

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 469 Salvage of Pleasure Vessels

SPONSOR(S): Government Accountability Committee; Careers & Competition Subcommittee; Natural Resources & Public Lands Subcommittee and Harrison

TIED BILLS: **IDEN./SIM. BILLS:** CS/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	9 Y, 2 N, As CS	Willson	Anstead
3) Government Accountability Committee	21 Y, 2 N, As CS	Moore	Williamson

SUMMARY ANALYSIS

Salvage is the voluntary assistance to a ship at sea or its cargo, from impending sea peril or 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. Currently, state law does not require salvors of pleasure vessels to notify customers regarding the potential costs prior to salvage.

The bill applies to salvors operating within waters of this state, with certain exceptions. The bill defines terms and provides that if the customer is present on the pleasure vessel, before a salvor may engage in the salvage operation of a pleasure vessel, the salvor must provide the customer with written notice that the service offered is not covered by any towing contract. The bill specifies that a salvor is not required to provide the written notice if there is an imminent threat of injury or death to any person on board the pleasure vessel, but must provide the written notice when there is no longer such threat of injury or death.

The bill requires that the written notice be signed by the customer and include specific language, in capital letters of at least 12-point type that includes, but is not limited to:

- The service offered is considered salvage work and is not covered by any towing service contract;
- The salvor may present the customer or the customer's insurance company with the bill at a later date;
- Salvage charges must be calculated according to federal law, which may exceed a charge based on a time and materials calculation, and may amount to the entire value of the vessel, including its gear and equipment;
- If the customer agrees to allow the salvor to perform the work without an agreement for a fixed charge, the only recourse for challenging the bill is by a lawsuit in federal court or binding arbitration;
- The customer may agree to a fixed charge before work begins, and that agreed charge must be documented on the U.S. Open Form Salvage Agreement or other such salvage contract; and
- The customer has the right to reject the salvor's offer of services if the salvor will not agree to a fixed charge before beginning work.

The bill provides that if a written notice is not provided before a salvage operation, the owner of a pleasure vessel may bring an action in an appropriate court of competent jurisdiction. An owner who prevails is entitled to damages equal to 1.5 times the amount paid or awarded to the salvor, plus court costs and reasonable attorney fees and any other remedy provided by law.

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

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

STORAGE NAME: h0469e.GAC

DATE: 2/14/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Salvage

Generally, only 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 voluntary assistance to a ship at sea or its cargo, from impending sea peril or the recovery of such property from actual peril or loss (e.g., shipwreck, dereliction, recapture).²

Public policy favors liberally rewarding a person for salvage services, because of the humanitarian and commercial importance of aiding persons and ships in distress and maintaining navigable waterways. Accordingly, salvage awards are viewed as a reward for providing dangerous services, voluntarily rendered, and as an inducement to embark on these life and property saving undertakings.³

Jurisdiction

Salvage claims fall within the admiralty jurisdiction of the federal courts⁴ and are governed by the Supplemental Rules for Certain Admiralty and Maritime Claims (Supplemental Rules) and the Federal Rules of Civil Procedure to the extent they are inconsistent with the Supplemental Rules.⁵ Jurisdiction extends to all waters that are navigable for trade and commerce, and includes:

- Claims against proceeds of salvaged property;
- Claims where the owner of the vessel or cargo has made himself or herself personally liable to pay for salvage services;
- Contracts relating to salvage service;
- Disputes between would-be salvors who submit themselves to the court's jurisdiction;
- Requests by current salvors for exclusive possession and salvage of certain property or wrecks;
- Claims arising out of salvage operations at sea beyond the territorial limits of the United States;
- Claims as to recoveries of salvaged property from state waters, excluding determinations of the state's ownership of any artifacts recovered in state waters;
- Salvage claims for services rendered by one warship to another warship; and
- Liens for salvage services.⁶

While federal courts have exclusive jurisdiction over salvage actions directly against property (e.g., where a vessel or thing is itself treated as the offender and made the defendant by name or description), state courts have concurrent jurisdiction in actions against a person.⁷ State courts, under concurrent jurisdiction, must apply federal maritime law. Generally, state courts may apply state law to maritime actions so long as there is no conflict with federal law.⁸ State courts applying state statutes

¹ 19 C.F.R. § 4.97(a) (1969).

