Committee on Infrastructure

Thursday, February 21, 2008
1:30 – 3:30 PM
404 HOB

MEETING PACKET

Marco Rubio
Speaker

Rep. Richard Glorioso
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on Infrastructure

Start Date and Time:	Thursday, February 21, 2008 01:30 pm
End Date and Time:	Thursday, February 21, 2008 03:30 pm
Location:	404 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 167 Temporary Motor Vehicle License Tags by Cretul
HB 317 Blood Testing of Persons Involved in a Traffic Accident Causing Serious Injury or Death by Kravitz
HB 351 Uniform Traffic Control by Reagan
HB 369 Driving Under the Influence by Simmons
HB 575 Contributions to Relieve Homelessness by Cusack
HB 641 License Plates by Chestnut

Presentation:

- Harkley Thornton, Chair, Strategic Aggregates Review Task Force

NOTICE FINALIZED on 02/14/2008 15:15 by RKW

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 167 Temporary Motor Vehicle License Tags

SPONSOR(S): Cretul and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 544

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure		Cortese	Miller
2) Economic Expansion & Infrastructure Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

This bill changes Florida law regarding the placement of temporary tags on vehicles, the specifications for the media on which temporary tags should be printed, and the current requirement for implementation of an electronic print on demand temporary tag issuance system.

Currently, temporary tags may be displayed in the rear license plate bracket or, attached to the inside of the rear window so as to be clearly visible from the rear of the vehicle. This bill will require that temporary tags be displayed within the rear license plate bracket. Additionally, on vehicles requiring front display of license plates, temporary tags would be displayed on the front of the vehicle in the location where the metal license plate would normally be displayed. This bill also adds a requirement that temporary tags must be printed on material that is either nonpermeable or subject to waterproofing so that it maintains it structural integrity.

This bill gives the Department of Highway Safety and Motor Vehicles (DHSMV) the authority to implement a print-on-demand electronic temporary license plate system with voluntary participation. Rather than requiring the implementation of a mandatory temporary tag issuance system as provided in current law, this bill would allow the creation of an optional electronic print-on-demand system.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government- This bill will remove the requirement for a governmental organization to implement a new system for the issuance of temporary license plates.

Maintain public security- This bill will increase the intelligence and resources available to law enforcement by providing a uniform system for the display of temporary license plates.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Under current law, the Department of Highway Safety and Motor Vehicles has the discretion to issue temporary license plates to applicants demonstrating a need for such temporary use.[1] Florida automobile dealers are licensed to issue temporary tags and, unless otherwise provided, temporary tags are valid for 30 days.[2] Temporary tags should be displayed in the rear license plate bracket or attached to the inside of the rear window in an upright position so as to be clearly visible from the rear of the vehicle.[3]

Effect of Proposed Changes

There are three primary changes to statute within HB 167.

1. Implementation of an electronic print-on-demand temporary tag issuance system.

C.S. for S.B. 1134, passed during the 2007 regular session created s. 320.96, F.S. This section requires DHSMV to implement a secure print-on-demand electronic temporary license plate registration, record retention, and issue system for use by every department-authorized issuer of temporary license plates by the end of the 2007-2008 fiscal year. "Secure print-on-demand" as defined in the bill meant validating state registration data using higher levels of commercially accepted data encryption methods from the point of department connectivity to the license plate printer.

The bill repeals the mandatory electronic temporary tag provisions of 320.96, F.S., and instead gives the DHSMV the authority to implement a print-on-demand electronic temporary license plate system with voluntary participation. Rather than requiring the implementation of an electronic print-on-demand temporary tag issuance system, this bill would give the department the option to implement such a system while repealing the implementation mandate.

2. Specifications for the media on which temporary tags should be printed.

Section 320.96, F.S. also makes provisions for the material on which temporary tags should be printed. The temporary license plate media "shall be a nonpermeable material that maintains its structural integrity, including graphic and data adhesion, in all weather conditions after being placed on a vehicle." This bill retains the criteria for the temporary tag material by putting new language in s. 320.131(4),

[1] Section 320.131 (1)(k), F.S.
[2] Section 320.131 (2), F.S.
[3] Section 320.131(4), F.S.

F.S., which has the same requirements as the repealed section, except that the material may be either nonpermeable or subject to waterproofing.

3. Placement of temporary license plates on vehicles.

Currently, s. 320.96, F.S. states that "for public safety in general and for the safety of law enforcement officers, placement of temporary license plates on the outside of the vehicle and in the provided license plate mount when available is encouraged." The bill repeals this section.

Section 320.131 (4), F.S., allows temporary tags to be displayed in the rear license plate bracket or, attached to the inside of the rear window in an upright position so as to be clearly visible from the rear of the vehicle. The bill deletes the language allowing temporary tags to be displayed in the vehicle's rear window so that temporary tags must be displayed within the rear license plate bracket. Additionally, on vehicles requiring front display of license plates, temporary tags must be displayed on the front of the vehicle in the location where the metal license plate would normally be displayed.

C. SECTION DIRECTORY:

Section 1- Subsections (4) and (8) of section 320.131, F.S., are amended to require new specifications for the media on which tags are printed, and for the display of temporary tags on vehicles. Subsection (9) is added to give the Department of Highway Safety and Motor Vehicles the authority to implement an optional electronic, print-on demand, temporary tag issuance system.

Section 2- Section 320.96, F.S., is repealed.

Section 3- This act shall take effect July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None
2. Expenditures:
   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None
2. Expenditures:
   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By making the use of the electronic print-on-demand temporary tag system permissive rather than mandatory, motor vehicle dealers and other sellers of vehicles that issue temporary tags would have the option of issuing the preprinted cardboard temporary tag with the required information being written on the tag's face. Information regarding the person being issued a temporary tag and the vehicle being assigned the tag would not have to be electronically submitted to DHSMV.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to temporary motor vehicle license tags; amending s. 320.131, F.S.; revising provisions for the placement of temporary tags on vehicles; revising provisions for implementation of an electronic, print-on-demand, temporary tag issuance system; providing that the system may be used at the option of the issuer; removing a timeframe for implementation of the system; repealing s. 320.96, F.S., relating to implementation of an electronic, print-on-demand, temporary license plate system; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (4) and (8) of section 320.131, Florida Statutes, are amended, and subsection (9) is added to that section, to read:

320.131 Temporary tags.--

(4)(a) Temporary tags shall be conspicuously displayed in the rear license plate bracket or, ~~attached to the inside of the rear window in an upright position so as to be clearly visible from the rear of the vehicle.~~ on vehicles requiring front display of license plates, ~~temporary tags shall be displayed~~ on the front of the vehicle in the location where the metal license plate would normally be displayed.

(b) The department shall designate specifications for the media upon which the temporary tag is printed. Such media shall be either nonpermeable or subject to weatherproofing so that it

maintains its structural integrity, including graphic and data adhesion, in all weather conditions after being placed on a vehicle.

(8) The department may administer an electronic system for licensed motor vehicle dealers to use for ~~in~~ issuing temporary tags ~~license plates~~. Upon issuing a temporary tag ~~license plate~~, the dealer shall access the electronic system and enter the appropriate vehicle and owner information within the timeframe specified by department rule. If a dealer fails to comply with the department's requirements for issuing temporary tags ~~license plates~~ using the electronic system, the department may deny, suspend, or revoke a license under s. 320.27(9)(b)16. upon proof that the licensee has failed to comply with the department's requirements. The department may adopt rules to administer this section.

(9) The department may implement an electronic, print-on-demand, temporary tag issuance system for the optional use of department-authorized issuers of temporary tags. This system shall enable the department to issue, on demand, a temporary tag number in response to a request from the issuer via a secure electronic exchange of data and then enable the issuer to print the temporary tag with all required information. The department may adopt rules as necessary to implement this program.

Section 2. Section 320.96, Florida Statutes, is repealed.

Section 3. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 317 Blood Testing of Persons Involved in a Traffic Accident Causing Serious Injury or Death

SPONSOR(S): Kravitz

TIED BILLS: **IDEN./SIM. BILLS:** SB 804

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure		Brown RLB	Miller P.M.
2) Economic Expansion & Infrastructure Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

HB 317 provides that if a law enforcement officer has reasonable suspicion that a person was driving or in actual physical control of a motor vehicle when it was involved in an accident that may have caused or contributed to the death or serious bodily injury of a human being, the officer must require the person to submit to a blood test for the purpose of determining the person's blood alcohol content or identifying the presence of chemical substances.

The bill further provides that the result of this blood test is admissible at trial, if the court reviews all evidence collected before, during, or after the test, and concludes that there was probable cause to believe that the person was under the influence.

The bill takes effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government. This bill would require a person reasonably suspected of driving or in actual physical control of a vehicle involved in an accident in which death or serious bodily injury occurs to submit to a blood test regardless of whether the officer has probable cause, at the time of the test, to believe that the person was under the influence or alcohol or other substances. The results of the test would be admissible at trial only if the court, after reviewing all of the evidence collected prior to, during, or after the test, is satisfied that probable cause exists, independent of the result of the test, to believe that the person was under the influence.

B. EFFECT OF PROPOSED CHANGES:

Current law – Implied Consent

Section 316.1932, F.S., sets forth what is commonly known as the implied consent law. It provides in part:

> Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages.[1]

A breath or urine test must be incidental to a lawful arrest at the request of a law enforcement officer who has reasonable cause to believe the offender was driving under the influence.

A blood test, rather than a breath or urine test, is possible under certain additional conditions. A person is deemed to have consented to a blood test (even if the person has not yet been arrested), if:

- There is reasonable cause to believe the person was driving under the influence,
- If the person appears for treatment at a medical facility (including an ambulance), and
- if the administration of a breath or urine test if impractical or impossible.[2]

As with breath or urine tests, the law enforcement officer must have reasonable cause to believe the person was under the influence *before* the test is performed.

Current law – Blood test for impairment in cases of death or serious bodily injury

Section 316.1933, F.S., requires a person to submit to a blood test when a law enforcement officer has probable cause to believe the person was driving under the influence and caused death or serious

[1] Section 316.1932(1)(a)1, F.S. The next sub-subparagraph provides that drivers are also deemed to have consented to a *urine* test for the purpose of detecting the presence of a chemical substance or controlled substance.

[2] Section 316.1932(1)(c), F.S.

bodily injury.[3] The law enforcement officer may use reasonable force if necessary to require the person to submit to the blood test. The testing does not need to be incidental to a lawful arrest of a person. The blood must be withdrawn by a medical professional or technician.[4]

Current Case Law – Fourth Amendment; Probable Cause; 'Special Needs'

The Fourth Amendment of the United States Constitution protects the people of the United States from "unreasonable search and seizure," and requires that specific warrants may be issued, but only upon "probable cause."

There appears to be little controversy over the fact that a blood draw is a "search" pursuant to the Fourth Amendment. The Florida courts have noted, "the Fourth Amendment does not prohibit all searches, only unreasonable ones."[5] For example, in the blood draw statute discussed above, the law enforcement officer must have probable cause to believe the person was driving under the influence before performing a blood test.

Current Florida law allows blood tests to be taken with less than probable cause, but only in a limited number of circumstances where the state's interest is extraordinarily high, allowing the Fourth Amendment requirement of probable cause to be set aside. These circumstances are sometimes referred to as "special needs" exemptions.

