

1 SB50
2 187596-3
3 By Senator Pittman
4 RFD: Governmental Affairs
5 First Read: 09-JAN-18
6 PFD: 01/05/2018

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8 SYNOPSIS: Existing law does not provide for the
9 disposal of abandoned or derelict vessels.

10 This bill would provide that a person or law
11 enforcement officer may take possession of an
12 abandoned or derelict vessel under certain
13 circumstances and would provide procedures for the
14 return of the vessel to the owner or lienholder of
15 record.

16 This bill would provide procedures for the
17 sale or disposal of an abandoned or derelict
18 vessel.

19 This bill would create the Alabama Abandoned
20 and Derelict Vessel Fund for the purpose of paying
21 for the cost of implementing and administering this
22 act.

23 This bill would make it unlawful for the
24 owner of a derelict vessel, as defined, to refuse
25 or fail to remove the derelict vessel from the
26 waters of this state within 24 hours after a verbal
27 or written request from a law enforcement officer.

1 This bill would provide the Alabama State
2 Law Enforcement Agency with the authority to adopt
3 rules for the implementation and administration of
4 this act.

5 Amendment 621 of the Constitution of
6 Alabama of 1901, now appearing as Section 111.05 of
7 the Official Recompilation of the Constitution of
8 Alabama of 1901, as amended, prohibits a general
9 law whose purpose or effect would be to require a
10 new or increased expenditure of local funds from
11 becoming effective with regard to a local
12 governmental entity without enactment by a 2/3 vote
13 unless: it comes within one of a number of
14 specified exceptions; it is approved by the
15 affected entity; or the Legislature appropriates
16 funds, or provides a local source of revenue, to
17 the entity for the purpose.

18 The purpose or effect of this bill would be
19 to require a new or increased expenditure of local
20 funds within the meaning of the amendment. However,
21 the bill does not require approval of a local
22 governmental entity or enactment by a 2/3 vote to
23 become effective because it comes within one of the
24 specified exceptions contained in the amendment.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

2
3 Relating to vessels; to provide for the disposal of
4 abandoned or derelict vessels; to provide the circumstances
5 under which a person or law enforcement officer may take
6 possession of an abandoned or derelict vessel; to provide
7 procedures for the return of the vessel to the owner or
8 lienholder of record; to provide for the sale of an abandoned
9 vessel; to provide for the disposal of the proceeds of the
10 sale; to create the Alabama Abandoned and Derelict Vessel
11 Fund; to make it unlawful for the owner of a derelict vessel
12 to refuse or fail to remove the derelict vessel from the
13 waters of this state after a request from a law enforcement
14 officer; to provide the Alabama State Law Enforcement Agency
15 with rulemaking authority; and in connection therewith would
16 have as its purpose or effect the requirement of a new or
17 increased expenditure of local funds within the meaning of
18 Amendment 621 of the Constitution of Alabama of 1901, now
19 appearing as Section 111.05 of the Official Recompilation of
20 the Constitution of Alabama of 1901, as amended.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Definitions.

23 As used in this act, the following terms shall have
24 the following meanings:

25 (1) ABANDONED VESSEL. A vessel left unattended for
26 two or more weeks after a hurricane, tropical storm, or other
27 natural event resulting in a declaration of emergency by the

1 Governor or, in the absence of a hurricane, tropical storm, or
2 other natural event resulting in a declaration of emergency by
3 the Governor, any of the following:

4 a. A vessel left unattended that is moored,
5 anchored, or otherwise in the waters of the state or on public
6 property for a period of more than 72 hours.

7 b. A vessel not left on private property for repairs
8 that is moored, anchored, or otherwise on private property for
9 a period of more than 72 hours without the consent of the
10 owner or lessee of the property.

11 c. A vessel left on private property for repairs
12 that has not been reclaimed within 72 hours from the latter of
13 either the date the repairs were completed or the agreed-upon
14 redemption date.

15 (2) AGENCY. The Alabama State Law Enforcement
16 Agency.

17 (3) DERELICT VESSEL. A vessel in the waters of this
18 state that satisfies any of the following:

19 a. Is sunk, in danger of sinking, or is otherwise
20 taking on water without an effective means to dewater.

21 b. Is obstructing a waterway.

22 c. Is endangering life or property.

23 d. Has broken loose or is in danger of breaking
24 loose from its anchor.

25 e. Is listing due to water intrusion.

26 f. Does not have an effective means of propulsion
27 for safe navigation or is otherwise not seaworthy.

