

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 475 Certificates of Title for Vessels

SPONSOR(S): State Affairs Committee, Transportation & Tourism Appropriations Subcommittee, Transportation & Infrastructure Subcommittee, Williamson and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 676

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	13 Y, 0 N, As CS	Roth	Vickers
2) Transportation & Tourism Appropriations Subcommittee	11 Y, 0 N, As CS	Hicks	Davis
3) State Affairs Committee	19 Y, 0 N, As CS	Roth	Williamson

SUMMARY ANALYSIS

The bill incorporates the Uniform Certificate of Title for Vessels Act into Florida's existing vessel titling law. In doing this, the bill includes numerous changes to the title application requirements and the duties and responsibilities of the Department of Highway Safety and Motor Vehicles (DHSMV) relating to vessel titling. In general, the bill:

- Creates the "Uniform Certificate of Title for Vessels Act."
- Provides new requirements for the contents of a certificate of title, including the requirement that an application contain a detailed description of the vessel.
- Provides that state law governs all issues relating to the certificate of title for vessels.
- Requires a vessel owner to deliver an application and any applicable fee for certificate of title for the vessel, no later than 30 days from the date of ownership or the date Florida becomes the state of principal use.
- Provides certain responsibilities applicable to an owner and insurer of a hull-damaged vessel.
- Requires DHSMV to maintain the information contained in all certificates of title and the information submitted with the application for such certificate.
- Specifies that possession of a certificate of title does not by itself provide a right to obtain possession of a vessel.
- Provides DHSMV with certain duties relating to creation, issuance, refusal to issue, or cancellation of a certificate of title.
- Specifies that a certificate of title is effective even if it contains scrivener's errors or does not contain certain required information that DHSMV determines to be inconsequential to issuing a certificate of title.
- Provides additional requirements for obtaining a duplicate certificate of title.
- Provides requirements for the determination and perfection of a security interest in a vessel.
- Provides requirements for the delivery of a statement of the termination of a security interest.
- Provides requirements for the transfer of ownership in a vessel.

DHSMV estimates an insignificant, positive fiscal impact on its revenues and an indeterminate, negative impact on its expenditures that can be absorbed within existing resources. See Fiscal Analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill revises Part I of Chapter 328, F.S., governing vessel title certificates and liens, by enacting the Uniform Certificate of Title for Vessels Act.

Current Situation

Vessel Titling

Application for Certificate of Title

An owner of a vessel that is required to be titled must apply to the Department of Highway Safety and Motor Vehicles (DHSMV) or county tax collector for a certificate of title. The application¹ must include the true name of the owner, the address of the owner, and the complete description of the vessel, including the hull identification number. The owner must sign the application and must provide valid identification and pay the prescribed fee.²

An original copy of the manufacturer's statement of origin for the vessel must be submitted with the application for title of a manufactured vessel sold in Florida. The owner of a manufactured vessel initially sold outside of Florida must provide an original copy of the manufacturer's statement of origin or the original copy of the executed bill of sale and the most recent certificate of registration for the vessel.³

The owner of a homemade vessel must establish proof of ownership by submitting with the application a notarized statement of the builder and, if the vessel is 16 feet or more in length, a certificate of inspection from the Fish and Wildlife Conservation Commission.⁴

The owner of a nontitled vessel registered outside of Florida, must establish proof of ownership by surrendering the original copy of the most current certificate of registration issued by the other state or country.⁵ If a vessel is titled in another state or country, DHSMV will not issue a Florida title until all existing titles are surrendered to DHSMV.⁶

In making application for a title upon transfer of ownership of a vessel, the new owner must surrender a properly executed last title document issued for that vessel. If a lien exists, and the application for transfer of title is based upon a contractual default, the recorded lienholder must establish proof of right to ownership by submitting with the application the original certificate of title and a copy of the applicable contract upon which the claim of ownership is made. If the claim is based upon a court order or judgment, a copy of such document must accompany the application for transfer of title. If there appears to be any other lien on the vessel, the certificate of title must contain a statement of such a lien.⁷

In making application for transfer of title from a deceased titled owner, the new owner or surviving co-owner must establish proof of ownership by submitting with the application the original certificate of title and the decedent's probated last will and testament or letters of administration appointing the personal

¹ Department of Highway Safety and Motor Vehicles, *Application for Certificate of Title With/Without Registration*, available at <https://www.flhsmv.gov/dmv/forms/btr/82040.pdf> (last visited January 30, 2019).

² Section 328.01(1)(a), F.S.

³ Section 328.01(2)(a) and (b), F.S.

⁴ Section 328.01(2)(c), F.S.

⁵ Section 328.01(2)(d), F.S.

⁶ Section 328.01(2)(e), F.S.