For example, the 5th DCA has addressed the taking of blood samples without consent from convicted prisoners.[6] In *Smalley v. State*, 889 So.2d 100 (2004), the Court cited *Skinner v. Railway Labor Executive's Ass'n*, 489 U.S. 602 (1989) for its proposition that blood samples constitute a "search," under the U.S. Constitution, and that the 'special needs' exception is valid. The court quoted the following passage from another federal case, *Green v. Berge*, 354 F.3d 675 (7th Cir.2004):

> [S]pecial needs searches adopt a balancing of interests approach. Special needs searches have been held to include drug testing.... In determining the reasonableness of these searches the Supreme Court has considered the governmental interest involved, the nature of the intrusion, the privacy expectations of the object of the search and, to some extent, the manner in which the search is carried out.... Although the state's DNA testing of inmates is ultimately for a law enforcement goal, it seems to fit within the special needs analysis the Court has developed for drug testing and searches of probationers' homes, since it is not undertaken for the investigation of a specific crime.

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[3] Section 316.1933(1)(b), F.S. defines serious bodily injury as an injury "to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

[4] Section 316.1933(2)(a), F.S. provides that "[o]nly a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician acting at the request of a law enforcement office may withdraw blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances or controlled substances therein."

[5] *Fosman v. State*, 664 So.2d 1163 (4th DCA 1995), citing *Skinner v. Railway Labor Executive's Ass'n*, 489 U.S. 602 (1989).

[6] Section 943.325, F.S. requires many categories of convicted persons in Florida, whether incarcerated or otherwise in state custody or control, to submit blood samples for DNA testing and other purposes.

The Florida court pointed out that "other state courts have approved a DNA collection statute similar to Florida's, on the ground it serves an important state interest ('special needs doctrine'), and because inmates subject to the testing are in custody, and are already 'seized.'"[7] The court also noted that

> [p]ersons convicted of crimes, or ones who have been arrested on probable cause, lose many rights to personal privacy under the 4th Amendment... a convicted person has no reasonable expectation of privacy with respect to blood samples for DNA testing which outweighs the state's interest in identifying convicted felons in a manner that cannot be circumvented, in apprehending criminals, in preventing recidivism and in absolving innocent persons charged with crimes. "[8]

The *Smalley* decision affirms the fact that Florida courts recognize the "special needs" doctrine as laid out in federal case law – a doctrine that can be used to set aside the otherwise necessary requirement that an officer have probable cause before searching a person. However, in *Smalley* the persons being searched have actually been convicted of some crime and are incarcerated or supervised by the State.

In *Fosman v. State,* 664 So.2d 1163 (1995), the 4th DCA cited the "special needs" permissions of *Skinner* in discussing the constitutionality of section 960.003, F.S. This law requires an HIV test for anyone charged with crimes involving transmission of bodily fluids. The results of the test are disclosed only to victim and to public health authorities. The Court agreed that the health aspects of the law rose to the level of a compelling state interest and that the defendant could be forced to give a blood sample without a specific finding of, or hearing to determine, probable cause. The court succinctly stated "...the whole point of *Skinner*... is that 'special needs' can outweigh the necessity of probable cause."[9]

Proposed Changes

The proposed legislation inserts a new paragraph into section 316.1933, F.S., allowing a law enforcement officer to draw blood from a person, if the officer has "reasonable suspicion that [the] person was driving... a motor vehicle when it was involved in an accident" that causes death or serious bodily injury. The search does not need to be incident to a lawful arrest, and the law enforcement officer does not need to have, at the time of the search, probable cause to believe the person is under the influence, merely a reasonable suspicion that the person was in control of the vehicle.

The bill also provides that the results of the blood draw will be admissible in court "if the court, after reviewing all of the evidence, whether gathered prior to, during, or after the test, is satisfied that probable cause exists, independent of the test result, to believe that the person... was under the influence."

C. SECTION DIRECTORY:

Section 1. Amends s. 316.1933, F.S.; providing that a law enforcement officer who has a reasonable suspicion that a person driving a motor vehicle when it was involved in an accident that may have caused death or serious bodily injury may require that person to submit to a blood test to determine alcoholic content of the blood; providing that the result of this blood test is admissible at trial, if the court

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[7] *Smalley v. State*, 889 So.2d 100 (2004), at 105. Internal citation omitted.

[8] *Id.*

[9] *Fosman v. State*, 664 So.2d 1163 (1995), 1165.

reviews all evidence collected before, during, or after test, and concludes that there was probable cause to believe that the person was under the influence.

Sections 2-5. Reenact ss. 316.066(7), 316.1934(2), 322.2616(18) and 322.27(1)(a), F.S. for the purpose of incorporating the amendment made by this act to section 316.1933, F.S. by reference.

Section 6. Provides effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

Because the bill requires a blood draw for persons who may not otherwise require any medical attention, there will presumably be a fiscal impact on local government, although it is unclear whether (or under what circumstances) the cost of the blood draw could be borne by any of the following entities: local law enforcement, a county health provider, a private health provider, or an insurer of the person being tested.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

In *Schmerber v. California*, 86 S.Ct. 1826 (1966), the United States Supreme Court held that it is not an unreasonable search under the Fourth Amendment for police to obtain a warrantless involuntary blood sample from a defendant who is under arrest for DUI if there is probable cause to arrest the defendant for that offense, and the blood is extracted in a reasonable manner by medical personnel pursuant to medically approved procedures. As discussed in the "Current Law" section of this analysis, Florida has a statute to provide for exactly this type of search.

This bill modifies the requirement that the officer have probable cause to believe the person was under the influence, and allows a finding of probable cause to be made in the future, based on all evidence collected before, during, and even after the blood test occurs. A court is permitted to review all collected evidence and decide, independent of the results of the blood test, whether or not the officer could have found probable cause to believe the person was under the influence.

In *Cooper v. Georgia*, 587 S.E.2d 605 (Ga. 2003), the Georgia Supreme Court struck down a statute authorizing a blood test to be taken when the officer had reason to believe to that a person was involved in a traffic accident resulting in serious injuries or fatalities. That statute did not contain the additional language regarding admissibility at trial or after-the-fact finding of probable cause. The Court concluded that the statutory provision was unconstitutional because it authorized a search without probable cause to believe the person was impaired. The Georgia court notes:

> The high courts of several other states have grappled with the constitutionality of provisions allowing the chemical testing of bodily substances without probable cause or valid consent, and based solely on serious traffic mishap. These courts have uniformly rejected provisions which obviate the finding of probable cause. See *McDuff v. State*, 763 So.2d 850 (Miss.2000); *Blank v. State*, 3 P.3d 359 (Alaska 2000); *King v. Ryan*, 153 Ill.2d 449, 180 Ill.Dec. 260, 607 N.E.2d 154 (1992); *Commonwealth v. Kohl*, 532 Pa. 152, 615 A.2d 308 (Pa.1992). Compare *State v. Roche*, 681 A.2d 472 (Maine 1996).[10]

In footnotes to the passage above (omitted here for clarity), the court quotes each decision's refusal to uphold a law that sets aside a requirement of probable cause. The Court also notes the contrary case, Maine's *State v. Roche*, and additional Maine language allowing judicial findings of probable cause after reviewing all gathered evidence from before, during, and after the test was performed. It is this unique language that appears in HB 317.

The Maine statute has been amended (prior to 2004 it provided for breath tests but not blood tests), and has subsequently been upheld in another case. In *State of Maine v. Richard Cormier*, 928 A.2d 753 (2007), the Court explains that the Maine Legislature recognized "the need for more complete information about the involvement of alcohol in serious and fatal accidents," and that blood tests for all drivers involved in fatal crashes "add to the State's body of knowledge regarding the effects of driving in Maine while under the influence of alcohol or drugs and allows the Legislature to be more informed as it shapes policy." The Court notes that the blood testing is performed without regard to whether the operator will be prosecuted for any crime.

As the Court explains:

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[10] *Cooper v. Georgia*, 587 S.E.2d 605 (Ga. 2003), 609-610.

> [T]he statute goes on to limit the admissibility of the blood test results at a criminal trial to circumstances in which evidence from the test would demonstrate probable cause to believe the operator was under the influence of intoxicants.... Unique to this statute is the Legislature's authorization of law enforcement to determine whether probable cause existed at the time of the test through evidence gathered *after* the test had been taken.[11]

Analyzing a combination of the "special needs" doctrine, the concept of inevitable discovery[12] and the "evanescent nature of the evidence" involved, the Maine Supreme Court declared that probable cause may be set aside at the time of a blood draw under the Maine statute. "If the State presents evidence gathered after the fact demonstrating that, but for the exigencies at the scene..., probable cause would have been discovered; and... the test would have been administered based on probable cause established by this... information," the admission of the test results into a later court hearing "is not unreasonable and would not violate" the person's Fourth Amendment rights.[13]

As the Georgia court noted in *Cooper*, several states have rejected the idea that a blood test 'search' may be predicated on mere involvement in a traffic accident, lacking a warrant or probable cause that the operator of the vehicle was under the influence. Both Maine's statute and subsequent judicial interpretation appear to be unique. Given these circumstances it is difficult to determine how Florida courts might interpret the proposed changes.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

A constituent brought this bill to me. His wife was involved in an accident where someone ran a red light and hit her. The person that caused the accident was never tested for any substance but his wife was tested at the hospital. His wife and child died as a result of the accident. This bill will require the blood testing of all parties that are in control of a vehicle.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

[11] 928 A.2d 753 at 757. Emphasis in original.

[12] The theory behind "inevitable discovery" generally holds that evidence gathered unlawfully might still be admissible at trial if the court determines that a lawful investigation would have inevitably led to the discovery of the same evidence.

[13] *State of Maine v. Richard Cormier*, 928 A.2d 753 (2007), 761.

A bill to be entitled

An act relating to blood testing of persons involved in a traffic accident causing serious injury or death; amending s. 316.1933, F.S.; requiring a law enforcement officer who has a reasonable suspicion that a person was driving or in actual physical control of a motor vehicle when it was involved in an accident that may have caused or contributed to the death or serious bodily injury of a human being to require that person to submit to a test of the person's blood to determine the alcoholic content thereof or the presence of specified substances; authorizing the law enforcement officer to use reasonable force if necessary; requiring that the blood test be performed in a reasonable manner; providing that the test need not be incidental to a lawful arrest of the person; providing for admissibility of test result at trial; providing testing requirements and procedures; providing a limitation of liability; providing for disposition of charges; limiting use of test results; authorizing release of results to certain persons; reenacting ss. 316.066(7), 316.1934(2), 322.2616(18), and 322.27(1)(a), F.S., relating to written reports of crashes; presumption of impairment and testing methods; suspension of license, persons under 21 years of age, and right to review; and authority of the Department of Highway Safety and Motor Vehicles to suspend or revoke license; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 316.1933, Florida Statutes, is amended to read:

316.1933 Blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force.--

(1)(a) If a law enforcement officer has probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury of a human being, a law enforcement officer shall require the person driving or in actual physical control of the motor vehicle to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in s. 877.111 or any substance controlled under chapter 893. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding s. 316.1932, the testing required by this paragraph need not be incidental to a lawful arrest of the person.