² 67B Am. Jur. 2d *Salvage* § 1 (2017); *see also* 33 CFR § 155.4025, defining salvage to mean any act undertaken to assist a vessel in potential or actual danger, to prevent loss of life, damage or destruction of the vessel and release of its contents into the marine environment.

³ 67B Am. Jur. 2d *Salvage* § 1 (2017).

⁴ 28 U.S.C. § 1333.

⁵ 67B Am. Jur. 2d *Salvage* § 58 (2017).

⁶ 67B Am. Jur. 2d *Salvage* § 61 (2017).

⁷ 28 U.S.C. § 1333; U.S. Const. art. III, § 2.

⁸ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.2, 3-4 (5th ed., The Florida Bar 2017).

authorizing the payment of a reasonable salvage may look to federal maritime law for the elements or definition of salvage in interpreting state salvage laws.⁹

Actions for common-law remedies can also be brought in state court. For instance, if parties have entered into a contract, which provides a means for measurement of a salvage award, the action can proceed as a contract claim in state court.¹⁰ State courts have also heard salvage claims based on an oral contract for salvage services, however, damages in these cases must be made on contract principles rather than on salvage principles or on state laws pertaining to the payment of salvage.¹¹

Salvage Claim

To have a valid salvage claim, the maritime property must be in peril. It is not necessary that the danger be actual or imminent. It is sufficient if there is a state of difficulty and reasonable apprehension of danger. Some courts add that the peril must be such that, without the salvor's assistance, the property would have been lost.¹²

A defense routinely used against a salvage claim is that the services rendered were for towing, not salvage. Towing service is rendered to expedite a vessel's voyage without reference to any circumstances of danger. Whether the service is one of towage or salvage, and when a towage operation becomes a salvage service, are questions of fact. When the elements of salvage are present, courts will treat the services rendered as salvage regardless of whether a contract is characterized as a towage contract or whether one of the parties refers to it as a towage service; the converse is also true.¹³

Salvage Award

Computation of salvage awards have traditionally considered the following factors:

- Labor and material costs expended by the salvor in rendering the salvage service;
- Promptitude, skill, and energy displayed by the salvor in rendering services and saving the property;
- Value of the property employed by the salvor in rendering the service, and the danger to which the property was exposed;
- Risk incurred by the salvor in securing the property from the impending peril;
- Post-casualty value of the property saved; and
- Degree of danger from which the property was rescued.¹⁴

In weighing these factors, a salvage award can vary greatly from a few hundred dollars to thousands of dollars. Salvage awards have also exceeded the value of the vessel. Additional factors created by the International Convention on Salvage, 1989, to which the United States is a party,¹⁵ include consideration for prevention or minimization of environmental damage and life salvage.¹⁶ In weighing

⁹ 67B Am. Jur. 2d *Salvage* § 58 (2017).

¹⁰ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.2, 3-4 (5th ed., The Florida Bar 2017).

¹¹ 67B Am. Jur. 2d *Salvage* § 62 (2017).

¹² 67B Am. Jur. 2d *Salvage* § 6 (2017).

¹³ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.10, 10 (5th ed., The Florida Bar 2017); 67B Am. Jur. 2d *Salvage* § 4 (2017).

¹⁴ *The Blackwall*, 77 US. 1 (1869); John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.18, 17 (5th ed., The Florida Bar 2017).

¹⁵ United Nations, *International Convention on Salvage*, <https://treaties.un.org/doc/Publication/UNTS/Volume%201953/v1953.pdf>, (last visited Nov. 17, 2017).

