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**SFA**



**BILL ANALYSIS**

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House Bill 4983 (Substitute H-4 as passed by the House)  
Sponsor: Representative William Callahan  
House Committee: Marine Affairs and Port Development  
Senate Committee: Transportation and Tourism

Date Completed: 9-23-98

## CONTENT

**The bill would create the “Michigan Marina and Boatyard Storage Lien Act” to permit an owner of a marina, boatyard, or other facility that repaired or provide storage for boats, to enforce a lien on property stored at the facility, and, in circumstances specified in the bill, to allow a person’s boat to be sold to enforce a lien. The bill also states that if it were inconsistent with provisions of the garage keepers’ lien Act, then the bill’s provisions would govern.**

### Creation of a Lien

A facility owner would have a lien on property stored at that facility for storage, rent, labor, materials, supplies, and other charges for expenses reasonably incurred in the sale of that property. Except in circumstances in which a prior lienholder for storage had priority over a lien created for storage under the bill, a lien on property under this provision would take priority over any prior lien on the property unless the prior lienholder paid the facility owner the amount of the lien attributable to storage, labor, materials, supplies, or other charges reasonably incurred in the sale of that property under the bill or the following amount, except as otherwise provided, whichever was less:

- \$5,000 or 20% of the fair market value, whichever was less, for a vessel that had a single engine of less than 454 horsepower.
- \$10,000 for a vessel that had a single engine of not less than 454 horsepower but not more than 600 horsepower.
- \$30,000 for a vessel that had a single engine of not less than 601 horsepower but not more than 1,000 horsepower.
- \$75,000 for a vessel that had a single engine of not less than 1,001 horsepower but not

- more than 1,500 horsepower.
- \$90,000 for a vessel that had a single engine of not less than 1,501 horsepower but not more than 2,000 horsepower.

(“Boat” and “vessel” would mean those terms as defined in the Natural Resources and Environmental Protection Act. “Facility” would mean a marina, boatyard, boat or yacht club, or marine repair facility that provided, as part of its commercial operation, for the storage of boats, boat motors, boat cradles, or boat trailers. “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 lienholder under the bill. “Lienholder” or “lienholder of record” would 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 amount calculated above would have to be increased by a like amount if the expenditure for labor and materials were for both engines of a vessel equipped with two engines. This provision would not apply, however, to auxiliary propulsion or trolling engines.

The amount calculated above would have to be reduced by one-half if more than half of the expenditure for labor and materials were attributable only to the repair or replacement of navigational electronics or auxiliary power generators. The above amount would have to be reduced by three-fourths if more than half of the expenditure for labor and materials were attributable only to one of the following: the repair or replacement of a cabin interior, painting,

cosmetic work, or any combination of these items. A payment made to a facility owner would have to be added to the amount of the lien of the prior lienholder who made the payment and would have to be subtracted from the amount of the facility owner's lien.

The facility owner's lien under the bill would be the only lien that a facility owner had on a vessel, unless the facility owner was also the prior lienholder.

The bill specifies that it would not create a lien on a documented vessel subject to a preferred ship mortgage or other preferred maritime lien pursuant to Chapter 313, Subtitle III, Title 46 of the U.S. Code, which governs maritime liability. A facility owner would be required to obtain an abstract of title from the U.S. Coast Guard for a vessel that was documented as that term is defined in Chapter 301, Subtitle III, Title 46 of the U.S. Code.

The bill specifies that the lien created for storage under the bill without a written storage agreement that included a notice of lien would not take priority over the lien of a prior lienholder for storage incurred before 30 days after the notice of lien required under the bill was delivered to the prior lienholder.

#### Notification, Enforcement of Lien

A facility owner would have to notify a property owner and all prior lienholders of the lien created in the bill before enforcing the lien. A property owner would have to be notified if either of the following had occurred: the property owner had signed a written storage agreement that included a notice of the lien created in the bill, or the facility owner had mailed written notification of the lien to the property owner and all prior lienholders.

A facility owner who did not have a written storage agreement that included a notice of the lien created under the bill on a vessel originally left at the facility only for repairs, labor, or materials installation on a repair order could not do either of the following: file a lien for storage fees on the vessel before 30 days after the notice of intent to begin storage fees were filed with the prior lienholder; or, initiate an enforcement action under the bill until 30 days after the required written notice of a lien was delivered to the property owner and all prior lienholders.

A facility owner could enforce a lien created under the bill only if the facility owner had notified the property owner and all prior lienholders of the lien.

If a property owner were in default for more than 180 days, the facility owner could enforce the lien by selling the repaired or stored property at a commercially reasonable public sale. ("Commercially reasonable" would mean that term as defined in the Uniform Commercial Code.)

The proceeds of the sale would have to be applied in the following order: to pay the reasonable expenses of the sale incurred by the facility owner including, to the extent not prohibited by law, reasonable attorney fees and legal expenses; to satisfy the lien created in the bill; to satisfy all other liens on the property held by all lienholders of record to be paid in the order of priority. To the extent that the proceeds of sale exceeded the sum of the previous items, the facility owner would have to pay the surplus to the property owner.

