

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: Judiciary Committee

BILL: CS/SB 648

INTRODUCER: Judiciary Committee and Senator Campbell

SUBJECT: Nonjudicial Sale of Vessels

DATE: March 10, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/2 amendments</u>
2.	<u>Maclure</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires marinas to notify additional types of lienholders before selling a vessel to satisfy the marina's lien on the vessel for unpaid dockage fees and other costs. The bill authorizes lienholders to come forward and settle the vessel owner's debt to the marina and thereby preclude the sale. The bill also reduces to 60 days from 120 days the amount of the time that a notified vessel owner or, under the bill, a lienholder has for settling the debt before the vessel is advertised for sale.

In addition, the bill creates a new possessory lien for a marina, for removal and disposal costs, when a wrecked vessel is left abandoned at the marina. In the case of a vessel damaged as a result of a named storm, however, the provisions governing the new possessory lien are suspended for 60 days following the date the vessel is damaged, in effect giving the vessel owner or insurer time to remove or repair the storm-damaged vessel before a lien is placed on it.

This bill substantially amends section 328.17, Florida Statutes.

II. Present Situation:

Marina Possessory Lien for Vessel Expenses

Current law establishes a process – referred to as the nonjudicial sale of vessels – through which a marina may sell a vessel to recoup certain costs not paid by the vessel's owner. Under s. 328.17, F.S., from the date a vessel is brought to a marina, or first 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, as well as other costs incurred by the marina.¹ Specifically, a marina 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.²

Notice of Nonjudicial Sale of Vessel

Before executing a nonjudicial sale under the statute, the marina must provide written notice of the lien to the vessel owner, lienholders with liens filed with the Department of Highway Safety and Motor Vehicles (DHSMV), and any lienholders with liens perfected under the Uniform Commercial Code in which the owner is named as the debtor.³ In addition, the marina must post notice in conspicuous locations on the vessel and at the marina. The statutory notice shall include:

- An itemized statement of the marina's claim;
- A description of the vessel;
- A demand for payment;
- A statement that – unless the claim is timely paid – the vessel will be sold or disposed of otherwise; and
- Contact information for the marina so that a person may respond to the notice.⁴

Disposition of Vessel and Proceeds

If any amounts remain due and unpaid 120 days after the marina provides written notice to the vessel owner, the marina may advertise the sale of the vessel.⁵ The sale must be conducted in a “commercially reasonable manner,” as defined by the Uniform Commercial Code.⁶ The owner may redeem the vessel by paying the amount required to satisfy the lien and any reasonable expenses incurred prior to the sale.⁷ Purchasers of a vessel sold to satisfy a lien, as provided in this section, take the vessel clear of any claims other than those perfected under the Uniform Commercial Code (UCC).⁸

A marina with priority over other liens – other than a prior lien perfected under the UCC – may use the sale proceeds to satisfy the debt of the vessel owner. The marina must notify the vessel owner of any balance remaining. If the vessel owner does not claim the balance within a year, the funds are deemed abandoned. If the marina does not have priority over other lienholders, it

¹ A possessor lien is a “lien allowing the creditor to keep possession of the encumbered property until the debt is satisfied. A power of sale may or may not be combined with this right of possession. Examples include pledges of chattels, the liens of innkeepers, garageman’s liens, and vendor’s liens.” *Black’s Law Dictionary* (8th ed. 2004) (“Lien”).

² Section 328.17(4), F.S.

³ Section 328.17(4) and (5)(a), F.S. The statute specifies that the marina must notify recorded lienholders on file with the Department of Highway Safety and Motor Vehicles at least 30 days before the sale. The statute does not specify a timeframe for notifying persons with perfected security interested under the Uniform Commercial Code.

⁴ Section 328.17(5)(b), F.S.

⁵ Section 328.17(7), F.S.

⁶ Section 328.17(9), F.S.

⁷ Section 328.17(10), F.S.

⁸ Section 328.17(11), F.S.

shall notify the owner or secured lienholders of the sale proceeds. If the owner or secured lienholders do not claim the proceeds within one year, they are deemed abandoned.⁹

III. Effect of Proposed Changes:

This bill increases notice requirements and revises other conditions relating to the nonjudicial sale of vessels by marinas under s. 328.17, F.S., when costs and expenses are not paid by the vessels' owners. The bill also creates a new possessory lien for a marina, for removal and disposal costs, when a wrecked vessel is abandoned at the marina.

Marina Lien for Vessel Expenses

The bill provides a marina with a possessory lien upon any vessel in a wrecked, junked, or substantially dismantled condition which has been left abandoned at a marina. The lien, which is for expenses reasonably incurred in the removal and disposal of the vessel, attaches on the date the vessel arrives at the marina or as of the date the vessel first occupies rental space at the marina. If the sale proceeds, or proceeds from salvaging the vessel, are insufficient to cover the marina's removal and disposal expenses, the marina may nonetheless pursue recovery of the balance from the vessel owner.