⁷ Section 328.01(3)(a) and (b), F.S.

representative of the decedent. In lieu of a probated last will and testament or letters of administration, a copy of the decedent's death certificate, a copy of the decedent's last will and testament, and an affidavit by the decedent's surviving spouse or heirs affirming rights of ownership may be accepted by DHSMV.⁸

An owner who has made a valid sale or transfer of a vessel and has delivered possession to a purchaser will not be considered the owner of the vessel and subject to civil liability for the operation of the vessel as long as the owner has surrendered the properly endorsed certificate of title to DHSMV.⁹

Certificate of Title Required

All vessels operated, used, or stored on the waters of Florida must be titled by DHSMV unless it is:

- A vessel operated, used, or stored exclusively on private lakes and ponds;
- A vessel owned by the United States Government;
- A non-motor-powered vessel less than 16 feet in length;
- A federally documented vessel;
- A vessel already covered by a registration number, if the vessel is not located in this state for a period in excess of 90 consecutive days;
- A vessel from a country other than the United States temporarily used, operated, or stored on the waters of this state for a period that is not in excess of 90 days;
- An amphibious vessel for which a vehicle title is issued by DHSMV;
- A vessel used solely for demonstration, testing, or sales promotional purposes by the manufacturer or dealer; or
- A vessel owned and operated by the state.¹⁰

However, a vessel may be operated, used, or stored for up to 180 days after the date of application for a certificate of title while the application is pending.¹¹ When selling, assigning, or transferring a titled vessel, the seller must deliver a valid certificate of title to the purchaser. The purchaser has 30 days to file an application for title transfer. The purchaser will be charged a \$10 fee for filing a transfer application after the 30-day period.¹² A certificate of title is prima facie evidence of the ownership of the vessel.¹³

Refusal to Issue and Authority to Cancel a Certificate of Title or Registration

DHSMV may refuse to issue a certificate of title or registration to any applicant who provides a false statement pertaining to the application for a certificate of title. If DHSMV determines that an owner or dealer named in a certificate of title provided a false statement in applying for the certificate of title, DHSMV may cancel the certificate. DHSMV may cancel any pending application or certificate of title, if DHSMV determines that any title or registration fee or sales tax pertaining to such registration has not been paid upon reasonable notice. DHSMV may not issue a certificate of title to any applicant for any vessel that has been deemed derelict by a law enforcement officer.¹⁴

Duplicate Certificate of Title

DHSMV may issue a duplicate certificate of title if it receives an application by the person entitled to hold such a certificate and DHSMV is satisfied that the original certificate has been lost, destroyed, or mutilated. DHSMV must charge a fee of \$6 for issuing a duplicate certificate. DHSMV may impose a fee of \$5 for expedited service in issuing a duplicate certificate of title.¹⁵

⁸ Section 328.01(3)(c), F.S.

⁹ Section 328.01(3)(d), F.S.

¹⁰ Section 328.03(1), F.S.

¹¹ Section 328.03(2), F.S.

¹² Section 328.03(3), F.S.

¹³ Section 328.03(4), F.S.

¹⁴ Section 328.09, F.S.

¹⁵ Section 328.11(1)-(2), F.S.

If the certificate is lost in transit and is not delivered to the addressee, the owner of the vessel or the holder of a lien may, within 180 days after the date of issuance of the title, apply to DHSMV for reissuance of the certificate of title. An additional fee may not be charged by DHSMV. If the address shown on the application is different from the address shown for the applicant, DHSMV will verify the certificate is delivered to an authorized receiver.¹⁶

Notice of Lien on Vessel and Recording

A lien for purchase money or as security for a debt in the form of retain title contract, conditional bill of sale, chattel mortgage, or otherwise on a vessel, is enforceable unless a sworn notice of such lien is recorded. The lien certificate must contain the following information:

- Name and address of the registered owner;
- Date of lien;
- Description of the vessel to include make, type, motor, and serial number; and
- Name and address of lienholder.

The lien must be recorded by DHSMV.¹⁷ DHSMV will not record a lien unless the official certificate of title is furnished with the notice of lien. Once the lien is recorded, the first lien holder will hold the certificate of title until the lien is paid in full.¹⁸

When a vessel is registered in the names of two or more people by the use of the word “or,” each person has the right to place a lien or notice of lien with only his or her signature. When the vessel is registered by the use of the word “and,” the signature of each co-owner is required in order to place a lien on the vessel.¹⁹

If the owner of the vessel or the director of the state child support enforcement program desires to place a second or subsequent lien against the vessel when the title certificate is in the possession of the first lienholder, the owner must send a written request to the first lienholder by certified mail and the first lienholder must forward the certificate to DHSMV for endorsement.²⁰

Once the lien is paid in full, the lienholder must provide the owner with a satisfaction of lien and the satisfaction of lien is then filed with DHSMV.²¹ DHSMV may collect a \$1 fee for the recording of each notice of lien, but no fee may be collected for recording the satisfaction of a lien.²²

A lienholder holding a satisfied lien who fails to issue a satisfaction of the lien within 30 days of satisfaction will be held liable for all costs, damages, and expenses by the registered owner of such vessel. If the certificate of title shows a subsequent lien that has not been discharged, an executed satisfaction of the first lien must be delivered by the lienholder to the owner, and the certificate of title showing satisfaction of the first lien must be forwarded by the lienholder to DHSMV within 10 days after satisfaction of the lien.²³ A lienholder who is noncompliant with the 10-day time period commits a misdemeanor of the second degree.²⁴

If the original certificate of title cannot be returned to DHSMV and the owner has satisfied all liens, upon application, a duplicate copy of the certificate of title without lien will be issued to the owner.²⁵ If the

¹⁶ Section 328.11(3)-(4), F.S.

¹⁷ Section 328.15(1), F.S.

¹⁸ Section 328.15(2)(a), F.S.

¹⁹ Section 328.15(2)(b), F.S.

²⁰ Section 328.15(2)(c), F.S.

²¹ Section 328.15(3), F.S.

²² Section 328.15(6), F.S.

