

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.)

Prepared By: Transportation Committee

BILL: CS/SB 902

SPONSOR: Transportation Committee and Senator Campbell

SUBJECT: Nonjudicial Sale of Vessels

DATE: April 13, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Meyer	TR	Fav/CS
2.			JU	
3.				
4.				
5.				
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I. Summary:

This committee substitute (CS) revises requirements for noticing vessel owners and lienholders prior to the nonjudicial sale of a vessel to satisfy a marina operator's possessory lien placed on the vessel for unpaid slip rental and other costs. The CS also shortens the response time given to lienholders and owners from 120 days to 60 days.

This CS substantially amends section 328.17 of the Florida Statutes.

II. Present Situation:

Section 328.17, F.S., establishes the process directing the nonjudicial sale of vessels. Under current law, from the time a vessel occupies rental space at a marina, the marina has a possessory lien on the vessel for any repairs, fees, and improvements provided by the marina. Marinas may hold a vessel 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 marina must provide written notice of the lien to the vessel owner and any perfected lienholders under the Uniform Commercial Code in which the owner is named as the debtor and post notice in conspicuous locations on the vessel and at the marina. If any amounts remain due 120 days after written notice, the marina may advertise the sale of the vessel. The sale must be conducted in a "commercially reasonable manner," as 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.

III. Effect of Proposed Changes:

The CS makes revisions to the notification requirements of s. 328.17, F.S., for the nonjudicial sale of vessels by marinas. The CS provides a possessory lien upon any vessel in a wrecked, junked, or substantially dismantled condition, which has been left docked, grounded, beached, or otherwise abandoned at a marina without consent of the marina owner, for expenses reasonably incurred in the removal and disposal of the vessel. The CS requires marinas with a possessory lien upon a vessel to comply with certain notification requirements in order to satisfy a lien by nonjudicial sale. The CS deletes a provision requiring marina owners to provide notice to perfected lienholders of a vessel under the Uniform Commercial Code. Instead, the CS requires 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; or
- Is known by the marina owner to possess a federal maritime lien against the vessel or judgment lien certificate in order to perfect a lien against the vessel.

When 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 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.

The CS requires marinas to obtain ownership documentation for the vessel (and trailer if applicable) from the DHSMV or an abstract from the United States Coast Guard for documented vessels. Further, marinas must perform a current Uniform Commercial Code lien search and a Florida judgment lien search. A written notice has to be made by certified mail at least sixty days prior to the proposed sale of the vessel. 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 CS 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 despite noncompliance by the marina with the requirements of the section.

The CS takes effect July1, 2005.

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:

By reducing the response time given to lienholders and owners from 120 to 60 days, owners and lienholders other than the marina may experience an indeterminate, but negative economic impact.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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