

# **Local Government Authority to Remove Abandoned and Derelict Vessels**



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## **I. Introduction**

Derelict vessels pose a serious and substantial threat to the maintenance of waterways, the health of marine environments, and the safety of navigation. Often found partially submerged or completely sunken in shallow waters, derelict vessels may not be visible above the waterline even in the best of conditions, thus provoking boating accidents. As sunken abandoned and derelict vessels deteriorate, materials and contents within the vessel break down and contaminate the water. Hazardous substances are present in nearly all abandoned and derelict vessels. Residues from marine fuel, lubricants, and solvents become pollutants in the water column and frequently contaminate the sediment surrounding the vessel.

In recent years, navigational and environmental hazards caused by abandoned and derelict vessels have increased. The abundance of new boater traffic on Florida's public waters and the numerous hurricanes of 2004 and 2005 have exacerbated the problem. In 2006, the Florida legislature made a host of changes to statutes that govern procedure regarding derelict vessels. Specifically, the legislature amended Florida Statutes § 823.11 and § 376.15, both of which deal with derelict vessels, § 705.101 that deals with abandoned property, and several other statutes relating to boating.

## **II. How Things Were Being Done**

### **A. Before 2002**

The Fish and Wildlife Conservation Commission (FWC) was the sole agency in Florida (other than the federal government) authorized to declare a vessel a "derelict vessel" and remove or cause to be removed any abandoned or derelict vessel from public waters *unless* FWC delegated that authority to a local government. Before 2002, derelict vessels were specifically excluded from the definition of "abandoned property" in Florida Statute § 705.101(3).<sup>1</sup> In 2002, the Florida legislature amended § 705.101(3) to include derelict vessels that *were declared derelict by FWC* within the definition of abandoned property. The legislative intent of this amendment was to provide local governments with additional flexibility in the removal of derelict vessels.<sup>2</sup> In addition, prior to even the 2002 changes, law enforcement officers could, under the authority of Florida Statutes § 237.70(1), order removal of vessels deemed to be an interference or a hazard to public safety.

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<sup>1</sup> See Fla. Stat. § 705.101(3) (2001). "Abandoned property" means all tangible personal property that does not have an identifiable owner and that has been disposed on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. However, vessels determined to be derelict by the Fish and Wildlife Conservation Commission or a county or municipality in accordance with the provisions of s. 823.11 are not included within this definition.

<sup>2</sup> See footnote 7 in RE: Municipalities - Fish and Wildlife Conservation Commission - Vessels - Authority to Remove Derelict Vessels, AGO 2006-17 Op. Fla. Att'y Gen, (May 5, 2006).

## ***B. 2002 – 2006***

Due to the fact that local governments still lacked the authority to declare vessels as derelict vessels, the 2002 amendments failed to adequately achieve the Florida legislature's goal. Local governments could remove derelict vessels under the abandoned property statute (§ 705.103) but only after FWC declared the vessel derelict. This inefficient process placed a great burden on FWC and stifled the ability of local governments to deal with problems that affected their waterways. Lee County progressively took measures into its own hands and enacted a comprehensive ordinance dealing with the removal and disposal of derelict vessels, proceeding under grants of authority by abandoned property statutes and Florida Statute § 327.70(1) which states that law enforcement officers may remove "any vessel deemed to be an interference or a hazard to public safety."

## **III. Relevant 2006 Legislative Changes**

In 2006, amendments to several Florida statutes relating to boating changed processes significantly. Now, derelict vessels are clearly defined by statute. Local governments, through law enforcement agencies, may remove any vessel that fits the statutory definition of a derelict vessel without consulting or receiving a delegation of authority from FWC, even if FWC has not declared or marked the vessel a derelict. When a local government identifies a derelict vessel that the local government wishes to remove, the local government's law enforcement agency must follow the procedures established for abandoned property since, under the 2006 statutes, *all* derelict vessels are now considered abandoned property.

### ***A. Florida Statute § 823.11***

Under the 2006 version of § 823.11, derelict vessels are now clearly defined, authority for removal of vessels has been expanded, grants for removal have been established, and further restrictions have been placed on identified owners of derelict vessels.

#### *i. Definition of "Vessel" and "Derelict Vessel"*

The 2005 version of § 823.11 did not provide a definition for the term "derelict vessel" and left the meaning of the term "vessel" to be interpreted under general maritime law. The 2006 statute references the definition of vessel provided in Florida Statute § 327.02 in order to provide clarity and incorporate the term into the definition of derelict vessel. The term derelict vessel is also clearly defined. Because § 823.11 now provides a clear definition of what constitutes a derelict vessel it is no longer necessary for FWC to declare a vessel a derelict vessel.

**Vessel** - A vessel is any boat, watercraft, barge, airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.<sup>3</sup>

**Derelict Vessel** - A derelict vessel is any vessel that is left stored or abandoned upon Florida waters in a wrecked, junked, or substantially dismantled condition. Vessels left at any Florida port without consent of the agency administering the port area and vessels left docked or grounded upon a property without the property owner's consent are also derelict vessels.<sup>4</sup>

Note that this definition of derelict vessel may even include a vessel with an owner on board.