²³ Section 328.15(7), F.S.

²⁴ Section 328.15(9), F.S.

²⁵ Section 328.15(8), F.S.

original lienholder assigns his or her lien to another person, the new lienholder may have his or her name substituted as lienholder.²⁶

Uniform Law Commission

The Uniform Law Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws, provides states with legislation that strives to bring clarity to areas of state statutory law.²⁷ ULC commissioners must be lawyers qualified to practice law. State governments as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands appoint ULC commissioners to research, draft, and promote enactment of uniform state laws in areas where uniformity is desirable and practical.²⁸ The ULC aims to strengthen the federal system by providing rules and procedures that are consistent from state to state.²⁹

Uniform Certificate of Title for Vessels Act

The Uniform Certificate of Title for Vessels Act (UCOTVA) was drafted by the ULC in 2011.³⁰ The principal objectives of the UCOTVA are to:

- (i) Qualify as a state titling law that the Coast Guard will approve;
- (ii) Facilitate transfers of ownership of a vessel;
- (iii) Deter and impede the theft of vessels by making information about the ownership of vessels available to both government officials and those interested in acquiring an interest in a vessel;
- (iv) Accommodate existing financing arrangements for vessels;
- (v) Work seamlessly with the Uniform Commercial Code;
- (vi) Manage, to the extent possible, the complications that can arise from a vessel's transition in or out of federal documentation;
- (vii) Provide clear rules on the consequences of compliance or noncompliance;
- (viii) Impose minimal or no new burdens or costs on state titling offices; and
- (ix) Protect buyers and others acquiring an interest in an undocumented vessel by requiring that the title for the vessel be branded if a casualty or sinking has caused significant damage to the vessel's hull integrity.

Few states currently brand the title of vessels, with the result that vessels with hidden hull damage are often salvaged and resold, after cosmetic repairs, without disclosure of the damage. The UCOTVA creates two title brands, one that owners are required to place on the title and a second supervening brand that insurers are required to place on the title. The act encourages compliance with its branding rules by imposing an administrative penalty on owners who fail to comply and by having insurers who fail to comply make a warranty that the hull is merchantable.³¹ The UCOTVA has been enacted in Virginia (2013), Connecticut (2014), Washington D.C. (2015), and Hawaii (2018).³²

Proposed Changes

The bill creates the "Uniform Certificate of Title for Vessels Act" (Act), which incorporates the UCOTVA into Florida's existing vessel titling law. As such, the bill includes numerous changes to the title application requirements and the duties and responsibilities of DHSMV as it relates to vessel titles.

²⁶ Section 328.15(11), F.S.

²⁷ Uniform Law Commission, *About Us*, available at <http://www.uniformlaws.org/aboutulc/overview> (last visited January 29, 2019).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Esson McKenzie Miller, Jr., et. al., *Uniform Certificate of Title Act for Vessels*, National Conference of Commissioner on Uniform State Laws, March 9, 2011, available at file:///C:/Users/Roth.Danielle/Downloads/CaBOgC2RZ629ydfZfJIA_COTAV_%20Post%20March%202011%20Cmte%20Mtg%20DRAFT_030911.pdf (last visited January 29, 2019).

³¹ *Id.* at p. 2-3.

³² Uniform Law Commission, *Certificate of Title for Vessels Act*, available at <https://www.uniformlaws.org/committees/community-home?CommunityKey=61fb3255-092e-4e91-982b-6fa1ae66fd82> (last visited January 29, 2019).

Application for Certificate of Title

The bill amends s. 328.01, F.S., revising provisions related to an application for certificate of title. The bill requires an applicant to sign the application for certificate of title, which must include:

- The applicant's name, residence address, and, if different, the mailing address.
- The name and mailing address of each other owner of the vessel.
- The hull identification number for the vessel or, if none, an application for the issuance of a hull identification number.
- The vessel number for the vessel or, if none issued by DHSMV, an application for a vessel number.
- A description of the vessel.³³
- An indication of all known security interests in the vessel and the name and mailing address of each secured party.
- A statement that the vessel is not a documented vessel³⁴ or a foreign-documented vessel.
- Any title brand known to the applicant and, if known, the jurisdiction under whose law the title brand was created. For purposes of the Act, the term "title brand" means a designation of previous damage, use, or condition that must be indicated on a certificate of title.
- If the applicant knows the vessel is hull damaged, a statement indicating such.
- If the application is made in connection with a transfer of ownership, the transferor's name, street address, and, if different, mailing address; the sales price, if any; and the date of the transfer.
- If the vessel was previously registered or titled in another jurisdiction, a statement identifying each jurisdiction known to the applicant in which the vessel was registered or titled.

Additionally, the bill requires an application for a certificate of title to contain an electronic address for the owner, transferor, or secured party. The application for certificate of title must be accompanied by a certificate of title signed by the owner shown on the certificate. Either the certificate must identify the applicant as the owner of the vessel or be accompanied by a record identifying the applicant as the owner. If there is no certificate of title:

- If the vessel was a documented vessel, a record issued by the United States Coast Guard that shows the vessel is no longer a documented vessel and identifies the applicant as the owner;
- If the vessel was a foreign-documented vessel, a record issued by the foreign country that shows the vessel is no longer a foreign-documented vessel and identifies the applicant as the owner; or
- In all other cases, a certificate of origin, bill of sale, or other record that to the satisfaction of DHSMV identifies the applicant as the owner.

