

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 469 Salvage of Pleasure Vessels
SPONSOR(S): Harrison; Natural Resources & Public Lands Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 664

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|---------|--|
| 1) Natural Resources & Public Lands Subcommittee | 13 Y, 0 N, As CS | Moore | Shugar |
| 2) Careers & Competition Subcommittee | | | |
| 3) Government Accountability Committee | | | |

SUMMARY ANALYSIS

Currently, state law does not require salvors to notify customers regarding the potential costs associated with the salvage of their pleasure vessel. Salvage is the amount allowed to persons who voluntarily assist a ship at sea or her cargo or both, whether saved in whole or in part from impending sea peril, or in the recovery of such property from actual peril or loss. In determining a salvage award, several factors are considered resulting in awards ranging from a few hundred dollars to thousands of dollars.

This bill creates the "Florida Salvage of Pleasure Vessels Act" (Act) providing certain consumer protections for salvage work performed on their pleasure vessel, similar to those contained in part IX of ch. 559, F.S., related to the repair of motor vehicles. Under the bill, "salvage work" includes any assistance, services, repairs, or other efforts rendered by a salvor relating to saving, preserving, or rescuing a pleasure vessel or its passengers and crew that are in marine peril, but does not include towing. The bill defines a "pleasure vessel" as a watercraft that is no more than 60 feet in length used solely for personal pleasure, family use, or the transportation of executives, persons under the employment, and guests of the owner.

The bill applies, with a few exceptions, to all salvors operating in Florida. It requires salvors, if the customer is present on the vessel, and there is no imminent threat of injury or death to any person to present a written disclosure statement if the salvage work will exceed \$500, which must provide for acknowledgment and signature from the customer. It also requires the salvor at any time before or during the rendering of salvage work to prepare a written estimate if requested by the customer. If a salvor's charges exceed the written estimate by more than 20 percent, then the customer must be verbally notified promptly of the additional estimated charge. The customer may, orally or in writing, authorize, modify, or cancel the order for salvage. The salvor may only continue work on the pleasure vessel upon authorization from the customer and work must continue only within the scope the customer authorized. If the customer cancels the order for salvage after being advised that authorized salvage work cannot be accomplished within the previously authorized estimate, then the salvor must expeditiously place the pleasure vessel back into a condition reasonably similar to the condition in which it was received, unless the customer waives that effort or to do so would be unsafe. The salvor may charge for salvage work provided up to the point of cancellation, but the charge may not exceed the agreed cancellation fee.

The bill requires that all salvage work vessels have signs posted in a conspicuous manner that can be read from a customer's pleasure vessel, which informs the customer that the salvors are professional salvors that charge for their services and that the customer has a right to a written estimate for the services offered.

The bill provides for violations of the Act and provides that a customer injured by a violation who prevails in court is entitled to damages in the amount of three times that charged by the salvor, plus actual damages, court costs, reasonable attorney fees, injunctive relief, and any other remedy provided by law.

The bill does not appear to have a fiscal impact on state or local government or private sector.

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

STORAGE NAME: h0469a.NRPL

DATE: 12/8/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A vessel of the United States, or a numbered motorboat owned by a citizen, may engage in any salvage operation in territorial waters of the United States.¹

“Salvage is the compensation allowed to persons by whose voluntary assistance to a ship at sea or her cargo or both have been saved in whole or in part from impending sea peril, or in recovering such property from actual peril or loss, as in cases of shipwreck, derelict, or recapture.”² The following factors have traditionally been considered in determining a salvage award: the labor expended by the salvors in rendering the salvage service; the promptitude, skill, and energy displayed in rendering the service and saving the property; the value of the property employed by the salvors in rendering the service, and the danger to which such property was exposed; the risk incurred by the salvors in securing the property from the impending peril; the value of the property saved; and the degree of danger from which the property was rescued.³ The 1989 International Convention on Salvage, which the United States is a party,⁴ added additional factors to consider when making a salvage award determination, which include consideration for prevention or minimization of environmental damage.⁵

In weighing these factors, a salvage award can vary greatly from a few hundred dollars⁶ to thousands of dollars.⁷ Currently, state law does not require salvors to notify customers of the potential costs involved in the salvage of their vessel.

Effect of Proposed Changes

The bill provides certain consumer protections for salvaging of pleasure vessels, similar to those contained in part IX of ch. 559, F.S., related to the repair of motor vehicles.

The bill directs the Division of Law Revision and Information to change the title of part XII of ch. 559, F.S., from “Miscellaneous Provisions” to “Internet Sales,” and to create a new part XIII of ch. 559, F.S., consisting of ss. 559.9601-559.9608, F.S., to be entitled “Salvage of Pleasure Vessels.”

The bill creates s. 559.9601, F.S., providing a short title. The bill provides that ss. 559.9601-559.9608, F.S., may be cited as the “Florida Salvage of Pleasure Vessels Act” (Act).

