

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>    </u>	(Y/N)
ADOPTED AS AMENDED	<u>    </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>    </u>	(Y/N)
FAILED TO ADOPT	<u>    </u>	(Y/N)
WITHDRAWN	<u>    </u>	(Y/N)
OTHER	<u>      </u>	

1 Committee/Subcommittee hearing bill: Criminal Justice  
 2 Subcommittee

3 Representative Basabe offered the following:

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16

**Amendment**

Remove lines 530-845 and insert:

purposes of this section, the term "owner" includes a "vessel owner" as defined in s. 327.02.

(2) (a)1. Whenever a law enforcement officer ascertains that:

a. An article of lost or abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1) (aa) is present on public property and is of such nature that it cannot be easily removed, the officer shall cause a notice to be placed upon such article in substantially the following form:

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17  
18 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED  
19 PROPERTY. This property, to wit: ...(setting forth brief  
20 description)... is unlawfully upon public property known as  
21 ...(setting forth brief description of location)... and must be  
22 removed within 5 days; otherwise, it will be removed and  
23 disposed of pursuant to chapter 705, Florida Statutes. The owner  
24 will be liable for the costs of removal, storage, and  
25 publication of notice. Dated this: ...(setting forth the date of  
26 posting of notice)..., signed: ...(setting forth name, title,  
27 address, and telephone number of law enforcement officer)....

28  
29 b. A derelict vessel or a vessel declared a public  
30 nuisance pursuant to s. 327.73(1)(aa) is present on the waters  
31 of this state, the officer shall cause a notice to be placed  
32 upon such vessel in substantially the following form:

33  
34 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED  
35 VESSEL. This vessel, to wit: ...(setting forth brief description  
36 of location)... has been determined to be ...(derelict or a  
37 public nuisance)... and is unlawfully upon the waters of this  
38 state ...(setting forth brief description of location)... and  
39 must be removed within 21 days; otherwise, it will be removed  
40 and disposed of pursuant to chapter 705, Florida Statutes. The  
41 owner and other interested parties have the right to a hearing

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42 to challenge the determination that this vessel is derelict or  
43 otherwise in violation of the law. Please contact ...(contact  
44 information for person who can arrange for a hearing in  
45 accordance with this section).... The owner of ~~or the party~~  
46 ~~determined to be legally responsible for~~ the vessel on being  
47 ~~upon~~ the waters of this state in a derelict condition or as a  
48 public nuisance will be liable for the costs of removal,  
49 destruction, and disposal if this vessel is not removed by the  
50 owner. Dated this: ...(setting forth the date of posting of  
51 notice)...., signed: ...(setting forth name, title, address, and  
52 telephone number of law enforcement officer)....

53  
54 2. The notices required under subparagraph 1. may not be  
55 less than 8 inches by 10 inches and must be sufficiently  
56 weatherproof to withstand normal exposure to the elements. In  
57 addition to posting, the law enforcement officer shall make a  
58 reasonable effort to ascertain the name and address of the  
59 owner. If such is reasonably available to the officer, he or she  
60 must ~~or he shall~~ mail a copy of such notice to the owner on the  
61 date of posting or as soon thereafter as is practical. If the  
62 property is a motor vehicle as defined in s. 320.01(1) or a  
63 vessel as defined in s. 327.02, the law enforcement agency must  
64 ~~shall~~ contact the Department of Highway Safety and Motor  
65 Vehicles in order to determine the name and address of the owner  
66 and any person who has filed a lien on the vehicle or vessel as

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67 provided in s. 319.27(2) or (3) or s. 328.15. On receipt of this  
68 information, the law enforcement agency shall mail a copy of the  
69 notice by certified mail, return receipt requested, to the owner  
70 and to the lienholder, if any, except that a law enforcement  
71 officer who has issued a citation for a violation of s. 823.11  
72 to the owner of a derelict vessel is not required to mail a copy  
73 of the notice by certified mail, return receipt requested, to  
74 the owner. For a derelict vessel or a vessel declared a public  
75 nuisance pursuant to s. 327.73(1)(aa), the mailed notice must  
76 inform the owner ~~or responsible party~~ that he or she has a right  
77 to a hearing to dispute the determination that the vessel is  
78 derelict or otherwise in violation of the law. If a request for  
79 a hearing is made, a state agency must ~~shall~~ follow the  
80 processes as set forth in s. 120.569. Local governmental  
81 entities shall follow the processes set forth in s. 120.569,  
82 except that a local judge, magistrate, or code enforcement  
83 officer may be designated to conduct such a hearing. If, at the  
84 end of 5 days after posting the notice in sub-subparagraph 1.a.,  
85 or at the end of 21 days after posting the notice in sub-  
86 subparagraph 1.b., and mailing such notice, if required, the  
87 owner or any person interested in the lost or abandoned article  
88 or articles described has not removed the article or articles  
89 from public property or shown reasonable cause for failure to do  
90 so, and, in the case of a derelict vessel or a vessel declared a  
91 public nuisance pursuant to s. 327.73(1)(aa), has not requested

