

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases procedural requirements related to a nonjudicial sale of a vessel.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

A marina is a facility which provides secured slip docking or dry storage of vessels for which the vessel owner pays rent.¹ A vessel is any type of watercraft, barge, and air boat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.² An owner of a vessel typically pays the marina for docking, storage, repairs, and other services. An owner of a vessel that does not pay a marina is subject to having the vessel sold by the marina. Section 328.17, F.S., provides procedures for the nonjudicial sale of a vessel to pay for the costs and fees owed to a marina by the owner of a vessel.

Section 328.17, F.S., provides that a marina "shall have a possessory lien upon any vessel for storage fees, dockage fees, repairs, improvements, or other work related storage charges, and for expenses necessary for preservation of the vessel or expenses reasonably incurred in the sale or other disposition of the vessel".³ The lien attaches on the date the vessel is brought to the marina or first occupies rental space there. Upon default, the marina has to give notice to those who hold perfected security interests against the vessel under the UCC.⁴

Before a marina can utilize the nonjudicial sales procedure, the marina must give written notice to the vessel's owner. The notice must be delivered in person or by certified mail to the owner's last known address and be clearly posted at the marina and on the vessel. The marina must also provide written notice to each recorded lienholder of the vessel registered with this state as shown by the records of the Department of Highway Safety and Motor Vehicles at least 30 days prior to the sale.⁵

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, a description of the vessel, a demand for payment, a clear 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 regarding the notice.⁶

If the fees and costs that give rise to the lien are due and unpaid 120 days after the vessel owner is given notice, the marina may sell the vessel, including its machinery, rigging, and accessories.⁷

¹ Section 327.02(19), F.S.

² Section 327.02(37), F.S.

³ Section 328.17(4), F.S.

⁴ Section 328.17(4), F.S.

⁵ Current law does not require a marina to give notice to lienholders that hold a security interest filed with the United States Coast Guard Vessel Documentation Center, and does not require marinas to obtain an abstract from the United States Coast Guard for these "documented vessels". By not having these requirements in the current law, a number of lienholders are given no notice that the marina is in the process of selling a vessel that the lienholders have a security interest in. The U.S. Coast Guard states that most vessels weighing more than 25 feet meet the statutory tonnage requirement to be eligible for documentation, encompassing a large number of vessels. This bill requires notice be given to these lienholders.

⁶ Section 328.17(5)(b), F.S.

⁷ Section 328.17(7), F.S.

Before any sale of the vessel the owner may pay the amount of the lien and redeem the vessel. The marina will then have no liability to any person with respect to the vessel.⁸ If sold, a good faith purchaser takes the vessel free of any claims except a prior lien perfected under the UCC even if the marina does not comply with the law relating to nonjudicial sale of vessels.⁹

The marina may satisfy its lien from the proceeds of the sale if the marina's lien has priority over all other liens on the vessel other than a prior lien perfected under the UCC. The balance remaining, if any, must be held by the marina for delivery on demand to the owner. A notice of any balance must be delivered by the marina to the owner in person or by certified mail to the last known address of the owner. If the owner does not claim the balance of the proceeds within 1 year after the date of the sale, the proceeds are deemed abandoned, and the marina will have no further obligation with regard to the payment of the balance.¹⁰

If the marina's lien does not have priority over all other liens, the sale proceeds will be held for the benefit of the holders of those liens having priority. A notice of the amount of the sale proceeds must be delivered by the marina to the owner or lienholder in person or by certified mail to the owner's or the lienholder's last known address. If the owner or lienholder does not claim the sale proceeds within 1 year after the date of the sale, the proceeds will be deemed abandoned, and the owner or lienholder will have no further obligation with regard to the payment of the proceeds.¹¹

Effect of Bill

This bill amends s. 328.17, F.S., regarding the nonjudicial sale of vessels by: expanding which vessels a marina can attach a possessory lien; revising the notice requirements a marina with a lien must follow before the sale of a vessel; reducing the number of days, from 120 to 60, that a vessel owner has from the time the fees and costs giving rise to the lien are due and unpaid to when the marina can sell the vessel; giving the marina the option, in certain circumstances, of removing the vessel, at the owner's expense, instead of selling it; and by revising provisions relating to the priority over other liens.

Applicability

This bill amends s. 328.17(4), F.S., to add that a marina may attach a possessory lien for expenses incurred in the removal and disposal of any vessel in a wrecked, junked, or substantially dismantled condition, which has been left docked, grounded, beached, or abandoned at a marina without the consent of the marina owner. The lien attaches on the date the vessel is discovered at the marina. If the proceeds of a sale of the vessel, or the scrap value of the vessel, do not cover the removal and disposal costs of the vessel, the marina will be able to recover those excess costs from the vessel's owner.

This bill also provides that a marina may, at its option, remove the vessel from the marina or from the waters of the state, at the owner's expense, rather than proceed to sell the vessel if the vessel is one that is wrecked, junked, or substantially dismantled and has been left docked, grounded, beached, or abandoned at a marina without the consent of the marina owner. This provision does not apply to vessels that are at the marina with the consent of the marina owner, and that owe storage, docking, or repair fees.