The bill creates s. 559.9602, F.S., providing scope and application. The bill provides that the Act applies to all salvors operating in Florida, with the following exceptions: a person who performs salvage work while employed by a municipal, county, state, or federal government when carrying out the

¹ 19 C.F.R. § 4.97(a) (1969).

² *The Sabine*, 101 U.S. 384 (1879).

³ *The Blackwell*, 77 US. 1 (1869).

⁴ United Nations. *International Convention on Salvage*, <https://treaties.un.org/doc/Publication/UNTS/Volume%201953/v1953.pdf>, (last visited Nov. 17, 2017).

⁵ *International Convention on Salvage, 1989*, <http://treaties.fco.gov.uk/docs/pdf/1996/TS0093.pdf> (last visited Nov. 17, 2017); International Maritime Organization. *International Convention on Salvage*.

<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Salvage.aspx>, (last visited Nov. 17, 2017).

⁶ *Hernandez v. Roberts*, 675 F.Supp. 1329, (S.D.Fla.1988).

⁷ *Lewis v. JPI Corp.*, No. 07-20103-CIV, 2009 WL 3761984 (S.D. Fla. Nov. 9, 2009); *Esoteric, LLC v. One (1) 2000 Eighty-Five Foot Azimut Motor Yacht Named M/V “Star One”*, No. 10-15652 (11th Cir. June 12, 2012).

functions of that government; a person who engages solely in salvage work for pleasure vessels that are owned, maintained, and operated exclusively by such person and for that person's own use or for-hire pleasure vessels that are rented for periods of 30 days or less; a person who owns or operates a marina or shore-based repair facility and is in the business of repairing pleasure vessels, where the salvage work takes place exclusively at that person's facility; a person who is in the business of repairing pleasure vessels who performs the repair work at a landside or shoreside location designated by the customer; and a person who is in the business of recovering, storing, or selling pleasure vessels on behalf of insurance companies that insure the vessels.

The bill creates s. 559.9603, F.S., providing definitions. The bill defines:

- Customer as the person who requests or signs the written salvage estimate or is entitled to receive a written salvage estimate, or any other person whom the person who requests, signs, or is entitled to receive the written salvage estimate designates on the written salvage estimate as a person who may authorize salvage work;
- Employee as an individual who is employed full-time or part-time by a salvor and performs salvage work;
- Pleasure vessel as any watercraft no more than 60 feet in length which is used solely for personal pleasure, family use, or the transportation of executives, persons under the employment, and guests of the owner;
- Salvage work as any assistance, services, repairs, or other efforts rendered by a salvor relating to saving, preserving, or rescuing a pleasure vessel or its passengers and crew, which are in marine peril. Salvage work does not include towing a pleasure vessel; and
- Salvor as a person in the business of voluntarily providing assistance, services, repairs, or other efforts relating to saving, preserving, or rescuing a pleasure vessel or the vessel's passengers and crew which are in marine peril, in exchange for compensation.

The bill creates s. 559.9604, F.S., requiring a written disclosure statement and salvage work estimate. The bill requires that if the salvage work will exceed \$500, the customer is present on the vessel, and there is no imminent threat of injury or death to any person the salvor must present a written disclosure statement to the customer. The bill also requires that the written disclosure statement contain the following statement in a separate, blocked section, in capital letters of at least 12-point type:

PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW,
AND SIGN:

I UNDERSTAND THAT, UNDER STATE LAW, I AM ENTITLED TO A
WRITTEN ESTIMATE IF MY FINAL BILL MAY EXCEED \$500.

.... I REQUEST A WRITTEN ESTIMATE.

.... I DO NOT REQUEST A WRITTEN ESTIMATE AS LONG AS THE
SALVAGE CHARGES DO NOT EXCEED \$ THE SALVOR MAY NOT
EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.

.... I DO NOT REQUEST A WRITTEN ESTIMATE.

SIGNED

DATE

The bill also requires a salvor to provide a written salvage work estimate when a customer requests such estimate any time before or during the rendering of any salvage work. The written estimate must be in a form stating the estimated cost of salvage work, including the cost of any inspections or diagnostic work, and must also include: the name, address, and telephone number of the salvor's business; the name, address, and telephone number of the customer; the date and time of the written salvage estimate; a general description of the pleasure vessel; a general description of the customer's problem or request for repair work or service relating to the pleasure vessel; a statement as to the basis

on which the customer is being charged, such as a flat rate, an hourly rate, or both; and the estimated cost of the salvage work; a statement indicating the daily charge for storing the customer's pleasure vessel if it is to be towed or otherwise transported to a different location than where the salvor performs the salvage work; and a cancellation fee, as determined by the salvor, in the event a customer cancels the order for services.

If the salvor does not possess sufficient information concerning the source, cause, or nature of the marine peril to formulate an estimate for the salvage work, then the salvor must provide the customer an estimate for the effort required to determine the source, cause, or nature of the marine peril. When the salvor has sufficient information to provide an estimate for the cost of the salvage work, the salvor must provide the estimate.

