



## 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. 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 can be satisfied by the marina by complying with the following requirements:

- 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. This notice must be given 30 days prior to the sale. 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 amounts due remain due 120 days after written notice, the marina may advertise the sale of the vessel. 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. 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 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 the Uniform Commercial Code.
- 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. 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 Uniform Commercial Code.

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

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<sup>1</sup> See s. 328.17, F.S.

after 1 year, they are deemed abandoned and the marina has no further obligation with regard to payment.

### **Effect of Proposed Changes**

HB 1403 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 from 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 a lien.

The bill deletes a provision requiring marina owners to provide notice to lienholders of a vessel under the Universal Commercial Code (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).
- 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.

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; the marina can obtain an abstract from the United States Coast Guard for vessels that are documented; A current UCC lien and Florida judgment lien certificate search has to be conducted by the marina; a lien search of the vessel registration records is conducted for vessels either displaying foreign country identification or registration numbers from a state other than Florida.

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 concludes there isn't a 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 written notice has to be made at least sixty days prior to the sale of the vessel. In addition, the lienholder and vessel owner has sixty days to pay the lien 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 has to return the property to the owner or lienholder making the payment and 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, Florida Statutes, relating to the nonjudicial sale of vessels.

Section 2. Provides the bill is effective 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 causing a potential positive impact for lienholders that 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 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 HB 1403. 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.