¹⁶ *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).

these factors, a salvage award can vary greatly from a few hundred dollars to thousands of dollars. Salvage awards have also exceeded the value of the vessel.¹⁷

The court will adjust a salvage award so that the salvor is fairly compensated without undue hardship to the vessel owner. Courts recognize that a generous award should be allowed when the salvaged property value justifies a high award; this is used to compensate salvors for services that are frequently performed when the property is so small that an adequate award cannot be given without hardship to the owner. The value of the salvaged property is usually determined by the fair market value. If the salvaged property is sold in a commercially reasonable manner, then the selling price is the fair market value. If the court determines that the proceeds of the sale would be inadequate to pay the salvor its full reward, the court may award the salvor title to the property, thereby saving the costs of sale.¹⁸

In addition, as in other maritime cases, the award of attorney fees is discretionary and may be awarded by the court or arbitrator for acts of bad faith, either in the salvage action itself or in litigation or arbitration of the dispute.¹⁹

Pure Salvage

Without an express contract defining the rights and duties of the parties, a pure salvage claim arises. The elements of a valid pure salvage claim include a maritime peril; a voluntary act by a salvor, who is under no preexisting official or contractual duty to the owner; and success in saving, or in helping to save, at least part of the property at risk. Some admiralty courts have also required the peril be such that the ship would not have been rescued without the salvor's assistance.²⁰

Salvage Contracts

General contract law principles govern salvage contracts. A formal agreement of the parties will not prevent a court from reaching the merits of the transaction, but salvage contracts for a definite amount of compensation are generally enforced, absent a finding of fraud or duress.²¹ A salvage contract may regulate the compensation paid to the salvor or require arbitration for determining salvage claims. The contract must be clear, definite, and explicit as to the amount of compensation.²²

When the existence of a salvage contract is raised as a defense to a pure salvage claim, the burden is on the party attempting to escape the pure salvage law to prove that a contract exists.²³

Arbitration

Primarily the Federal Arbitration Act²⁴ and the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards²⁵ govern arbitration under maritime law. Many salvage contracts include binding arbitration²⁶ as a means for resolving disputes as to a salvor's compensation. When there is an

¹⁷ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.18, 17-18 (5th ed., The Florida Bar 2017).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 67B Am. Jur. 2d *Salvage* § 5 (2017); *see, Klein v. Unidentified Wrecked and abandoned Sailing Vessel*, 758 F.2d 1511 (11th Cir. 1985).

²¹ 67B Am. Jur. 2d *Salvage* § 15 (2017).

²² 67B Am. Jur. 2d *Salvage* § 14 (2017).

²³ 67B Am. Jur. 2d *Salvage* § 17 (2017).

²⁴ 9 U.S.C. §§ 1-16

²⁵ 21 U.S.T. 2517; 330 U.N.T.S. 38.

²⁶ *See, The Society of Maritime Arbitrators, U.S. Open Form Salvage Agreement*, <http://www.smany.org/salvage-rules-agreement-form.html>; *Lloyd's Open Form, Form*, <https://www.lloyds.com/the-market/tools-and-resources/lloyds-agency-department/salvage-arbitration-branch/lloyds-open-form-lof> (last visited Jan. 22, 2018).

arbitration clause in a signed contract, the parties have presumptively agreed to arbitrate any disputes arising from the contract, including those disputes about the validity of the contract.²⁷

Notice of Salvage Services

When a vessel is exposed to marine peril and no one is on board a salvor is not required to attempt to locate the owner or obtain permission before undertaking salvage services. On the other hand, a salvor must obtain permission before beginning salvage services when there are people on board the vessel and salvage services can be refused.²⁸ Currently, neither federal nor state law require salvors to notify customers of the potential costs involved in the salvage of their vessel.

Effect of Proposed Changes

The bill creates s. 559.9602, F.S., relating to the salvage of pleasure vessels. The bill requires a salvor to provide written notice to a customer of the potential costs of salvage work before engaging in a salvage operation.