The bill requires that a copy of the disclosure statement and, if requested, the written salvage estimate be given to the customer before salvage work begins. The disclosure statement and the written estimate may be on the same form. However, a salvor is not required to give a written estimated price if the salvor does not agree to provide any assistance, service, repairs, or other effort to a potential customer.

The bill allows a customer to cancel the salvage work at any time.

The bill creates s. 559.9605, F.S., regarding notification of charges in excess of salvage estimate; unlawful charges. The bill requires that if a salvor determines that the actual charges for the assistance, service, or repair work will exceed the written estimate by more than 20 percent, then the customer must be verbally notified promptly of the additional estimated charge. A customer so notified may, orally or in writing, authorize, modify, or cancel the order for salvage. The salvor may only continue work on the pleasure vessel upon authorization from the customer and work must continue only within the scope the customer authorized. The bill also provides that if a customer cancels the order for salvage after being advised that authorized salvage work cannot be accomplished within the previously authorized estimate, then the salvor must expeditiously place the pleasure vessel back into a condition reasonably similar to the condition in which it was received, unless the customer waives that effort or to do so would be unsafe. After cancellation, the salvor may charge for salvage work provided up to the point of cancellation, but the salvor's charge may not exceed the agreed cancellation fee. The salvor may only charge for any work undertaken on the agreed-upon basis.

The bill creates s. 559.9606, F.S., requiring disclosure; signs; and notice to customers. The bill requires that all vessels used by salvors in connection with performing salvage work have signs posted in a manner conspicuous to customers and potential customers and that can be read from customers' and potential customers' pleasure vessels. The signs must inform customers and potential customers that the salvors are professional salvors that charge for their services and that customers and potential customers have a right to a written estimate for the services offered.

The bill creates s. 559.9607, F.S., regarding unlawful acts and practices. The bill provides that it is a violation for a salvor or its employees to: provide or charge for services that have not been expressly or implicitly authorized by the customer when the customer is present on the pleasure vessel; misrepresent that a pleasure vessel being inspected is in a dangerous condition or that the customer's continued use of the pleasure vessel may be hazardous to the customer or cause great damage to, or loss of, the vessel; fraudulently alter any customer contract, estimate, invoice, or other document; fraudulently misuse any customer's credit card; make or authorize in any manner or by any means whatsoever any written or oral statement which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care the salvor should know, to be untrue, deceptive, or misleading; make false statements of a character likely to influence, persuade, or induce a customer to authorize salvage work for a pleasure vessel; require that any customer waive her or his rights provided in this part as a precondition to performing salvage work; charge a customer more than 20 percent over the written estimate provided to the customer, unless the salvor has obtained authorization to exceed

the written estimate; or perform any other act that violates this part or that constitutes fraud or misrepresentation.

The bill creates s. 559.9608, F.S., providing remedies. The bill provides that a customer injured by a violation may bring an action in the appropriate court for relief. A customer who prevails is entitled to damages in the amount of three times that charged by the salvor, plus actual damages, court costs, and reasonable attorney fees. The customer may also bring an action for injunctive relief. The bill provides that these remedies are in addition to any other remedy provided by law.

B. SECTION DIRECTORY:

- Section 1. Directs the Division of Law Revision and Information to redesignate Florida Statutes.
- Section 2. Creates s. 559.9601, F.S., providing a short title.
- Section 3. Creates s. 559.9602, F.S., providing scope and application.
- Section 4. Creates s. 559.9603, F.S., providing definitions.
- Section 5. Creates s. 559.9604, F.S., regarding written disclosure statement and salvage work estimate.
- Section 6. Creates s. 559.9605, F.S., regarding notification of changes in excess of salvage estimate; unlawful charges.
- Section 7. Creates s. 559.9606, F.S., regarding required disclosure; signs; notice to customers.
- Section 8. Creates s. 559.9607, F.S., regarding unlawful acts and practices.
- Section 9. Creates s. 559.9608, F.S., providing remedies.
- Section 10. Provides an effective date of July 1, 2018.

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. 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, 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 December 6, 2017, the Natural Resources & Public Lands Subcommittee adopted two amendments and reported the bill favorable with committee substitute. The amendments:

- Direct the Division of Law Revision and Information to change the title of part XII of ch. 559, F.S., from "Miscellaneous Provisions" to "Internet Sales," and to create a new part XIII of ch. 559, F.S., consisting of ss. 559.9601-559.9608, F.S., to be entitled "Salvage of Pleasure Vessels;"
- Exempt any person who is in the business of recovering, storing, or selling pleasure vessels on behalf of insurance companies that insure the vessels from the Act;
- Clarify the definition of "pleasure vessel;" and
- Require a salvor to present a written disclosure statement to the customer if the salvage work will exceed \$500, the customer is present on the vessel, and there is no imminent threat of injury or death to any person.

This analysis is drafted to the committee substitute as approved by the Natural Resources & Public Lands Subcommittee.