If, after satisfying the reasonable expenses of the sale and the lien, there was a dispute concerning the priority of record lienholders, the facility owner could hold the proceeds of the sale until the dispute was settled by the written agreement of the parties or until an order or final judgment was issued by a court of competent jurisdiction relative to the dispute. The facility owner could pay the proceeds of sale to a court with subject matter jurisdiction. The facility owner then would be relieved of all further obligation concerning those proceeds. If the proceeds of the sale were not sufficient to satisfy the property owner's outstanding obligations to the facility owner or any lienholder of record, the property owner would remain liable to the facility owner or lienholder for the deficiency.

Before conducting a sale and within a reasonable time after default had continued for more than 180 days, the facility owner would have to do both of the following:

- Mail a notice of default to the property owner and the Secretary of State, who would have to notify the facility owner and provide him or her 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 listed on the title, registration, or other marine documentation. A notice of default would have to include all of the items listed below.
- After the expiration of the required 30-day period described below, publish an advertisement of the sale once a week for two consecutive weeks in a newspaper of general circulation in the area where the sale

was to be held. The advertisement would have to include a general description of the property, the name of the property owner, and the time and location of the sale. The date of the sale could not be less than 15 days after the date the first advertisement of the sale was published.

The notice of default would have to include all of the following: a statement that the property was subject to a lien held by the facility owner; a statement of the facility owner's claim indicating the charges due on the date of the notice, the amount of any additional charges that would be due before that date of sale, and the date those additional charges would be due; a demand for payment of the charges due within a specified time not less than 30 days after the date the notice was delivered to the property owner and all lienholders of record; a statement that the property would be sold if the claim were not paid within the time period stated in the notice as well as the time and location of the sale; the name, street address, and telephone number of the facility owner, or the facility owner's designated agent, whom the property owner could contact to respond to the notice.

During the 30-day period, any lienholder could cure the default by paying the amount of the lien to the facility owner. That amount would have to be added to the lien of the lienholder.

A sale would have to be held at the facility or at another reasonable location. A person who purchased property sold at a commercially reasonable sale pursuant to the bill would take the property free and clear of the rights of the property owner and all lienholders of record.

A facility owner who complied with the bill would be liable as follows: the facility owner's liability to a lienholder of record would be limited to the net proceeds received from the sale of the property; and, the facility owner's liability to the property owner would be limited to the net proceeds received from the sale of the property after payment in full of all lienholders of record.

A property owner or lienholder who suffered damages because of a facility owner's failure to comply with the bill could bring an action in a court of competent jurisdiction for his or her actual damages or \$250, whichever was greater.

A facility owner would be limited to one lien under State law against a vessel for the storage, labor, materials, or supplies for the vessel. A facility

owner who asserted a lien against a vessel under another statute or the common law could not also assert a lien under the bill for the same storage, labor, materials, or supplies, or other charges or expenses related to the vessel.

A facility owner could deny a property owner who had been notified under the bill access to the storage facility, except that the property owner would be entitled to access to the facility during the normal business hours for the purpose of satisfying the lien or viewing and verifying the conditions of the property.

Except as otherwise provided in the bill, all notices required by the bill would have to be mailed by registered or certified mail, return receipt requested. Notices to a facility owner would have to be mailed to the owner's business address or to the address of the owner's designated representative. Notices to a property owner would have to be mailed to the owner's 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. Notices to a lienholder of record would have to be sent to the address of the lienholder 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 delivered on the date the recipient of the notice signed the return receipt or, if the notice were undeliverable, the date the post office last attempted to deliver the notice.

The facility owner could bid all or a portion of his or her claim at the auction sale of the property. The Secretary of State would have to issue a new title or registration to the purchaser of property at a sale conducted under the bill. If a documented vessel were sold pursuant to 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 C.F.R. 67.91) that included providing all of the following: a copy of the bill; an affidavit from the facility owner setting forth the grounds for selling the property and the steps taken to comply with the bill; evidence of substantial compliance with the bill; and, a bill of sale in recordable form from the facility owner as agent for the property owner.

A facility owner immediately would have to cease enforcement of actions brought under the bill if either of the following occurred:

- The property owner paid the facility owner the full amount necessary to satisfy the lien or other amount that was accepted by a facility owner as payment in full. At any time before the conclusion of a sale conducted under the bill, the property owner could redeem the property by paying the full amount necessary to satisfy the lien or other amount that was accepted by a facility owner as payment in full.
- A person other than the facility owner who had a lien on the property paid the facility owner the full amount necessary to satisfy the facility owner's lien or other amount that was accepted by a facility owner as payment in full. Upon payment by a lienholder of record, the facility owner would have to hold the property for the benefit of and at the direction of that lienholder and could not deliver possession of the property to the property owner. Unless the facility owner and the lienholder entered into a new storage agreement, the lienholder would have to arrange removal of the property from the facility.

Legislative Analyst: L. Arasim

#### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: E. Limbs

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.