Lastly, the bill requires DHSMV to maintain any records submitted in connection with an application and authorizes the department to require an application for a certificate of title be accompanied by payment of all fees and taxes by the applicant.

DHSMV Records

The bill creates s. 328.015, F.S., specifying the duties and operation of DHSMV. The bill requires DHSMV to retain evidence used to establish the accuracy of the information in its files relating to the current ownership of a vessel and the information on the certificate of title. DHSMV must retain all information regarding a security interest in a vessel for at least 10 years after it receives a termination statement regarding the security interest, and such information must be accessible by the hull identification number for the vessel.

³³ The description must include the official number for the vessel assigned by the U.S. Coast Guard; the name of the manufacturer, builder, or maker; the model year or year in which the manufacture or build of the vessel was completed; the overall length of the vessel; the vessel type; the hull material; the propulsion type; the engine drive type; and the fuel type.

³⁴ The bill defines the term "documented vessel" to mean a vessel covered by a certificate of documentation issued pursuant to 46 U.S.C. s. 12105, but does not include a foreign-documented vessel. A "foreign-documented vessel" means a vessel the ownership of which is recorded in a registry maintained by a country other than the United States, which identifies each person who has an ownership interest in a vessel and includes a unique alphanumeric designation for the vessel.

A person who submits a record to DHSMV may request an acknowledgement of the filing by the department. Upon request, DHSMV must send the person an acknowledgment showing the hull identification number, information in the filed record, and date and time the record was received. DHSMV must make available certain information to any person who requests it and pays the applicable fees. Upon request, DHSMV must send the requested information in a record that is self-authenticating.

Applicability of State Law

The bill creates s. 328.02, F.S., which provides that state law under which a vessel's certificate of title is covered governs all issues relating to the certificate until the vessel becomes covered by another certificate or becomes a documented vessel.³⁵

Application Submission and Exceptions

The bill amends s. 328.03, F.S., to require a vessel owner to deliver to DHSMV an application for a certificate of title, with the applicable fee, not later than 30 days after the later of the date of a transfer of ownership or the date Florida becomes the state of principal use. The bill creates the following additional exceptions to titling vessels in Florida:

- A documented vessel;
- A foreign-documented vessel;
- A barge;³⁶
- A vessel before delivery if the vessel is under construction or completed pursuant to contract;
- A vessel held by a dealer for sale or lease; and
- A vessel used solely for demonstration, testing, or sales promotional purposes by the manufacturer or dealer.

The bill deletes the following exceptions found in current law:

- A non-motor-powered vessel less than 16 feet in length;
- A federally documented vessel;
- An amphibious vessel for which a vehicle title is issued by DHSMV; and
- A vessel owned and operated by the state or a political subdivision.

Additionally, the bill prohibits DHSMV from issuing, transferring, or renewing a number issued to an undocumented vessel under federal law unless the department has created a certificate of title for the vessel or an application for a certificate and the applicable fee has been delivered to DHSMV.

The bill deletes provisions providing that a vessel may be operated, used, or stored for up to 180 days after the date of application for a certificate of title while the application is pending. The bill also deletes provisions prohibiting a person from selling, assigning, or transferring a titled vessel without the seller delivering a valid certificate of title to the purchaser or transferee.

The bill provides that not only is a certificate of title prima facie evidence of the ownership of the vessel, but also of the accuracy of the information in the record that constitutes the certificate.

Content of the Certificate of Title

The bill creates s. 328.04, F.S., to establish the content of a certificate of title. A certificate of title must contain:

- The date the certificate was created;
- The name of the owner of record and, if not all owners are listed, an indication that there are additional owners indicated in DHSMV's files;
- The mailing address of the owner of record;
- The hull identification number;

³⁶ The bill defines the term "barge" to mean a vessel that is not self-propelled or fitted for propulsion by sail, paddle, oar, or similar device.

- A description of the vessel;
- The name and mailing address of the secured party of record; and
- All title brands indicated in DHSMV's files.

Each title brand indicated on a certificate of title must identify the jurisdiction under whose law the title brand was created. If the vessel was previously registered or titled in a foreign country, DHSMV must indicate such fact on the certificate of title.

The written certificate of title must contain a form that all owners indicated on the certificate may sign to evidence consent to a transfer of an ownership interest. The form must include a certification, signed under penalty of perjury. The written certificate of title must also contain a form for the owner of record to indicate that the vessel is hull damaged.

Branded Titles for Hull-Damaged Vessels

The bill creates s. 328.045, F.S., establishing responsibilities of a vessel owner or insurer of a hull-damaged vessel. If damage occurred to a vessel while a person was the owner and the person has notice of the damage at the time of the transfer, the owner must:

- Deliver to DHSMV an application for a new certificate and include the title brand designation "Hull Damaged"; or
- Indicate on the certificate that the vessel is hull damaged and deliver the certificate to the transferee.

Before an insurer transfers an ownership interest in a hull-damaged vessel covered by a certificate of title created by DHSMV, the insurer must deliver an application to DHSMV and include the title brand "Hull Damaged." Once the information is received, DHSMV has 30 days to create a new certificate indicating the vessel is branded "Hull Damaged."

An owner or insurer who fails to comply with the disclosure requirements is subject to a noncriminal infraction with a penalty of \$5,000 for the first offense, \$15,000 for a second offense, and \$25,000 per offense for every subsequent offense.