*ii. Delegation of Authority*

A delegation of authority for derelict vessel removal is no longer necessary due to the fact that *any* law enforcement agency may now remove derelict vessels<sup>5</sup> under the lost and abandoned property statute.<sup>6</sup> The 2006 statute also enables private property owners to remove derelict vessels from their property.<sup>7</sup>

*iv. Restrictions on Derelict Vessel Owners*

The 2006 statute restricts the ability of a derelict or abandoned vessel owner who does not pay for removal of the vessel to obtain registration for other vessels or motor vehicles.<sup>8</sup> The 2006 statute also makes it clear that in addition to criminal liability, courts may impose civil penalties on derelict vessel owners.<sup>9</sup>

***B. Florida Statute § 705.101***

Although the 2002 amendments to § 705.101 included derelict vessels within the definition of abandoned property, the statute only recognized derelict vessels *declared derelict by FWC*. The 2006 amendment to the statute references the definition of derelict vessel provided in § 823.11. Under the 2006 amendment to § 823.11, if a vessel found by a law enforcement agency meets the definition of a derelict vessel, the law enforcement agency may recognize the vessel as a derelict vessel.

Under § 705.101 (3), *all* derelict vessels are considered abandoned property. The definition of abandoned property in § 705.101 (3) incorporates the definition of derelict vessels under § 823.11.

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<sup>3</sup> See Fla. Stat. § 327.02 (2006).

<sup>4</sup> See Fla. Stat. § 823.11(1) (2006).

<sup>5</sup> See Fla. Stat. § 376.15(2)(a) (2006).

<sup>6</sup> See Fla. Stat. ch. 705 (2006).

<sup>7</sup> See Fla. Stat. § 823.11(3)(b) (2006).

<sup>8</sup> See Fla. Stat. § 823.11(3)(a) (2006).

<sup>9</sup> See Fla. Stat. § 823.11(4) (2006).

### *C. Florida Statute § 376.15*

In 2006, Florida Statutes § 376.15 changed slightly from the 2005 version. The changes recognize that all law enforcement officers have the authority to remove derelict vessels from public waters.<sup>10</sup> The statute also emphasizes that costs incurred for the removal of abandoned or derelict vessels are recoverable against vessel owners.<sup>11</sup>

## **IV. Local Government Removal of Vessels**

### *A. Authority of Local Governments*

Under the revised statutes § 823.11 and § 376.15 it is clear that any law enforcement agency may remove any derelict vessel in public waters of Florida<sup>12</sup> that meets the definition of a derelict vessel under § 823.11. Local governments are no longer preempted from engaging in derelict vessel removal. Under § 327.70, all law enforcement officers may order the removal of vessels deemed to be an interference or a hazard to the public safety. However, it should be noted that local governments **do not** have authority to remove derelict vessels from private moorings or property; removal in such instances is governed by Florida Statutes section 823.11(3)(b), which allows the private property owner to remove the vessel after compliance with certain notice requirements.

### *B. Responsibility for Removal*

Owners of abandoned or derelict vessels are responsible for removal of the vessel. Owners who refuse or fail to remove their vessel may face criminal prosecution and civil penalties.<sup>13</sup>

### *C. If the Owner cannot be Identified or is Unable to Remove the Vessel*

If the owner cannot be identified, any law enforcement agency is authorized to remove any derelict vessel.<sup>14</sup> Law enforcement agencies are also authorized to remove any vessel a law enforcement officer deems an interference or a hazard to public safety.<sup>15</sup>

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<sup>10</sup> See Fla. Stat. § 376.15(2)(a) (2006).

<sup>11</sup> *Id.*

<sup>12</sup> "Waters of this state" is defined in Florida Statute § 327.02(40):

- (40) "Waters of this state" means any navigable waters of the United States within the territorial limits of this state, and the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers, and canals under the jurisdiction of this state.

The territorial limits of the state are defined in Article II, Section 1 of Florida's Constitution.

<sup>13</sup> See Fla. Stat § 823.11(4) (2006) and Fla. Stat. § 376.16 (2006).

<sup>14</sup> See Fla. Stat. § 376.15(2)(a) (2006).

<sup>15</sup> See Fla. Stat. § 327.70(1) (2006).

The Secretary of the Army has concurrent jurisdiction with the state of Florida to remove derelict vessels from state waters. However, in practice the federal government does not remove vessels from state waters except under rare or unusual circumstances.

#### ***D. Removal by Local governments***

There are two routes to remove a vessel from public waters.

