

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2652

SPONSOR: Judiciary Committee and Senator Aronberg

SUBJECT: Vessels

DATE: April 21, 2003

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Greenbaum</u>	<u>Roberts</u>	<u>JU</u>	<u>Fav/CS</u>
2.	_____	_____	<u>TR</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill substantially amends provisions governing the non-judicial sale of vessels by marinas. Primarily, the bill eliminates the current requirement that a marina seeking to satisfy a lien against a vessel obtain two independent appraisals of the vessel prior to auction, and that the vessel be sold for at least 50 percent of the appraised value.

This bill substantially amends s. 328.17, Florida Statutes.

## II. Present Situation:

Current law provides for the non-judicial sale of vessels subject to a marina's liens for non-payment of marina storage fees and unpaid costs of removal for failure to maintain a vessel in a sanitary condition. In addition, the law provides for the non-judicial sale of vessels subject to a lien for unpaid costs of repairs and improvements.

A marina may sell a vessel at auction when the owner fails to pay storage or dockage fees due, or the marina is required to remove an unsanitary vessel and the towing and storage costs remain unpaid. The proceeds derived from such an auction are subject to prior recorded liens. All written leases for storage of undocumented vessels at a marina must contain provision authorizing a non-judicial sale if rent is not paid for 6 months. These leases are enforceable if:

- The lease contains the address of the vessel owner, and the marina notifies the owner via certified or registered mail at least 30 days prior to the sale;
- The marina notifies all recorded lienholders at least 30 days prior to the sale; and
- The marina publishes notice of the time and place of the sale in a newspaper of general circulation at least 10 days prior to the sale containing a description of the vessel, and a

conspicuous statement that the sale will be at public auction with sale to the highest bidder, provided the sale price is greater than 50 percent of the fair market value of the vessel. Fair market value must be determined by two independent appraisals by factory representatives of the vessel's manufacturer or licensed marine surveyors.

If the proceeds from the sale exceed the storage costs incurred by the marina, and the costs of the sale, the balance must be deposited with the clerk of court to be returned to the previous owner or the marina within one year, less any fee charged by the clerk.

The marina is required, at the time of the sale, to deliver to the purchaser a bill of sale and certified copies of all notice and appraisal documents. The purchaser must submit these documents and the bill of sale to the Department of Highway Safety and Motor Vehicles (DHSMV) with an application for transfer of vessel title.

A person who has lawful physical possession of an undocumented vessel for repairs, improvements, or other work, has an unrecorded lien against the vessel for all reasonable costs of the completed work and any reasonable towing and storage charges. If the costs remain unpaid 90 days after notice to the vessel owner that the work has been completed, the person in possession may sell the vessel at public auction. The sale of the vessel is valid and enforceable if:

- Notice of a non-judicial sale is sent by certified or registered letter with return receipt to all owners and lienholders at least 30 days prior to the sale, containing an itemized invoice of charges owed; and
- The notice is published in general circulation in the county of the repair business and the county of owner's last known address at least 10 days prior to sale of the vessel. The notice must include the time and place of the sale, a description of the vessel including the name of the owner, and a statement that the sale will be at public auction with sale to the highest bidder, provided the sale price is greater than 50 percent of the fair market value of the vessel. Fair market value must be determined by two independent appraisals by factory representatives of the vessel's manufacturer or licensed marine surveyors.

If proceeds from the sale exceed reasonable costs for the work done, costs of the sale, and reasonable towing and storage costs, the balance must be deposited with the clerk of court. The clerk is entitled to five percent of the proceeds. Within one year after sale, former owners or lienholders may recover net proceeds by filing a claim with the clerk against the county.

The seller is required to deliver a bill of sale and pertinent notice documents to the purchaser, who must submit them to DHSMV with an application for transfer of title.

### **III. Effect of Proposed Changes:**

This bill creates a non-judicial sales procedure for vessels modeled after lien enforcement provisions relating to self-service storage space. This bill provides that any vessel held for unpaid costs, storage charges, dockage fees, or failure to pay costs related to removal due to unsanitary condition, may be sold at a non-judicial sale.

A marina has a possessory lien for storage fees, dockage fees, repairs, improvements, work-related storage charges, expenses necessary for preservation of the vessel, and expenses reasonably incurred in the sale or other disposition of the vessel. The lien attaches on the date the vessel is brought to the marina or first occupies rental space. Upon default, the marina is required to notify any perfected lienholders.

The lien is satisfied if:

- The marina gives written notice to the owner by personal service, certified mail (presumed delivered when properly mailed), or by posting notice at the marina and on the vessel; and
- The notice includes: an itemized statement of the claim containing the amount due at the time of notice and the date that amount became due; a description of the vessel; a demand for payment; a conspicuous statement warning that the vessel will be advertised for sale and sold at a particular time and place; and a name, address, and phone number of the marina that the owner may contact to respond.

If any amount remains due 120 days after written notice, the marina may advertise the sale of the vessel. The advertisement:

- Must be published once a week for two weeks in a general circulation newspaper, or if no such newspaper exists, be posted conspicuously in three locations in the neighborhood surrounding the marina at least 10 days prior to the sale; and
- Must include: a general description of the vessel; the address of the marina and the name of the vessel owner; and the time, place, and manner of the sale to occur no sooner than 15 days after first publication of the advertisement.

The sale must be conducted in a "commercially reasonable manner," as that phrase is defined by ch. 679, F.S., the Uniform Commercial Code (UCC).

The owner may redeem the vessel by paying the amount required to satisfy the lien, and any reasonable expenses incurred prior to the sale. After redemption, the lienholder is not liable to the owner. A good faith purchaser takes the vessel unencumbered except for prior liens perfected under the UCC or otherwise provided by the law, even if the marina does not comply with the law relating to non-judicial sale of vessels.

The marina may apply the proceeds derived from the sale toward satisfaction of its lien, after another lien has priority. If the proceeds are subject to liens first in priority, the marina must notify the lienholders. Additionally, liens perfected under the UCC take precedence over the marina's lien. If any proceeds remain after prior liens are satisfied, the marina may satisfy its lien.

If any amount remains, the marina must deliver the balance to the previous owner. In the event priority liens exist or a balance remains after satisfaction of the marina's lien, the marina is required to hold the proceeds or balance for one year from the date of notification. If the proceeds are not claimed after one year, they are deemed abandoned and the marina has no further obligation with regard to payment.

At sale, the marina will deliver a bill of sale and all notice documents to the buyer, who shall present them to DHSMV when applying for transfer of title.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may reduce the costs marinas incur in handling abandoned vessels and vessels subject to liens for storage or repairs. The potential impact is indeterminate because it is impossible to determine the total costs Florida marinas incur under current law.

C. Government Sector Impact:

Non-judicial sales proceeds are not required to be deposited with county clerks, therefore, fees currently paid to clerks for this activity will no longer be required. Because the amount of proceeds deposited and fees collected is unavailable, the aggregate impact on clerks of court is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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