Maintenance of and Access to Vessel Title Files

The bill creates s. 328.055, F.S., requiring DHSMV to maintain information contained in all certificates of title and information submitted with an application. DHSMV must:

- Ascertain or assign the hull identification number for the vessel;
- Maintain the hull identification number and all the information submitted with the application, including the date and time the record was delivered to the department; and
- Index the files of DHSMV by hull identification number, vessel number, and name of the owner of record, and any other method used by the department.

Additionally, DHSMV must maintain in its files all known title brands, the name of each known secured party, the name of each known person to be claiming an ownership interest in the vessel, and all stolen property reports DHSMV has received.

Creation of Certificate of Title

The bill creates s. 328.06, F.S., relating to creation of a certificate of title. On creation of a written or electronic certificate of title, DHSMV must promptly send the certificate, or record evidencing the certificate, to the secured party or owner of record. If DHSMV creates a written certificate of title, any electronic certificate of title for the vessel is canceled and replaced by the written certificate.

Before DHSMV creates an electronic certificate of title, any written certificate must be surrendered to the department. If DHSMV creates an electronic certificate, DHSMV must destroy the written certificate and maintain in its files the date and time of destruction.

Limitations on Possession of Title

The bill creates s. 328.065, F.S., specifying that possession of a certificate of title does not, by itself, provide a right to obtain possession of a vessel.

Refusal to Issue and Authority to Cancel Certificate of Title

The bill amends s. 328.09, F.S., providing DHSMV with duties relating to refusal to issue and authority to cancel a certificate of title or registration.

Unless an application for a certificate of title is rejected, DHSMV must create a certificate for the vessel not later than 30 days after delivery of the application to DHSMV. DHSMV must create an electronic certificate of title unless the owner requests a written certificate.

DHSMV may reject an application for a certificate of title only if:

- The application is not in compliance;
- The application does not contain sufficient documentation for DHSMV to determine whether the applicant is entitled to a certificate;
- There is a reasonable basis for concluding that the application is fraudulent or issuance of a certificate would facilitate a fraudulent or illegal act; or
- The application does not comply with the laws of this state.

DHSMV must reject an application for a certificate of title for a vessel that is a documented vessel or a foreign-documented vessel. DHSMV may cancel a certificate of title it creates only if the department could have rejected the application for the certificate; is required to cancel the certificate under another provision; or receives satisfactory evidence that the vessel is a documented vessel or a foreign-documented vessel. DHSMV's decision to reject an application for a certificate of title or cancel a certificate of title is subject to a hearing whereby the owner may present evidence in support of or opposition to cancellation or rejection of a certificate of title.³⁷

Effect of Incorrect or Missing Information

The bill creates s. 328.101, F.S., specifying that a certificate of title is effective even if it contains unintended or incorrect scrivener's errors or does not contain certain required information that DHSMV determines to be inconsequential to the issuing of a certificate of title.

Duplicate Certificate of Title

The bill amends s. 328.11, F.S., providing additional requirements for obtaining a duplicate certificate of title. In addition to a certificate of title being lost, destroyed, or mutilated, if a certificate is stolen, the owner of record may apply for and, by furnishing information satisfactory to DHSMV, obtain a duplicate certificate in the name of the owner of record.

An applicant for a duplicate certificate of title must sign the application and comply with all requirements for title application, and the application must include the existing certificate unless the certificate is lost, stolen, mutilated, destroyed, or otherwise unavailable. A duplicate certificate of title created by DHSMV must comply with all the requirements for a certificate of title and must state that it is a "duplicate." If a person receiving a duplicate certificate of title finds the original certificate, the person must destroy the original certificate.

The bill removes authorization for an applicant for a duplicate certificate of title to apply for reissuance of the certificate if the applicant has not received the duplicate title from DHSMV within 180 days after the date of issuance.

Requirements for Security Interest in a Vessel

The bill creates s. 328.12, F.S., providing requirements for the determination and perfection of a security interest in a vessel.

³⁷ The decision is subject to a hearing pursuant to ss. 120.569 and 120.57, F.S.

A security interest in a vessel can be perfected only by delivery of an application for a certificate of title to DHSMV that identifies the secured party and otherwise complies with all title application requirements. An application identifies a person as a secured party if the person is named as an owner, lessor, consignor, or bailor in an application for a certificate of title.

The bill provides that if DHSMV has created a certificate of title for a vessel, a security interest in the vessel may be perfected by delivery to DHSMV of an application to have the security interest added to the certificate. The application must be signed by an owner of the vessel or by the secured party and must include the name of the owner of record, the name and mailing address of the secured party, the hull identification number, and, if DHSMV has created a written certificate of title for the vessel, the certificate. On delivery of an application and payment of fees, DHSMV must create a new certificate of title and deliver the new certificate, or a record evidencing an electronic certificate, and must maintain the date and time of delivery of the application. DHSMV is not required to provide a receipt providing the name of the assignee of a secured party. A purchaser of a vessel subject to a security interest who obtains a release from the secured party takes free of the security interest and of the rights of a transferee.

The bill provides that s. 328.12, F.S, does not apply to a security interest:

- Created in a vessel by a person during any period in which the vessel is inventory held for sale or lease by the person or is leased by the person as lessor if the person is in the business of selling vessels;
- In a barge for which no application for a certificate of title has been delivered to DHSMV; or
- In a vessel before delivery if the vessel is under construction, or completed, pursuant to contract and for which no application for a certificate has been delivered to DHSMV.