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92 a hearing in accordance with this section, the following applies  
93 ~~shall apply~~:

94 a. For abandoned property other than a derelict vessel or  
95 a vessel declared a public nuisance pursuant to s.

96 327.73(1)(aa), the law enforcement agency may retain any ~~or all~~  
97 of the property for its own use or for use by the state or unit  
98 of local government, trade such property to another unit of  
99 local government or state agency, donate the property to a  
100 charitable organization, sell the property, or notify the  
101 appropriate refuse removal service.

102 b. For a derelict vessel or a vessel declared a public  
103 nuisance pursuant to s. 327.73(1)(aa), the law enforcement  
104 agency or its designee may:

105 (I) Remove the vessel from the waters of this state and  
106 destroy and dispose of the vessel or authorize another  
107 governmental entity or its designee to do so; or

108 (II) Authorize the vessel's use as an artificial reef in  
109 accordance with s. 379.249 if all necessary federal, state, and  
110 local authorizations are received.

111  
112 A law enforcement agency or its designee may also take action as  
113 described in this sub-subparagraph if, following a hearing  
114 pursuant to this section, the judge, magistrate, administrative  
115 law judge, or hearing officer has determined the vessel to be  
116 derelict as provided in s. 823.11 or otherwise in violation of

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117 the law in accordance with s. 327.73(1)(aa) and a final order  
118 has been entered or the case is otherwise closed.

119 (4) The owner of any abandoned or lost property, or in the  
120 case of a derelict vessel or a vessel declared a public nuisance  
121 pursuant to s. 327.73(1)(aa), the owner of ~~or other party~~  
122 ~~determined to be legally responsible for~~ the vessel on being  
123 ~~upon~~ the waters of this state in a derelict condition or as a  
124 public nuisance, who, after notice as provided in this section,  
125 does not remove such property within the specified period is  
126 liable to the law enforcement agency, other governmental entity,  
127 or the agency's or entity's designee for all costs of removal,  
128 storage, destruction, and disposal of such property, less any  
129 salvage value obtained by disposal of the property. Upon final  
130 disposition of the property, the law enforcement officer or  
131 representative of the law enforcement agency or other  
132 governmental entity shall notify the owner, or in the case of a  
133 derelict vessel or vessel declared a public nuisance pursuant to  
134 s. 327.73(1)(aa), the owner ~~or other party determined to be~~  
135 ~~legally responsible~~, if known, of the amount owed. In the case  
136 of an abandoned vessel or motor vehicle, a ~~any~~ person who  
137 neglects or refuses to pay such amount is not entitled to be  
138 issued a certificate of registration for such vessel or motor  
139 vehicle, or any other vessel or motor vehicle, until such costs  
140 have been paid. A person who has neglected or refused to pay all  
141 costs of removal, storage, disposal, and destruction of a vessel

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142 or motor vehicle as provided in this section, after having been  
143 provided written notice via certified mail that such costs are  
144 owed, and who applies for and is issued a registration for a  
145 vessel or motor vehicle before such costs have been paid in full  
146 commits a misdemeanor of the first degree, punishable as  
147 provided in s. 775.082 or s. 775.083. The law enforcement  
148 officer or representative of the law enforcement agency or other  
149 governmental entity shall supply the Department of Highway  
150 Safety and Motor Vehicles with a list of persons whose vessel  
151 registration privileges and motor vehicle privileges have been  
152 revoked under this subsection. The department or a person acting  
153 as an agent of the department may not issue a certificate of  
154 registration to a person whose vessel and motor vehicle  
155 registration privileges have been revoked, as provided by this  
156 subsection, until such costs have been paid.