1 (4) LAW ENFORCEMENT OFFICER. An officer of a county,
2 municipality, or any state agency, department, or subdivision
3 thereof, who is certified by the Alabama Peace Officers'
4 Standards and Training Commission.

5 (5) VESSEL. Every description of watercraft, other
6 than a seaplane, capable of being used as a means of
7 transportation on the water.

8 (6) WATERS OF THIS STATE. Waters of this state as
9 defined in Section 33-5-3, Code of Alabama 1975.

10 Section 2. Removal.

11 (a) A law enforcement officer may request a service
12 to remove a vessel from public property under any of the
13 following circumstances:

14 (1) The vessel is determined by the officer to be
15 abandoned.

16 (2) The vessel is left unattended because the
17 operator of the vessel has been arrested.

18 (3) The vessel is determined by the officer to pose
19 a threat to public health or safety.

20 (4) The vessel is determined by the officer to be a
21 derelict vessel.

22 (b) An owner of private property may request a
23 service to remove an abandoned or derelict vessel from the
24 private property to a storage place.

25 (c) (1) A law enforcement officer who directs the
26 removal of a vessel in accordance with this act shall be
27 liable for gross negligence only.

1 (2) A person who removes or stores a vessel in
2 accordance with this act shall be liable for gross negligence
3 only.

4 Section 3. Duty.

5 (a) Except as provided in Section 5, a person who
6 removes a vessel pursuant to this act shall do all of the
7 following:

8 (1) Give written notice of the removal to the agency
9 within five calendar days. The notice shall include a complete
10 description of the vessel, the vessel identification number,
11 and any other information required by the agency.

12 (2) Perform a lien search on the vessel with the
13 Secretary of State.

14 (3) Give written notice of the removal of the vessel
15 to the owner and lienholders of record of all of the
16 following:

17 a. The location of the vessel.

18 b. The normal business hours of the facility, if
19 any, holding the vessel.

20 c. Any accrued charges or fees and the daily storage
21 rate.

22 d. The mailing address and contact telephone number
23 of the person in possession of the vessel.

24 e. The following language in no smaller than 10
25 point type: "If this vessel is not redeemed by the recorded
26 owner or lienholder of record within 30 calendar days from the
27 date of this notice, the vessel may be sold."

1 (4) If the identity of an owner or lienholder of
2 record cannot be ascertained, place an advertisement in a
3 newspaper of general circulation in the county in which the
4 vessel was located. The advertisement shall run in the
5 newspaper once a week for two consecutive weeks and shall
6 contain all of the information required in subdivision (3).

7 (b) The agency, within 10 calendar days of receiving
8 the notice required in subsection (a), shall provide the
9 person removing or storing the vessel with the identity and
10 address of the owner of the vessel.

11 (c) A person storing a vessel pursuant to this
12 section shall notify the agency if the vessel is claimed by
13 the owner, determined to be stolen, or for any other reason
14 suggesting that the vessel should no longer be considered an
15 abandoned or derelict vessel.

16 (d) A person who does not provide the notice and
17 information required by this act shall forfeit all claims and
18 liens for the vessel's storage prior to the time both the
19 report and notice have been sent. However, failure to report
20 or send notice does not result in a forfeiture of claims and
21 liens for the removal of a vessel.

22 Section 4. Liens and Fees, Sale.

23 Except for vessels subject to Section 5:

24 (1) A person who removes, stores, or sells a vessel
25 in accordance with this act shall have a lien on the vessel
26 for all of the following:

1 a. The reasonable fees connected with the removal
2 and storage of the vessel.

3 b. The court costs and filing fees incurred in
4 obtaining a court order for the sale of the vessel.

5 c. The notification and advertisement costs
6 incurred.

7 d. The costs incurred in selling the vessel.

8 (2) An owner or lienholder of record may redeem an
9 abandoned or derelict vessel by providing reasonable proof of
10 ownership and satisfying any liens upon the vessel created
11 pursuant to this act.

12 (3) An abandoned or derelict vessel may not be sold
13 unless the person in possession of the vessel files a petition
14 to sell the vessel in any court of competent jurisdiction in
15 the county in which the vessel was abandoned and the court
16 authorizes the sale of the vessel.

17 (4) A court shall authorize the sale of a vessel
18 upon a finding that the vessel was abandoned or derelict and
19 not redeemed by the owner or lienholder of record within 30
20 days after notice was given pursuant to subsection (a) of
21 Section 3.

