

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1403 CS

Nonjudicial Sale of Vessels

**SPONSOR(S):** Poppell

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 902

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Committee</u>	<u>11 Y, 0 N, w/CS</u>	<u>St. Fleur</u>	<u>Miller</u>
2) <u>Civil Justice Committee</u>	<u>4 Y, 0 N</u>	<u>Lammers</u>	<u>Billmeier</u>
3) <u>State Infrastructure Council</u>	<u>10 Y, 0 N</u>	<u>St. Fleur</u>	<u>Havlicak</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

HB 1403 w/CS makes revisions to the notification and procedural requirements involving the nonjudicial sale of vessels by marinas. It requires marinas with a possessory lien upon a vessel to undergo certain notification steps in order to satisfy that lien. Furthermore, it requires certain procedures for marinas to abide by in the notification process. The bill specifies the timeframe for sending a notice and shortens the time period vessel owners and lienholders are able to respond to a notice of a nonjudicial sale of a vessel.

The bill primarily benefits marinas with possessory liens on vessels and certain additional lienholders.

The bill appears to have no fiscal impact to state or local governments.

The bill takes effect July 1, 2005.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—This bill increases the notification procedure for marinas engaged in nonjudicial sales of vessels.

### B. EFFECT OF PROPOSED CHANGES:

#### Present Situation

Current law 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 nonjudicial sale.<sup>1</sup>

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.<sup>2</sup> The lien attaches on the date the vessel is brought to the marina or first occupies rental space there.<sup>3</sup> Upon default, the marina is required to notify any perfected lienholders.<sup>4</sup>

The marina may satisfy its possessory lien by complying with the following requirements:

- The marina gives written notice to the vessel's owner by personal service or certified mail (presumed delivered when properly deposited with the postal service<sup>5</sup>) to the owner's last known address and by posting notice at the marina and on the vessel.<sup>6</sup> This notice must be given 30 days prior to the sale.<sup>7</sup>

The notice must include:

- an itemized statement of the claim containing the amount due at the time of notice and the date that amount became due;<sup>8</sup>
  - a description of the vessel;<sup>9</sup>
  - a demand for payment;<sup>10</sup>
  - a conspicuous statement warning that the vessel will be advertised for sale and sold at a particular time and place;<sup>11</sup> and
  - a name, address, and phone number of the marina that the owner may contact to respond.<sup>12</sup>
- If the costs resulting in a lien remain due 120 days after written notice, the marina may advertise the sale of the vessel.<sup>13</sup> The advertisement must be published once a week for 2 weeks in a general circulation newspaper or, if no such newspaper exists, be posted conspicuously in at least 3 locations in the neighborhood surrounding the marina at least 10 days prior to the sale.<sup>14</sup>

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<sup>1</sup> Section 328.17, F.S.

<sup>2</sup> *Id.* at (4).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at (6).

<sup>6</sup> *Id.* at (5)(a).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at (5)(b)1.

<sup>9</sup> *Id.* at (5)(b)2.

<sup>10</sup> *Id.* at (5)(b)3.

<sup>11</sup> *Id.* at (5)(b)4.

<sup>12</sup> *Id.* at (5)(b)5.

<sup>13</sup> *Id.* at (7).

<sup>14</sup> *Id.* at (8), (8)(b).

- The advertisement must also 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, which is to occur no sooner than 15 days after first publication of the advertisement.<sup>15</sup>
- The sale must conform with the notice requirements of this section and be conducted in a "commercially reasonable manner," as that phrase is defined by the Uniform Commercial Code (UCC).<sup>16</sup>
- Prior to the sale, the owner may redeem the vessel by paying the amount required to satisfy the lien and any reasonable expenses incurred.<sup>17</sup> After redemption, the lienholder is not liable to the owner.<sup>18</sup> Unless otherwise provided by the law, a good faith purchaser takes the vessel unencumbered, even if the marina does not comply with the law relating to nonjudicial sale of vessels. However, the vessel is still subject to prior liens perfected under the UCC.

The marina may apply the proceeds derived from the sale toward satisfaction of its lien unless another lien has priority. If the proceeds are subject to liens first in priority, the marina must notify the lienholders. If any proceeds remain after prior liens are satisfied, the marina may satisfy its lien. If any proceeds remain thereafter, 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 1 year from the date of notification. If the proceeds are not claimed after 1 year, they are deemed abandoned and the marina has no further obligation with regard to payment.

