

CHAMBER ACTION

1 The State Infrastructure Council 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 including expenses for the removal and disposal of certain
11 vessels in a wrecked, junked, or substantially dismantled
12 condition; reducing the time allowed to pay the fees,
13 charges, and costs giving rise to the lien prior to sale
14 of the vessel; providing for suspending application for a
15 certain time after a named storm; revising requirements
16 with respect to perfection of and priority over prior or
17 other liens; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsections (4), (5), (7), (10), (11), and (12)
22 of section 328.17, Florida Statutes, are amended to read:

23 328.17 Nonjudicial sale of vessels.--

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

25 (a) A possessory lien upon any vessel for storage fees,
26 dockage fees, repairs, improvements, or other work-related
27 storage charges, and for expenses necessary for preservation of
28 the vessel or expenses reasonably incurred in the sale or other
29 disposition of the vessel. The possessory lien shall attach as
30 of the date the vessel is brought to the marina, or as of the
31 date the vessel first occupies rental space at the marina
32 facility. ~~However, in the event of default, the marina must give~~
33 ~~notice to persons who hold perfected security interests against~~
34 ~~the vessel under the Uniform Commercial Code in which the owner~~
35 ~~is named as the debtor.~~

36 (b) A possessory lien upon any vessel in a wrecked,
37 junked, or substantially dismantled condition, which has been
38 left abandoned at a marina, for expenses reasonably incurred in
39 the removal and disposal of the vessel. The possessory lien
40 shall attach as of the date the vessel arrives at the marina or
41 as of the date the vessel first occupies rental space at the
42 marina facility. If the funds recovered from the sale of the
43 vessel, or from the scrap or salvage value of the vessel, are
44 insufficient to cover the expenses reasonably incurred by the
45 marina in removing and disposing of the vessel, all costs in
46 excess of recovery shall be recoverable against the owner of the
47 vessel. For a vessel damaged as a result of a named storm, the
48 provisions of this paragraph shall be suspended for 60 days
49 following the date the vessel is damaged in the named storm. The
50 operation of the provisions specified in this paragraph run

51 concurrently with, and do not extend, the 60-day notice periods
52 provided in subsections (5) and (7).

53 (5) A marina's possessory lien may be satisfied as
54 follows:

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

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

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

65 b. Holds a preferred ship mortgage or has filed a claim of
66 lien with the United States Coast Guard Vessel Documentation
67 Center.

68 c. Holds a security interest against the vessel under the
69 Uniform Commercial Code.

70 d. Has perfected a lien against the subject vessel by
71 filing a judgment lien certificate pursuant to ss. 55.201-
72 55.209.

73 3. When a vessel displays a foreign country identification
74 or displays registration numbers from a state other than
75 Florida, the marina shall conduct a reasonable lien search of
76 the vessel registration records in the jurisdiction of registry
77 to determine if there is a lienholder who is entitled to notice
78 pursuant to subparagraph 2. Failure to discover a foreign

79 | national or non-Florida United States lienholder after a good
 80 | faith effort to conduct such a lien search shall not prevent the
 81 | sale or removal of a vessel from the marina to satisfy the
 82 | marina's possessory lien or a purchaser, in good faith, from
 83 | taking title of the vessel, pursuant to subsections (7) and
 84 | (11).

85 | 4. The requirements of subparagraph 2. shall be satisfied
 86 | if the marina:

87 | a. Obtains ownership documentation for the vessel and
 88 | trailer, if applicable, from the Department of Highway Safety
 89 | and Motor Vehicles or other agency with which the vessel is
 90 | registered;

91 | b. Obtains an abstract from the United States Coast Guard
 92 | for a vessel that is documented as defined in 46 U.S.C. s.
 93 | 30101;

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

95 | d. Performs a current Florida judgment lien certificate
 96 | search; and

97 | e. Complies with subparagraph 3. with regard to vessels
 98 | registered in a foreign country or in a state other than
 99 | Florida.

100 | 5. The written notice to the vessel owner and lienholders
 101 | required by this paragraph shall be made at least 60 days prior
 102 | to any sale of the vessel under this section ~~recorded lienholder~~
 103 | ~~of such vessel registered with this state as shown by the~~
 104 | ~~records of the Department of Highway Safety and Motor Vehicles,~~
 105 | ~~at least 30 days prior to the proposed sale.~~

106 | (b) The notice shall include:

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

110 | 2. A description of the vessel.

111 | 3. A demand for payment.

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

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

118 | (7) If the fees, and costs, and late payment interest that
119 | give rise to such a lien are due and unpaid 60 ~~120~~ days after
120 | the vessel owner and lienholder are ~~is~~ given written notice, the
121 | marina may sell the vessel, including its machinery, rigging,
122 | and accessories as provided for in subsection (8); or the marina
123 | may, at its option, remove the vessel from the marina or from
124 | the waters of the state at the owner's expense pursuant to
125 | paragraph (4) (b).

126 | (10) Before any sale or other disposition of the vessel
127 | pursuant to this section, the owner or the lienholder may pay
128 | the amount necessary to satisfy the lien and the reasonable
129 | expenses and late payment interest incurred under this section
130 | and thereby redeem and take possession of the vessel. Upon
131 | receipt of such payment, the marina shall return the property to
132 | the owner or lienholder making such payment and thereafter shall
133 | have no liability to any person with respect to such vessel.

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134 (11) Unless otherwise provided by law, a purchaser in good
135 faith of a vessel sold to satisfy a lien provided for in this
136 section takes the property free of any claims other than a prior
137 lien perfected under state or federal law ~~the Uniform Commercial~~
138 ~~Code, despite noncompliance by the marina with the requirements~~
139 ~~of this section.~~

140 (12) In the event of a sale under this section, the marina
141 may satisfy its lien from the proceeds of the sale, provided the
142 marina's lien has priority over all other liens on the vessel
143 ~~other than a prior lien perfected under the Uniform Commercial~~
144 ~~Code.~~ The lien rights of secured lienholders ~~are~~ automatically
145 also attach ~~transferred~~ to the remaining proceeds of the sale.
146 The balance, if any, shall be held by the marina for delivery on
147 demand to the owner. A notice of any balance shall be delivered
148 by the marina to the owner in person or by certified mail to the
149 last known address of the owner. If the owner does not claim the
150 balance of the proceeds within 1 year after the date of sale,
151 the proceeds shall be deemed abandoned, and the marina shall
152 have no further obligation with regard to the payment of the
153 balance. In the event that the marina's lien does not have
154 priority over all other liens, the sale proceeds shall be held
155 for the benefit of the holders of those liens having priority. A
156 notice of the amount of the sale proceeds shall be delivered by
157 the marina to the owner or secured lienholder in person or by
158 certified mail to the owner's or the secured lienholder's last
159 known address. If the owner or the secured lienholder does not
160 claim the sale proceeds within 1 year after the date of sale,
161 the proceeds shall be deemed abandoned, and the owner or the

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162 | secured lienholder shall have no further obligation with regard
163 | to the payment of the proceeds.

164 | Section 2. This act shall take effect July 1, 2006.