However, s. 328.12, F.S, does apply if a certificate of documentation for a documented vessel is deleted or canceled.

The bill also specifies when a perfected security interest attaches depending on the law under which the security interest arises.

Finally, the bill requires the Department of Revenue to be treated as a secured party when collecting unpaid child support.

Termination of Security Interest

The bill creates s. 328.125, F.S., providing requirements for the delivery of a statement of the termination of a security interest. A secured party must deliver a termination statement to DHSMV and, on the debtor's request, to the debtor, by the earlier of:

- Twenty days after the secured party receives a signed demand from an owner for a termination statement; or
- If the vessel is consumer goods, 30 days after there is no obligation secured by the vessel.

If a written certificate of title has been created and delivered to a secured party and a termination statement is required, the secured party must deliver the certificate to the debtor or to DHSMV with the statement. The bill provides that on delivery to DHSMV of a termination statement authorized by the secured party, the security interest to which the statement relates ceases to be perfected. DHSMV must create and deliver a new certificate if the security interest was indicated on the certificate of title. Additionally, DHSMV must maintain in its files the date and time of delivery of the statement to the department. A secured party that fails to comply with these requirements is liable for any loss the secured party had reason to know might result from its lack of compliance.

Rights of Non-secured Parties

The bill creates s. 328.14, F.S., providing for the rights of a purchaser of a vessel who is not a secured party. The bill provides that a buyer is afforded protection under the Uniform Commercial Code even if an existing certificate of title was not signed and delivered to the buyer.

Rights of Secured Parties

The bill creates s. 328.145, F.S., providing for the rights of a secured party. If a security interest in a vessel is perfected and DHSMV creates a certificate of title that does not indicate the vessel is subject to the security interest:

- A buyer of the vessel takes free of the security interest if the buyer, without knowledge of the security interest, pays for and receives possession of the vessel; and
- The security interest is subordinate to a conflicting security interest in the vessel that is perfected after creation of the certificate and without the conflicting secured party's knowledge of the security interest.

Repeal of Notice of Lien on Vessel

The bill sunsets the following provisions of s. 328.15, F.S., on October 1, 2026, at which time the expired provisions in this section are replaced by those in the bill:

- Authorization of a debtor or registered owner to demand and receive a satisfaction of lien.
- Provisions allowing DHSMV to adopt rules permitting the use of other methods of lien satisfaction, such as a stamp.
- Assessment of liability for costs and attorney fees for failure to furnish a debtor or registered owner of a vessel a satisfaction of lien and related provisions governing satisfaction of liens.
- Authorization for duplicate certificates of title.
- Penalties for failure to return a certificate of title after demand by DHSMV or for failure to forward satisfactions of lien after such demand.
- Provisions requiring DHSMV to use the last known address of record when sending any required notice.
- Provisions for substitution of an original lienholder's name on the certificate of title by an assignee.

Application for Transfer of Ownership and Termination of Security Interest

The bill creates s. 328.215, F.S., specifying circumstances by which DHSMV may create a new certificate of title after receipt of an application for a transfer of ownership or termination of a security interest, without the applicant providing a certificate of title. If DHSMV receives an application for a new certificate of title unaccompanied by a signed certificate of title, DHSMV may create a new certificate of title if:

- The requirements for application for and information to be included in a certificate of title, as well as the requirements for fraud prevention, are met;
- The applicant provides an affidavit stating facts showing the applicant is entitled to a transfer of ownership or termination statement;
- The applicant provides DHSMV with evidence that proper notification of the application has been sent to the owner of record; and
- The applicant submits any other information required by DHSMV as evidence of the applicant's ownership or right to terminate the security interest, and DHSMV has no credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vessel.

The bill authorizes DHSMV to indicate in the certificate of title that the certificate was created without submission of a signed certificate or termination statement. If, after one year, DHSMV has not received any credible information indicating theft, fraud, unsatisfied security interest, or lien on the vessel, DHSMV must remove the indication from the certificate if requested by the applicant.

The bill authorizes DHSMV to require a bond, indemnity, or other security for a vessel title that has a transfer of ownership or security interest and is titled without a signed certificate of title. DHSMV may require the applicant to post a reasonable bond or provide an equal source of indemnity or security. Unless DHSMV receives a claim for indemnity within one year after creation of the certificate of title, DHSMV must release any bond, indemnity, or other security at the request of the applicant. DHSMV is not liable to any person for creating a certificate of title in good faith based on the information provided by the applicant.

Any applicant who intentionally submits erroneous or fraudulent information is subject to a noncriminal infraction with a penalty of \$5,000 for the first offense, \$15,000 for a second offense, and \$25,000 per offense for every subsequent offense.

Voluntary Transfer of Vessel Title Ownership

The bill creates s. 328.22, F.S., providing requirements for the transfer of ownership in a vessel. On a voluntary transfer of vessel title ownership, the following requirements apply:

- If the transferor's interest is noted on the paper certificate, the transferor must sign and deliver it to the transferee. If the transferor does not have possession of the certificate, the person in possession of the certificate has a duty to facilitate the transfer.
- If the certificate of title is an electronic certificate, the transferor must sign and deliver to the transferee a record evidencing the transfer of ownership to the transferee.
- The transferee has a right to enforce, by specific performance, the transfer of the certificate of title from the transferor.