The levy of an attachment on personal property binds the attached property except against pre-existing liens.<sup>19</sup> Successive liens levied against the same property, take precedence in the order in which they were made.<sup>20</sup> A bona fide purchaser who gives valuable consideration in exchange for property without knowledge of an outstanding interest in the property is protected against any claims of prior possessory interest in the property.<sup>21</sup>

### Effect of Proposed Changes

HB 1403 w/CS makes revisions to the notification requirements of s. 328.17, F.S., for the nonjudicial sale of vessels by marinas. It allows marinas to place possessory liens on vessels that are in a wrecked, junked, or substantially dismantled condition. The bill will also affect vessels that are docked, grounded, beached or abandoned at a marina without the consent of the marina owner. The owner of such vessels would be liable for expenses incurred for the removal and disposal of the vessel. It requires marinas with a possessory lien upon a vessel to undergo certain notification procedures in order to satisfy the lien.

The bill deletes a provision requiring marina owners to provide notice to lienholders of a vessel under the UCC in case of default. Instead, the bill requires that a marina owner give notice to the vessel owner and each person or entity that:

- Holds a security interest on the vessel as shown in the records of the Department of Highway Safety and Motor Vehicles (DHSMV).

<sup>15</sup> *Id.* at (8)(a)1.-3.

<sup>16</sup> *Id.* at (9).

<sup>17</sup> *Id.* at (10).

<sup>18</sup> *Id.*

<sup>19</sup> Section 76.14, F.S.

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

<sup>21</sup> 44 Fla. Jur. 2d Real Property Sales and Exchanges, s. 137, 155 (2005).

- Holds a preferred ship mortgage or has filed a claim of lien with the United States Coast Guard Vessel Documentation Center.
- Holds a security interest against the vessel under the UCC.
- Has filed a judgment lien certificate in order to perfect a lien against the vessel.

In instances where a vessel displays either a foreign country identification or a registration from a state other than Florida, a marina is required to conduct a reasonable lien search of the vessel registration records in the jurisdiction where the vessel is registered in order to determine if there is a lienholder entitled to notice. If the result of the search shows that there is no foreign or non-Florida lienholder, the vessel may be sold or removed and a purchaser of the vessel would not be prohibited from taking the title of the vessel.

A marina with a possessory lien on a vessel, in order to satisfy a lien, can obtain a copy of the title for the vessel and trailer from DHSMV or an agency where the vessel is registered; obtain an abstract from the United States Coast Guard for vessels that are documented; conduct a current UCC lien and Florida judgment lien certificate search; comply with the requirements for a lien search of vessel registration records for vessels either displaying foreign country identification or registration numbers from a state other than Florida.

A written notice has to be made at least 60 days prior to the sale of the vessel. In addition, the lienholder and vessel owner has 60 days to pay the costs giving rise to the lien, including late payment interest, after the written notice is given or the marina may sell the vessel, including its machinery, rigging, and other accessories. The marina owner also has the option of removing the vessel from the marina or the waters of the state at the vessel owner's expense. If the funds recovered from the sale of the vessel are inadequate to cover the expenses incurred by the marina, the amount in excess can be recovered from the owner of the vessel.

This bill allows the marina to provide the purchaser of a vessel through a nonjudicial sale a title subject only to prior liens under state and federal law. However, the owner or holder of any perfected lien who is entitled to possession of the vessel may defray the lien, reasonable expenses and late payment interest incurred in order to redeem and take possession of the vessel. Once payment is received, the marina must return the property to the owner or lienholder making the payment and the marina is released from any liability for the vessel.

#### C. SECTION DIRECTORY:

Section 1. Amends subsections (4), (5), (7), (10), (11) and (12) of s. 328.17, F.S., relating to the nonjudicial sale of vessels.

Section 2. Provides an effective date of July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill reduces the response time given to lienholders from 120 to 60 days, therefore creating a potential positive impact for lienholders seeking to satisfy their liens by nonjudicial sales. The amount of this impact is unknown.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

HB 1403 w/CS does not require the exercise of rule-making authority to implement its provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2005, the Committee on Transportation adopted a strike-everything amendment. The amendment added possessory lien provisions related to wrecked and abandoned vessels. The amendment allowed the nonjudicial sale of such vessels and provided for the recovery of excess costs from the owner related to vessel removal and disposal. The amendment also added lien search, notice, and nonjudicial sale provisions to address vessels from other states or foreign countries. The bill was then reported favorably as amended with a committee substitute.