Notice Requirements

This bill amends s. 328.17(5), F.S., to revise the notice requirements of a marina, by requiring a marina to give notice to 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

⁸ Section 328.17(10), F.S.

⁹ Section 328.17(11), F.S.

¹⁰ Section 328.17(12), F.S.

¹¹ Section 328.17(12), F.S.

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; or has filed a judgment lien certificate in order to perfect a lien against the vessel.¹² This change only applies to a vessel registered in Florida.

This bill amends s. 328.17(5), F.S., to provide notice procedures a marina must follow when a vessel displays either 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 takes title of the vessel.

Lien Search Requirements

This bill amends s. 328.17(5), F.S., to provide search requirements that must be satisfied for the marina to fulfill the notice requirements above. The notice requirements are satisfied if the marina shows that it has:

- obtained ownership documentation for the vessel and trailer, if applicable, from the Department of Highway Safety and Motor Vehicles or other agency with which the vessel is registered;
- obtained an abstract from the United States Coast Guard for a vessel that is documented as defined in 46 U.S.C. § 30101¹³;
- performed a current Uniform Commercial Code lien search;
- performed a current Florida judgment lien certificate search; and
- complied with the requirement relating to vessels registered in a foreign country or in a state other than Florida.

Notice Before Sale

This bill amends s. 328.17(5), F.S., to require that written notice be made to both the vessel's owner and the lienholders 60 days prior to the sale of the vessel. This changes the time provision, which currently pertains to only lienholders, from 30 days prior to any sale of the vessel to 60 days prior to the sale.

This bill amends s. 328.17(7), F.S., to include both the vessel's owner and lienholders in this section, and decreases the time provision in this section from 120 days to 60 days. Section 328.17(7), F.S., currently pertains only to the vessel's owner, and gives the vessel's owner 120 days, after notice, to pay for the fees and costs giving rise to the lien before the marina may sell the vessel. This bill provides that both the vessel's owner and lienholders have 60 days after notice to pay the marina the fees, costs, and late payment interest giving rise to the lien, once they becomes due and are unpaid, before the marina may sell the vessel. After the 60 day time period, if the fees, costs, and late payment interest are still due and unpaid, the marina may sell the vessel, including its machinery, rigging, and accessories. This section also adds the requirement that owners and lienholders pay interest to the marina on late payments.

¹² A judgment lien certificate is a document that records a judgment lien with the Department of State.

¹³ The citation in the bill, to 46 U.S.C. s. 30101 appears incorrect: 46 U.S.C. s. 30101(1) defines "documented vessel" as a vessel documented under chapter 121 of Title 46. 46 U.S.C. § 12102 says that a vessel is eligible for documentation if the vessel is at least 5 net tons, not registered under the laws of a foreign country, and is owned by: an individual who is a citizen of the United States; an association, trust, joint venture, or other entity all of whose members are citizens of the United States and capable of holding title to a vessel under the laws of the United States or of a State; a partnership whose general partners are citizens of the United States, and the controlling interest in the partnership is owned by citizens of the United States; a corporation established under the laws of the United States or of a State, whose chief executive officer, by whatever title, and chairman of its board of directors are citizens of the United States and no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum; the United States Government; or the government of a State. Also, a vessel is eligible for documentation only if it has been measured under part J of this subtitle, which regulates how vessels are measured. However, the Secretary of Transportation may issue a temporary certificate of documentation for a vessel before it is measured.

Priority of Liens

This bill amends s. 328.17(12), F.S., to provide that a marina may satisfy its lien from the proceeds of a sale, "if the marina's lien has priority over all other liens on the vessel". This bill removes the phrase "other than a prior lien perfected under the UCC", and as a result, requires the marina to have priority over all liens on the vessel including prior liens perfected under the UCC. Current law does not require a marina's lien to have priority over a UCC lien before the marina can satisfy its lien against a vessel. By taking out the phrase, "other than a prior lien perfected under the UCC"; this bill requires the marina's lien to have priority over a UCC lien and all other liens on the vessel.

C. SECTION DIRECTORY:

Section 1 amends s. 328.17, F.S., regarding the nonjudicial sale of vessels.

Section 2 provides an effective date of July 1, 2006.

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill does not specify who receives proceeds of a sale that are abandoned pursuant to s. 328.17(12), F.S., should an owner fail to collect such funds within one year of the sale.

This bill is unclear as to whether or not the marina would be able to satisfy their lien from the proceeds of the sale where the marina does not have priority, but lienholders have claimed their proceeds within 1 year.

Section 328.17(5)(a)4.b., F.S., as amended by this bill, appears to have an incorrect cite to the United States Code at lines 82-83. The section of the code that the bill is referring to should perhaps be cited as 46 U.S.C. § 30101. 46 U.S.C. § 30101(1) provides that "documented vessel" is a vessel documented under chapter 121 of title 46. Chapter 121 of Title 46 provides a complete definition for what a documented vessel is, what vessels are eligible, and the procedure for vessel documentation.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.