

1989

## Session Law 89-128

Florida Senate & House of Representatives

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**S 989 GENERAL BILL by McPherson (Identical H 1159)**  
**~~Yacht & Ship Brokers' Act~~; authorizes Revenue Dept. to provide information re said act to Florida Land Sales, Condominiums, & Mobile Homes Div. of Business Regulation Dept.; provides for filing of new bond or letter of credit; provides additional places for escrow deposits; provides penalty for intentional failure to comply with escrow requirements; provides for powers & duties of division, etc. Amends 213.053, 326.002-.006. Effective Date: 10/01/89.**

04/05/89 SENATE Filed  
04/14/89 SENATE Introduced, referred to Regulated Industries; Finance, Taxation and Claims; Appropriations -SJ 142  
04/21/89 SENATE On Committee agenda—Regulated Industries, 04/25/89, 1:00 pm, Room-H-(428)  
04/25/89 SENATE Comm. Report: Favorable by Regulated Industries -SJ 211  
04/27/89 SENATE Now in Finance, Taxation and Claims -SJ 211  
04/28/89 SENATE Extension of time granted Committee Finance, Taxation and Claims  
05/11/89 SENATE Withdrawn from Finance, Taxation and Claims -SJ 353; Now in Appropriations  
05/18/89 SENATE Extension of time granted Committee Appropriations  
05/24/89 SENATE Withdrawn from Appropriations -SJ 414; Placed on Calendar  
05/25/89 SENATE Placed on Special Order Calendar -SJ 450; Passed; YEAS 37 NAYS 0 -SJ 468  
05/26/89 SENATE Immediately certified -SJ 476  
05/26/89 HOUSE In Messages; Received, placed on Calendar -HJ 693; Substituted for HB 1159 -HJ 693; Read second time; Read third time; Passed; YEAS 104 NAYS 0 -HJ 693  
05/26/89 Ordered enrolled -SJ 503  
06/12/89 Signed by Officers and presented to Governor  
06/26/89 Approved by Governor; Chapter No. 89-128

**NOTES:** Above bill history from Division of Legislative Information's **FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS**. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

REVISED: \_\_\_\_\_

BILL NO. SB 989

DATE: April 25, 1989

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. Skelton <u>STB</u>	Skelton <u>STB</u>	1. <u>RI</u>	<u>Favorable</u>
2. _____	_____	2. <u>FTC</u>	<u>Withdrawn</u>
3. _____	_____	3. <u>AP</u>	<u>Withdrawn</u>
4. _____	_____	4. _____	_____

SUBJECT: Yacht and Ship Broker's Act

BILL NO. AND SPONSOR: SB 989 by Senator McPherson

I. SUMMARY:

A. Present Situation:

The legislature enacted Chapter 326, Florida Statutes, The Yacht and Ship Brokers Act, in 1988. The act provides that the Department of Business Regulation is to administer the Chapter. The Chapter covers licensing of yacht brokers and salespersons; issuance of surety bonds and/or irrevocable letters of credit; actions against brokers or salespersons for fraud, deceit or willful negligence; maintenance of principal places of business in the state and the establishment of branch offices; escrow requirements and discipline. The Chapter does not specify what Division of the Department will have authority over yacht and ship brokers.

A yacht is defined as any vessel which his propelled by sail or machinery in the water which exceeds 32 feet in length, and which weighs less than 300 gross tons. A broker is defines as a person who, for in expectation of compensation: sells, offers or negotiates to buy; solicits or obtains listings of; or negotiates the purchase, sale or exchange of, yachts for other persons.

Section 213.053, Florida Statutes, relates to confidentiality and information sharing among various state agencies and the Department of Revenue. Section 213.053(7), Florida Statutes, specifically relates to Chapter 207, Florida Statutes, the Florida Special Fuel and Motor Fuel Use Tax of 1981, but states that nothing in the section prevents the Department of Revenue from providing information relative to Chapter 212 (Tax on Sales, Use and Other Transactions) to the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation.

B. Effect of Proposed Changes:

This bill designates the Division of Florida Land Sales, Condominiums and Mobile Homes as the division responsible for administering Chapter 326, F.S.

The Division may require the filing of a new bond or letter of credit if a final judgement is rendered against a yacht broker or salesperson for a violation of the Act which results in an action being taken against the broker's or salesperson's current bond or letter of credit. A broker or salesperson is required to immediately file a new bond or letter of credit upon the recovery in any action against the original bond or letter of credit. If a new bond or letter of credit is not filed within ten days, grounds exist for the Division to suspend or revoke the broker/salesperson's license.

The bill defines which types of financial institutions are acceptable for the placement of a yacht broker's escrowed funds. Savings and loan associations, banks, trust companies

or other financial institutions located in the state and with a net worth in excess of \$5 million may accept escrow funds for brokers.

