

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 223 Marina Evacuations

SPONSOR(S): State Affairs Committee; Pandemics & Public Emergencies Committee; Plasencia and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 578

FINAL HOUSE FLOOR ACTION: 116 Y's

0 N's

GOVERNOR'S ACTION: Pending

SUMMARY ANALYSIS

CS/CS/HB 223 passed the House on April 1, 2021, and subsequently passed the Senate on April 14, 2021.

Under Florida law, the term "port" is defined as a port authority or district. Each port, in agreement with the United States Coast Guard, state pilots, and other ports in its operating port area, is required to adopt guidelines for minimum bottom clearance of each berth and channel, for the movement of vessels, and for radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels. There are 14 deepwater seaports in Florida.

A marina is a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis. Vessels that are left in a marina during hurricane and storm conditions can cause problems in the port, including the inability to secure docks, causing potential damage to infrastructure such as piers, and other harm to people or property.

Some marina docking contracts contain "safe haven" or "hurricane" clauses. These clauses provide that, when a hurricane watch is issued, boat owners must immediately remove their vessels and all personal property from the marina and seek safe haven somewhere else. In 1993, Florida enacted a law designed to prevent marinas from using safe haven clauses as a basis for recovering the costs of property damage from vessel owners after a hurricane.

Upon the issuance of a hurricane watch affecting the waters of marinas located in a deepwater seaport, the bill prohibits vessels under 500 gross tons from remaining in the waters of marinas that have been deemed not suitable for refuge during a hurricane. In addition, the bill requires vessel owners to promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

The bill specifies that if the Coast Guard captain of the port sets the port condition to "Yankee" and a vessel owner has failed to remove a vessel from the waterway, the marina owner must remove the vessel and may charge the vessel owner a reasonable fee for the removal. In addition, the bill specifies that a marina owner may not be held liable for any damage incurred to a vessel from a hurricane and is held harmless as a result of such actions to remove the vessel from the waterways, unless the damage was caused by intentional acts or negligence.

Finally, the bill authorizes the deepwater seaport to impose and collect a fine in an amount not to exceed three times the cost associated with removing a vessel from the waterway if, after the hurricane watch has been issued, the owner or operator of a vessel has not removed the vessel from the waterway of the marina pursuant to an order from the deepwater seaport.

The bill may have an indeterminate positive fiscal impact on local governments.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2021.

I. SUBSTANTIVE INFORMATION

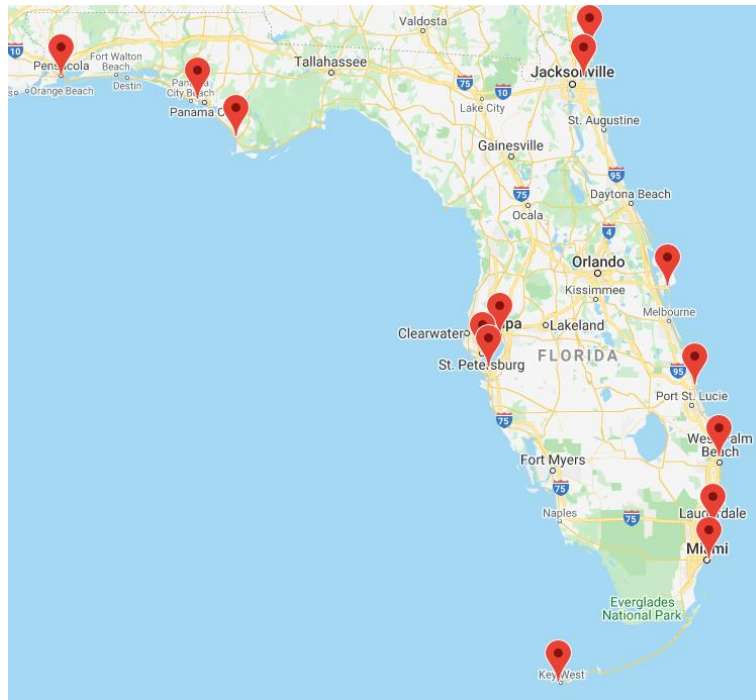
A. EFFECT OF CHANGES:

Background

Deepwater Seaports

Under Florida law, the term “port” is defined as a port authority or district.¹ Ports are created by and given authority under general or special law. Each port, in agreement with the United States Coast Guard (Coast Guard), state pilots, and other ports in its operating port area, is required to adopt guidelines for minimum bottom clearance of each berth and channel, for the movement of vessels, and for radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels.²