The bill applies to all salvors operating within waters of this state, as defined in s. 327.02(47), F.S., but excludes a person who:

- Performs salvage work while employed by a municipal, county, state, or federal government when carrying out the functions of that government;
- 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;
- 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;
- Is in the business of repairing pleasure vessels who performs the repair work at a landside or shoreside location designated by the customer; and
- Is in the business of recovering, storing, or selling pleasure vessels on behalf of insurance companies that insure the vessels.

The bill defines the term:

- "Customer" to mean the owner of a pleasure vessel or the person who has been given the authority by the owner to authorize salvage work of the pleasure vessel.
- "Employee" to mean an individual who is employed full-time or part-time by a salvor and performs salvage work.
- "Pleasure vessel" to mean any watercraft no more than 60 feet in length that is used solely for personal pleasure, family use, or the transportation of executives, persons under the employment, and guests of the owner.
- "Salvage work" to mean 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.
- "Salvor" to mean 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.

²⁷ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.24, 25 (5th ed., The Florida Bar 2017).

²⁸ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.19, 19 (5th ed., The Florida Bar 2017).

The bill requires that if the customer is present on the pleasure vessel, before a salvor may engage in the salvage operation of a pleasure vessel, the salvor must provide the customer with written notice that the service offered is not covered by any towing contract. The bill requires that the written notice include the following statement, in capital letters of at least 12-point type, and be signed by the customer:

THE SERVICE OFFERED BY THE SALVOR IS CONSIDERED SALVAGE WORK AND IS NOT COVERED BY ANY TOWING SERVICE CONTRACT. SALVAGE WORK ALLOWS THE SALVOR TO PRESENT YOU, OR YOUR INSURANCE COMPANY, WITH A BILL FOR THE CHARGES AT A LATER DATE. THE SALVOR SHALL CALCULATE THE CHARGES ACCORDING TO FEDERAL SALVAGE LAW AND SUCH CHARGES MAY EXCEED A CHARGE BASED ON A TIME AND MATERIALS CALCULATION. THE CHARGES COULD AMOUNT TO AS MUCH AS THE ENTIRE VALUE OF YOUR VESSEL, INCLUDING ITS GEAR AND EQUIPMENT.

IF YOU AGREE TO ALLOW THE SALVOR TO PERFORM THE OFFERED WORK WITHOUT AN AGREEMENT FOR A FIXED CHARGE FOR THE SALVAGE, YOUR ONLY RECOURSE TO CHALLENGE THE ASSESSED CHARGES IS BY A LAWSUIT IN FEDERAL COURT OR, IF YOU AND THE SALVOR AGREE IN WRITING, BY BINDING ARBITRATION.

YOU MAY AGREE TO A FIXED CHARGE FOR THE SALVAGE WITH THE SALVOR BEFORE WORK BEGINS, AND THE AGREED CHARGE SHALL BE DOCUMENTED ON THE U.S. OPEN FORM SALVAGE AGREEMENT OR OTHER SUCH SALVAGE CONTRACT SIGNED BY YOU AND THE SALVOR. YOU HAVE A RIGHT TO REJECT THE SALVOR'S OFFER OF SERVICES IF THE SALVOR WILL NOT AGREE TO A FIXED CHARGE BEFORE BEGINNING WORK.

CUSTOMER SIGNATURE:.....

DATE:.....

TIME:.....

The bill specifies that a salvor is not required to provide the written notice if there is an imminent threat of injury or death to any person on board the pleasure vessel and requires the salvor to provide the written notice when there is no longer such threat of injury or death.

The bill provides that if a written notice is not provided before a salvage operation, the owner of a pleasure vessel may bring an action in the appropriate court of competent jurisdiction. An owner who prevails is entitled to damages equal to 1.5 times the amount paid or awarded to the salvor, plus court costs and reasonable attorney fees. The bill provides that these remedies are in addition to any other remedy provided by law.

B. SECTION DIRECTORY:

Section 1. Creates s. 559.9602, F.S., relating to the salvage of pleasure vessels.

