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## MARINA AND BOATYARD STORAGE LIEN ACT

**House Bill 4983 as enrolled  
Public Act 362 of 1998  
Second Analysis (11-18-98)**

**Sponsor: Rep. William Callahan  
House Committee: Marine Affairs and  
Port Development  
Senate Committee: Transportation and  
Tourism**

### ***THE APPARENT PROBLEM:***

Liens imposed by "garage keepers," those who store and repair vehicles, aircraft, and boats, have traditionally been granted priority over all other liens under Michigan law. As a result, when a boat owner contracts to have a boat repaired, but abandons it rather than pay the bill, a garage keeper (or marina facility owner) can claim a portion of the boat's value for services rendered. That amount is remitted to the garage keeper when the lender repossesses and sells the boat at a public sale, or the garage keeper sells the boat at auction. Recent legislation, introduced to increase the maximum lien standard for ground vehicles, would also repeal provisions of the garage keepers' lien act pertaining to boats (House Bill 4640, which is pending before the Senate Committee on Economic Development, International Trade and Regulatory Affairs). Consequently, legislation has been introduced to address boat liens. Specifically, it is proposed that issues concerning marina and boatyard liens be dealt with under a separate act.

### ***THE CONTENT OF THE BILL:***

House Bill 4983 would establish the Michigan Marina and Boatyard Storage Lien Act, to allow the owner of a marina, boatyard, or other facility that repairs or provides storage for boats, to enforce a lien on property stored at the facility, and in certain circumstances to allow a customer's boat to be sold to enforce a lien. The bill would specify that, if a provision of the new act were inconsistent with a provision of the garage keeper's lien act (MCL 570.301 to MCL 570.303), then the provisions of the new act would govern.

Creation of Lien. Under the bill, a facility owner would have a possessory lien on property stored at that facility for storage, rent, labor, materials, supplies, and other charges, and for expenses reasonably incurred in the sale of the property. Except in circumstances where a prior lienholder had priority over a lien created for storage under the provisions of the bill, a facility owner's lien would have priority over any prior lien, unless the prior lienholder paid the facility owner the amount of the lien that was attributable to storage, labor, materials, supplies, or other charges incurred in selling the property, or the following applicable amount, whichever was less:

\*\* For a vessel up to 27 feet long, \$5,000 or 20 percent of the fair market value, whichever was less.

\*\* For a vessel that was between 27 feet and 40 feet long, \$30,000.

\*\* For a vessel that was between 40 feet and 60 feet long, \$75,000.

\*\* For a vessel that was more than 60 feet long, \$90,000.

The bill would also provide for modifications of these amounts, as follows:

- The amount calculated would be increased by a like amount if the expenditure for labor and materials was for both primary power engines of a vessel equipped with two engines. However, this subsection would not apply to auxiliary propulsion or trolling engines.

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- The amount calculated would be reduced by one-half if more than half of the expenditure for labor and materials was attributable only to the repair or replacement of navigational electronics or auxiliary power generators.

- The amount calculated would be reduced by three-quarters if more than half of the expenditure for labor and materials was attributable only for either repairing or replacing a cabin interior; painting; cosmetic work; or any combination of these items.

- A payment made to a facility owner would be added to the amount of the lien of the prior lienholder who made the payment, and would be subtracted from the amount of the facility owner's lien.

The bill would also specify that, unless a facility owner was also the prior lienholder, that lien would be the only one that the facility owner could have on a vessel. Further, the provisions of the bill would not apply to a "documented" vessel that was subject to a preferred ship mortgage or other preferred maritime lien, as established under Chapter 313, Subtitle III, Title 46 of the United States Code (46 USC 31301 to 31343), which governs maritime liability. In addition, a facility owner would have to obtain an abstract of title from the U.S. Coast Guard for a "documented" vessel, as that term is defined in Chapter 301, Subtitle III, Title 46 of the United States Code (46 USA 30101). The bill would specify that a lien created for storage would not take priority over the lien of a prior lienholder for storage incurred for the 30-day period prior to the date a lien notice had been delivered to the prior lienholder. In addition, the bill would specify that the lienholder would have to arrange to have property removed from the facility when the lien had been terminated unless the lienholder and the facility owner had entered into a new storage agreement.