22 (5) The sale of an abandoned or derelict vessel
23 shall be at a public auction. The auction shall take place in
24 the county in which the vessel was located when the person
25 removing the vessel took possession.

26 (6) Prior to a sale under this section, notice of
27 the sale shall be given by publication once a week for two

1 successive weeks in a newspaper of general circulation in the
2 county in which the sale is to be held. Notice shall be in a
3 manner prescribed by the agency and shall include all of the
4 following:

5 a. The date, time, and place of the sale.

6 b. A description of the abandoned or derelict
7 vessel, including the year, make, and model.

8 c. The name and address of the current owner and
9 lienholder of record, if any, as reflected on the current
10 title or registration record.

11 d. The contact information for the person filing the
12 notice.

13 (7) A person selling an abandoned or derelict vessel
14 pursuant to this section shall give notice of the public
15 auction to the agency at least 10 calendar days prior to the
16 date of the auction.

17 (8) The agency, within five calendar days of receipt
18 of the notice of public auction, shall send a vessel interest
19 termination notice to the current owner and lienholder of
20 record, if any, of the abandoned or derelict vessel, as
21 disclosed on the notice of public auction. The vessel interest
22 termination notice shall advise the owner and lienholder of
23 record, if any, of all of the following:

24 a. The owner or lienholder's interest in the vessel,
25 upon its sale, will be terminated pursuant to this act.

1 b. Any personal property and items contained in the
2 vessel will be disposed of in a manner determined by the
3 person conducting the sale.

4 c. The owner or lienholder of record may redeem the
5 vessel prior to the sale by providing reasonable proof of
6 ownership and satisfying any liens upon the vessel created
7 pursuant to this act.

8 d. All of the information provided in the notice of
9 public auction.

10 e. The owner or other interested party's right to
11 appeal and contest the proposed sale of the vessel as provided
12 in Section 7.

13 (9) The vessel shall be sold to the highest bidder
14 subject to any reserve price established by the agency.

15 (10)a. Except for any lien created pursuant to this
16 act, the ownership rights of the owner and lienholders of
17 record shall terminate upon the sale of an abandoned or
18 derelict vessel.

19 b. A person who sells a vessel under this section
20 shall provide notice that the vessel has been sold and a copy
21 of the court order authorizing the sale to the agency. The
22 agency shall issue to the purchaser of the vessel a bill of
23 sale for the abandoned vessel, free and clear of all liens,
24 security interests, and encumbrances, in a form as prescribed
25 by the agency.

26 c. The purchaser of the vessel shall register the
27 vessel with the agency as provided by law.

1 d. Each person who sells a vessel pursuant to this
2 section shall maintain all of the following for two years from
3 the date of the sale:

4 1. Copies of the notices sent pursuant to Section 3
5 to the previous vessel owner and lienholder of record.

6 2. Any other records as required by the agency.

7 Section 5. Disposal of Certain Abandoned and
8 Derelict Vessels.

9 (a) (1) The agency may, without a court order, sell
10 by negotiation, dispose of as junk, donate, or destroy an
11 abandoned or derelict vessel that is not redeemed within 30
12 days if the vessel, as determined by an independent appraiser,
13 is worth less than the cost of selling the vessel. For
14 purposes of this section, the cost of selling the vessel means
15 the total estimated cost, as determined by the agency, of the
16 vessel's seizure, removal, storage, advertisement, appraisal,
17 auction, and court costs.

18 (2) The appraiser may be a boat seller or a licensed
19 marine surveyor and must have at least one year of experience
20 in the sale, purchase, or appraisal of vessels.

21 (b) Prior to the sale, disposal, donation, or
22 destruction of the vessel, the agency shall advertise the
23 vessel once in a public advertisement in a newspaper of
24 general circulation in the county in which the vessel was
25 located.

26 (c) Prior to the sale, disposal, donation, or
27 destruction of the vessel, the owner may redeem the vessel by

1 paying all costs incurred in the seizure, removal, storage,
2 appraisal, and advertisement of the vessel.

3 Section 6. Proceeds of the Sale.

4 The proceeds of the sale of an abandoned or derelict
5 vessel shall be distributed by the agency as follows:

6 (1) The reasonable fees and costs incurred in the
7 seizure and sale of the vessel, including but not limited to
8 removal and storage costs, court costs and filing fees, and
9 advertisement and notification costs.

10 (2) Any outstanding security interest or debt
11 attached to the vessel.