- 1) Under § 327.70, a vessel that is deemed to be an interference or hazard to public safety may be removed by a law enforcement agency. Florida Statute § 327.70 does not require the vessel to be recognized as a derelict vessel for the statute to apply.
- 2) According to § 823.11(3)(a), any abandoned or derelict vessel that obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment may be removed by any law enforcement officer as defined in § 327.70. Also, under § 376.15 any derelict vessel may be removed from public waters by any law enforcement officer as defined in § 327.70. In practice, this means that the statutory grant of authority for derelict vessel removal under the limited circumstances in § 823.11(3)(a) is now superfluous.

Whether proceeding under either statute the process of removing the vessel must comply with the requirements of Florida's lost and abandoned property statutes, which appear in chapter 705 of the Florida Statutes.

#### ***E. How to Proceed***

##### ***1. Determine Status of Vessel***

When a local government receives a report or locates a vacant vessel, the first step for a local government to take is to arrange for a law enforcement agency to determine if the vessel is stolen, lost, or abandoned property.

##### **a. Lost Property**

Lost property is defined by Florida Statute § 705.101(2). If a vessel is substantially operable and in a functioning condition or has an apparent intrinsic value, the vessel should be considered to be lost property. Lost vessels are not derelict vessels. Law enforcement officers are authorized to remove lost vessels under § 705.103. Law enforcement officers are also authorized to remove any (lost) vessel deemed to be an interference or a hazard to public safety by an officer's discretion under § 327.70.

##### **b. Abandoned Property**

Abandoned property is defined under § 705.101 (3). The definition of abandoned property incorporates the definition of derelict vessels under § 823.11. A vessel in a substantially dismantled condition is a derelict vessel as well as abandoned property.

Law enforcement officers have the authority to remove abandoned property, including derelict vessels, under § 705.103(3), and specific authority to remove derelict vessels under § 376.15. Law enforcement officers may also remove (abandoned) vessels that are an interference or a hazard to public safety under § 327.70.

## 2. *Is the Vessel Easily Removable?*

Whether the vessel is considered lost or abandoned, if the vessel can be easily removed an officer may immediately remove the vessel and then must make a reasonable attempt to locate the owner or any lienholder of the vessel.<sup>16</sup> Most derelict vessels can not be easily removed due to the size and condition of most derelict vessels. If a vessel cannot be easily removed, an officer must mail a notice to the last registered owner of the vessel and then post notice on the vessel.<sup>17</sup> Whether the vessel is lost or abandoned the following procedure is the same.

## 3. *Locate Owner and Lienholders*

Law enforcement officers must make a reasonable search to locate the owner and any lienholders of the vessel.<sup>18</sup> If the officer successfully locates the vessel owner's or any lienholder's address, the officer must mail the owner or lienholder a copy of a notice substantially in the same form as appears in § 705.103(2).<sup>19</sup>

## 4. *Post Notice*

After mailing notice if an address for an owner or lienholder was reasonably available, or without mailing notice if no such information could be located, law enforcement officers must place an 8x10 or larger weatherproofed notice on the lost or abandoned vessel that describes the vessel with a demand to remove the vessel within five days.<sup>20</sup> The notice must indicate that if the vessel is not removed by the owner it will be removed by law enforcement officials and disposed of.<sup>21</sup> The notice must also indicate that the owner of the vessel is liable for the costs of removal storage, and costs regarding the publication of notice for the vessel.<sup>22</sup> An officer must date the notice and supply his or her name, title, address and telephone number.<sup>23</sup>

## 5. *Remove the Vessel*

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<sup>16</sup> See Fla. Stat. § 705.103(1) (2006).

<sup>17</sup> See Fla. Stat. § 705.103(2) (2006).

<sup>18</sup> *Id.* (In making a reasonable search, the officer must contact the Department of Highway Safety and Motor vehicles in order to determine the name and address of any person who has filed a lien on the vessel.)

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

If the attempt to locate an owner or lienholder has failed or if five days pass following the posting of notice on the vessel and mailing of notice to located owners and lienholders, and the owner or lienholders have not responded or removed the vessel, a law enforcement agency may remove the vessel.<sup>24</sup>

a. Removal of Abandoned Vessel

If the vessel is abandoned, and hence a derelict vessel, it may be retained by the law enforcement agency for its own use, retained by the state or local government, donated to a charitable organization, sold, or disposed of.<sup>25</sup>

b. Removal of Lost Vessel

If the vessel is lost property, a law enforcement agency must take custody of the vessel and hold it for 90 days.<sup>26</sup> A law enforcement agency must publish notice of how the vessel will be disposed of.<sup>27</sup> A law enforcement agency must follow the appropriate method of disposing title of the vessel depending on their choice under § 705.103(2)(b) whether it be retaining the vessel for use by the agency or government, surrendering property to the finder, selling the property, or trading the property to another unit of local government or state agency.