(b) If a law enforcement officer has a reasonable suspicion that a person was driving or in actual physical control of a motor vehicle when it was involved in an accident that may have caused or contributed to the death or serious bodily injury of a human being, a law enforcement officer shall

require the person who is suspected of driving or being in actual physical control of the motor vehicle to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in s. 877.111 or any substance controlled under chapter 893. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding s. 316.1932, the testing required by this paragraph need not be incidental to a lawful arrest of the person. The result of the test is admissible at trial if the court, after reviewing all the evidence, whether gathered prior to, during, or after the test, is satisfied that probable cause exists, independent of the test result, to believe that the person suspected of driving or being in actual physical control of the motor vehicle was under the influence of alcohol, any chemical substance as set forth in s. 877.111, or any substance controlled under chapter 893 at the time of the accident.

(c) ~~(b)~~ The term "serious bodily injury" means an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(2)(a) Only a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, acting at the

request of a law enforcement officer, may withdraw blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances or controlled substances therein. However, the failure of a law enforcement officer to request the withdrawal of blood shall not affect the admissibility of a test of blood withdrawn for medical purposes.

1. Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, if a health care provider, who is providing medical care in a health care facility to a person injured in a motor vehicle crash, becomes aware, as a result of any blood test performed in the course of that medical treatment, that the person's blood-alcohol level meets or exceeds the blood-alcohol level specified in s. 316.193(1)(b), the health care provider may notify any law enforcement officer or law enforcement agency. Any such notice must be given within a reasonable time after the health care provider receives the test result. Any such notice shall be used only for the purpose of providing the law enforcement officer with reasonable cause to request the withdrawal of a blood sample pursuant to this section.

2. The notice shall consist only of the name of the person being treated, the name of the person who drew the blood, the blood-alcohol level indicated by the test, and the date and time of the administration of the test.

3. Nothing contained in s. 395.3025(4), s. 456.057, or any applicable practice act affects the authority to provide notice under this section, and the health care provider is not considered to have breached any duty owed to the person under s.

395.3025(4), s. 456.057, or any applicable practice act by providing notice or failing to provide notice. It shall not be a breach of any ethical, moral, or legal duty for a health care provider to provide notice or fail to provide notice.

4. A civil, criminal, or administrative action may not be brought against any person or health care provider participating in good faith in the provision of notice or failure to provide notice as provided in this section. Any person or health care provider participating in the provision of notice or failure to provide notice as provided in this section shall be immune from any civil or criminal liability and from any professional disciplinary action with respect to the provision of notice or failure to provide notice under this section. Any such participant has the same immunity with respect to participating in any judicial proceedings resulting from the notice or failure to provide notice.

(b) A chemical analysis of the person's blood to determine the alcoholic content thereof must have been performed substantially in accordance with methods approved by the Department of Law Enforcement and by an individual possessing a valid permit issued by the department for this purpose. The Department of Law Enforcement may approve satisfactory techniques or methods, ascertain the qualifications and competence of individuals to conduct such analyses, and issue permits that are subject to termination or revocation at the discretion of the department. Any insubstantial differences between approved methods or techniques and actual testing procedures, or any insubstantial defects concerning the permit

issued by the department, in any individual case, shall not render the test or test results invalid.

(c) No hospital, clinical laboratory, medical clinic, or similar medical institution or physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person assisting a law enforcement officer shall incur any civil or criminal liability as a result of the withdrawal or analysis of a blood specimen pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.

(3)(a) Any criminal charge resulting from the incident giving rise to the officer's demand for testing shall be tried concurrently with a charge of any violation arising out of the same incident, unless, in the discretion of the court, such charges should be tried separately. If such charges are tried separately, the fact that such person refused, resisted, obstructed, or opposed testing shall be admissible at the trial of the criminal offense which gave rise to the demand for testing.

(b) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(4) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information relating to the alcoholic content of the blood or the presence of chemical substances or controlled substances in the blood obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of s. 316.193 upon request for such information.

Section 2. For the purpose of incorporating the amendment made by this act to section 316.1933, Florida Statutes, in a reference thereto, subsection (7) of section 316.066, Florida Statutes, is reenacted to read:

316.066 Written reports of crashes.--

(7) Except as specified in this subsection, each crash report made by a person involved in a crash and any statement made by such person to a law enforcement officer for the purpose of completing a crash report required by this section shall be without prejudice to the individual so reporting. No such report or statement shall be used as evidence in any trial, civil or criminal. However, subject to the applicable rules of evidence, a law enforcement officer at a criminal trial may testify as to any statement made to the officer by the person involved in the crash if that person's privilege against self-incrimination is not violated. The results of breath, urine, and blood tests administered as provided in s. 316.1932 or s. 316.1933 are not confidential and shall be admissible into evidence in accordance with the provisions of s. 316.1934(2). Crash reports made by persons involved in crashes shall not be used for commercial

solicitation purposes; however, the use of a crash report for purposes of publication in a newspaper or other news periodical or a radio or television broadcast shall not be construed as "commercial purpose."

Section 3. For the purpose of incorporating the amendment made by this act to section 316.1933, Florida Statutes, in a reference thereto, subsection (2) of section 316.1934, Florida Statutes, is reenacted to read:

316.1934 Presumption of impairment; testing methods.--

(2) At the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving, or in actual physical control of, a vehicle while under the influence of alcoholic beverages or controlled substances, when affected to the extent that the person's normal faculties were impaired or to the extent that he or she was deprived of full possession of his or her normal faculties, the results of any test administered in accordance with s. 316.1932 or s. 316.1933 and this section are admissible into evidence when otherwise admissible, and the amount of alcohol in the person's blood or breath at the time alleged, as shown by chemical analysis of the person's blood, or by chemical or physical test of the person's breath, gives rise to the following presumptions:

(a) If there was at that time a blood-alcohol level or breath-alcohol level of 0.05 or less, it is presumed that the person was not under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(b) If there was at that time a blood-alcohol level or breath-alcohol level in excess of 0.05 but less than 0.08, that fact does not give rise to any presumption that the person was or was not under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired but may be considered with other competent evidence in determining whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(c) If there was at that time a blood-alcohol level or breath-alcohol level of 0.08 or higher, that fact is prima facie evidence that the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired. Moreover, such person who has a blood-alcohol level or breath-alcohol level of 0.08 or higher is guilty of driving, or being in actual physical control of, a motor vehicle, with an unlawful blood-alcohol level or breath-alcohol level.

The presumptions provided in this subsection do not limit the introduction of any other competent evidence bearing upon the question of whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

Section 4. For the purpose of incorporating the amendment made by this act to section 316.1933, Florida Statutes, in a reference thereto, subsection (18) of section 322.2616, Florida Statutes, is reenacted to read:

322.2616 Suspension of license; persons under 21 years of age; right to review.--

(18) The result of a blood test obtained during an investigation conducted under s. 316.1932 or s. 316.1933 may be used to suspend the driving privilege of a person under this section.

Section 5. For the purpose of incorporating the amendment made by this act to section 316.1933, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 322.27, Florida Statutes, is reenacted to read:

322.27 Authority of department to suspend or revoke license.--

(1) Notwithstanding any provisions to the contrary in chapter 120, the department is hereby authorized to suspend the license of any person without preliminary hearing upon a showing of its records or other sufficient evidence that the licensee:

(a) Has committed an offense for which mandatory revocation of license is required upon conviction. A law enforcement agency must provide information to the department within 24 hours after any traffic fatality or when the law enforcement agency initiates action pursuant to s. 316.1933;

Section 6. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 351 Uniform Traffic Control

SPONSOR(S): Reagan and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 816

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure		Brown	Miller
2) Economic Expansion & Infrastructure Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

HB 351 creates the "Mark Wandall Traffic Safety Act." The bill authorizes counties and municipalities to enact ordinances permitting the use of traffic infraction detectors and specifies the required content of the ordinance. The penalty for failing to stop at a steady red light, as determined through the use of a traffic infraction detector, is a fine of $125. The bill describes requirements that must be met when issuing a ticket through documentation by the traffic infraction detector and the challenge procedure to be followed if someone other than the vehicle owner was driving the vehicle at the time of the alleged violation.

The bill provides a complaint process for complaints that a county or municipality is employing traffic infraction detectors for purposes other than the promotion of public health, welfare, and safety or in a manner inconsistent with the law. Each county or municipality that operates a traffic infraction detector must submit an annual report to the Department of Highway Safety and Motor Vehicles (Department) which details the results of the detectors and the procedures for enforcement. The Department must submit a summary report to the Governor and Legislature on or before December 1, 2009, which includes a review of the information submitted by the counties and municipalities and any recommendations or necessary legislation.

The bill revises the definition of "habitual traffic offender" to include three convictions for a violation of a traffic control red light within a three-year period. Violations detected by use of a traffic infraction detector are not considered convictions for habitual traffic offender purposes. A severability clause is also provided.

To the extent local governments choose to enact ordinances to permit the use of traffic infraction detectors there will be a fiscal impact to the local governments for the cost of the installation and maintenance of the devices, the amount of which will vary depending on the negotiated agreement between the local government and any private vendor providing the equipment. There may be an increase in fine revenue for the local governments that choose to enact ordinances permitting the use of traffic infraction detectors, the amount of which is indeterminate and reliant on driver awareness and future behavior.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government- The bill authorizes a local government to enact an ordinance to permit the use of traffic infraction devices to photograph motor vehicles that run red lights. The local government is also authorized to impose a fine of $125 on vehicle owners whose vehicle ran a red light, as determined by a traffic infraction device.

Promote Personal Responsibility- The use of traffic infraction devices by local governments may promote personal responsibility by increasing the likelihood of a sanction for failure to obey a traffic control device.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

According to the Department, in 2007 there were 106 fatalities and 10,720 injuries related to motor vehicle drivers who disregarded a traffic signal in Florida.[1]

Traffic infraction detectors, or "red light cameras," are used to enforce traffic laws by automatically photographing vehicles whose drivers run red lights. A red light camera is connected to the traffic signal and to sensors that monitor traffic flow at the crosswalk or stop line. The system continuously monitors the traffic signal, and the camera is triggered by any vehicle entering the intersection above a pre-set minimum speed and following a specified time after the signal has turned red. A second photograph typically shows the red light violator in the intersection. In some cases video cameras are used. Cameras record the license plate number, the date and time of day, the time elapsed since the beginning of the red signal, and the vehicle speed. Over 110 cities and towns in 20 states across the country currently participate in a red light camera program[2]. Red light cameras have been used in at least 33 foreign countries since the 1970s.[3]

An Insurance Institute for Highway Safety (IIHS) review of international red light camera studies concluded that cameras reduce red light violations by 40-50 percent and reduce injury crashes by 25-30 percent.[4] A 2005 study of red light camera programs in seven metropolitan communities by the Federal Highway Administration concluded that there was a 25 percent reduction in right-angle collisions, but a 15 percent increase in rear-end collisions.[5] It is possible that the volume of rear-end collisions will decline as drivers get used to the idea that the vehicle in front of them will stop at a red light.[6]

Other studies, including a 7-jurisdiction study conducted by the Virginia Department of Transportation[7] and a USDOT-funded study by the Urban Transit Institute at North Carolina A&T University,[8] have reached conflicting results regarding crash reduction. The results of these studies are best summarized by this excerpt from the North Carolina study:

