

CHAMBER ACTION

1 The Transportation Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to nonjudicial sale of vessels; amending
7 s. 328.17, F.S.; revising notice requirements of a marina
8 having a possessory lien on a vessel for unpaid costs,
9 charges, or fees prior to nonjudicial sale of the vessel;
10 reducing the time allowed to pay the fees, charges, and
11 costs giving rise to the lien prior to sale of the vessel;
12 revising requirements with respect to perfection of and
13 priority over prior or other liens; providing an effective
14 date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsections (4), (5), (7), (10), (11), and (12)
19 of section 328.17, Florida Statutes, are amended to read:

20 328.17 Nonjudicial sale of vessels.--

21 (4) A marina, as defined in s. 327.02(19), shall have:

22 (a) A possessory lien upon any vessel for storage fees,
23 dockage fees, repairs, improvements, or other work-related

HB 1403

2005
CS

24 storage charges, and for expenses necessary for preservation of
 25 the vessel or expenses reasonably incurred in the sale or other
 26 disposition of the vessel. The possessory lien shall attach as
 27 of the date the vessel is brought to the marina, or as of the
 28 date the vessel first occupies rental space at the marina
 29 facility. ~~However, in the event of default, the marina must give~~
 30 ~~notice to persons who hold perfected security interests against~~
 31 ~~the vessel under the Uniform Commercial Code in which the owner~~
 32 ~~is named as the debtor.~~

33 (b) A possessory lien upon any vessel in a wrecked,
 34 junked, or substantially dismantled condition, which has been
 35 left docked, grounded, beached, or otherwise abandoned at a
 36 marina without consent of the marina owner, for expenses
 37 reasonably incurred in the removal and disposal of the vessel.
 38 The possessory lien shall attach as of the date the vessel is
 39 discovered at the marina facility. If the funds recovered from
 40 the sale of such a vessel, or from the scrap or salvage value of
 41 such a vessel, are insufficient to cover the expenses reasonably
 42 incurred by the marina in removing and disposing of the vessel,
 43 all costs in excess of recovery shall be recoverable against the
 44 owner of the vessel.

45 (5) A marina's possessory lien may be satisfied as
 46 follows:

47 (a)1. The marina shall provide written notice to the
 48 vessel's owner, delivered in person or by certified mail to the
 49 owner's last known address. The notice shall also be ~~and~~
 50 conspicuously posted at the marina and on the vessel.

51 2. In addition to notice provided to the vessel owner
 52 under subparagraph 1., the marina shall provide written notice
 53 to each person or entity that:

54 a. Holds a security interest on the vessel as shown in the
 55 records of the Department of Highway Safety and Motor Vehicles
 56 with respect to state-titled vessels.

57 b. Holds a preferred ship mortgage or has filed a claim of
 58 lien with the United States Coast Guard Vessel Documentation
 59 Center.

60 c. Holds a security interest against the vessel under the
 61 Uniform Commercial Code.

62 d. Has perfected a lien against the subject vessel by
 63 filing a judgment lien certificate pursuant to s. 55.201-55.209.

64 3. When a vessel displays a foreign country identification
 65 or displays registration numbers from a state other than
 66 Florida, the marina shall conduct a reasonable lien search of
 67 the vessel registration records in the jurisdiction of registry
 68 to determine if there is a lienholder who is entitled to notice
 69 pursuant to subparagraph 2. Failure to discover a foreign
 70 national or non-Florida United States lienholder after a good
 71 faith effort to conduct such a lien search shall not prevent the
 72 sale or removal of a vessel from the marina to satisfy the
 73 marina's possessory lien or a purchaser, in good faith, from
 74 taking title of the vessel, pursuant to subsections (7) and
 75 (11).