6. *Title to Vessel*

Under § 705.104, title to lost or abandoned property is vested in the finder upon the expiration of the 90 day custodial time period specified in 705.103(2)(b). The statute makes it clear that if no claim is made, title for *lost* property will vest in the finder in 90 days but does not specifically address abandoned property. Thus, reading the statutes on their face, it is not clear if title vests in the finder of abandoned property immediately after the notice requirement or after a 90 day period as is clearly the case with lost property. To ensure that title to abandoned property vests properly and to avoid a due process claim, it would be wise for a local government to retain custody of all lost or abandoned vessels before retaining or disposing of them. This also comports with the common sense notion that if the finder *wants* to claim the vessel, the vessel has some intrinsic value and should be procedurally treated as lost rather than abandoned property for title purposes.

***F. Local Government Recourse Against Derelict Vessel Owners***

A. *Cost Recovery*

Under § 376.15, all costs incurred by a law enforcement agency in the removal of any abandoned or derelict vessel shall be recoverable against the owner of the vessel. If the

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<sup>24</sup> See Fla. Stat. § 705.103(2)(a) (2006) and Fla. Stat. § 705.103(2)(b) (2006).

<sup>25</sup> See Fla. Stat. § 705.103(2)(a) (2006).

<sup>26</sup> See Fla. Stat. § 705.103(2)(b) (2006).

<sup>27</sup> *Id.*

owner can be located, the local government can be reimbursed for removal costs by the owner.

### *B. Criminal Law*

It is a first degree misdemeanor for any person, firm, or corporation to store, leave, or abandon any derelict vessel.<sup>28</sup> Violators may be convicted and punished under criminal law.

### *C. DEP Civil Penalties*

Civil Penalties may be collected by Florida's Department of Environmental Protection.<sup>29</sup> Local governments should notify Florida DEP of any derelict vessel so that DEP may attempt to fine the owner.

### *D. Litter Law*

Under Florida Statute § 403.413 derelict vessels may be considered litter. Litter cannot be dumped in or on any freshwater lake, river, canal, or stream or tidal or coastal water of the state, including canals. "Dumped" is defined by § 403.413 as dump, throw, discard, place, deposit, or dispose of. Since most vessels exceed 500 lbs., dumping a vessel is a third degree felony under § 403.413 (6), punishable by § 775.082 or § 775.083

A violator may be compelled to remove litter, repair or restore property damaged by the litter, or perform public service to restore the damage the litter caused.

## **V. Funding for Removal**

### *A. Florida Statutory Grants*

Although Florida Statutes § 376.15 authorizes FWC to establish a program to provide grants to local governments for the removal of derelict vessels from the public waters of the state funded by the Florida Coastal Protection Trust Fund, the Florida legislature did not appropriate any money for derelict removal efforts in 2006-2007. (Funding was not approved in 2004-2005 or 2003-2004.) In the 2002-2003 fiscal year, 12 grantees participated in the program, resulting in the removal of 47 derelict vessels.<sup>30</sup>

Although these grants have not been funded for several years, it is important to note that FWC may have to designate and mark a vessel as derelict for a local government to receive funding should the Legislature appropriate funds for this program in the future. Although the 2006 amendment to § 823.11, by stating the definition of a derelict vessel, no longer require FWC to declare a vessel a derelict vessel for purposes of removal,

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<sup>28</sup> 823.11 (2) & (4)

<sup>29</sup> See Fla. Stat. § 823.11(4) (2006), Fla. Stat. § 376.15 (2006), and Fla. Stat. § 376.16 (2006).

<sup>30</sup> See <http://myfwc.com/boating/derelict/>

Florida Administrative Code 68D-16.029 (2) has not kept pace with the statutory amendments. The Florida Administrative Code still requires FWC to declare a vessel derelict to be eligible for funding under Florida legislature appropriations of funding.

Although the Florida legislature has not made any appropriations for derelict vessel removal in recent years, FWC may provide grants for derelict vessel removal when a potential grantee makes an application for funds under the Florida Boating Improvement Program. (FBIP)<sup>31</sup>

FBIP is a competitive grant program designed to provide funds to local governments in order to improve boating and boating related activities within the state of Florida. FBIP is divided into two tiers. Tier one is established in accordance with Florida Statutes § 206.606(1)(b) to fund local projects for recreational channel marking, public launching facilities, derelict vessel removal and other local boating related activities in the form of competitive grants. Applicants are awarded grant funds using a point system. The system is competitive and funds will be awarded to applicants with the highest score.

Tier II is established in accordance with Florida Statutes § 327.47, to fund projects through a competitive grant program for the construction and maintenance of publicly-owned boat ramps, piers, and docks. Tier II projects are funded by taxes on marine fuels.<sup>32</sup>

### ***B. Florida Navigation Districts***

Florida contains two special taxing districts relevant to navigation: The Florida Inland Navigation District and the West Coast Inland Navigation District.

The Florida Inland Navigation District (FIND) stretches from the Georgia border to the north south to Miami-Dade County on Florida's east coast. The "Waterways Assistance Program" of FIND has given match funding for derelict vessel removal to both Brevard and Dade counties.<sup>33</sup>

The West Coast Inland Navigation District (WCIND) includes Manatee, Sarasota, Charlotte, and Lee counties in southwest Florida. WCIND works with these local governments to provide funding for derelict vessel removal.