12 (3) The remaining balance, if any, shall be
13 deposited into the Alabama Abandoned and Derelict Vessel Fund
14 to be used by the agency for purposes of implementing and
15 administering this act.

16 Section 7. Right to Contest Sale.

17 (a) The current owners, registrants, secured
18 parties, and lienholders of record of a vessel may contest the
19 sale of a vessel by filing a notice of appeal with the court
20 that ordered the sale within two years of the sale of the
21 vessel.

22 (b) The court shall conduct a hearing to determine
23 whether proper notice was provided pursuant to this act. The
24 vessel may not be sold pending the decision of the court.

25 (c) If the court determines that proper notice was
26 issued, the vessel may be sold.

1 (d) Notwithstanding any other provision in this act,
2 if the court determines that proper notice was not provided
3 pursuant to this act, the sale of the vessel shall be void and
4 the current owners, registrants, secured parties, and
5 lienholders of record shall retain their ownership, security
6 interests, liens, and interests in the vessel.

7 Section 8. Alabama Abandoned and Derelict Vessel
8 Fund.

9 (a) There is established a special fund within the
10 State Treasury to be known as the Alabama Abandoned and
11 Derelict Vessel Fund.

12 (b) The fund shall be placed under the management or
13 administration of the Secretary of the Alabama State Law
14 Enforcement Agency for payment of the cost of implementing and
15 administering this act, including but not limited to the cost
16 of the seizure, removal, transportation, preservation,
17 storage, advertisement, appraisal, and disposal of a derelict
18 vessel.

19 (c) The fund shall consist of all moneys collected
20 or received by the secretary pursuant to this act and all
21 grants, appropriations, gifts, donations, and other sources
22 for purposes of implementing and administering this act.

23 (d) The secretary shall have the authority to expend
24 moneys in the fund in accordance with this act.

25 Section 9. Unattended Vessel Check.

26 (a) A law enforcement officer may perform an
27 unattended vessel check on a vessel that has been left

1 unattended on public property. The unattended vessel check
2 shall consist of actions that are reasonably necessary to
3 determine that the unattended vessel does not contain an
4 injured or incapacitated person and to determine that the
5 unattended vessel does not pose a threat to public health or
6 safety.

7 (b) A law enforcement officer who performs an
8 unattended vessel check shall complete and attach to the
9 vessel an unattended vessel check card. Unattended vessel
10 check cards shall be in a form and attached to unattended
11 vessels in a manner as may be specified by rule of the agency.
12 Unattended vessel check cards shall be serially numbered and
13 shall be a distinctive color as determined by the agency.

14 Section 10. (a) It is unlawful for a person who is
15 the owner of a derelict vessel to refuse or fail to remove the
16 derelict vessel from the waters of this state within 24 hours
17 after a verbal or written request from a law enforcement
18 officer.

19 (b) (1) A violation of this section is a Class A
20 misdemeanor if the vessel is a Class 4 vessel as described in
21 Section 33-5-17, Code of Alabama 1975.

22 (2) A violation of this section is a Class B
23 misdemeanor if the vessel is a Class 3 vessel as described in
24 Section 33-5-17, Code of Alabama 1975.

25 (3) A violation of this section is a Class C
26 misdemeanor if the vessel is a Class 1 or Class 2 vessel as
27 described in Section 33-5-17, Code of Alabama 1975.

1 (c) In addition to all other penalties, the
2 sentencing official shall order the owner to pay for all of
3 the costs incurred in the enforcement of this section,
4 including the seizure, removal, transportation, preservation,
5 storage, and disposal expenses of the derelict vessel.

6 (d) Any fines collected pursuant to subsection (b)
7 and all moneys collected pursuant to subsection (c) shall be
8 distributed into the Alabama Abandoned and Derelict Vessel
9 Fund to be used by the Secretary of the Alabama State Law
10 Enforcement Agency in the implementation and administration of
11 this act.

12 Section 11. Rulemaking Authority.

13 The Alabama State Law Enforcement Agency may adopt
14 rules for the implementation and administration of this act.

15 Section 12. Although this bill would have as its
16 purpose or effect the requirement of a new or increased
17 expenditure of local funds, the bill is excluded from further
18 requirements and application under Amendment 621, now
19 appearing as Section 111.05 of the Official Recompilation of
20 the Constitution of Alabama of 1901, as amended, because the
21 bill defines a new crime or amends the definition of an
22 existing crime.

23 Section 13. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.