

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 883 License Plates

**SPONSOR(S):** Transportation & Highway Safety Subcommittee, Broxson

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	13 Y, 0 N, As CS	Johnson	Miller
2) Transportation & Economic Development Appropriations Subcommittee	12 Y, 0 N	Perkins	Davis
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

Under current law, when a lienholder notifies the Department of Highway Safety and Motor Vehicles (DHSMV) that the registered owner of a vehicle refuses to comply with a demand for surrender, the driver's name is placed on the "surrender stop" list. Drivers on the surrender stop list are not allowed to be issued license plates or registration stickers until either the vehicle is recovered or the lienholder has the person's name removed from the list. Due to legal concerns, DHSMV is currently not enforcing this provision.

The bill requires DHSMV to withhold the registration, re-registration, or replacement registration after the lienor submits a written notice to surrender to DHSMV. The bill provides that only the vehicle identified by the lienor would be prevented from registering.

The bill provides that upon DHSMV's receipt from a lienor who claims a lien on a vehicle, of written notice to surrender a vehicle or vessel that has been disposed of, concealed, removed, or destroyed by a lienee, DHSMV shall place the name of the vehicle's registered owner on the list of persons who may not be issued a license plate, revalidation sticker, or replacement license plate for the vehicle or vessel owned by the lienee which is identified in the claim by the lienor.

The bill provides that a registered owner of a vehicle may dispute a notice to surrender the vehicle or his or her inclusion on the list of those persons who may not be issued a license plate, revalidation sticker, or replacement license plate by bringing a civil action in the county which he or she resides. The bill provides for procedures for that civil action.

There is an indeterminate fiscal impact on state revenues and expenditures, and DHSMV will incur minimal, nonrecurring programming costs to implement provisions of the bill. See Fiscal Comments for additional detail.

The bill has an effective date of October 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

Section 320.02(17), F.S. , provides that DHSMV “may” withhold the registration or registration or replacement registration after a written notice to surrender a vehicle is submitted to DHSMV by a lienor.<sup>1</sup> DHSMV currently places a “customer stop” when notified by a lienor, which prevents the registration renewal for all vehicles associated with a customer.<sup>2</sup>

In 2008, the Legislature passed SB 1992,<sup>3</sup> creating the Automobile Lenders Industry Task Force within DHSMV. In 2009, based upon a task force recommendation, s. 320.1316, F.S., relating to failure to surrender a vehicle or vessel was created.<sup>4</sup>

Section 320.1316(1), F.S., provides that upon the receipt from a lienor who claims a lien on a vehicle, of written notice to surrender a vehicle or vessel that has been disposed of, concealed, removed, or destroyed by the lienee, DHSMV shall place the name of the registered owner on the list of persons who may not be issued a license plate, revalidation sticker, or replacement license plate for any motor vehicle owned by the lienee at the time notice was given by the lienor. Currently, DHSMV places a “customer stop” when notified by a lienor, preventing the registration or renewal for “all” vehicles associated with a customer.<sup>5</sup>

Since September 2012, DHSMV has suspended the enforcement of s. 320.1316, based on an internal legal opinion “[d]ue to concerns about the opportunity for citizens to appeal DHSMV decisions to levy these ‘registration stops. . .’”<sup>6</sup>

#### **Proposed Changes**

The bill amends s. 320.02(17), F.S., providing that DHSMV shall withhold the registration or re-registration or replacement registration after written notice to surrender a vehicle is submitted to DHSMV by a lienor.<sup>7</sup> The bill also requires DHSMV to only prevent the registration of the one vehicle identified in the lienor’s notice, not all vehicles owned by the customer.

The changes to s. 320.02(17), F.S., require DHSMV to no longer place a “customer stop;” but place a newly created stop that works identical to a registration stop on a person’s record. According to DHSMV, a new type of stop would be created rather than using the existing registration stop because registration stops are placed using a license plate number and both mobile homes and vessels do not have license plates. This would no longer prevent “all vehicles” owned by the person from being renewed; but, only the specific vehicle, vessel, or mobile home associated with the lien. According to DHSMV, this would require programming and process changes.<sup>8</sup>

The bill amends s. 320.1316(1),F.S., providing that upon DHSMV’s receipt from a lienor who claims a lien on a vehicle, of written notice to surrender a vehicle or vessel that has been disposed of, concealed, removed, or destroyed by a lienee, DHSMV shall place the name of the vehicle’s registered

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<sup>1</sup> This is pursuant to s. 316.1316, F.S.

<sup>2</sup> DHSMV bill analysis of HB 883. On file with the Transportation & Highway Safety Subcommittee.

<sup>3</sup> Ch. 2008-176, L.O.F.

<sup>4</sup> Ch. 2009-206, L.O.F.

<sup>5</sup> DHSMV bill analysis of HB 883. On file with the Transportation & Highway Safety Subcommittee.

<sup>6</sup> DHSMV Office of General Council legal opinion. Docket No. 2012-6505. On file with Transportation & Highway Safety Subcommittee staff.

<sup>7</sup> This is pursuant to s. 320.1316, F.S.

<sup>8</sup> DHSMV bill analysis of HB 883. On file with the Transportation & Highway Safety Subcommittee.

owner on the list of persons who may not be issued a license plate, revalidation sticker, or replacement license plate for the vehicle or vessel owned by the lienee which is identified in the claim by the lienor.