Definitions. Under the bill, "property" would be defined to mean a boat, boat motor, boat cradle, or boat trailer in storage at a "facility;" a "facility" would be defined to mean a marina, boatyard, boat or yacht club, or marine repair facility, that provided storage for boats, boat motors, boat cradles, or boat trailers as part of its commercial operation. "Boat" and "vessel" would mean boat and vessel, as those words are defined under the Natural Resources and Environmental Protection Act (NREPA, MCL 324.80101 and 324.80104); and "fair market value" would mean the value of the property as determined by the current issue of a nationally recognized used vessel guide at the time of the notice to the property

owner and any person identified as a lienholder by the secretary of state.

Notification of Lien. All notices regarding a lien would have to be made by registered or certified mail, return receipt requested. Notices to a facility owner would have to be mailed to a business address. Notices to a property owner would have to be mailed to the last known address as listed on the title, registration, or other marine documentation, or as provided in the most recent agreement concerning storage, labor, materials, or supplies entered into between the facility owner and the property owner. A lienholder of record would have to be notified at his or her address, as listed on the title, registration, or other marine documentation in the public filings that served to perfect the lienholder's interest in the property. Notices would be considered as having been delivered on the date the return receipt was signed or the date the post office last attempted to deliver the notice.

Enforcement of Lien. In order to enforce a lien, a facility owner would first have to provide notification of the lien created under the act to the property owner and all prior lienholders, either by mailing written notification, or by having the property owner sign a written storage agreement that includes a notice of the act's provisions. A facility owner whose written storage agreement did not include this notice on a vessel originally left at the facility only for repairs, labor, or materials installation on a repair order could not file a lien for storage fees before 30 days after the notice of intent to commence storage fees was filed with the prior lienholder, and could not initiate an enforcement action until 30 days after the lien's written notice was delivered to the property owner and all other prior lienholders.

Before conducting a sale, and within a reasonable time after default had continued for more than 180 days, a facility owner would have to mail a notice of default to the property owner and secretary of state. In turn, the secretary of state would be required to provide the facility owner with the name of the registered owner of the property and a list of all lienholders. The facility owner would have to provide a copy of the notice of default to each lienholder of record. In addition, the notice of default could include a demand for payment of the charges within a specified time not less than 30 days after the date the notice was delivered to the property owner and lienholders. At any time prior to the sale of property, any lienholder could cure the default by payment of the amount of the lien to the facility owner, which amount would be

added to the lienholder's lien. After the expiration of the 30-day period, the facility owner would be required to publish an advertisement of the sale for two consecutive weeks in a newspaper of general circulation in the area where the sale was to be held.

The following is a brief summary of other requirements that would be placed on the facility owner:

- A facility owner could sell the repaired or stored property if a property owner was in default for more than 180 days.
- The property would be sold at a "commercially reasonable public sale," as that term is defined in the Uniform Commercial Code (1962 PA 174, MCL 440.1101 to 440.11102), and the proceeds applied in the following order: 1) to the reasonable expenses of the sale; b) to satisfy the lien; c) to satisfy all other liens; and d) any surplus would be paid to the property owner.
- The sale of the stored property would be held at the facility or at the nearest suitable location.
- Purchasers of the property would hold it free and clear of the property rights of the owner and of all lienholders of record.
- If the proceeds of the sale didn't satisfy the property owner's outstanding obligations, he or she would still be liable to a facility owner or lienholder.
- If there was a dispute concerning the priority of record lienholders after the reasonable expenses of the sale and lien had been satisfied, a facility owner could hold the sale proceeds until the dispute was settled, either by the written agreement of the parties or until a court order or final judgment was issued.
- A facility owner could deny the property owner access to the storage facility, except during normal business hours to view and verify the condition of the property or to satisfy the lien.
- A property owner or lienholder who suffered damages because of a facility owner's failure to comply with the provisions of the act could bring an action for damages, or \$250, whichever was greater.
- A facility owner would be limited to one lien under state law against a vessel for storage, labor, materials, or supplies. A facility owner who asserted a lien

under another statute or the common law could not also assert a lien under the provisions of the act for the same storage, labor, materials, or supplies, or other charges or expenses related to the vessel.