Failure to comply with these requirements or to apply for a new certificate of title does not render the transfer of ownership of a vessel ineffective between the parties; however, the transfer may not be effective against another person claiming an interest in the vessel. A transferor who complies with the above requirements is not liable as owner of the vessel for an event occurring after the transfer.

Transfer of Ownership by Secured Party

The bill creates s. 328.23, F.S., relating to transfer of ownership by a secured party's transfer statement. It defines the term "secured party's transfer statement" as a record signed by the secured party of record stating:

- That there has been a default on an obligation secured by the vessel;
- That the secured party of record is exercising or has exercised post-default remedies with respect to the vessel;
- That by reason of the exercise, the secured party of record has the right to transfer the ownership interest of an owner, and the name of the owner;
- The name and last known mailing address of the owner and secured party of record;
- The name of the transferee;
- Other information required in the application for certificate of title; and
- One of the following:
 - The certificate of title is an electronic certificate;
 - The secured party does not have possession of the written certificate of title created in the name of the owner of record; or
 - The secured party is delivering the written certificate of title to DHSMV with the secured party's transfer statement.

Unless DHSMV has cause to reject a secured party's transfer statement, the department must:

- Accept the statement;
- Amend its files to reflect the transfer; and
- If the name of the owner whose interest is being transferred is indicated on the certificate:
 - Cancel the certificate even if the certificate has not been delivered to DHSMV;
 - Create a new certificate indicating the transferee as owner; and
 - Deliver the new certificate or a record evidencing an electronic certificate.

The secured party is still held to the duties under the Uniform Commercial Code for secured transactions.

Transfer by Operation of Law

The bill creates s. 328.24, F.S., relating to transfers by operation of law. It defines the term “by operation of law” To mean pursuant to a law or judicial order affecting ownership of a vessel because of death, divorce, or other family law proceeding, merger, consolidation, dissolution, or bankruptcy; through the exercise of the rights of a lien creditor or a person having a lien created by statute or rule of law; or through other legal process.

The bill requires a transfer-by-law statement to contain:

- The name and last known mailing address of the owner of record and the transferee and other information required for application of title;
- Documentation sufficient to establish the transferee's ownership interest or right to acquire the ownership interest;
- A statement that the certificate of title is an electronic certificate of title, the transferee does not have possession of the written certificate of title created in the name of the owner of record, or the transferee is delivering the written certificate to DHSMV with the transfer-by-law statement; and
- Except for a transfer due to death, divorce, family law proceeding, merger, consolidation, dissolution, or bankruptcy, evidence that notification of the transfer and the intent to file the transfer-by-law statement has been sent to all persons indicated in DHSMV's files as having an interest, including a security interest, in the vessel.

Unless DHSMV has cause to reject the transfer, the department must:

- Accept the statement;
- Amend its files to reflect the transfer; and
- If the name of the owner whose interest is being transferred is indicated on the certificate:
 - Cancel the certificate even if the certificate has not been delivered to DHSMV;
 - Create a new certificate indicating the transferee as owner;
 - Indicate on the new certificate any security interest indicated on the canceled certificate, unless a court order provides otherwise; and
 - Deliver the new certificate or a record evidencing an electronic certificate.

The bill does not apply to defaults under the Uniform Commercial Code.

Principles of Law and Equity

The bill creates s. 328.25, F.S., providing that the principles of law and equity supplement the provisions of this bill.

Grandfather Provisions

The bill creates an undesignated section of law that grandfathers in the rights, duties, and interests flowing from a transaction, certificate of title, or record created on or before the effective date of this act. Except in certain circumstances, a security interest that is enforceable immediately before the effective date of this act and would have priority over the rights of a person who becomes a lien creditor at that time is a perfected security interest under the act. However, a security interest perfected immediately before the effective date of this act remains perfected until the earlier of:

- The time perfection would have ceased under the law under which the security interest was perfected; or
- Three years after the effective date of this act, which is July 1, 2023.

Retroactive Application

The bill provides that subject to section 31, this act applies to any transaction, certificate of title, or record relating to a vessel, even if the transaction, certificate of title, or record was entered into or created before the effective date of this act.

B. SECTION DIRECTORY:

Section 1: Creates s. 328.001, F.S., relating to short title.

Section 2: Creates s. 328.0015, F.S., relating to definitions.

Section 3: Amends s. 328.01, F.S., relating to application for certificate of title.

Section 4: Creates s. 328.015, F.S., relating to duties and operation of the department.

Section 5: Creates s. 328.02, F.S., relating to law governing vessel covered by certificate of title.

Section 6: Amends s. 328.03, F.S., relating to certificate of title required.

Section 7: Creates s. 328.04, F.S., relating to content of certificate of title.

Section 8: Creates s. 328.045, F.S., relating to title brands.

Section 9: Creates s. 328.055, F.S., relating to maintenance of and access to files.

Section 10: Creates s. 328.06, F.S., relating to action required on creation of certificate of title.

Section 11: Creates s. 328.065, F.S., relating to effect of possession of certificate of title; judicial process.

Section 12: Amends s. 328.09, F.S., relating to refusal to issue and authority to cancel a certificate of title or registration.

Section 13: Creates s. 328.101, F.S., relating to effect of missing or incorrect information.

Section 14: Amends s. 328.11, F.S., relating to duplicate certificate of title.