The bill also removes a provision from current law which allows a registered owner to dispute a notice to surrender the vehicle by notifying DHSMV in writing on forms provided by DHSMV and presenting proof that the vehicle was sold to a licensed motor vehicle dealer, a licensed mobile home dealer, or a licensed recreational vehicle dealer. This does not affect s. 320.02, F.S., which continues to authorize DHSMV to withhold registration or re-registration of any motor vehicle if an owner has a driver's license suspended for failure to pay any fine levied under chs. 318 or 322, F.S.

The bill provides that a registered owner of a vehicle may dispute a notice to surrender the vehicle or his or her inclusion on the list of those persons who may not be issued a license plate, revalidation sticker, or replacement license plate<sup>9</sup> by bringing a civil action in the county which he or she resides. In an action, the petitioner is entitled to summary procedure,<sup>10</sup> and the court shall advance the cause in its calendar if requested by the petitioner.

At a hearing challenging the refusal to issue a license plate, revalidation sticker, or replacement license plate, the court must first determine whether the lienor has a recorded lien on the vehicle or vessel and whether the lienor properly made a demand for the surrender of the vehicle or vessel. If the court determines that the lien was recorded and that such a demand was properly made, the court should also determine whether a good cause exists for the person's failure to surrender the vehicle or vessel. The term "good cause" is limited to proof that:

- The vehicle that was the subject of the demand for surrender was traded in to a licensed motor vehicle dealer before the date of the surrender demand;
- The lienholder's lien giving rise to the inclusion on the list has been paid in full or otherwise satisfied;
- There is ongoing litigation relating to the validity or enforceability of the lien;
- The petitioner was in compliance with all of his or her contractual obligations with the lienholder at the time of the demand for surrender;
- The vehicle or vessel was reported to law enforcement as stolen by the owner of the vehicle or vessel before the demand to surrender; or
- The petitioner no longer has possession of the vehicle or vessel and the loss of possession occurred pursuant to operation of law. If the petitioner's loss of possession did not occur pursuant to the operation of law, the fact that a third party has physical possession of the vehicle or vessel does not constitute good cause for the failure to surrender the vehicle or vessel.

If the petitioner establishes good cause for failure to surrender the vehicle or vessel, the court shall enter an order removing the petitioner's name from the list of those persons who may not be issued a license plate, revalidation sticker, or replacement license plate and award the petitioner reasonable attorney fees and costs actually incurred for the proceeding.

If the court finds that the demand for surrender was properly made by the lienor and the petitioner fails to establish good cause for the failure to surrender the vehicle or vessel, the court shall award the lienor reasonable attorney fees and costs actually incurred for the proceeding.

### **Effective Date (Section 3)**

The bill has an effective date of October 1, 2014.

## **B. SECTION DIRECTORY:**

Section 1 Amends s. 320.02, F.S., relating to registration required; application for registration; forms.

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<sup>9</sup> This is under s. 320.03(8), F.S.

<sup>10</sup> Summary procedure is specified in s. 51.011, F.S.

Section 2 Amends s. 320.1316, F.S., relating to failure to surrender vehicle or vessel.

Section 3 Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See Fiscal Comments.

2. Expenditures:

Indeterminate. See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Motorists could potentially have registration holds on fewer vehicles since the bill only allows a registration hold on the vehicle involved subject to a lien, not all vehicles owned by the same registered owner.

### D. FISCAL COMMENTS:

The provisions of the bill will allow DHSMV to create a new “stop” that will generate a registration hold on only the specific vehicle that was submitted to DHSMV with a notice to surrender a vehicle by a lienor. A new stop will also be created when a lienor submits a claim to surrender a vehicle or vessel that has been disposed of, concealed, removed, or destroyed by the lienee. This hold will prevent the lienee from obtaining a license plate, revalidation sticker, or replacement license plate for the vehicle or vessel specified in the notice. Because DHSMV is currently not enforcing existing holds due to legal concerns,<sup>11</sup> the implementation of a new hold by this bill could reduce or simply delay the number of registrations and license plates issued in a given year, at least until the lien is satisfied. This impact cannot be quantified, therefore the fiscal impact is negative indeterminate on general revenue and state trust funds. However, satisfying the lien and providing the opportunity for the lienee to dispute the notice to surrender the vehicle or his or her inclusion on the list of those persons who may not be issued a license plate, revalidation sticker, or replacement license plate, could mitigate this impact.

To the extent a motorist brings a civil action to dispute a notice to surrender their vehicle or their inclusion on the list who may be issued a license plate or validation sticker, may create a workload increase for the court system. Such impact is indeterminate, however, and cannot be quantified.

DMSMV advises that it will incur minimal, nonrecurring programming costs of \$8,400 to implement this bill.

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<sup>11</sup> DHSMV bill analysis of HB 883. On file with the Transportation & Economic Development Appropriations Subcommittee.

### 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:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Transportation & Highway Safety Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute removed provisions regarding registration stops for uniform traffic citations related to toll violations, parking tickets, traffic infraction detector violations and wrecker liens. The amendment also changed the effective date of the bill to October 1, 2014. This analysis is drafted to the committee substitute as reported by the Transportation & Highway Safety Subcommittee.