### ***C. Other Sources of Funds***

#### ***i. Federal Emergency Management Agency (FEMA)***

Public Assistance Program funds are available to local governments for removal of vessels after hurricanes or natural disasters.

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<sup>31</sup> See <http://myfwc.com/boating/grants/fbip.htm>

<sup>32</sup> See Fla. Stat. § 206.606(1)(d) (2006).

<sup>33</sup> FIND's Waterways Assistance Program website is available at <http://aicw.org/wap.htm>.

ii. *National Oceanic and Atmospheric Association (NOAA) and the National Fish and Wildlife Foundation (NFWF)*

These agencies provide funds to projects that “will result in benefits to living marine resource habitats and navigational waterways through removing and/or preventing marine debris, including projects that are coupled with a best management practice that limits the re-accumulation of debris.”<sup>34</sup>

iii. *U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS)*

These agencies provides grants for clean up of debris from canals and streams in the event of a natural disaster.<sup>35</sup>

## **VI. Federal Law Issues**

### **A. Concurrent Jurisdiction**

Under the Submerged Land Act, 43 U.S.C. § 1311, Florida has the right to manage and administer submerged lands and natural resources within state boundaries. This includes the right to manage derelict vessels and shipwrecks.<sup>36</sup> However, Florida’s jurisdiction to manage derelict vessels is concurrent with the United States.<sup>37</sup>

### **B. Federal Licensure of Salvage Companies**

Federal law appears in some instances to require a license for contractors working with derelict vessels. If the derelict vessel has intrinsic value for salvage and the local government contracts with a company using a vessel that is regularly engaged in salvage off the coast of Florida, the local government should ensure that the salvage vessel has a federal license from a judge of the federal district court.<sup>38</sup> The judge will issue a license if the vessel to be employed in salvaging efforts is seaworthy, properly equipped, and captained by a trustworthy master who has not committed fraud or engaged in misconduct in past salvage efforts.

<sup>34</sup> See <http://marinedebris.noaa.gov/funding/welcome.html>

<sup>35</sup> See <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=diap&topic=landing> and <http://www.nrcs.usda.gov/Programs/>

<sup>36</sup> See 43 U.S.C. § 2101 (2006).

<sup>37</sup> See 33 U.S.C. § 414 (2006).

See also ESHB 2376, 2002 Leg., Reg. Sess. (Wash. 2002) (enacted). “Both the United States Coast Guard (USCG) and the Army Corps of Engineers (Corps) have federal authority to address derelict and abandoned vessels; however, that authority is often constrained. The USCG is charged with addressing vessels that pose a substantial threat to the environment or navigation channels. These problems are usually mitigated without removing and disposing of the vessel, and the USCG does not have the authority to remove and dispose of a vessel once the immediate threat has been removed. Likewise, the Corps has the authority to remove floating or sunken debris, but only if that debris is a hazard to navigation. This authority is usually only used in federal, not state waters.”

<sup>38</sup> See 46 USC §724 (2006) - applies to vessels regularly employed in the business of salvaging off the Florida coast.

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## APPENDIX – 2006 Statutes

### *A. Florida Statute § 823.11*

- (1) "Derelict vessel" means any vessel, as defined in s. 327.02, that is left, stored, or abandoned:
- (a) In a wrecked, junked, or substantially dismantled condition upon any public waters of this state.
  - (b) At any port in this state without the consent of the agency having jurisdiction thereof.
  - (c) Docked or grounded at or beached upon the property of another without the consent of the owner of the property.
- (2) It is unlawful for any person, firm, or corporation to store, leave, or abandon any derelict vessel as defined in this section in this state.
- (3)(a) The Fish and Wildlife Conservation Commission and its officers and all law enforcement officers as specified in s. 327.70 are authorized and empowered to remove or cause to be removed any abandoned or derelict vessel from public waters in any instance when the same obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment. Removal of vessels pursuant to this section may be funded by grants provided in ss. 206.606 and 376.15. The Fish and Wildlife Conservation Commission is directed to implement a plan for the procurement of any available federal disaster funds and to use such funds for the removal of derelict vessels. All costs incurred by the commission or other law enforcement agency in the removal of any abandoned or derelict vessel as set out above shall be recoverable against the owner thereof. The Department of Legal Affairs shall represent the commission in such actions. As provided in s. 705.103(4), any person who neglects or refuses to pay such amount is not entitled to be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until the costs have been paid.
- (b) When a derelict vessel is docked or grounded at or beached upon private property without the consent of the owner of the property, the owner of the property may remove the vessel at the vessel owner's expense 60 days after compliance with the notice requirements specified in s. 328.17(5). The private property owner may not hinder reasonable efforts by the vessel owner or agent to remove the vessel. Any notice given pursuant to this paragraph shall be presumed delivered when it is deposited with the United States Postal Service, certified, and properly addressed with prepaid postage.
- (4) Any person, firm, or corporation violating this act commits a misdemeanor of the first degree and shall be punished as provided by law. Conviction under this section shall not bar the assessment and collection of the civil penalty provided in s. 376.16 for violation of s. 376.15. The court having jurisdiction over the criminal offense, notwithstanding any jurisdictional limitations on the amount in controversy, may order the imposition of such civil penalty in addition to any sentence imposed for the first criminal offense.