Section 15: Creates s. 328.12, F.S., relating to perfection of security interest.

Section 16: Creates s. 328.125, F.S., relating to termination statement.

Section 17: Creates s. 328.14, F.S., relating to rights of purchaser other than secured party.

Section 18: Creates s. 328.145, F.S., relating to rights of secured party.

Section 19: Amends s. 328.15, F.S., relating to notice of lien on vessel; recording.

Section 20: Amends s. 328.16, F.S., relating to issuance in duplicate; delivery; liens; and encumbrances.

Section 21: Amends s. 328.165, F.S., relating to cancellation of certificates.

Section 22: Creates s. 328.215, F.S., relating to application for transfer of ownership or termination of security interest without certificate of title.

Section 23: Creates s. 328.22, F.S., relating to transfer of ownership.

Section 24: Creates s. 328.23, F.S., relating to transfer of ownership by secured party's transfer statement.

Section 25: Creates s. 328.24, F.S., relating to transfer by operation of law.

Section 26: Creates s. 328.25, F.S., relating to supplemental principles of law and equity.

Section 27: Creates s. 328.41, F.S., relating to rulemaking authority.

Section 28: Amends s. 409.2575, F.S., relating to liens on motor vehicles and vessels.

Section 29: Amends s. 705.103, F.S., relating to procedure for abandoned or lost property.

Section 30: Amends s. 721.08, F.S., relating to escrow accounts; nondisturbance instruments; alternate security arrangements; transfer of legal title.

Section 31: Provides grandfather provision for valid certificates of title created on or before the effective date of this act.

Section 32: Provides that subject to section 31, this act applies to transfer of title entered into or created before the effective date of this act.

Section 33: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DHSMV estimates an insignificant, but negative impact on the Marine Resource Conservation Trust Fund due to the elimination of the \$1 recording of lien fee. In addition, DHSMV estimates an insignificant, but positive impact on the Marine Resource Conservation Trust Fund due to the potential increase in the number of transactions related to hull-damaged vessel titling. The number of additional title transactions is unknown.

2. Expenditures:

The bill requires DHSMV to implement changes to vessel titling procedures and databases. However, with a delayed effective date of July 1, 2023, DHSMV can incorporate the required changes utilizing existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

To the extent the bill results in additional vessel titling transactions, tax collectors could experience an insignificant increase in title application fees. Tax collectors retain \$3.75 for new and duplicate title transactions. In addition, tax collectors may collect a service charge of \$2.25 per visit. The number of additional title transactions is unknown.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may improve the integrity of the vessel titling process by requiring a more detailed description of the vessel on the title and requiring DHSMV to maintain the information contained in all certificates of title and title applications.

The bill benefits consumers by requiring the title of a vessel be branded if the vessel's hull has been damaged, a condition that affects the condition and value of the vessel.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. As such, Article VII, s. 19 of the Florida Constitution may apply if the fee provisions in the bill are interpreted to be a new or increased state fee.

B. RULE-MAKING AUTHORITY:

This bill authorizes DHSMV to adopt rules to implement the provisions of the Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2019, the Transportation & Infrastructure Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Clarified that the law of the state under which a vessel's certificate of title is covered governs all issues relating to the certificate.
- Provided a 30-day rather than 20-day time thresholds for DHSMV to perform certain requirements.
- Provided that an applicant for a certificate of title must deliver to DHSMV an application for certificate of title within 30 days rather than 20 days from the date of transfer of ownership or date this state becomes the state of principal use.
- Clarified DHSMV's process to issue, transfer, or renew a federal certificate of title for an undocumented vessel that is registered with the U.S. Coast Guard.
- Provided that a vessel owner who fails to report hull damage is subject to a noncriminal infraction with a penalty of \$5,000 for the first offense, \$15,000 for a second offense, and \$25,000 per offense for any subsequent offenses.

- Provided that DHSMV's decision to reject an application for a certificate of title or cancel a certificate of title is subject to a hearing whereby the owner may present evidence in support of or opposition to cancellation or rejection of a certificate of title.
- Clarified that a certificate of title is still effective if it contains scrivener's errors or does not contain certain required information that DHSMV determines to be inconsequential to the issuing of a certificate of title.
- Removed DHSMV's specific rulemaking authority in s. 328.12, F.S., and created a general grant of rulemaking authority.
- Removed DHSMV's requirement to give valuations of vessels.
- Provided language to protect DHSMV from liability for fraudulently obtained certificates of title and provided penalties for applicants who intentionally mislead DHSMV into issuing a fraudulent certificate of title.
- Removed the word "rules" from the requirements of a voluntary transfer of ownership interest in a vessel.
- Clarified that the transferor of a certificate of title can be hand signed or electronically signed, if the option is available.
- Provided a repeal date of s. 328.15(1), (2), and (4) – (8) on October 1, 2025.
- Provided an effective date of July 1, 2022.

On March 19, 2019, the Transportation & Tourism Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Changed the repeal date of s. 328.15(1), (2), and (4) – (8) to October 1, 2026.
- Changed the effective date to July 1, 2023.

On March 28, 2019, the State Affairs Committee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Restored existing provisions in s. 328.01, F.S., relating to application for transfer of title from a deceased title holder.
- Removed unnecessary language relating to public records.
- Required the Department of Revenue to be treated as a secured party when collecting unpaid child support.
- Corrected a cross-reference to a section of the bill.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.