157 **Section 7. Paragraphs (a), (c), and (d) of subsection (2),**  
158 **paragraph (a) of subsection (3), paragraph (c) of subsection**  
159 **(4), and subsections (6) and (7) of section 823.11, Florida**  
160 **Statutes, are amended, paragraph (e) is added to subsection (2)**  
161 **of that section, and paragraph (b) of subsection (1) of that**  
162 **section is reenacted, to read:**

163 823.11 Derelict vessels; relocation or removal; penalty.—

164 (1) As used in this section, the term:

165 (b) "Derelict vessel" means a vessel, as defined in s.

166 327.02, that is:

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167 1. In a wrecked, junked, or substantially dismantled  
168 condition upon any waters of this state.

169 a. A vessel is wrecked if it is sunken or sinking; aground  
170 without the ability to extricate itself absent mechanical  
171 assistance; or remaining after a marine casualty, including, but  
172 not limited to, a boating accident, extreme weather, or a fire.

173 b. A vessel is junked if it has been substantially  
174 stripped of vessel components, if vessel components have  
175 substantially degraded or been destroyed, or if the vessel has  
176 been discarded by the owner or operator. Attaching an outboard  
177 motor to a vessel that is otherwise junked will not cause the  
178 vessel to no longer be junked if such motor is not an effective  
179 means of propulsion as required by s. 327.4107(2) (e) and  
180 associated rules.

181 c. A vessel is substantially dismantled if at least two of  
182 the three following vessel systems or components are missing,  
183 compromised, incomplete, inoperable, or broken:

- 184 (I) The steering system;
- 185 (II) The propulsion system; or
- 186 (III) The exterior hull integrity.

187  
188 Attaching an outboard motor to a vessel that is otherwise  
189 substantially dismantled will not cause the vessel to no longer  
190 be substantially dismantled if such motor is not an effective  
191 means of propulsion as required by s. 327.4107(2) (e) and



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192 associated rules.

193 2. At a port in this state without the consent of the  
194 agency having jurisdiction thereof.

195 3. Docked, grounded, or beached upon the property of  
196 another without the consent of the owner of the property.

197 (2) (a) A vessel owner as defined in s. 327.02 ~~person,~~  
198 ~~firm, or corporation~~ may not leave any derelict vessel upon  
199 waters of this state. For purposes of this paragraph, the term  
200 "leave" means to allow a vessel to remain occupied or unoccupied  
201 on the waters of this state for more than 24 hours.

202 (c) The additional time provided in subparagraph (b)2. for  
203 an owner ~~or responsible party~~ to remove a derelict vessel from  
204 the waters of this state or to repair and remedy the vessel's  
205 derelict condition does not apply to a vessel that was derelict  
206 upon the waters of this state before the stated accident or  
207 event.

208 (d) Notwithstanding the additional 45 days provided in  
209 sub-subparagraph (b)2.b. during which an owner ~~or a responsible~~  
210 ~~party~~ may not be charged for a violation of this section, the  
211 commission, an officer of the commission, a law enforcement  
212 agency or officer specified in s. 327.70, or, during a state of  
213 emergency declared by the Governor, the Division of Emergency  
214 Management or its designee, may immediately begin the process  
215 set forth in s. 705.103(2) (a) and, once that process has been  
216 completed and the 45 days provided herein have passed, any

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217 vessel that has not been removed or repaired such that it is no  
218 longer derelict upon the waters of this state may be removed and  
219 destroyed as provided therein.

220 (e) The title of a derelict vessel is prima facie evidence  
221 of ownership for any derelict vessel left upon the waters of  
222 this state. An owner who attempts to transfer ownership of a  
223 vessel or derelict vessel through means other than the process  
224 outlined in s. 328.22 or s. 328.64 will not be exonerated from  
225 the responsibility of having a derelict vessel upon the waters  
226 of this state without a written agreement of ownership by the  
227 transferee or evidence of agreement to transfer ownership to the  
228 transferee and the exchange of consideration between the  
229 parties.

230 (3) The commission, an officer of the commission, or a law  
231 enforcement agency or officer specified in s. 327.70 may  
232 relocate, remove, and store or cause to be relocated, removed,  
233 and stored a derelict vessel from waters of this state as  
234 defined in s. 327.02 if the derelict vessel obstructs or  
235 threatens to obstruct navigation or in any way constitutes a  
236 danger to the environment, property, or persons. The commission,  
237 an officer of the commission, or any other law enforcement  
238 agency or officer acting pursuant to this subsection to  
239 relocate, remove, and store or cause to be relocated, removed,  
240 and stored a derelict vessel from waters of this state shall be  
241 held harmless for all damages to the derelict vessel resulting

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242 from such action unless the damage results from gross negligence  
243 or willful misconduct.