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[1] Email from Office of Legislative Affairs, Department of Highway Safety and Motor Vehicles, February 12, 2008.
[2] National Campaign to Stop Red Light Running, www.stopredlightrunning.com/html/rlc_cities.htm
[3] Insurance Institute for Highway Safety website (www.iihs.org/research/qanda/rlr.html) citing Blackburn, R.R. and Glibert, D.T., *Photographic enforcement of traffic laws*. Washington, DC, National Academy Press, 1995.
[4] *Id.*, citing Retting, R.A. et al., *Effects of red light cameras on violations and crashes: a review of the international literature*, Traffic Injury Prevention 4:17-23, 2003.
[5] Federal Highway Administration, *Safety Evaluation of Red-Light Cameras*, Publication No. FHWA-HRT-05-048, available online here: http://www.tfhrc.gov/safety/pubs/05048/
[6] *Id.*
[7] Available online here: http://www.thenewspaper.com/rlc/docs/05-vdot.pdf
[8] Available online here: http://www.thenewspaper.com/rlc/docs/burkeyobeng.pdf

> The results do not support the conventional wisdom expressed in recent literature and popular press that red light cameras reduce accidents.... Our findings are more pessimistic, finding no change in angle accidents and large increases in rear-end crashes and many other types of crashes relative to other intersections. We did find a decrease in accidents involving a vehicle turning left and a vehicle on the same roadway, which may have been included as an angle accident in some other studies. However, given that these left turn accidents occur only one third as often as angle accidents, and the fact that we find no benefit from decreasing severity of accidents suggests that there has been no demonstrable benefit from the RLC [red light camera] program in terms of safety. In many ways, the evidence points toward the installation of RLCs as a detriment to safety.

Critics on each side of the debate raise concerns about the scientific methodology of opposing studies and potential bias of researchers. Criticisms have focused on issues such as sample size, control of variables (weather, similarity of intersections, etc), and other possible control methods (*e.g.,* failure to analyze intersections before/after detectors are placed).

Currently there are no recognized independent standards or certifications for the red light camera industry. The Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA) have developed guidelines for the use of state and local agencies on the implementation and operation of red light camera systems. These guidelines were updated in January 2005.[9] Although not a regulatory requirement, the guidance is intended to provide critical information for state and local agencies on relevant aspects of red light camera systems in order to promote consistency and proper implementation and operation. The guidelines present research that suggests engineering improvements, safety education and increased enforcement by law enforcement officers can significantly reduce red light violations.

Examples of engineering improvements include:

- *Improving signal head visibility.* Signal head visibility can be improved by increasing the size of the traffic signal lamps from 8 to 12 inches. The addition of backplates can also make signals more visible.
- *All-red interval.* An all-red clearance interval, where the traffic signals on all sides are red for a period of time, provides additional time for motorists already in the intersection to proceed through the intersection on the red indication while holding cross traffic on the cross street approaches. The red clearance interval is not intended to reduce the incidence of red light running; rather it is a safety measure.
- *Appropriate yellow times.* The likelihood of a motorist running a red light increases as the yellow interval is shortened. Lengthening the yellow interval, within appropriate guidelines, has been shown to significantly reduce the number of inadvertent red light violations.
- *Traffic signal coordination.* A coordinated traffic signal operation where motorists are able to move smoothly in platoons from intersection to intersection reduces the risk of red light violations and collisions.

Cameras are permitted by current Florida law to enforce violations of payment of tolls.[10] For example, toll facility operators use a digital camera to capture an image of the vehicle's license plate as the vehicle travels through the tolling zone. If the system receives payment from a SunPass, the image is deleted. If no payment is received, the image is processed for video tolling or is considered a toll violation and a Uniform Traffic Citation is issued.

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[9] U.S. Department of Transportation, *Red Light Camera Systems Operational Guidelines*, Publication No. FHWA-SA-05-002, January 2005.

[10] s. 316.1001(2)(d), F.S.

In response to the city of Pembroke Pines' inquiry regarding the use of unmanned cameras to enforce violations of traffic signals, the Attorney General issued an advisory legal opinion on July 12, 2005.[11] The opinion concluded that it was within the local government's scope of authority "to enact an ordinance authorizing the city:

- to monitor violations of traffic signals within the city and to use unmanned cameras to monitor intersections and record traffic violations;
- to monitor violations of traffic signals within the city and to use unmanned cameras to record the license tag numbers of cars involved in such violations; and
- to advise a car owner that his or her license tag number has been recorded in a violation of the traffic laws."

The problem identified by a 1997 Attorney General Opinion[12] was whether unmanned electronic traffic infraction detectors may independently be used as the basis for issuing citations for violations of traffic laws. Current statute requires that citations be issued when an officer "*observes* the commission of a traffic infraction."[13] The 1997 Attorney General Opinion concluded that nothing precludes the use of unmanned cameras to record violations of s. 316.075, F.S., but "a photographic record of a vehicle violating traffic control laws may not be used as the basis for issuing a citation for such violations." The 2005 Attorney General Opinion reached the same conclusion, stating, "legislative changes are necessary before local governments may issue traffic citations and penalize drivers who fail to obey red light indications on traffic signal devices" as collected from a photographic record from unmanned cameras monitoring intersections.

Several local governments in Florida have participated in the use of red light cameras enforcement of red light violations. Due to the Attorney General's Advisory Opinions, the majority of local governments have used the cameras in pilot projects solely for data collection purposes or as a warning system to motorists, by sending a letter and attaching no penalty. Sarasota County, Manatee County, Palm Beach County, Polk County, and the cities of Orlando and Melbourne are examples of local governments that have at one time participated in a red light camera pilot project. The Palm Beach County Commission reported that their two-month pilot project using traffic cameras at a test intersection in Palm Beach County showed alarming results. One fifth of those who ran a red light did so two seconds after the light had changed. On average, fifty cars a day ran the light at the test site during the first month of the pilot project. During the second month of the project, following publicity about the program, that number dropped to less than twenty.[14]

The city of Gulf Breeze passed a local ordinance in 2005 allowing use of red light cameras. A violation by any motor vehicle running a red light that is recorded by a traffic enforcement photographic system is deemed a civil, noncriminal violation and a $100 civil fee is assessed against the motor vehicle owner. The city has installed one red light camera at Daniel Drive and U.S. 98 in front of Gulf Breeze Middle School. The Gulf Breeze City Council adopted the ordinance despite the opinion issued by the Attorney General. The Gulf Breeze Police Chief said that after the signs went up, violations dropped from 150 a month to 95 in a little over a year.[15] The camera was installed by "Traffipax." According to the police chief, the vendor paid for the initial cost of setting up the program. In return, the vendor is paid a percentage of the $100 fine. "Peek Traffic", the vendor who donated the equipment and monitoring for Sarasota County's pilot project, states that a camera typically costs approximately $50,000 and is $10,000 to install.

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[11] Attorney General Opinion 05-41.
[12] Attorney General Opinion 97-06.
[13] s. 316.640(5)(a), F.S.
[14] Palm Beach County Board of County Commissioners, "FY 2007 State Legislative Program", available online here: http://www.pbcgov.com/legislativeaffairs/pdf/LegProg.pdf
[15] Ginny Laroe, "Police Research Traffic Cameras", Sarasota Herald Tribune 26 March 2007.

Proposed Changes

Local Ordinance Authorization

HB 351 creates the "Mark Wandall Traffic Safety Act." The bill creates s. 316.0083, F.S., authorizing counties and municipalities to enact ordinances permitting the use of traffic infraction detectors and specifies the required content of the ordinance. Pursuant to the new statute, each local ordinance must:

- provide for the use of a traffic infraction detector to enforce s. 316.075(1)(c), F.S., which requires the driver of a motor vehicle to stop when facing a traffic signal steady red light on the streets and highways under the jurisdiction of the county or municipality;
- authorize a traffic infraction enforcement officer to issue a ticket for violation of s. 316.075(1)(c), F.S., and to enforce the payment of tickets for such violation;
- require signs to be posted at locations designated by the county or municipality providing notification that a traffic infraction detector may be in use;
- require the county or municipality to make a public announcement and conduct a public awareness campaign of the proposed use of traffic infraction detectors at least 30 days before commencing the enforcement program;
- establish a fine of $125 to be assessed against the owner of a motor vehicle whose vehicle fails to stop when facing a red light, as determined through use of a traffic infraction detector; and

Fines

The fine imposed by the local ordinance is done so in the same manner and is subject to the same limitations as provided for parking violations under s. 316.1967, F.S. The Department's authority to suspend or revoke a license (contained in Chapter 318 and s. 322.27, F.S.) is not applicable to a violation of an ordinance enacted under s. 316.0083, F.S. A violation is not a conviction of the operator, may not be made a part of the operator's driving record, may not be used for purposes of setting motor vehicle insurance rates, and may not result in points assessed against the operator's driver's license. Fines assessed under the ordinance are retained by the county or municipality.

Procedure for Issuance and Contestation of Tickets

HB 351 cites current statutory procedures addressing liability for payment of parking ticket violations and other parking violations[16] and applies those procedures to violations of ordinances created under s. 316.0083, F.S., with the following additional requirements:

- the name and address of the person alleged to be liable as the registered owner or operator of the vehicle involved in the violation;
- the registration number of the vehicle;
- the violation charged;
- a copy of the recorded image;
- the location where the violation occurred;
- the date and time of the violation;
- information that identifies the device that recorded the violation;
- a signed statement by a specifically trained technician employed by the agency or its contractor that, based on inspection of recorded images, the motor vehicle was being operated in violation of s. 316.075(1)(c), F.S.;
- the amount of the fine;
- the date by which the fine must be paid;
- the procedure for contesting the violation alleged in the ticket; and

[16] Section 316.1967(2)-(5), F.S.

- a warning that failure to contest the violation in the manner and time provided is deemed an admission of the liability and that a default may be entered thereon.

The violation is processed by the county or municipality that has jurisdiction over the street or highway where the violation occurred or by any entity authorized by the county or municipality to prepare and mail the ticket. The ticket is sent by first-class mail to the owner of the vehicle involved in the violation no less than 14 days after the date of the violation and the owner is responsible for payment of the fine unless the owner can establish that the vehicle:

- Passed through the intersection to yield the right-of-way to an emergency vehicle or as part of a funeral procession;
- Passed through the intersection at the direction of a law enforcement officer;
- Was, at the time of the violation, reported as stolen; or
- A Uniform Traffic Citation (UTC) was issued for the alleged violation.

The owner of the vehicle must furnish an affidavit to the county or municipality that provides detailed information supporting an exemption as provided above, including relevant documents such as a police report (if the car had been reported stolen) or a copy of the UTC, if issued.

A person may elect to contest the determination that they failed to stop at a red light as evidenced by the traffic infraction detector by electing to appear before a judge authorized to adjudicate traffic infractions. If the person elects to appear before the court, they are deemed to have waived the limitation of civil penalties imposed for the violation and the court may impose a civil penalty not to exceed $125 plus court costs. The court may take appropriate measures to enforce collection of any penalty not paid within the time permitted by the court.