- A facility owner could bid all, or a portion, of his or her claim at a property auction sale.

In addition, the liability of a facility owner who complied with the provisions of the bill would be as follows:

\*\* To a "lienholder of record" (defined under the bill to mean a person who claimed an interest in, or lien on, the property pursuant to a financing statement, title, registration, or other marine documentation filed with the secretary of state or other public filing) the liability would be limited to the net proceeds received from the sale of the property.

\*\* To the owner of the property being held, the liability would be limited to the net proceeds received from the sale of the property after payment in full of all lienholders of record.

Other. The secretary of state would have to issue a new title and registration to the purchaser of property at a sale conducted under the provisions of the bill. If a "documented" vessel was sold under the provisions of the bill, the facility owner would have to satisfy the U.S. Coast Guard requirements for passage of title by operation of state law (46 CFR 67.83), which includes providing certain documents, including an affidavit from the facility owner specifying the grounds for selling the property and the steps taken to comply with the act.

Cessation of Action. A lien would have to be terminated, and a facility owner would have to immediately cease enforcing actions regarding a lien, if the property owner paid the full amount necessary to satisfy the lien, or an acceptable amount, or if a person other than the facility owner who had a lien on the property paid the full amount to the facility owner. Further, a property owner could redeem his or her property at any time before the conclusion of a sale by paying this amount. A facility owner would have to hold property, at a lienholder's direction, for a lienholder of record who paid the required amount, and could not convey the property to the property owner. In addition, unless the facility owner and the lienholder entered into a new storage agreement, the lienholder would have to arrange for the property to be removed from the facility.

**FISCAL IMPLICATIONS:**

According to the Department of State, the provisions of the bill would result in indeterminate costs to the state. (2-25-98)

**ARGUMENTS:****For:**

As is the case with current law, the bill would allow marinas, boatyards, and marine repair facilities to recover the costs involved when a boat is stored at a facility for repairs and then abandoned by the owner. In testimony before the House committee, a marina owner who currently has five abandoned boats at his facility cited several problems associated with this type of business. Sometimes boats are abandoned because the owner can't afford the repair costs -- which may, in some instances, exceed the value of the boat -- or the annual cost for storing the boat, which can run into thousands of dollars per season. In a few instances, the boat owner has died, and the heirs don't want the boat. Facilities that incur bad debts when owners abandon their boats rather than pay the costs for repairs or storage should be able to recover some of their loss. However, as the prices of boats have increased in recent years, so too have the costs of repairing them. In addition, the problems associated with abandoned boats has increased since the law protecting garage keepers' liens was last updated. Reportedly, more and more people are tempted into buying larger, more expensive craft, but, having overestimated their purchasing power, some choose to permanently "store" their boats at marine facilities. Consequently a facility can incur bad debt far in excess of the amount the current law allows for recovery, which is capped at \$200. The bill would increase the lien standard to allow liens of up to \$180,000 (for a vessel that is more than 60 feet long), and allow facilities to recover their costs.

**Against:**

The bill should specify that the maximum amount charged by a facility for storage could not exceed an amount which, when added to the amount owed the lender who financed boat, would result in a lien that exceeded the boat's value. Under current law, a facility may confiscate a boat if the boat owner refuses to pay the facility's bill for storage or repairs. A lender that finances the purchase of a boat has

subordinate lien status, and must pay the facility's charges before it can repossess the boat and sell it to recover its costs. However, by the time the lender receives notification of a default, these charges can increase significantly to include storage charges for each day that the facility's charges remain unpaid. As a result, the total amount owed on a lien may well exceed the boat's value. For example, a financial institution may lend \$25,000 for a boat purchase. The facility's repair and storage charges, however, could total \$7,000 at current rates, bringing the total amount that the financial institution must charge to recover its lien and costs to \$32,000.

**Against:**

The bill would require that a facility owner mail a notice of default to the secretary of state before selling a boat on which it holds a lien. The secretary of state must then provide the facility owner with certain information, including a list of all lienholders. The secretary of state currently maintains records of watercraft titles for boats that measure 20 feet or longer, or that have inboard motors. However, the office would have to contact every county clerk's office in the state to gather a "list of all lienholders." This provision would result in prohibitive costs to the state.

Analyst: R. Young

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.