A broker who intentionally fails to comply with trust account and escrow provisions of the chapter will be guilty of a felony of the third degree. Failure to place such funds in accounts as required by the chapter is prima facie evidence of an intentional violation.

This bill will expand the powers and duties of the Division pertaining to discipline: (a)The Division may investigation violations, investigate to aid enforcement of the chapter or orders issued thereunder, or investigate to adopt rules or forms; (b)the Division director (or a designated employee) may administer oaths, subpoena witnesses, compel attendance, take evidence and require production of documents and other materials; (c)apply to circuit court for orders compelling compliance; and (d)institute administrative enforcement proceedings and impose civil penalties up to \$10,000 per offense. Fees from such penalties must be deposited in the Division of Florida Land Sales, Condominiums and Mobile Home Trust Fund.

The Department of Revenue will be able to exchange information with the Division for the purposes outlined in the Yacht and Ship Brokers Act; i.e., to insure proper enforcement of tax payments.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Clients of Yacht and Ship brokers will have some assurance that the business entity with which they are dealing is sound and able to close the types of large financial deals involved in yacht and ship trading.

B. Government:

None.

III. COMMENTS:

This act was passed late in the 1988 legislative process and many technical provisions for implementing the act were not included in the original legislation. This bill provides the structure needed by the Division to enforce the act.

IV. AMENDMENTS:

None.

HOUSE OF REPRESENTATIVES  
COMMITTEE ON REGULATORY REFORM  
STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 1159

RELATING TO: Yacht and Ship Brokers Act

SPONSOR(S): Representative Lewis

EFFECTIVE DATE: October 1, 1989

COMPANION BILL(S): SB 989

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2)

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I. SUMMARY:

The bill would amend provisions of sections 213.053, and 326.002-.006, Florida Statutes, concerning regulating yacht and ship brokers in the State of Florida.

A. PRESENT SITUATION:

Currently, The Department of Business Regulation regulates the yacht and ship broker industry and is responsible for issuing and revoking licenses, promulgating rules, establishing and collecting fees, and investigating complaints. Presently, the department administers the disciplinary provisions of the act which gives it the authority to suspend or revoke licenses based on certain improper actions. However, should the department determine that a broker or salesman has violated the act, but a lesser penalty is appropriate, the department under the present act does not have the authority to impose civil penalties for those persons who are found to be in violation of the act. Additionally, under the existing act the department is unable to determine the persons selling yachts within the state with any degree of accuracy. Although this information is available from the Department of Revenue, in order for the Department of Revenue to provide the Department of Business Regulation with this information it must maintain its confidentiality pursuant to section 213.053(7), Florida Statutes.

B. EFFECT OF PROPOSED CHANGES:

The bill would revise the Yacht and Ship Brokers' Act to delete the use of the term "Department" and substitute the word "Division" (meaning the Division of Florida Land Sales, Condominiums and Mobile Homes) throughout the act and provide for the powers and duties of the Division.

House bill 1159 would authorize the Department of Revenue to provide information relating to the Yacht and Ship Brokers' Act 00235

to the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation.

The bill would authorize the Division to require the filing of a new bond or letter of credit upon a final judgement against a yacht broker or salesman for a violation of the act which results in any action being commenced on the original bond or letter of credit.

The bill would also provide for a third degree felony penalty for any broker who intentionally fails to comply with the requirements to deposit funds in a savings and loan association, bank, trust company or other financial institution which is located in the State of Florida and has assets in excess of \$5 million. Finally, all fees would be required to be deposited in the Division of Florida Land Sales, Condominiums, and Mobile Home Trust Fund.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

00236

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

None

III. LONG RANGE CONSEQUENCES:

None

IV. COMMENTS:

The bill is a result of the Department of Business Regulation's recommendations relative to improving regulation of the yacht and ship broker industry.

This bill is consistent with the policy statement relative to regulating occupations and businesses so that they protect the public health, safety, and economic welfare, with out having cost greater the benefits conferred.

V. FINAL ACTION:

HB 1159 was laid on the Table under Rule and substituted for SB 989, which passed the Legislature on May 26, 1989. SB 989 was signed by the Governor on June 26, 1989, chapter 89-128, Florida Statutes.

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

  
\_\_\_\_\_  
David Henderson

Staff Director:

\_\_\_\_\_  
Patrick L. "Booter" Imhof

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STORAGE NAME: h1159.rr

DATE: June 6, 1989

PAGE 4

SECOND COMMITTEE OF REFERENCE:

Prepared by:

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Staff Director:

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APPROPRIATIONS:

Prepared by:

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Staff Director:

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00238