A certificate sworn to or affirmed by a person authorized under s. 316.008, F.S., who is employed by or under contract with the county or municipality where the infraction occurred, or a fax of such a certificate, that is based upon inspection of photographs or other recorded images produced by the traffic infraction detector, is considered evidence of the facts contained in the certificate. A photograph or other recorded image evidencing a violation must be available for inspection in any proceeding to adjudicate liability for violation of an ordinance enacted under s. 316.0083, F.S.

The bill authorizes counties and municipalities to provide the names of those who have one or more outstanding violations, as recorded by traffic infraction detectors, to the Department. Pursuant to s. 320.03(8), F.S., if a person's name appears on the Department's list, a license plate or revalidation sticker may not be issued until the fine has been paid.

Accountability

The bill provides for a complaint process for complaints that a county or municipality is employing traffic infraction detectors for purposes other than the promotion of public health, welfare, and safety or in a manner inconsistent with the law. A complaint may be submitted to the governing board of the county or municipality.

Each county or municipality that operates a traffic infraction detector is required to submit an annual report to the Department, which must contain:

- the complaints received, along with any investigation and corrective action taken by the governing body;
- the results of using the traffic infraction detector; and
- the procedures for enforcement.

The Department must submit an annual summary report to the Governor and Legislature which must contain:

- a review of the information received from the counties and municipalities;
- a description of the enhancement of the traffic safety and enforcement programs; and
- recommendations, including any necessary legislation.

The first report must be submitted on or before December 1, 2009. After reviewing the report, the Legislature may exclude a county or municipality from further participation in the program. Any traffic infraction detector installed on the state's streets or highways must meet requirements established by the Department of Transportation (DOT) and must be tested at regular intervals according to procedures prescribed by DOT.

Definition of Habitual Traffic Offender

The bill revises the definition of "habitual traffic offender," as contained in s. 322.264, F.S. The current definition includes a person whose record, as maintained by the Department, shows that such person has accumulated the specified number of convictions for specified offenses within a five year period. The offenses currently include three or more convictions of any one or more of the following offenses:

- voluntary or involuntary manslaughter resulting from the operation of a motor vehicle;
- driving under the influence;
- any felony in the commission of which a motor vehicle is used;
- driving a motor vehicle with a suspended or revoked license;
- failing to stop and render aide in the event of a motor vehicle crash resulting in the death or personal injury of another; or
- driving a commercial vehicle while his or her privilege is disqualified.

The term also applies to drivers receiving 15 convictions for moving traffic offenses for which points may be assessed as set forth in s. 322.27, F.S., within five years.

The bill applies the "habitual traffic offender" label to drivers who receive three or more convictions for a violation of a traffic control signal steady red light indication. In computing the number of convictions, all convictions during the last three years previous to July 1, 2008, will be used, provided at least one conviction occurs after that date.

Ordinance violations issued pursuant to this bill are not considered convictions, and therefore would not count towards the "habitual traffic offender" statute. Only someone who is issued a uniform traffic citation by a law enforcement officer and subsequently convicted of the violation is subject to the proposed provisions in the definition of "habitual traffic offender".

The bill provides a severability clause and is effective upon becoming law.

C. SECTION DIRECTORY:

Section 1. Citing the act as the "Mark Wandall Traffic Safety Act."

Section 2. Amending s. 316.003, F.S.; defining the term "traffic infraction detector."

Section 3. Creating s. 316.0083, F.S.; creating the "Mark Wandall Traffic Safety Program" to be administered by the Department; authorizing counties and municipalities to enact ordinances permitting the use of traffic infraction detectors and specifying the topics of the required ordinances; exempting emergency vehicles from an ordinance enacted under this section; providing penalties for traffic control signal violations detected by traffic infraction detectors; providing for the issuance, challenge, and disposition of tickets; providing for disposition of fine revenue; providing a process for complaints that a county or municipality is employing detectors in a manner inconsistent with this

section; and requiring the Department to submit a report to the Governor and Legislature.

Section 4. Amending s. 316.0745(6), F.S.; requiring traffic infraction detectors to meet requirements established by the Department of Transportation and be tested at regular intervals.

Section 5. Reenacting s. 316.1967, F.S.

Section 6. Reenacting s. 320.03, F.S.

Section 7. Amending s. 322.264, F.S.; revising the definition of "habitual traffic offender" to include 3 convictions for violation of a traffic control red light within a 3-year period.

Section 8. Reenacting s. 322.27, F.S.

Section 9. Reenacting s. 322.34, F.S.

Section 10. Providing a severability clause.

Section 11. Providing that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent local governments choose to enact ordinances to permit the use of traffic infraction detectors there may be a fiscal impact to the private sector. Traffic infraction detectors will increase the scope of a local government's enforcement of red light violations; therefore increasing the possibility of a motor vehicle owner receiving a ticket for a red light violation. The fine for the ordinance violation, as determined by a traffic infraction detector, is $125. If a person chooses to contest the ticket, they may appear before a judge, but they are deemed to have waived the limitation of civil penalties imposed for the violation and, if the ticket is upheld by the judge, may be charged the $125 fee plus court costs.

D. FISCAL COMMENTS:

Two state agencies will incur minor expenses as a result of this legislation. The bill requires the Department of Highway Safety and Motor Vehicles to collect reports from municipalities and to prepare an annual report for the Legislature. The bill also requires the Department of Transportation to prepare standards for traffic infraction detectors. The Department of Highway Safety and Motor Vehicles may also require programming changes to address the additional "habitual traffic offender" requirements.

To the extent local governments choose to enact ordinances to permit the use of traffic infraction detectors there may be a fiscal impact to the local governments for the cost of the acquisition, installation and maintenance of the devices, the amount of which will vary depending on the negotiated agreement between the local government and any private vendor providing the equipment and service. The price of a traffic infraction detector ranges from $50,000 to $100,000 each. There may also be installation, maintenance and monitoring fees, based on the negotiated agreement. The number of local governments that will choose to enact local ordinances as authorized by this bill is unknown; therefore the fiscal impact to local governments is unknown.

Local court systems may see a caseload increase, in the event that vehicle operators choose to contest tickets as permitted under the bill. Although the bill permits the court to impose a penalty "not to exceed $125 plus court costs," there may be an indeterminate cost to the local court system.

There may be an increase in fine revenue for any local governments that choose to enact ordinances permitting the use of traffic infraction detectors. The amount of revenue is indeterminate, as the number of ordinance violations to be issued is unknown, and reliant on driver awareness and future behavior.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 62, the bill uses the term "citation" to refer to a ticket issued for an ordinance violation. This usage is inconsistent with the term "ticket" as otherwise used in the bill's red light camera provisions.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to uniform traffic control; creating the "Mark Wandall Traffic Safety Act"; amending s. 316.003, F.S.; defining the term "traffic infraction detector"; creating s. 316.0083, F.S.; creating the Mark Wandall Traffic Safety Program to be administered by the Department of Highway Safety and Motor Vehicles; requiring a county or municipality to enact an ordinance in order to use a traffic infraction detector to identify a motor vehicle that fails to stop at a traffic control signal steady red light; requiring authorization of a traffic infraction enforcement officer to issue and enforce a ticket for such violation; requiring signage; requiring certain public awareness procedures; requiring the ordinance to establish a fine of a certain amount; prohibiting additional charges; exempting emergency vehicles; providing that the registered owner of the motor vehicle involved in the violation is responsible and liable for payment of the fine assessed; providing exceptions; providing procedures for disposition and enforcement of tickets; providing for disposition of revenue; providing complaint procedures; providing for the Legislature to exclude a county or municipality from the program; requiring reports from participating municipalities and counties to the department; requiring the department to make reports to the Governor and the Legislature; amending s. 316.0745, F.S.; providing that traffic infraction detectors must meet certain

requirements; amending s. 316.1967, F.S.; providing for inclusion of persons with outstanding violations in a list sent to the department for enforcement purposes; amending s. 322.264, F.S.; revising the definition of the term "habitual traffic offender" to include a certain number of violations of a traffic control signal steady red light indication within a certain timeframe; reenacting ss. 322.27(5) and 322.34(1), (2), (5), and (8)(a), F.S., relating to the authority of the Department of Highway Safety and Motor Vehicles to suspend or revoke a driver license and driving while a driver license is suspended, revoked, canceled, or disqualified, for the purpose of incorporating the amendment to s. 322.264, F.S., in references thereto; providing for severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Mark Wandall Traffic Safety Act."

Section 2. Subsection (86) is added to section 316.003, Florida Statutes, to read:

316.003 Definitions.--The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(86) TRAFFIC INFRACTION DETECTOR.--A device that uses a vehicle sensor installed to work in conjunction with a traffic

control signal and a camera synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light. Any citation issued by the use of a traffic infraction detector must include a photograph showing both the license tag of the offending vehicle and the traffic control device being violated.

Section 3. Section 316.0083, Florida Statutes, is created to read:

316.0083 Mark Wandall Traffic Safety Program; administration; report.--

(1) There is created the Mark Wandall Traffic Safety Program governing the operation of traffic infraction detectors. The program shall be administered by the Department of Highway Safety and Motor Vehicles and shall include the following provisions:

(a) In order to use a traffic infraction detector, a county or municipality must enact an ordinance that provides for the use of a traffic infraction detector to enforce s. 316.075(1)(c), which requires the driver of a vehicle to stop the vehicle when facing a traffic control signal steady red light on the streets and highways under the jurisdiction of the county or municipality. A county or municipality that operates a traffic infraction detector must authorize a traffic infraction enforcement officer to issue a ticket for a violation of s. 316.075(1)(c) and to enforce the payment of tickets for such violation. This paragraph does not authorize a traffic

infraction enforcement officer to carry a firearm or other weapon and does not authorize such an officer to make arrests. The ordinance must require signs to be posted at locations designated by the county or municipality providing notification that a traffic infraction detector may be in use. Such signage must conform to the standards and requirements adopted by the Department of Transportation under s. 316.0745. The ordinance must also require that the county or municipality make a public announcement and conduct a public awareness campaign of the proposed use of traffic infraction detectors at least 30 days before commencing the enforcement program. In addition, the ordinance must establish a fine of $125 to be assessed against the registered owner of a motor vehicle that fails to stop when facing a traffic control signal steady red light as determined through the use of a traffic infraction detector. Any other provision of law to the contrary notwithstanding, an additional surcharge, fee, or cost may not be added to the civil penalty authorized by this paragraph.

(b) When responding to an emergency call, an emergency vehicle is exempt from any ordinance enacted under this section.

(c) A county or municipality must adopt an ordinance under s. 316.008 that provides for the use of a traffic infraction detector in order to impose a fine on the registered owner of a motor vehicle for a violation of s. 316.075(1)(c). The fine shall be imposed in the same manner and is subject to the same limitations as provided for parking violations under s. 316.1967. Except as specifically provided in this section, chapter 318 and s. 322.27 do not apply to a violation of s.

316.075(1)(c) for which a ticket has been issued under an ordinance enacted pursuant to this section. Enforcement of a ticket issued under the ordinance is not a conviction of the operator of the motor vehicle, may not be made a part of the driving record of the operator, and may not be used for purposes of setting motor vehicle insurance rates. Points under s. 322.27 may not be assessed based upon such enforcement.