244 (a) All costs, including costs owed to a third party,  
245 incurred by the commission, another law enforcement agency, or a  
246 governmental subdivision, when the governmental subdivision has  
247 received authorization from a law enforcement officer or agency,  
248 in the relocation, removal, storage, destruction, or disposal of  
249 a derelict vessel are recoverable against the ~~vessel~~ owner of ~~or~~  
250 ~~the party determined to be legally responsible for~~ the vessel on  
251 ~~being upon~~ the waters of this state in a derelict condition. The  
252 Department of Legal Affairs shall represent the commission in  
253 actions to recover such costs. As provided in s. 705.103(4), a  
254 person who neglects or refuses to pay such costs may not be  
255 issued a certificate of registration for such vessel or for any  
256 other vessel or motor vehicle until such costs have been paid. A  
257 person who has neglected or refused to pay all costs of removal,  
258 storage, destruction, or disposal of a derelict vessel as  
259 provided in this section, after having been provided written  
260 notice via certified mail that such costs are owed, and who  
261 applies for and is issued a registration for a vessel or motor  
262 vehicle before such costs have been paid in full commits a  
263 misdemeanor of the first degree, punishable as provided in s.  
264 775.082 or s. 775.083.

265 (4)

266 (c) The commission may establish a program to provide

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267 grants to local governments for the removal, storage,  
268 destruction, and disposal of derelict vessels from the waters of  
269 this state. This grant funding may also be used for the removal,  
270 storage, destruction, and disposal of vessels declared a public  
271 nuisance pursuant to s. 327.73(1)(aa) or the derelict vessel  
272 prevention program established pursuant to s. 327.4107(7). The  
273 program must be funded from the Marine Resources Conservation  
274 Trust Fund or the Florida Coastal Protection Trust Fund.  
275 Notwithstanding s. 216.181(11), funds available for these grants  
276 may only be authorized by appropriations acts of the  
277 Legislature. In a given fiscal year, if all funds appropriated  
278 pursuant to this paragraph are not requested by and granted to  
279 local governments for the removal, storage, destruction, and  
280 disposal of derelict vessels or vessels declared a public  
281 nuisance pursuant to s. 327.73(1)(aa) by the end of the third  
282 quarter, the Fish and Wildlife Conservation Commission may use  
283 the remainder of the funds to remove, store, destroy, and  
284 dispose of, or to pay private contractors to remove, store,  
285 destroy, and dispose of, derelict vessels or vessels declared a  
286 public nuisance pursuant to s. 327.73(1)(aa). The commission  
287 shall adopt by rule procedures for local governments to submit a  
288 grant application and criteria for allocating available funds.  
289 Such criteria must include, at a minimum, all of the following:  
290 1. The number of derelict vessels within the jurisdiction  
291 of the applicant.

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292 2. The threat posed by such vessels to public health or  
293 safety, the environment, navigation, or the aesthetic condition  
294 of the general vicinity.

295 3. The degree of commitment of the local government to  
296 maintain waters free of abandoned and derelict vessels and to  
297 seek legal action against those who abandon vessels in the  
298 waters of this state as defined in s. 327.02.

299 (6) (a) For a first offense, a vessel owner who violates  
300 this section ~~person, firm, or corporation violating this section~~  
301 commits a misdemeanor of the first degree, punishable as  
302 provided in s. 775.082 or 775.083 ~~and shall be punished as~~  
303 ~~provided by law. A conviction under this section does not bar~~  
304 ~~the assessment and collection of a civil penalty.~~ The court  
305 having jurisdiction over the criminal offense, notwithstanding  
306 any jurisdictional limitations on the amount in controversy, may  
307 order the imposition of such civil penalty in addition to any  
308 sentence imposed for the first criminal offense.

309 (b) For a second offense, a vessel owner who violates this  
310 section commits a felony of the third degree, punishable as  
311 provided in s. 775.082, s. 775.083, or s. 775.084.

312 (c) For a third or subsequent offense, a vessel owner who  
313 violates this section commits a felony of the second degree,  
314 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

315  
316 A conviction under this section does not bar the assessment and

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317 collection of a civil penalty.

318 (7) A person may not reside or dwell on a vessel  
319 determined to be derelict by disposition of a court or  
320 administrative order, or where the vessel owner does not  
321 challenge the derelict determination pursuant to chapter 120. A  
322 person who violates this subsection commits a misdemeanor of the  
323 first degree, punishable as provided in s. 775.082 or s.  
324 775.083. Law