***B. Florida Statute § 705.101(3)***

(3) "Abandoned property" means all tangible personal property that does not have an identifiable owner and that has been disposed on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels as defined in s. 823.11(1).

***C. Florida Statute § 376.15***

(1) It is unlawful for any person, firm, or corporation to store, leave, or abandon any derelict vessel as defined in s. 823.11(1) in this state.

(2)(a) The Fish and Wildlife Conservation Commission and its officers and all law enforcement officers as specified in s. 327.70 are authorized and empowered to remove any derelict vessel as defined in s. 823.11(1) from public waters. All costs incurred by the commission or other law enforcement agency in the removal of any abandoned or derelict vessel shall be recoverable against the owner of the vessel. The Department of Legal Affairs shall represent the commission in such actions.

(b) The commission may establish a program to provide grants to local governments for the removal of derelict vessels from the public waters of the state. The program shall be funded from the Florida Coastal Protection Trust Fund. Notwithstanding the provisions in s. 216.181(11), funds available for grants may only be authorized by appropriations acts of the Legislature.

(c) The commission shall adopt by rule procedures for submitting a grant application and criteria for allocating available funds. Such criteria shall include, but not be limited to, the following:

1. The number of derelict vessels within the jurisdiction of the applicant.
2. The threat posed by such vessels to public health or safety, the environment, navigation, or the aesthetic condition of the general vicinity.
3. The degree of commitment of the local government to maintain waters free of abandoned and derelict vessels and to seek legal action against those who abandon vessels in the waters of the state.

(d) This section shall constitute the authority for such removal but is not intended to be in contravention of any applicable federal act.

***D. Florida Statute § 327.70***

(1) This chapter and chapter 328 shall be enforced by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers, the sheriffs of the various counties and their deputies, and any other authorized law enforcement officer, all of whom may order the removal of vessels deemed to be an interference or a hazard to public safety, enforce the provisions of this chapter and chapter 328, or cause any inspections to be made of all vessels in accordance with this chapter and chapter 328.

(2) Such officers shall have the power and duty to issue such orders and to make such investigations, reports, and arrests in connection with any violation of the provisions of

this chapter and chapter 328 as are necessary to effectuate the intent and purpose of this chapter and chapter 328.

(3) The Fish and Wildlife Conservation Commission or any other law enforcement agency may make any investigation necessary to secure information required to carry out and enforce the provisions of this chapter and chapter 328.

***E. Florida Statute § 705.103***

(1) Whenever a law enforcement officer ascertains that an article of lost or abandoned property is present on public property and is of such nature that it can be easily removed, the officer shall take such article into custody and shall make a reasonable attempt to ascertain the rightful owner or lienholder pursuant to the provisions of this section.

(2) Whenever a law enforcement officer ascertains that an article of lost or abandoned property 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:

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

Such notice shall be not less than 8 inches by 10 inches and shall be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the law enforcement officer shall make a reasonable effort to ascertain the name and address of the owner. If such is reasonably available to the officer, she or he shall mail a copy of such notice to the owner on or before the date of posting. If the property is a motor vehicle as defined in s. 320.01(1) or a vessel as defined in s. 327.02, the law enforcement agency shall contact the Department of Highway Safety and Motor Vehicles in order to determine the name and address of the owner and any person who has filed a lien on the vehicle or vessel as provided in s. 319.27(2) or (3) or s. 328.15(1). On receipt of this information, the law enforcement agency shall mail a copy of the notice by certified mail, return receipt requested, to the owner and to the lienholder, if any. If, at the end of 5 days after posting the notice and mailing such notice, if required, the owner or any person interested in the lost or abandoned article or articles described has not removed the article or articles from public property or shown reasonable cause for failure to do so, the following shall apply:

(a) For abandoned property, the law enforcement agency may retain any or all of the property for its own use or for use by the state or unit of local government, trade such property to another unit of local government or state agency, donate the property to a charitable organization, sell the property, or notify the appropriate refuse removal service.

(b) For lost property, the officer shall take custody and the agency shall retain custody of the property for 90 days. The agency shall publish notice of the intended disposition of the property, as provided in this section, during the first 45 days of this time period.

1. If the agency elects to retain the property for use by the unit of government, donate the property to a charitable organization, surrender such property to the finder, sell the property, or trade the property to another unit of local government or state agency, notice of such election shall be given by an advertisement published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the property was found if the value of the property is more than \$100. If the value of the property is \$100 or less, notice shall be given by posting a description of the property at the law enforcement agency where the property was turned in. The notice must be posted for not less than 2 consecutive weeks in a public place designated by the law enforcement agency. The notice must describe the property in a manner reasonably adequate to permit the rightful owner of the property to claim it.