(d) The procedures set forth in s. 316.1967(2)-(5) apply to an ordinance enacted pursuant to this section, except that the ticket must contain the name and address of the person alleged to be liable as the registered owner of the motor vehicle involved in the violation, the registration number of the motor vehicle, the violation charged, a copy of the recorded images, the location where the violation occurred, the date and time of the violation, information that identifies the device that recorded the violation, and a signed statement by a specifically trained technician employed by the agency or its contractor that, based on inspection of recorded images, the motor vehicle was being operated in violation of s. 316.075(1)(c). The ticket must advise the registered owner of the motor vehicle involved in the violation of the amount of the fine, the date by which the fine must be paid, and the procedure for contesting the violation alleged in the ticket. The ticket must contain a warning that failure to contest the violation in the manner and time provided is deemed an admission of the liability and that a default may be entered thereon. The violation shall be processed by the county or municipality that has jurisdiction over the street or highway where the violation

occurred or by any entity authorized by the county or municipality to prepare and mail the ticket.

(e) The ticket shall be sent by first-class mail addressed to the registered owner of the motor vehicle and postmarked no later than 14 days after the date of the violation.

(f)1. The registered owner of the motor vehicle involved in a violation is responsible and liable for payment of the fine assessed pursuant to this section unless the owner can establish that:

a. The motor vehicle passed through the intersection in order to yield right-of-way to an emergency vehicle or as part of a funeral procession;

b. The motor vehicle passed through the intersection at the direction of a law enforcement officer;

c. The motor vehicle was stolen at the time of the alleged violation; or

d. A uniform traffic citation was issued to the driver of the motor vehicle for the alleged violation of s. 316.075(1)(c).

2. In order to establish any such fact, the registered owner of the vehicle must, within 20 days after receipt of notification of the alleged violation, furnish to the county or municipality, as appropriate, an affidavit that sets forth detailed information supporting an exemption as provided in sub-subparagraph 1.a., sub-subparagraph 1.b., sub-subparagraph 1.c., or sub-subparagraph 1.d. For an exemption under sub-subparagraph 1.c., the affidavit must set forth that the vehicle was stolen and be accompanied by a copy of the police report indicating that the vehicle was stolen at the time of the alleged

violation. For an exemption under sub-subparagraph 1.d., the affidavit must set forth that a citation was issued and be accompanied by a copy of the citation indicating the time of the alleged violation and the location of the intersection where it occurred.

(g) A person may contest the determination that such person failed to stop at a traffic control signal steady red light as evidenced by a traffic infraction detector by electing to appear before any judge authorized by law to preside over a court hearing that adjudicates traffic infractions. A person who elects to appear before the court to present evidence is deemed to have waived the limitation of civil penalties imposed for the violation. The court, after hearing, shall determine whether the violation was committed and may impose a civil penalty not to exceed $125 plus costs. The court may take appropriate measures to enforce collection of any penalty not paid within the time permitted by the court.

(h) A certificate sworn to or affirmed by a person authorized under s. 316.008 who is employed by or under contract with the county or municipality where the infraction occurred, or a facsimile thereof that is based upon inspection of photographs or other recorded images produced by a traffic infraction detector, is prima facie evidence of the facts contained in the certificate. A photograph or other recorded image evidencing a violation of s. 316.075(1)(c) must be available for inspection in any proceeding to adjudicate liability under an ordinance enacted pursuant to this section.

(i) In any county or municipality in which tickets are

issued as provided in this section, the names of persons who have one or more outstanding violations may be included on the list authorized under s. 316.1967(6).

(j) If the driver of the motor vehicle received a citation from a traffic enforcement officer at the time of the violation, a ticket may not be issued pursuant to this section.

(k) The uniform traffic citation prepared by the department under s. 316.650 may not be issued for any violation for which a ticket is issued as provided in this section.

(2) The fine imposed pursuant to paragraph (1)(a) or paragraph (1)(g) shall be retained by the county or municipality enforcing the ordinance enacted pursuant to this section.

(3) A complaint that a county or municipality is employing traffic infraction detectors for purposes other than the promotion of public health, welfare, and safety or in a manner inconsistent with this section may be submitted to the governing body of such county or municipality. Such complaints, along with any investigation and corrective action taken by the county or municipal governing body, shall be included in the annual report to the department and in the department's annual summary report to the Governor, the President of the Senate, and the Speaker of the House Representatives, as required by this section. Based on its review of the report, the Legislature may exclude a county or municipality from further participation in the program.

(4)(a) Each county or municipality that operates a traffic infraction detector shall submit an annual report to the department that details the results of using the traffic infraction detector and the procedures for enforcement.

(b) The department shall provide an annual summary report to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the use and operation of traffic infraction detectors under this section. The summary report must include a review of the information submitted to the department by the counties and municipalities and must describe the enhancement of the traffic safety and enforcement programs. The department shall report its recommendations, including any necessary legislation, on or before December 1, 2009, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 4. Subsection (6) of section 316.0745, Florida Statutes, is amended to read:

316.0745 Uniform signals and devices.--

(6)(a) Any system of traffic control devices controlled and operated from a remote location by electronic computers or similar devices must ~~shall~~ meet all requirements established for the uniform system, and, if ~~where~~ such a system affects ~~systems affect~~ the movement of traffic on state roads, the design of the system must ~~shall~~ be reviewed and approved by the Department of Transportation.

(b) Any traffic infraction detector deployed on the streets and highways of the state must meet requirements established by the Department of Transportation and must be tested at regular intervals according to procedures prescribed by that department.

Section 5. Subsection (6) of section 316.1967, Florida Statutes, is amended to read:

316.1967 Liability for payment of parking ticket violations and other ~~parking~~ violations.--

(6) Any county or municipality may provide by ordinance that the clerk of the court or the traffic violations bureau shall supply the department with a magnetically encoded computer tape reel or cartridge or send by other electronic means data which is machine readable by the installed computer system at the department, listing persons who have three or more outstanding parking violations, including violations of s. 316.1955, or who have one or more outstanding tickets for a violation of a traffic control signal steady red light indication issued pursuant an ordinance adopted under s. 316.0083. Each county shall provide by ordinance that the clerk of the court or the traffic violations bureau shall supply the department with a magnetically encoded computer tape reel or cartridge or send by other electronic means data that is machine readable by the installed computer system at the department, listing persons who have any outstanding violations of s. 316.1955 or any similar local ordinance that regulates parking in spaces designated for use by persons who have disabilities. The department shall mark the appropriate registration records of persons who are so reported. Section 320.03(8) applies to each person whose name appears on the list.

Section 6. Subsection (8) of section 320.03, Florida Statutes, reads:

320.03 Registration; duties of tax collectors; International Registration Plan.--

(8) If the applicant's name appears on the list referred to in s. 316.1001(4), s. 316.1967(6), or s. 713.78(13), a license plate or revalidation sticker may not be issued until that person's name no longer appears on the list or until the person presents a receipt from the clerk showing that the fines outstanding have been paid. This subsection does not apply to the owner of a leased vehicle if the vehicle is registered in the name of the lessee of the vehicle. The tax collector and the clerk of the court are each entitled to receive monthly, as costs for implementing and administering this subsection, 10 percent of the civil penalties and fines recovered from such persons. As used in this subsection, the term "civil penalties and fines" does not include a wrecker operator's lien as described in s. 713.78(13). If the tax collector has private tag agents, such tag agents are entitled to receive a pro rata share of the amount paid to the tax collector, based upon the percentage of license plates and revalidation stickers issued by the tag agent compared to the total issued within the county. The authority of any private agent to issue license plates shall be revoked, after notice and a hearing as provided in chapter 120, if he or she issues any license plate or revalidation sticker contrary to the provisions of this subsection. This section applies only to the annual renewal in the owner's birth month of a motor vehicle registration and does not apply to the transfer of a registration of a motor vehicle sold by a motor vehicle dealer licensed under this chapter, except for the transfer of registrations which is inclusive of the annual

renewals. This section does not affect the issuance of the title to a motor vehicle, notwithstanding s. 319.23(7)(b).

Section 7. Section 322.264, Florida Statutes, is amended to read:

322.264 "Habitual traffic offender" defined.--A "habitual traffic offender" is any person whose record, as maintained by the Department of Highway Safety and Motor Vehicles, shows that such person has accumulated the specified number of convictions for offenses described in subsection (1) or subsection (2) within a 5-year period or the specified number of convictions for offenses described in subsection (3) within a 3-year period:

(1) Three or more convictions of any one or more of the following offenses arising out of separate acts:

(a) Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle;

(b) Any violation of s. 316.193, former s. 316.1931, or former s. 860.01;

(c) Any felony in the commission of which a motor vehicle is used;

(d) Driving a motor vehicle while his or her license is suspended or revoked;

(e) Failing to stop and render aid as required under the laws of this state in the event of a motor vehicle crash resulting in the death or personal injury of another; or

(f) Driving a commercial motor vehicle while his or her privilege is disqualified.

(2) Fifteen convictions for moving traffic offenses for which points may be assessed as set forth in s. 322.27, including those offenses in subsection (1).

(3) Three convictions under s. 316.075 for a violation of a traffic control signal steady red light indication.

Any violation of any federal law, any law of another state or country, or any valid ordinance of a municipality or county of another state similar to a statutory prohibition specified in subsection (1), ~~or~~ subsection (2), or subsection (3) shall be counted as a violation of such prohibition. In computing the number of convictions, all convictions during the 5 years previous to July 1, 1972, will be used, provided at least one conviction occurs after that date. In computing the number of convictions for offenses listed in subsection (3), all convictions during the 3 years preceding July 1, 2008, will be used, provided at least one conviction occurs after that date. The fact that previous convictions may have resulted in suspension, revocation, or disqualification under another section does not exempt them from being used for suspension or revocation under this section as a habitual offender.

Section 8. For the purpose of incorporating the amendment made by this act to section 322.264, Florida Statutes, in a reference thereto, subsection (5) of section 322.27, Florida Statutes, is reenacted to read:

322.27 Authority of department to suspend or revoke license.--

(5) The department shall revoke the license of any person designated a habitual offender, as set forth in s. 322.264, and such person shall not be eligible to be relicensed for a minimum of 5 years from the date of revocation, except as provided for in s. 322.271. Any person whose license is revoked may, by petition to the department, show cause why his or her license should not be revoked.

Section 9. For the purpose of incorporating the amendment made by this act to section 322.264, Florida Statutes, in references thereto, subsections (1), (2), and (5) and paragraph (a) of subsection (8) of section 322.34, Florida Statutes, are reenacted to read:

322.34 Driving while license suspended, revoked, canceled, or disqualified.--

(1) Except as provided in subsection (2), any person whose driver's license or driving privilege has been canceled, suspended, or revoked, except a "habitual traffic offender" as defined in s. 322.264, who drives a vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked is guilty of a moving violation, punishable as provided in chapter 318.

(2) Any person whose driver's license or driving privilege has been canceled, suspended, or revoked as provided by law, except persons defined in s. 322.264, who, knowing of such cancellation, suspension, or revocation, drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked, upon:

(a) A first conviction is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A second conviction is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A third or subsequent conviction is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The element of knowledge is satisfied if the person has been previously cited as provided in subsection (1); or the person admits to knowledge of the cancellation, suspension, or revocation; or the person received notice as provided in subsection (4). There shall be a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order as provided in subsection (4) appears in the department's records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation.