There are 14 deepwater seaports in Florida, which are depicted in the following map:³



Deepwater seaports serve as maritime facilities that consist of one or more marinas where ships can dock to load and discharge cargo, such as gasoline and other petroleum products, and cruise passengers.⁴ These seaports also serve as hubs for small businesses such as restaurants, retail facilities, and charter boats.⁵ Currently, Florida’s deepwater seaports support nearly 900,000 jobs and contribute \$117.6 billion in economic value through cargo and cruise activities.⁶

¹ Section 313.21, F.S.; *see also* s. 315.02, F.S. “Port authority” means a port authority in Florida created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law. “Port district” means any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities.

² Section 313.23, F.S.

³ Florida Ports Council, *Seaports*, available at <https://flaports.org/seaports/> (last visited Mar. 5, 2021).

⁴ U.S. Department of Transportation, *Frequently Asked Questions*, available at <https://www.maritime.dot.gov/ports/deepwater-ports-and-licensing/frequently-asked-questions> (last visited Mar. 5, 2021).

⁵ Port Canaveral, *About Us*, available at <https://www.portcanaveral.com/About> (last visited Mar. 5, 2021).

⁶ Florida Ports Council, *Seaports*, available at <https://flaports.org/about/the-florida-system-of-seaports/> (last visited Mar. 5, 2021).

Vessel Movements and Penalties for Delay

Pursuant to s. 313.22(1), F.S., each port may regulate vessel movements within its jurisdiction, whether involving public or private facilities or areas, by:

- Scheduling vessels for use of berths, anchorages, or other facilities at the port.
- Ordering and enforcing a vessel, at its own expense and risk, to vacate or change position at a berth, anchorage, or facility, whether public or private, in order to facilitate navigation, commerce, protection of other vessels or property, or dredging of channels or berths.
- Designating port facilities for the loading or discharging of vessels.
- Assigning berths at wharves for arriving vessels.⁷

Ports are also authorized to establish fees and compensation for the services regulating vessel movements provided by the port.⁸ Additionally, a port may impose and collect a penalty from a vessel that unnecessarily delays moving under an order to vacate or change position. This penalty may not exceed \$1,000 per hour or fraction thereof, plus 150 percent of the demurrage costs incurred by a waiting vessel, until the order is complied with.⁹

Marina Evacuations

A marina is a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis.¹⁰ When hurricanes and storm conditions threaten the coast, marinas and vessels are vulnerable to catastrophic damage from the high winds, storm surges, wave action, and heavy rainfall these storms bring.¹¹ Vessels that are left in a marina during hurricane and storm conditions can also cause problems in the port, including the inability to secure docks, causing potential damage to infrastructure such as piers, and other harm to people or property. Storm conditions can also force a vessel into another object, propel objects into the vessel, or sink or damage a vessel.¹² Storm surges can even lift entire floating docks above their pilings or knock boats off their cradles.¹³ Vessels left in the harbor can also pose navigational issues and cause problems and delays in clearing channels.¹⁴

Safe Haven

Some marina docking contracts contain “safe haven” or “hurricane” clauses. These clauses provide that, when a hurricane watch is issued, boat owners must immediately remove their vessels and all personal property from the marina and seek safe haven somewhere else. Failure to comply with this requirement, according to the clauses, results in the boat owner’s liability for all damage to docks, piers, other vessels, or any other property damage directly caused by the owner’s vessel or resulting from its presence in the marina.¹⁵

In 1993, Florida enacted a law designed to prevent marinas from using safe haven clauses as a basis for recovering the costs of property damage from vessel owners after a hurricane, emphasizing the protection of life over property by prohibiting marinas from requiring vessel owners to remove their vessels from a marina following the issuance of a hurricane watch or warning.¹⁶

⁷ Section 313.22(1), F.S.

⁸ Section 313.22(2), F.S.

⁹ Section 313.22(3), F.S.

¹⁰ Section 327.02(25), F.S.

¹¹ University of Florida (UF), *Hurricane Manual for Marine Interests*, available at [https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf) (last visited Mar. 5, 2021).

¹² *Id.*; Florida Keys National Marine Sanctuary, *Protect your Boat in a Hurricane: Making a Plan (Part I)*, available at <https://floridakeys.noaa.gov/whatsnew/around/2015/boathurricane1.html> (last visited Mar. 5, 2021).

