

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1319 Vessels
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Diamond
TIED BILLS: **IDEN./SIM. BILLS:** SB 1530

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|---------|--|
| 1) Agriculture & Natural Resources Subcommittee | 13 Y, 0 N, As CS | Melkun | Shugar |
| 2) Agriculture & Natural Resources Appropriations Subcommittee | | | |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public 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. Both state and local law enforcement agencies are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.

The bill requires vessel operators to reduce to slow speed, minimum wake upon: approaching within 300 feet of any emergency vessel, including but not limited to, a law enforcement vessel, a United States Coast Guard vessel or auxiliary vessel, fire vessel, or tow vessel, with its emergency lights activated; and approaching within 300 feet of any construction vessel or barge when workers are present and actively engaged in operations and displaying an orange flag or yellow flashing light from the tallest portion of the vessel or barge. The bill provides that a vessel operator found in violation of the above requirements is guilty of a noncriminal infraction and further provides civil penalties.

The bill further provides that a vessel that does not have or is unable to demonstrate an effective means of propulsion and the owner is unable to provide documentation of vessel repair may be deemed at risk for becoming derelict.

The bill increases the civil penalties for a vessel deemed at risk for becoming derelict and for anchoring or mooring in a prohibited area and creates a penalty for a vessel that creates a special hazard. The bill further provides that a person cited more than three times in a 12-month period may have their vessel impounded by law enforcement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel, while mooring is accomplished through the utilization of tie-ups, or moorings, permanently affixed to the bottom.¹ Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.²

Derelict Vessels

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public 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.³

It is unlawful to store, leave, or abandon a derelict vessel in Florida.⁴ Those found in violation of this law commit a first degree misdemeanor.⁵ State law further provides that a violation of derelict vessel laws may also be subject to a civil penalty of up to \$50,000 per day.⁶ Each day, during any portion of which the violation occurs, constitutes a separate offense.⁷

Removal of Derelict Vessels

The Division of Law Enforcement of the Florida Fish and Wildlife Conservation Commission (FWC) and its officers, and the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer as defined in s. 943.10, F.S., have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.⁸

Both state and local law enforcement are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons. The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner. A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value

¹ Section 327.02, F.S., defines "vessel" to include 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.

² Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida* (Rev. May 2012), 2, available at <http://nsgl.gso.uri.edu/flsgp/flsgpt12001.pdf> (last visited Mar. 15, 2017).

³ Section 823.11(1)(b), F.S.

⁴ Section 823.11(2), F.S.

⁵ A first degree misdemeanor is punishable by a term of imprisonment of no more than one year and a fine of up to \$1,000.

⁶ Section 376.16(1), F.S.

⁷ *Id.*

⁸ Section 943.10(1), F.S., defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.⁹

Removal costs for derelict vessels are approximately \$350 to \$450 per foot of vessel length. However, a floating vessel may be towed to a boat ramp or hoist and pulled from the water at a much lower cost. Relocation may have a minimal cost if a law enforcement officer is able to tow it to a suitable location. Costs for professional towing services are approximately \$200 per hour.¹⁰

FWC may provide grants to local governments for the removal of derelict vessels from waters of the state, if funds are appropriated for the grant program are appropriated.¹¹ Funds for the Derelict Vessel Removal Grant program are appropriated from the Florida Coastal Protection Trust Fund. Grants from this fund are awarded based on a set of criteria outlined in FWC rules.¹² Removal or relocation of the vessel on private property is not eligible for grant funding¹³

At-risk vessels

Neglected vessels or those in deteriorating conditions are prohibited from anchoring, mooring, or occupying the waters of the state.¹⁴ A vessel is 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 of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor; or
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, or is listing due to water intrusion, or is sunk or partially sunk.¹⁵

A violation for anchoring, mooring, or occupying a vessel at risk of becoming derelict on the waters of the state is a noncriminal infraction, for which the civil penalty is \$50 for a first offense, \$100 for a second offense occurring 30 days or more after a first offense, and \$250 for a third or subsequent offense occurring 30 days or more after a previous offense.¹⁶