(5) Any person whose driver's license has been revoked pursuant to s. 322.264 (habitual offender) and who drives any motor vehicle upon the highways of this state while such license is revoked is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8)(a) Upon the arrest of a person for the offense of driving while the person's driver's license or driving privilege is suspended or revoked, the arresting officer shall determine:

1. Whether the person's driver's license is suspended or revoked.

2. Whether the person's driver's license has remained suspended or revoked since a conviction for the offense of driving with a suspended or revoked license.

3. Whether the suspension or revocation was made under s. 316.646 or s. 627.733, relating to failure to maintain required security, or under s. 322.264, relating to habitual traffic offenders.

4. Whether the driver is the registered owner or coowner of the vehicle.

Section 10. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 11. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 369 Driving Under the Influence

SPONSOR(S): Simmons and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 456

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure		Brown	Miller
2) Economic Expansion & Infrastructure Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Current statute provides for a court to order the mandatory placement of an ignition interlock device upon all vehicles leased or owned by a person convicted of a first violation of driving under the influence (DUI) when the person's blood-alcohol level (BAL) is .20 percent or higher or the person is accompanied by a minor; or a second, third, or fourth DUI conviction.

HB 369 amends s. 316.193, F.S., to direct the court to order the mandatory placement of an ignition interlock device for a period of at least six months on all vehicles leased or owned by a person convicted of a first time violation of DUI and referred to a substance abuse treatment provider. The bill also increases the amount of time an interlock device must be used by a first-time offender who is guilty of DUI with a BAL of .20 percent or higher or who had a minor in the vehicle at the time of arrest from "up to six months" to "at least 1 year." The penalty for a repeat offender in either of these circumstances remains at "at least 2 years."

Ignition interlock devices currently disable a vehicle if the driver's blood alcohol level is .05 percent or higher. HB 369 lowers this allowable threshold to .025 percent.

The bill does not have a fiscal impact on state or local governments and has an effective date of July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Reduce Government: The court system is provided increased authority to require mandatory placement of ignition interlock devices on the vehicles of first-time DUI offenders who have been referred to drug treatment centers.

Increase Personal Responsibility: Those convicted of a first-time DUI and have been referred to drug treatment centers are required to have an ignition interlock device placed on their vehicle to test the driver's breath for blood alcohol concentration before the person uses a motor vehicle.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Penalties for Persons Convicted of DUI, according to s. 316.193, F.S.

According to s. 316.193, F.S., a person is guilty of the offense of DUI if the person is driving or in actual physical control of a vehicle and either: (1) is under the influence of alcoholic beverages, any chemical substance, or any controlled substance to the extent the person's normal faculties are impaired; or (2) has a blood-alcohol level of 0.08 percent or higher. Penalties vary depending on the number of previous convictions, the offender's blood-alcohol or breath-alcohol level (BAL) when arrested, and the age of passengers in the vehicle at the time of arrest.

A first-time offender is subject to a fine ranging from $250 to $500, as well as being subject to imprisonment for up to six months. The offender must also be on probation for up to one year and participate in 50 hours of community service. As a condition of probation, the offender's vehicle is impounded for a period of ten days. However, if the first-time offender's BAL is .20 percent or higher, or if a passenger under 18 years of age is present in the vehicle, the penalty is enhanced to a fine ranging from $500 to $1,000, imprisonment not exceeding 9 months, and placement of an ignition interlock device upon all vehicles leased or owned and routinely operated by the person for up to six months.

A second DUI conviction carries a fine ranging from $500 to $1,000, imprisonment for a period of up to nine months, and mandatory placement of an ignition interlock device upon all vehicles leased or owned and routinely operated by the offender for at least one year. However, if a second offense occurs within five years of a previous DUI conviction, there is a mandatory imprisonment period of at least 10 days, of which at least 48 hours must be consecutive. As a condition of probation, the offender's vehicle is impounded for 30 days, which may not occur concurrently with the imprisonment. Enhanced penalties also apply when the second-time offender's BAL is .20 percent or higher, or when a passenger under the age of 18 is present in the vehicle. These penalties require a fine ranging from $1,000 to $2,000, imprisonment not exceeding 12 months, and placement of an ignition interlock device upon all vehicles leased or owned and routinely operated by the person for at least two years.

A third or subsequent DUI conviction occurring within ten years of a prior DUI conviction is considered a third degree felony and carries a minimum fine of $1,000 but not exceeding $5,000, a term of imprisonment not to exceed five years, and placement of an ignition interlock device upon all vehicles leased or owned and routinely operated by the person for a period not less than two years. There is also a 30-day minimum mandatory imprisonment period, of which at least 48 hours must be consecutive. The offense of a felony DUI for a third conviction within ten years of a prior conviction is ranked within level three of the offense severity ranking chart. The offense of a felony DUI for a fourth or subsequent conviction is ranked within level six of the offense severity ranking chart. However, a third offense occurring more than ten years after the date of a prior DUI conviction carries a fine ranging from $1,000 to $2,500, possible imprisonment for up to 12 months, and placement of an ignition interlock device upon all vehicles leased or owned and routinely operated by the person for at least two years.

Section 316.193(3), F.S., also provides penalties for a person convicted of a DUI who causes or contributes to causing: damage to the property or person of another, serious bodily injury to another, or the death of another (DUI manslaughter). A DUI offense involving property damage results in a first degree misdemeanor, punishable by a fine not exceeding $1,000 and imprisonment for up to one year in jail. A DUI offense involving serious injury results in a third degree felony, punishable by a fine not exceeding $5,000 and imprisonment for up to five years. A DUI offense resulting in death is a second degree felony, punishable by a fine not exceeding $10,000 and imprisonment for up to 15 years.

In addition to these penalties, a DUI conviction results in a driver's license revocation under s. 322.28, F.S., as follows: at least 180 days to one year for a first conviction; at least five years for a second conviction within five years of a previous conviction; at least ten years for a third conviction within ten years from the first of three or more prior convictions; and permanent revocation for a fourth conviction.

Ignition Interlock Devices

As defined in Department Rule 15A-9.003(13), an ignition interlock device is "a breath alcohol analyzer connected to a motor vehicle's ignition. In order to start the motor vehicle engine, a convicted person must blow a deep lung breath sample into the analyzer, which measures the breath alcohol concentration. If the breath alcohol concentration exceeds the fail point on the ignition interlock device, the motor vehicle engine will not start."

Section 316.193, F.S., says the court must order the placement of an interlock device for up to six months for a first DUI offense and for up to two years for a second DUI offense where the violator had a BAL above .20 percent or if a passenger under 18 years of age is present in the vehicle. Upon a second DUI conviction, the law requires placement of an interlock device on all vehicles owned or leased by the offender for at least one year. Upon a third DUI conviction, the court must order an interlock device to be installed for at least two years. The ignition interlock device must be of a type approved by the Department and must be placed at the offender's sole expense. Section 316.1937, F.S., requires that ignition interlock devices keep a vehicle from starting if the person's blood alcohol level is in excess of .05 percent.

Pursuant to s. 316.193(2) and (4), F.S., the ignition interlock device penalties for DUI and for DUI with a BAL above .20 percent or when the driver was accompanied by a minor in the vehicle are summarized in the chart as follows:

DUI Conviction	Ignition Interlock Device Requirement
1st Conviction	If court ordered
1st Conviction if .20 BAL or w/ Minor in Car	Up to 6 months
2nd Conviction	At least 1 year
2nd Conviction if .20 BAL or w/ Minor in Car	At least 2 years
3rd Conviction w/in 10 years of previous	At least 2 years
3rd Conviction more than 10 years after previous	At least 2 years

Section 322.2715, F.S., directs the Department to require placement of an ignition interlock device for any person convicted of committing an offense of DUI as shown in the chart above, prior to issuing the person a permanent or restricted driver's license.

The Department has contracted with two interlock device vendors to install, inspect and service the ignition interlock devices in Florida. "Interlock Systems of Florida" is the vendor for south Florida counties and has eight installation locations. "Interlock Group of Florida" is the vendor for north Florida counties and has eight installation locations. The cost of installation is $70, plus tax. The offender must also pay a $100 refundable deposit or a $5 monthly insurance charge, as well as a $67.50 monthly fee for monitoring and calibration.[1] However, if the court determines that the convicted person is unable to pay for the installation of the device, the court may order that a portion of the fine paid by the person for the DUI violation be allocated to defray the costs of installing the device.[2]

The ignition device is programmed to require routine servicing at 30 to 60 day intervals. However, events involving misuse or non-compliance with program conditions may cause the service date to advance automatically. Service requirements must be strictly complied with; otherwise the interlock device will not allow the vehicle to be started, even if no alcohol is detected. Locations for installation, inspection and servicing of the ignition interlock devices are as follows:

Interlock Systems of Florida (south Florida)	Interlock Group of Florida (north Florida)
Orlando, Tampa, Largo, Lake Worth, Lauderhill, Miami, Ft. Myers, Marathon	Milton, Panama City, Tallahassee, Jacksonville, Gainesville, DeBary, Mt. Dora, Brooksville

According to the most recent available data from the Department, there are 6,552 people across the state currently enrolled in the ignition interlock device program. Since the program began on February 1, 2004, there have been 9,093 people to successfully complete their program requirements. This population has a 2.95 percent overall recidivism rate, with 36 receiving a DUI during the program and 232 receiving a DUI after the program. 997 people have quit the program since February 1, 2004. This population has a 5.42 percent overall recidivism rate. When a person prematurely quits the ignition

[1] See http://www.hsmv.state.fl.us/ddl/IID.html for additional details.
[2] S. 316.1937(2)(d), F.S.

interlock device program, their license is suspended until the remainder of the required time in the program is completed.

Proposed Changes

HB 369 requires that first-time DUI offenders who have been referred to a substance abuse treatment provider have mandatory placement of an ignition interlock device for a period of at least 6 months. A second conviction requires the offender to have an interlock device for at least 1 year.

The Department estimates that there are approximately 35,000 to 40,000 people a year convicted of a first-time DUI offense. Approximately 15,000 people are referred to treatment for a first offense.[3] Under the bill, this population will be required to install an ignition interlock device on their vehicles. An unknown percentage of the population will not comply with the installation, thereby surrendering their license until the program requirements have been met.

The bill also increases the amount of time an interlock device must be used by a first-time offender who is guilty of DUI with a BAL of .20 percent or higher or who had a minor in the vehicle at the time of arrest from "up to six months" to "at least 1 year." The penalty for a repeat offender in either of these circumstances remains at "at least 2 years."

Ignition interlock devices currently disable a vehicle if the driver's blood alcohol level is .05 percent or higher. HB 369 lowers this allowable threshold to .025 percent.

The bill also deletes outdated language regarding the installation of the devices not occurring before July 1, 2003.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.193, F.S., by providing that ignition interlock devices be required for a specified period after the first conviction of certain offenses; and revising provisions relating to the period for which an interlock device may be required for the second conviction of certain offenses.

Section 2. Amends s. 316.1937, F.S., to revise the blood alcohol level threshold on an interlock device to .025 percent.

