessels or Vessels Declared a Public Nuisance*

Additionally, under s. 705.103, F.S., whenever a law enforcement officer ascertains that a derelict vessel or a vessel declared a public nuisance is present on the waters of this state, the officer must affix a notice to such vessel that states:

- The vessel has been determined to be derelict or a public nuisance and is unlawfully upon the waters of this state;<sup>15</sup>
- The vessel must be removed within 21 days;
- If the vessel is not removed within 21 days, it will be removed and disposed of pursuant to ch. 705, F.S.;
- The owner and other interested parties have the right to a hearing to challenge the determination that the vessel is derelict or otherwise in violation of law;
- Contact information for a person who can arrange such a hearing; and
- The owner or party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition or as a public nuisance will be liable for the costs of removal, destruction, and disposal of the vessel if it is not removed by the owner.<sup>16</sup>

#### *Notice Requirements*

The notice required for both lost or abandoned property and derelict vessels or vessels declared a public nuisance must be at least 8 inches by 10 inches and must be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting the notice on the property or vessel, the officer must:

- For lost or abandoned property, make a reasonable effort to ascertain the name and address of the owner, and if such information is obtained, the officer must mail a copy of such notice to the owner on or *before* the date of posting.

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<sup>11</sup> S. 327.4107(2), F.S.

<sup>12</sup> The civil penalty for a violation of s. 327.4107(3), F.S., is up to \$100 for a first offense, up to \$250 for a second offense, and up to \$500 for a third or subsequent offense. Ss. 327.4107(3) and 327.73(1)(aa), F.S.

<sup>13</sup> S. 327.73(1)(aa), F.S. An FWC officer or other law enforcement officer may relocate, remove, or cause to be relocated or removed such public nuisance vessels from the waters of this state.

<sup>14</sup> S. 705.103(2)(a)1.a., F.S.

<sup>15</sup> The notice must briefly describe the location of the vessel. S. 705.103(2)(a)1.b., F.S.

<sup>16</sup> S. 705.103(2)(a)1.b., F.S.

- For a vessel, contact the Department of Highway Safety and Motor Vehicles in order to determine the name and address of the owner and any person who has filed a lien on the vessel. Upon receipt of this information, the law enforcement agency must mail a copy of the notice by certified mail, return receipt requested, to the vessel's owner and to any lienholders on or *before* the date of posting.<sup>17, 18</sup>

FWC reports that because s. 705.103, F.S., currently requires a law enforcement officer to mail a copy of the required notice, after obtaining the name and address of the vessel's owner and any lienholders, on or *before* the date of posting such notice on the vessel, its officers frequently must make a second trip to affix the notice to the vessel in question *after* mailing a copy of the notice to the owner and any lienholders.<sup>19</sup>

### *Removal and Disposal of Property and Vessels*

If the owner, or another person interested in the property, has not removed the lost or abandoned property or vessel from public property or waters, shown reasonable cause for failure to do so, or in the case of a vessel, has not requested a hearing, within the specified time frame the law enforcement agency may:

- For abandoned property other than a derelict vessel or a vessel declared a public nuisance, retain the property for its own use or for use by the state or unit of local government, trade such property to another unit of local government or state agency, donate the property to a charitable organization, sell the property, or notify the appropriate refuse removal service.<sup>20</sup>
- For a derelict vessel or a vessel declared a public nuisance:
  - Remove the vessel from the water and destroy and dispose of the vessel or authorize another governmental entity or its designee to do so; or
  - Authorize the vessel's use as an artificial reef if all necessary federal, state, and local authorizations are received.<sup>21</sup>
- For lost property, take and retain custody of the property for 90 days. The agency must publish notice of the intended disposition of the property during the first 45 days of this time period.<sup>22</sup>

### **Effect of Proposed Changes**

CS/HB 487 amends s. 705.103, F.S., to change the time period within which a law enforcement officer, who has ascertained the name and address of the owner of lost or abandoned property or the name and address of the owner and any lienholders of a derelict vessel or a vessel declared a public nuisance, must mail a copy of the required notice to the owner and any lienholders, if applicable, from on or *before* the date of posting to on the date of posting *or as soon thereafter as is practical*. The bill should eliminate the frequent need for law enforcement to make multiple trips to a vessel to comply with statutory notice requirements.

The bill provides an effective date of July 1, 2024.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 705.103, F.S., relating to procedure for abandoned or lost property.

**Section 2:** Provides an effective date of July 1, 2024.

<sup>17</sup> S. 705.103(2)(a)2., F.S.

<sup>18</sup> If a law enforcement officer has issued a citation for a violation of s. 823.11, F.S., to the owner of a derelict vessel he or she is not required to send a copy of the notice by certified mail. S. 705.103(2)(a)2., F.S.

<sup>19</sup> Email from Tristan Sommer, Legislative Aide to Representative Chaney, RE: HB 487 Talking Points (Dec. 5, 2023)(on file with the House Criminal Justice Subcommittee).

<sup>20</sup> S. 705.103(2)(a)2.a., F.S.

<sup>21</sup> A law enforcement agency may also take the following action if, following a hearing, the judge, magistrate, administrative law judge, or hearing officer has determined the vessel to be derelict or otherwise in violation of law and a final order has been entered or the case is otherwise closed. S. 705.103(2)(a)2.b., F.S.

<sup>22</sup> S. 705.103(2)(b), F.S. This notice provides the owner or any person interested in the property an opportunity to reclaim the property before it is disposed of.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or 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

On January 8, 2024, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment reenacted several provisions of law that contain a cross-reference to s. 705.103, F.S.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.