Effect of Proposed Changes

The bill creates s. 327.332, F.S., to require vessels approaching hazardous conditions to reduce speed. The bill requires vessel operators to reduce to a slow speed with minimum wake¹⁷ upon approaching within 300 feet of: any emergency vessel, including but not limited to, a law enforcement vessel, a United States Coast Guard vessel or auxiliary vessel, fire vessel, or tow vessel, with its emergency lights activated; or any construction vessel or barge when workers are present and actively engaged in operations and displaying an orange flag or yellow flashing light from the tallest portion of the vessel or barge.

The bill further provides that a vessel operator found in violation of the above requirements is guilty of a noncriminal infraction.

⁹ Section 705.103(4), F.S.

¹⁰ FWC, Agency Analysis of 2016 House Bill 7025, p. 3 (Jan. 8, 2016).

¹¹ Section 376.15, F.S.

¹² Rule 68-1.003, F.A.C.

¹³ National Oceanic and Atmospheric Association: Marine Debris Program, *Abandoned and Derelict Vessels in Florida*, available at <https://marinedebris.noaa.gov/abandoned-and-derelict-vessels/florida> (last visited Mar. 15, 2019).

¹⁴ Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

¹⁵ *Id.*

¹⁶ Section 327.73(aa), F.S.

¹⁷ Any vessel operating at a speed zone posted as “Slow Down – Minimum Wake” must operate fully off plane and completely settled in the water; see FWC, *Boating Regulations – Vessel Speed Restrictions*, available at <https://myfwc.com/boating/regulations/> (last visited Mar. 15, 2019).

The bill provides that a vessel that does not have or is unable to demonstrate an effective means of propulsion and the owner is unable to provide documentation of vessel repair may be deemed at risk of becoming derelict.

The bill amends s. 327.73, F.S., to increase the civil penalties for a vessel deemed at risk of becoming derelict for a second offense from \$100 to \$250 and for a third offense from \$250 to \$500. The bill also increases the penalties for anchoring or mooring in a prohibited area for a second offense from a maximum of \$100 to \$250 and for a third offense from \$250 to \$500. The bill further provides that a person cited more than three times in a 12-month period may have their vessel impounded by law enforcement.

The bill creates penalties for vessels that do not reduce speed in specified hazardous conditions: \$50 for a first offense, \$250 for a second offense occurring within 12 months after a prior conviction, \$500 for a third offense occurring within 36 months after a prior conviction, and \$1000 for a fourth or subsequent offense occurring within 72 months after a prior conviction.

B. SECTION DIRECTORY:

Section 1 creates s. 327.332, F.S., to require vessels to reduce speed when approaching special hazards.

Section 2 amends s. 327.4107, F.S., to specify criteria that render a vessel at risk of becoming derelict.

Section 3 amends s.327.73, F.S., to increase civil penalties for vessels at risk of becoming derelict, vessels anchored or moored in prohibited areas, and vessels that do not reduce speed in hazardous conditions.

Section 4 provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive impact on state government revenues because of new and increased civil penalties that FWC may receive.

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 positive fiscal impact on the private sector because the requirement for vessels to reduce speed in certain circumstances may reduce instances of property damage and safety issues for construction vessels engaged in operations.

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 sales tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill would require FWC to update their existing rules; however, FWC possesses sufficient rulemaking authority to adopt rules to comply with statutory changes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2019, the Agriculture & Natural Resources Subcommittee adopted a strikeall amendment and reported the bill favorably as a committee substitute. The amendment removed reference to an undefined term, removed the requirement that a destination be declared upon inquiry of a law enforcement officer, removed the requirement that a vessel be moved three miles within 90 days of the date of notice to the owner, and removed penalties for the failure to present certificate of title to the department with the new owner information.

This analysis is drafted to the committee substitute as passed by the Agriculture & Natural Resources Subcommittee.