

1 SB391
2 128992-2
3 By Senator Pittman
4 RFD: *Commerce, Transportation, and Utilities*
5 First Read: 14-APR-11

8 SYNOPSIS: This bill would make it unlawful for a
9 person to leave a derelict vessel in the waters of
10 this state in the counties bordering on the Gulf of
11 Mexico under certain conditions.

12 This bill would provide penalties and would
13 provide procedures for exercising authority over
14 and selling at public auction derelict vessels
15 under certain conditions.

16 Amendment 621 of the Constitution of Alabama
17 of 1901, now appearing as Section 111.05 of the
18 Official Recompilation of the Constitution of
19 Alabama of 1901, as amended, prohibits a general
20 law whose purpose or effect would be to require a
21 new or increased expenditure of local funds from
22 becoming effective with regard to a local
23 governmental entity without enactment by a 2/3 vote
24 unless: it comes within one of a number of
25 specified exceptions; it is approved by the
26 affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to
2 the entity for the purpose.

3 The purpose or effect of this bill would be
4 to require a new or increased expenditure of local
5 funds within the meaning of the amendment. However,
6 the bill does not require approval of a local
7 governmental entity or enactment by a 2/3 vote to
8 become effective because it comes within one of the
9 specified exceptions contained in the amendment.

10
11 A BILL

12 TO BE ENTITLED

13 AN ACT

14
15 Relating to vessels, to make it unlawful for a
16 person to leave a derelict vessel in the waters of this state
17 in the counties bordering on the Gulf of Mexico under certain
18 conditions; to provide penalties; to provide procedures for
19 exercising authority over and selling at public auction
20 derelict vessels under certain conditions; and in connection
21 therewith would have as its purpose or effect the requirement
22 of a new or increased expenditure of local funds within the
23 meaning of Amendment 621 of the Constitution of Alabama of
24 1901, now appearing as Section 111.05 of the Official
25 Recompilation of the Constitution of Alabama of 1901, as
26 amended.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall apply only to those counties bordering on the Gulf of Mexico.

Section 2. For the purposes of this act, the following terms shall have the following meanings:

(1) DEPARTMENT. The Department of Conservation and Natural Resources.

(2) DERELECT VESSEL. Any of the following:

a. A vessel in a wrecked, junked, or substantially dismantled condition.

b. A sunken vessel or a vessel in immediate danger of sinking, a vessel that is obstructing a waterway, or a vessel that is endangering life or property.

c. A vessel that has been moored or otherwise left in the waters of this state along with any of the following circumstances:

1. The certificate of registration or marine document of the vessel has expired and the registered owner no longer resides at the address listed in the vessel registration of the department, the marine document records of the United States Coast Guard, or other reasonably known public records.

2. The last registered owner of record disclaims ownership and the name and address of the current owner cannot be determined.

3. The vessel identification numbers and other means of identification have been obliterated or removed in a manner

1 that nullifies or precludes efforts to locate or identify the
2 owner.

3 4. The vessel registration records of the
4 department, the marine document records of the United States
5 Coast Guard, or other reasonably known public records contain
6 no record that the vessel was ever registered or documented
7 and the name and address of the current owner cannot be
8 determined.

9 d. A vessel that is an "unattended vessel," as
10 defined herein.

11 (3) UNATTENDED VESSEL. A vessel which has been
12 stickered by the department as "unattended" at least once a
13 week for a period of four weeks, and upon which no requested
14 response has been received by the Marine Police Division of
15 the department.

16 (4) VESSEL. A vessel as defined in Section 33-5-3 of
17 the Code of Alabama 1975, that is located on the waters of
18 this state.

19 (5) WATERS OF THIS STATE. Waters of this state as
20 defined in Section 33-5-3 of the Code of Alabama 1975.

21 Section 3. (a) (1) A person who owns a vessel that is
22 a derelict vessel who refuses or fails to remove the derelict
23 vessel from the waters of this state within 30 days after a
24 verbal or written request from an officer or agent of the
25 department shall be guilty of a Class C misdemeanor.