2. If the agency elects to sell the property, it must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given by an advertisement of the sale published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens. The sale must be held at the nearest suitable place to that where the lost or abandoned property is held or stored. The advertisement must include a description of the goods and the time and place of the sale. The sale may take place no earlier than 10 days after the final publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted at the door of the courthouse and at three other public places in the county at least 10 days prior to sale. Notice of the agency's intended disposition shall describe the property in a manner reasonably adequate to permit the rightful owner of the property to identify it.

(3) If the property is sold at public sale pursuant to subparagraph (2)(b)2., the agency shall deduct from the proceeds the costs of transportation, storage, and publication of notice, and any balance of proceeds shall be deposited into an interest-bearing account not later than 30 days after the date of the sale and held there for 1 year. The agency shall provide a bill of sale clearly stating that the sale is subject to any and all liens. The rightful owner of the property may claim the balance of the proceeds within 1 year from the date of the above stated deposit by making application to the agency. If no rightful owner comes forward with a claim to the property within the designated year, the balance of the proceeds shall be deposited into the State School Fund.

(4) The owner of any abandoned or lost property who, after notice as provided in this section, does not remove such property within the specified period shall be liable to the law enforcement agency for all costs of removal, storage, and destruction of such property, less any salvage value obtained by disposal of the property. Upon final disposition of the property, the law enforcement officer shall notify the owner, if known, of the amount owed. In the case of an abandoned vessel or motor vehicle, any person who

neglects or refuses to pay such amount is not entitled to be issued a certificate of registration for such vessel or motor vehicle, or any other vessel or motor vehicle, until such costs have been paid. The law enforcement officer shall supply the Department of Highway Safety and Motor Vehicles with a list of persons whose vessel registration privileges or whose motor vehicle privileges have been revoked under this subsection. Neither the department nor any other person acting as agent thereof shall issue a certificate of registration to a person whose vessel or motor vehicle registration privileges have been revoked, as provided by this subsection, until such costs have been paid.

(5) Whoever opposes, obstructs, or resists any law enforcement officer or any person authorized by the law enforcement officer in the discharge of her or his duties as provided in this section upon conviction is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Any law enforcement officer or any person authorized by the law enforcement officer is immune from prosecution, civil or criminal, for reasonable, good faith trespass upon real property while in the discharge of duties imposed by this section.

(7) The rightful owner shall be liable for the law enforcement agency's costs for transportation and storage of lost or abandoned property and the agency's cost for publication of notice of disposition of lost property. If the rightful owner does not pay such costs within 30 days of making claim to the property, title to the property shall vest in the law enforcement agency.

#### ***F. Florida Statute § 705.104***

(1) Title to lost or abandoned property is hereby vested in the finder upon the expiration of the 90-day custodial time period specified in s. 705.103(2)(b), provided the notice requirements of s. 705.103 have been met, unless the rightful owner or a lienholder claims the property within that time.

(2) Employees of any state, county, or municipal agency shall be deemed agents of such governmental entity, and lost or abandoned property found by them during the course of their official duties shall be turned in to the proper person or department designated to receive such property by the governmental entity. Such property shall be subject to the provisions of this chapter, after which, if unclaimed by the rightful owner, the title to such property shall be vested in the state, county, or municipality and not in the employee.

(3) Employees of public transportation systems shall be deemed agents of such transportation systems, and lost or abandoned property found on public conveyances, in depots, or in garages of a transportation system shall be turned in to the proper person or department designated to receive such property by the transportation systems. Such property shall be subject to the provisions of this section, after which, if unclaimed by the rightful owner, the title to such property shall be vested in the transportation system and not in the employee.

***G. Florida Statute § 403.413***

(1) **SHORT TITLE.**--This section may be cited as the "Florida Litter Law."

(2) **DEFINITIONS.**--As used in this section:

(a) "Litter" means any garbage; rubbish; trash; refuse; can; bottle; box; container; paper; tobacco product; tire; appliance; mechanical equipment or part; building or construction material; tool; machinery; wood; motor vehicle or motor vehicle part; vessel; aircraft; farm machinery or equipment; sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility; or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

(b) "Person" means any individual, firm, sole proprietorship, partnership, corporation, or unincorporated association.

(c) "Law enforcement officer" means any officer of the Florida Highway Patrol, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the department, or the Fish and Wildlife Conservation Commission. In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipal park or recreation department designated by the department head as a litter enforcement officer.

(d) "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly but does not include a parachute or any other device used primarily as safety equipment.

(e) "Commercial purpose" means for the purpose of economic gain.

(f) "Commercial vehicle" means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for a commercial purpose.

(g) "Dump" means to dump, throw, discard, place, deposit, or dispose of.

(h) "Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor, or semitrailer combination or any other vehicle that is powered by a motor.

(i) "Vessel" means a boat, barge, or airboat or any other vehicle used for transportation on water.