¹³ *Id.*

¹⁴ UF, *Hurricane Manual for Marine Interests*, available at [https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf) (last visited Mar. 5, 2021).

¹⁵ Mercante, James, *Hurricanes and Act of God: When the Best Defense is a Good Offense*, 18 U.S.F. MAR. L.J. (2006).

¹⁶ Chapter 93-211, s. 22, Laws of Fla.; s. 327.59(1), F.S.

However, after a tropical storm or hurricane watch has been issued, a marina owner or operator, or their employee or agent, is authorized to take reasonable actions to further secure a vessel within the marina to minimize damage to the vessel and to protect marina property, private property, and the environment. The owner or operator may charge a reasonable fee for securing the vessel, which can be included in a contractual agreement with the vessel owner.¹⁷ While marina owners may not be held liable for damage to a vessel from a storm or hurricane, they may be still be held liable for damage due to intentional acts or negligence when removing or securing a vessel.¹⁸

Hurricane Season Port Conditions and Categories

Port conditions, which are set by the Coast Guard captain of the port of a particular sector, or regulated area, are indicated in the table below.¹⁹

Port Condition	Storm Status	Port Status
Whiskey	Gale force winds ²⁰ are predicted to arrive within 72 hours	Open to all commercial and recreational traffic
X-Ray	Gale force winds are predicted to arrive within 48 hours	Open to all commercial and recreational traffic
Yankee	Gale force winds are predicted to arrive within 24 hours	Closed to inbound traffic and vessel traffic control measures in effect on vessel movements within the port
Zulu	Gale force winds are predicted to arrive within 12 hours	Closed to all inbound and outbound traffic
Recovery	The storm is no longer a threat to the area, but response and recovery operations may be in progress to address damage	Reopened to outbound traffic at completion of port survey; vessel traffic control measures remain in effect on vessel movements within the port

Effect of the Bill

Upon the issuance of a hurricane watch affecting the waters of marinas located in a deepwater seaport, the bill prohibits vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane. In addition, the bill requires vessel owners to promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

The bill specifies that if the Coast Guard captain of the port sets the port condition to “Yankee” and a vessel owner has failed to remove a vessel from the waterway, the marina owner, operator, employee, or agent, regardless of any existing contractual provisions between the marina owner and the vessel owner, must remove the vessel, or cause the vessel to be removed, if reasonable, from its slip and may charge the vessel owner a reasonable fee for any such services rendered.

The bill authorizes the deepwater seaport to impose and collect a fine in an amount not to exceed three times the cost associated with removing a vessel from the waterway if, after the hurricane watch has been issued, the owner or operator of a vessel has not removed the vessel from the waterway of the marina pursuant to an order from the deepwater seaport. The bill specifies that a deepwater seaport is not required to issue an order to evacuate vessels or impose and collect fines for failure to remove vessels from its waterways.

¹⁷ Chapter 2006-309, s. 2, Laws of Fla.; s. 327.59(2)-(3), F.S.

¹⁸ Section 327.59(4), F.S.

¹⁹ 33 C.F.R. s. 165.720; 33 C.F.R. 165.781; *See also* Brazos Pilots Association, *Hurricane Season Port Conditions and Categories*, available at <http://www.brazospilots.com/Hurricane-Season.pdf> (last visited Mar. 5, 2021).

²⁰ “Gale force winds” mean winds of 34 knots or 39 miles per hour. National Oceanic and Atmospheric Administration, *Beaufort Wind Scale*, available at <https://www.spc.noaa.gov/faq/tornado/beaufort.html> (last visited Mar. 5, 2021).

The bill specifies that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to a vessel from a hurricane and is held harmless as a result of such actions to remove the vessel from the waterways. However, the bill clarifies that this provision does not provide immunity to a marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

The bill defines the term “deepwater seaport” to mean the port waters, dredged material management sites, port harbors, navigation channels, turning basins, and harbor berths used for deepwater commercial navigation.

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:

The bill may have an indeterminate positive fiscal impact on the local governments because deepwater seaports may impose and collect fines from vessel owners that do not comply with a movement order. In addition, the seaports may have to spend less on repairing damage to seaport facilities and infrastructure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on vessel owners due to the costs associated with moving their vessels pursuant to a movement order, the fees charged by a marina owner for the service of moving a vessel, or the fines incurred from noncompliance with a movement order.

D. FISCAL COMMENTS:

None.