26 (2) In addition, the sentencing official shall order
27 the person to reimburse the department for all expenses

1 incurred by the department in the enforcement of this act,
2 including, but not limited to, seizure, removal,
3 transportation, preservation, storage, and disposal expenses
4 of the derelict vessel.

5 (b) This section may not be construed to contravene
6 any applicable federal laws or regulations.

7 Section 4. The department or a peace officer, for
8 the purposes of this act, may exercise authority over a
9 derelict vessel and may dispose of the vessel pursuant to this
10 act. The department may allow the vessel to remain at its
11 present location or may contract to have the vessel removed
12 and stored and the contract may allow the contractor to
13 receive the vessel as payment for services rendered on behalf
14 of the department if the vessel is not claimed and awarded to
15 any other person pursuant to this act.

16 Section 5. Upon the exercise of the authority
17 conferred herein over a derelict vessel, a written notice
18 shall immediately be posted on the vessel and a duplicate of
19 that notice sent by registered or certified mail, with a
20 return receipt, to the registered owner of the vessel at the
21 last known address of the registered owner and to all
22 lienholders shown on the records of the department, the United
23 States Coast Guard, or other reasonably known public records.
24 The notice shall contain a brief description of the vessel,
25 the location of the vessel, and the intended disposition of
26 the vessel if not repossessed within 20 days after the mailing
27 of the notice. A notice need not be sent to the purported

owner or any other person whose interest in the vessel is not recorded with the department, the United States Coast Guard, or other reasonably known public records.

Section 6. A person having an ownership or lienholder interest in a derelict vessel may take possession of the vessel before the date of the public auction upon payment to the department of all port or harbor use fees, towing, handling, storage, appraisal, advertising, and any other expenses incurred by the department in connection with the vessel. If the person taking possession of the vessel is not the registered owner, the person, before taking possession of the vessel, shall pay the expenses incurred by the department and post adequate security which may not exceed the appraised value of the vessel. The security, if not forfeited, shall be returned to the person one year after receipt.

Section 7. (a) If a vessel over which authority is exercised under Section 4 is not repossessed within 20 days after the mailing of the notice, the vessel shall be disposed of by public auction, through oral tenders or by sealed bids, after public advertisement has been made once in a newspaper of general circulation. The public auction may not be held less than five days after the publication of the advertisement. If no bid is received, the vessel may be sold by negotiation, disposed of as junk, donated to a governmental agency, or destroyed.

(b) Public auction is not required when the
appraised value of a derelict vessel, as determined by an

1 independent appraiser, is less than one hundred dollars
2 (\$100). The appraiser may be a boat seller or a licensed
3 marine surveyor and must have at least one year of experience
4 in the sale, purchase, or appraisal of vessels. Upon that
5 determination and after public advertisement has been made
6 once in a newspaper of general circulation, the department may
7 sell the vessel by negotiation, dispose of it as junk, donate
8 the vessel to a governmental agency, or destroy the derelict
9 vessel.

10 Section 8. The transfer of interest by sale under
11 Section 6 or 7 shall be evidenced by a bill of sale from the
12 department, considered a transfer by operation of law, and
13 governed by applicable provisions of law.

14 Section 9. Nothing in this act shall confer upon the
15 department, or its agents or employees, any duty or obligation
16 of care, protection, or safekeeping of any derelict vessel.

17 Section 10. The department, its agents, and
18 employees shall be immune from any liability for any actions
19 taken or enforced, or any rules adopted or enforced, to carry
20 out this act.

21 Section 11. Although this bill would have as its
22 purpose or effect the requirement of a new or increased
23 expenditure of local funds, the bill is excluded from further
24 requirements and application under Amendment 621, now
25 appearing as Section 111.05 of the Official Recompilation of
26 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an
2 existing crime.

3 Section 12. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.