(3) **RESPONSIBILITY OF LOCAL GOVERNING BODY OF A COUNTY OR MUNICIPALITY.**--The local governing body of a county or a municipality shall determine the training and qualifications of any employee of the county or municipality or any employee of the county or municipal park or recreation department designated to enforce the provisions of this section if the designated employee is not a regular law enforcement officer.

(4) **DUMPING LITTER PROHIBITED.**--Unless otherwise authorized by law or permit, it is unlawful for any person to dump litter in any manner or amount:

(a) In or on any public highway, road, street, alley, or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in containers or areas lawfully provided therefor. When any litter is thrown or discarded from a motor vehicle, the operator or owner of the motor vehicle, or both, shall be deemed in violation of this section;

(b) In or on any freshwater lake, river, canal, or stream or tidal or coastal water of the state, including canals. When any litter is thrown or discarded from a boat, the operator or owner of the boat, or both, shall be deemed in violation of this section; or

(c) In or on any private property, unless prior consent of the owner has been given and unless such litter will not cause a public nuisance or be in violation of any other state or local law, rule, or regulation.

(5) **DUMPING RAW HUMAN WASTE PROHIBITED.**--Unless otherwise authorized by law or permit, it is unlawful for any person to dump raw human waste from any train, aircraft, motor vehicle, or vessel upon the public or private lands or waters of the state.

(6) **PENALTIES; ENFORCEMENT.**--

(a) Any person who dumps litter in violation of subsection (4) in an amount not exceeding 15 pounds in weight or 27 cubic feet in volume and not for commercial purposes is guilty of a noncriminal infraction, punishable by a civil penalty of \$100, from which \$50 shall be deposited into the Solid Waste Management Trust Fund to be used for the solid waste management grant program pursuant to s. 403.7095. In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

(b) Any person who dumps litter in violation of subsection (4) in an amount exceeding 15 pounds in weight or 27 cubic feet in volume, but not exceeding 500 pounds in weight or 100 cubic feet in volume and not for commercial purposes is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the court shall require the violator to pick up litter or perform other community service commensurate with the offense committed. Further, if the violation involves the use of a motor vehicle, upon a finding of guilt, whether or not adjudication is withheld or whether imposition of sentence is withheld, deferred, or suspended, the court shall forward a record of the finding to the Department of Highway Safety and Motor Vehicles, which shall record a penalty of three points on the violator's driver's license pursuant to the point system established by s. 322.27.

(c) Any person who dumps litter in violation of subsection (4) in an amount exceeding 500 pounds in weight or 100 cubic feet in volume or in any quantity for commercial purposes, or dumps litter which is a hazardous waste as defined in s. 403.703, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the court may order the violator to:

1. Remove or render harmless the litter that he or she dumped in violation of this section;
2. Repair or restore property damaged by, or pay damages for any damage arising out of, his or her dumping litter in violation of this section; or
3. Perform public service relating to the removal of litter dumped in violation of this section or to the restoration of an area polluted by litter dumped in violation of this section.

(d) A court may enjoin a violation of this section.

(e) A motor vehicle, vessel, aircraft, container, crane, winch, or machine used to dump litter that exceeds 500 pounds in weight or 100 cubic feet in volume is declared

contraband and is subject to forfeiture in the same manner as provided in ss. 932.703 and 932.704.

(f) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or \$200, whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees. A final judgment rendered in a criminal proceeding against a defendant under this section estops the defendant from asserting any issue in a subsequent civil action under this paragraph which he or she would be estopped from asserting if such judgment were rendered in the civil action unless the criminal judgment was based upon a plea of no contest or nolo contendere.

(g) For the purposes of this section, if a person dumps litter or raw human waste from a commercial vehicle, that person is presumed to have dumped the litter or raw human waste for commercial purposes.

(h) In the criminal trial of a person charged with violating this section, the state does not have the burden of proving that the person did not have the right or authority to dump the litter or raw human waste or that litter or raw human waste dumped on private property causes a public nuisance. The defendant has the burden of proving that he or she had authority to dump the litter or raw human waste and that the litter or raw human waste dumped does not cause a public nuisance.

(i) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(j) Any person who violates the provisions of subsection (5) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; provided, however, that any person who dumps more than 500 pounds or more than 100 cubic feet of raw human waste, or who dumps any quantity of such waste for commercial purposes, is guilty of a felony of the third degree, punishable as provided in paragraph (c).

**(7) ENFORCEMENT BY CERTAIN COUNTY OR MUNICIPAL EMPLOYEES.--** Employees of counties or municipalities whose duty it is to ensure code compliance or to enforce codes and ordinances may be designated by the governing body of the county or the municipality to enforce the provisions of this section. Designation of such employees shall not provide the employees with the authority to bear arms or to make arrests.

**(8) ENFORCEMENT OF OTHER REGULATIONS.--**This section does not limit the authority of any state or local agency to enforce other laws, rules, or ordinances relating to litter or solid waste management.