Section 2. 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:

The bill may have an indeterminate fiscal impact on the private sector. The required notice may result in a positive fiscal impact to customers and salvors who agree upon an amount for salvage services, resulting in a reduction in legal disputes over the amount paid for services rendered. The bill may have a negative fiscal impact on salvors if by providing the required notice they experience a reduction in customers seeking salvage services. The bill may have a positive fiscal impact on customers if by providing the required notice they choose other alternatives to cure their vessel situation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

While federal courts have exclusive jurisdiction over salvage actions directly against property, state courts have concurrent jurisdiction in actions against a person.²⁹ State courts under concurrent jurisdiction must apply federal maritime law. Generally, state courts may apply state law to maritime actions so long as there is no conflict with federal law.³⁰ State courts applying state statutes authorizing the payment of a reasonable salvage may look to federal maritime law for the elements or definition of salvage in interpreting state salvage laws.³¹

Actions for common-law remedies can also be brought in state court. For instance, if parties have entered into a contract, which provides a means for measurement of a salvage award, the action can proceed as a contract claim in state court.³² State courts have also heard salvage claims based on

²⁹ 28 U.S.C. § 1333; U.S. Const. art. III, § 2.

³⁰ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.2, 3-4 (5th ed., The Florida Bar 2017).

³¹ 67B Am. Jur. 2d *Salvage* § 58 (2017).

³² John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.2, 3-4 (5th ed., The Florida Bar 2017).

an oral contract for salvage services; however, damages in these cases must be made on contract principles rather than on salvage principles or on state laws pertaining to the payment of salvage.³³

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.

On January 16, 2018, the Careers and Competition Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment makes the following changes:

- Redefines “customer” to mean the person to whom a salvor offers salvage work;
- Revises the disclosure provision to only require that, before a salvor may engage in the salvage operation of a pleasure vessel, the salvor shall provide the customer with verbal and written notice that the service offered is not covered by any towing contract;
- Substantially revises the content of the written notice;
- Removes all provisions relating to the salvage work estimate;
- Removes all provisions relating to the notification of charges in excess of the salvage estimate and to unlawful charges;
- Removes provisions relating to required signs posted on salvor vessels informing customers of the right to an estimate for services;
- Removes all provisions relating to unlawful acts and practices;
- Removes the provision directing the Division of Law Revision and Information to re-designate statutes; and
- Reduces the damages multiplier in the remedies provision, from “three times that” to “1.5 times that” charged by the salvor.

On February 13, 2018, the Government Accountability Committee adopted a strike-all amendment and reported the bill favorably with a committee substitute. The strike-all amendment:

- Provided that the bill applies to all salvors operating within waters of the state as defined in s. 327.02(47), F.S.;
- Defined “customer” to mean the owner of the pleasure vessel or the person who has been given the authority by the owner to authorize salvage work of the pleasure vessel;
- Removed the requirement for the salvor to give verbal notice to a customer;
- Clarified that the written notice requirement of the bill applies when the customer is present on the pleasure vessel;

³³ 67B Am. Jur. 2d *Salvage* § 62 (2017).

- Clarified the written notice by providing:
 - That if the customer agrees to allow the salvor to perform salvage work without an agreement for a fixed charge of the salvage, then the only recourse to challenge the charges is through a federal court action or, if agreed to in writing, to binding arbitration;
 - That if the customer and salvor agree to a fixed charge for the salvage before work begins, then the agreed upon charge must be documented on the U.S. Open Form Salvage Agreement or other such salvage contract and signed by the customer and salvor; and
 - A signature block for the customer;
- Required the salvor, when previously exempted from providing the written notice, to provide the written notice when there is no longer a threat of injury or death to any person on board the pleasure vessel;
- Clarified that a civil cause of action may be brought by an owner who has not received the required written notice from the salvor;
- Clarified that a prevailing owner is entitled to damages equal to 1.5 times the amount paid or awarded to the savor; and
- Removed provisions relating to an award of actual damages and injunctive relief to a customer.

This analysis is drafted to the committee substitute as adopted by the Government Accountability Committee.