76 4. The requirements of subparagraph 2. shall be satisfied
 77 if the marina:

78 | a. Obtains a copy of the title for the vessel and trailer,
 79 | if applicable, from the Department of Highway Safety and Motor
 80 | Vehicles or other agency where the vessel is registered;

81 | b. Obtains an abstract from the United States Coast Guard
 82 | for a vessel that is documented as defined in 46 U.S.C. s.
 83 | 301.01;

84 | c. Performs a current Uniform Commercial Code lien search;

85 | d. Performs a current Florida judgment lien certificate
 86 | search; and

87 | e. Complies with subparagraph 3. with regard to vessels
 88 | registered in a foreign country or in a state other than
 89 | Florida.

90 | 5. The written notice to the vessel owner and lienholders
 91 | required by this paragraph shall be made at least 60 days prior
 92 | to any sale of the vessel under this section ~~recorded lienholder~~
 93 | ~~of such vessel registered with this state as shown by the~~
 94 | ~~records of the Department of Highway Safety and Motor Vehicles,~~
 95 | ~~at least 30 days prior to the proposed sale.~~

96 | (b) The notice shall include:

97 | 1. An itemized statement of the marina's claim, showing
 98 | the sum due at the time of the notice and the date upon which
 99 | the sum became due.

100 | 2. A description of the vessel.

101 | 3. A demand for payment.

102 | 4. A conspicuous statement that, unless the claim is paid
 103 | within the time stated in the notice, the vessel will be
 104 | advertised for sale or other disposition and will be sold or
 105 | otherwise disposed of at a specified time and place.

HB 1403

2005
CS

106 5. The name, street address, and telephone number of the
107 marina that the owner may contact to respond to the notice.

108 (7) If the fees, ~~and costs,~~ and late payment interest that
109 give rise to such a lien are due and unpaid 60 ~~120~~ days after
110 the vessel owner and lienholder are ~~is~~ given written notice, the
111 marina may sell the vessel, including its machinery, rigging,
112 and accessories as provided for in subsection (8) or the marina
113 may, at its option, remove the vessel from the marina or from
114 the waters of the state at the owner's expense pursuant to
115 paragraph (4)(b).

116 (10) Before any sale or other disposition of the vessel
117 pursuant to this section, the owner or the lienholder may pay
118 the amount necessary to satisfy the lien and the reasonable
119 expenses and late payment interest incurred under this section
120 and thereby redeem and take possession of the vessel. Upon
121 receipt of such payment, the marina shall return the property to
122 the owner or lienholder making such payment and thereafter shall
123 have no liability to any person with respect to such vessel.

124 (11) Unless otherwise provided by law, a purchaser in good
125 faith of a vessel sold to satisfy a lien provided for in this
126 section takes the property free of any claims other than a prior
127 lien perfected under state or federal law ~~the Uniform Commercial~~
128 ~~Code, despite noncompliance by the marina with the requirements~~
129 ~~of this section.~~

130 (12) In the event of a sale under this section, the marina
131 may satisfy its lien from the proceeds of the sale, provided the
132 marina's lien has priority over all other liens on the vessel
133 ~~other than a prior lien perfected under the Uniform Commercial~~

HB 1403

2005
CS

134 ~~Code~~. The lien rights of secured lienholders ~~are~~ automatically
135 also attach ~~transferred~~ to the remaining proceeds of the sale.
136 The balance, if any, shall be held by the marina for delivery on
137 demand to the owner. A notice of any balance shall be delivered
138 by the marina to the owner in person or by certified mail to the
139 last known address of the owner. If the owner does not claim the
140 balance of the proceeds within 1 year after the date of sale,
141 the proceeds shall be deemed abandoned, and the marina shall
142 have no further obligation with regard to the payment of the
143 balance. In the event that the marina's lien does not have
144 priority over all other liens, the sale proceeds shall be held
145 for the benefit of the holders of those liens having priority. A
146 notice of the amount of the sale proceeds shall be delivered by
147 the marina to the owner or secured lienholder in person or by
148 certified mail to the owner's or the secured lienholder's last
149 known address. If the owner or the secured lienholder does not
150 claim the sale proceeds within 1 year after the date of sale,
151 the proceeds shall be deemed abandoned, and the owner or the
152 secured lienholder shall have no further obligation with regard
153 to the payment of the proceeds.

154 Section 2. This act shall take effect July 1, 2005.