In the case of a vessel damaged by a named storm, however, these new lien provisions would be suspended for 60 days after the vessel is damaged in the storm, in effect giving the vessel owner or insurer time to remove or repair the storm-damaged vessel before a lien is placed on it. The bill specifies that this 60-day grace period for storm scenarios runs concurrent with and does not extend the 60-day notification period required before the marina may sell or remove the vessel.

The new possessory lien created by the bill is distinct from the lien under existing law for dockage fees, repairs, improvements, and similar expenses on vessels renting space at a marina or otherwise brought to the marina.

Notice of Nonjudicial Sale of Vessel

The bill expands and revises the list of persons or entities to which a marina must provide written notice before executing the nonjudicial sale of a vessel. Specifically, under the bill, the marina must provide notice to a person or entity who:

- Holds a security interest on the vessel as shown in records of the Department of Highway Safety and Motor Vehicles (DHSMV or department) with respect to state-titled vessels;
- Holds a preferred ship mortgage or has filed a claim of lien with the U.S. Coast Guard Vessel Documentation Center;
- Holds a security interest against the vessel under the Uniform Commercial Code; or
- Has perfected a lien against the vessel by filing a judgment lien certificate as provided by state law.¹⁰

⁹ Section 328.17(12), F.S.

¹⁰ Sections 55.201 through 55.209, F.S., establish a process for obtaining and filing with the Department of State a judgment lien securing the unpaid amount of certain money judgments.

The bill also prescribes procedures to be followed in the case of vessels that are not titled in this state. If a vessel displays a foreign country identification or a registration from a state other than Florida, the marina shall 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 fails to identify 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.

In order to satisfy the lienholder notice requirements, the bill 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.¹¹ Further, marinas must perform a current Uniform Commercial Code lien search and a Florida judgment lien search.

A written notice must be made to the vessel owner and lienholders at least 60 days prior to the proposed sale of the vessel, rather than 30 days under current law.¹²

Disposition of Vessel and Proceeds

The bill provides that, in addition to a vessel owner under a current law, a lienholder may also come forward and pay the debt owed to the marina, thereby precluding the sale. However, the bill reduces – to 60 days from 120 days – the amount of time after notice is provided that the debt may remain unpaid before the marina may sell the vessel.

Consistent with its creation of a new possessory lien for abandoned damaged vessels, the bill gives a marina owner 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 vessel owner of the vessel.

This bill revises the statute 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. The bill removes from existing law the qualifying phrase "other than a prior lien perfected under the Uniform Commercial Code" (UCC). As a result, the bill requires the marina to have priority over all liens

¹¹ 46 U.S.C. s. 30101(1) defines "documented vessel" as a vessel documented under chapter 121 of Title 46. 46 U.S.C. s. 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.

¹² The statute currently specifies that the marina must notify recorded lienholders on file with the Department of Highway Safety and Motor Vehicles at least 30 days before the sale. The statute does not currently specify a timeframe for notifying persons with perfected security interested under the Uniform Commercial Code. See s. 328.17(4) and (5)(a), F.S.

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.

Current law provides that a good-faith purchasers of a vessel sold under this statute takes the property free of claims – other than a prior lien perfected under the UCC. The bill protects the interests of additional types of lienholders by qualifying that the good-faith purchaser takes the property free of claims – other than a prior lien perfect *under state or federal law*.

The bill also specifies that a marina is entitled, as part of this statutory lien authority, to recoup late-payment interest, in addition to other fees and costs.

Effective Date

The bill takes effect July 1, 2006.

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 time given to owners to 60 days from 120 days in which to respond to a notice of intent to sell a vessel and settle the debt, vessel owners – and also lienholders under the bill – may experience an indeterminate, but negative economic impact. By expanding the entities whom a marine must notify of a sale, the bill may provide economic benefits to lienholders who previously may not have been aware that a vessel in which they had an interest was at risk of being sold.

C. Government Sector Impact:

The Department of Highway Safety and Motor Vehicles currently publishes procedures for applying for a certificate of title after the nonjudicial sale of a vessel.¹³ The procedures include, as exhibit, a “Notice of Nonjudicial Sale of a Vessel.” It appears likely that the department would need to revise the procedures and the notice form if this legislation were to become law. The department, however, does not anticipate significant costs associated with such revisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

¹³ These procedures are available at <http://www3.hsmv.state.fl.us/Intranet/dmv/Manuals/DMVProcedures/BVTR/VSTL-25.pdf>.

VIII. Summary of Amendments:

None.

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