Section 3. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[3] *DHSMV Bill Analysis – HB 369*, December 18, 2007, on file with the Department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
Those convicted of a first-time DUI will be ordered to pay for the installation and maintenance of the ignition interlock device on their vehicles. However, if the court determines that the convicted person is unable to pay for the installation of the interlock device, the court may order that a portion of the fine paid by the person for the DUI violation be allocated to defray the costs of installing the device.

Increasing the population required to participate in the ignition interlock device program will increase the volume of installations and monthly maintenance work performed by the state's two contracted vendors. Currently, there are 6,552 people enrolled in the program statewide. With the new requirements found in the bill, as many as 15,000 additional people could be required to participate in the program.

D. FISCAL COMMENTS:

There is no fiscal impact to state and local governments because the costs of installation ($70) and monthly monitoring and servicing ($67.50 for monthly monitoring and $100 refundable deposit or a $5 monthly insurance charge) are the sole responsibility of the convicted person.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to driving under the influence; amending s. 316.193, F.S.; requiring that ignition interlock devices be used for a specified period after a first conviction of certain offenses; revising provisions relating to the period for which an ignition interlock device may be required for a second conviction of certain offenses; amending s. 316.1937, F.S.; reducing the maximum permissible blood alcohol level at which an ignition interlock device will allow a vehicle to start; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) and paragraph (c) of subsection (4) of section 316.193, Florida Statutes, are amended to read:

316.193 Driving under the influence; penalties.--

(2)(a) Except as provided in paragraph (b), subsection (3), or subsection (4), any person who is convicted of a violation of subsection (1) shall be punished:

1. By a fine of:

a. Not less than $250 or more than $500 for a first conviction; and~~.~~

b. Not less than $500 or more than $1,000 for a second conviction; and

2. By imprisonment for:

a. Not more than 6 months for a first conviction; and~~.~~

b. Not more than 9 months for a second conviction; and~~.~~

3. ~~For a second conviction,~~ By mandatory placement ~~for a period of at least 1 year~~, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license, for:

a. At least 6 months for a first conviction when the convicted person has been referred to a substance abuse treatment provider, as provided in subsection (5); and

b. At least 1 year for a second conviction. ~~The installation of such device may not occur before July 1, 2003.~~

(b)1. Any person who is convicted of a third violation of this section for an offense that occurs within 10 years after a prior conviction for a violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the court shall order the mandatory placement for a period of not less than 2 years, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. ~~The installation of such device may not occur before July 1, 2003.~~

2. Any person who is convicted of a third violation of this section for an offense that occurs more than 10 years after the date of a prior conviction for a violation of this section

shall be punished by a fine of not less than $1,000 or more than $2,500 and by imprisonment for not more than 12 months. In addition, the court shall order the mandatory placement for a period of at least 2 years, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. ~~The installation of such device may not occur before July 1, 2003.~~

3. Any person who is convicted of a fourth or subsequent violation of this section, regardless of when any prior conviction for a violation of this section occurred, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, the fine imposed for such fourth or subsequent violation may be not less than $1,000.

(4) Any person who is convicted of a violation of subsection (1) and who has a blood-alcohol level or breath-alcohol level of 0.20 or higher, or any person who is convicted of a violation of subsection (1) and who at the time of the offense was accompanied in the vehicle by a person under the age of 18 years, shall be punished:

(c) In addition to the penalties in paragraphs (a) and (b), the court shall order the mandatory placement, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned

and routinely operated by the convicted person for at least 1 year ~~up to 6 months~~ for the first offense and for at least 2 years for a second offense, when the convicted person qualifies for a permanent or restricted license. ~~The installation of such device may not occur before July 1, 2003.~~

Section 2. Subsection (1) of section 316.1937, Florida Statutes, is amended to read:

316.1937 Ignition interlock devices, requiring; unlawful acts.--

(1) In addition to any other authorized penalties, the court may require that any person who is convicted of driving under the influence in violation of s. 316.193 shall not operate a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device certified by the department as provided in s. 316.1938, and installed in such a manner that the vehicle will not start if the operator's blood alcohol level is in excess of 0.025 ~~0.05~~ percent or as otherwise specified by the court. The court may require the use of an approved ignition interlock device for a period of not less than 6 months, if the person is permitted to operate a motor vehicle, whether or not the privilege to operate a motor vehicle is restricted, as determined by the court. The court, however, shall order placement of an ignition interlock device in those circumstances required by s. 316.193.

Section 3. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 575 Contributions to Relieve Homelessness

SPONSOR(S): Cusack

TIED BILLS: **IDEN./SIM. BILLS:** SB 1568

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure		Cortese TC	Miller P.M.
2) Economic Expansion & Infrastructure Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

This bill requires that application and renewal forms for motor vehicle registration and driver's license, renewal of driver's license or duplicate driver's license applications include an option to make a voluntary contribution of $1 to aid the homeless. A voluntary check-off box would be added to these Department of Highway Safety & Motor Vehicle (DHSMV) application forms.

Any contributions collected would be deposited into the Grants and Donations Trust Fund of the Department of Children and Family Services and used by the State Office of Homelessness. The State Office of Homelessness will use the donations to supplement grants, provide information to the public about homelessness in the state, and provide literature for homeless persons seeking assistance.

The bill exempts contributions collected through this voluntary donation from the statutory requirements for organizations seeking voluntary contribution check-offs. The law prohibits the use of state funds to pay the required $10,000 application fee; and according to the proponents of the bill the State Office of Homelessness does not have any other revenue source to pay the fee.

The bill becomes effective July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government- This bill creates additional work for governmental organizations.

B. EFFECT OF PROPOSED CHANGES:

Section 320.02, F.S. provides vehicle owners with an opportunity to make voluntary contributions to six organizations or causes when registering a vehicle or when renewing a vehicle registration:

- Transportation Disadvantaged Trust Fund,
- Prevent Blindness Florida,
- Florida Mothers Against Drunk Driving, Inc.,
- Southeastern Guide Dogs, Inc.,
- Stop Heart Disease, and
- Children's Hearing Help Fund

Similarly, s. 322.08, F.S., provides driver license applicants with an opportunity to make voluntary contributions to six organizations or causes when applying for, or renewing a license:

- Election Campaign Financing Trust Fund,
- Florida Organ and Tissue Donor Education and Procurement Trust Fund,
- Florida Council of the Blind,
- Hearing Research Institute, Incorporated,
- Juvenile Diabetes Foundation International, and
- Children's Hearing Help Fund.

Currently, aid to the homeless is not an option for a voluntary contribution on motor vehicle registration and registration renewal forms, or on driver's license applications and renewal forms. By adding a voluntary check-off box to aid the homeless to the forms, it will give applicants the option to contribute funds to this cause. Any contributions made by applicants would be deposited into the Grants and Donations Trust Fund of the Department of Children and Family Services and used by the State Office of Homelessness. The State Office of Homelessness is housed within the Department of Children and Family Services. The bill requires that collected funds be used to "supplement grants"[1]... and to "provide information to the public about homelessness in the state, and provide literature for homeless persons seeking assistance."

Voluntary check-off contributions on vehicle registrations and driver's licenses must be authorized by a statutory change. Florida Statutes[2] require organizations to submit to the Department of Highway Safety and Motor Vehicles a request for the particular contribution being sought, an application fee not to exceed $10,000, a short-term and long-term marketing plan, and an analysis outlining anticipated

[1] Section 420.622 (4)(5),F.S.

[2] Section 320.023,F.S., sets out requirements for vehicle registration check-offs and s. 322.081, F.S., sets out the similar requirements for driver's license check-offs.

revenues and planned expenditures of such revenues. DHSMV must receive this information at least 90 days before convening of the next regular session. In addition, the law specifically prohibits the use of state funds to pay the application fee. The State Office of Homelessness has not met these requirements.

The language of the bill exempts contributions collected through this voluntary donation from the requirements listed above. According to proponents of this legislation, the State Office of Homelessness does not have a revenue source to pay the fee because the law prohibits the use of state funds for this purpose.

C. SECTION DIRECTORY:

Section 1- Adds a paragraph to subsection (16) of section 320.02 F.S. to include language permitting a voluntary contribution to aid the homeless on the application form for motor vehicle registration and renewals of registration.

Section 2- Subsection (6) of section 322.08 F.S. is amended to include language permitting a voluntary contribution to aid the homeless on the application form for a driver's license or duplicate license.

Section 3- Subsection (9) of section 322.18 F.S. is amended to include language permitting a voluntary contribution to aid the homeless on the application form for a renewal of issuance of driver's license or renewal extension.

Section 4 – Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Revenue generated by this voluntary contribution is based on public interest and is therefore indeterminate.

2. Expenditures:

   This bill will require programming modifications to the DHSMV's Driver License and Motor Vehicle Information Systems, the cost of which will be absorbed within existing agency resources. [3]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Homelessness programs operated by local governments may receive and indeterminate amount of revenue through the State Office of Homelessness.

2. Expenditures:

   None.

[3] DHSMV Bill Analysis, HB 575

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Motorists who decide to donate would pay an additional dollar for vehicle registrations and driver's licenses.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill has an incorrect cross reference to s. 320.23 F.S. on line 28. This section should be amended to the correct reference, s. 320.023, F.S. Also, the DHSMV recommends that this act take effect October 1, 2008 instead of July 1, 2008 to allow time for implementation. The sponsor's staff has indicated that the sponsor is willing to offer amendments to make these changes.

D. STATEMENT OF THE SPONSOR

As the State of Florida faces a very challenging budget year and many homeless organizations are being told that there will be no, or very limited, funds from the State to assist their operations and expansions. The need for services continues to rise, and agencies have been encouraged to seek funding sources from private entities, try for federal matching dollars, and to think of any other creative ways to keep their operations on solid ground. House Bill 575 creates a potential funding source for these organizations.

Based on 2006-2007 data the current voluntary contributions in place both on the drivers license and the auto tag renewal have generated anywhere from $18,000 to $504,000. With the economy in decline and the threat of a recession on the horizon, we will find more and more homeless families who will need these services to make them whole again.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to contributions to relieve homelessness; amending s. 320.02, F.S.; requiring the motor vehicle registration form and registration renewal form to include an option to make a voluntary contribution to aid the homeless; amending s. 322.08, F.S.; requiring the driver license application form to include an option to make a voluntary contribution to aid the homeless; amending s. 322.18, F.S.; requiring the driver license application form for renewal issuance or renewal extension to include an option to make a voluntary contribution to aid the homeless; providing that voluntary contributions for the homeless are not income of a revenue nature for the purpose of applying certain service charges; providing for such contributions to be deposited into the Grants and Donations Trust Fund of the Department of Children and Family Services and used by the State Office on Homelessness for certain purposes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (f) is added to subsection (16) of section 320.02, Florida Statutes, to read:

320.02 Registration required; application for registration; forms.--

(16)

(f) Notwithstanding s. 320.23, the application form for motor vehicle registration and renewal of registration must include language permitting a voluntary contribution of $1 per applicant to aid the homeless. Contributions made pursuant to this paragraph shall be deposited into the Grants and Donations Trust Fund of the Department of Children and Family Services and used by the State Office on Homelessness to supplement grants made under s. 420.622(4) and (5), provide information to the public about homelessness in the state, and provide literature for homeless persons seeking assistance.

For the purpose of applying the service charge provided in s. 215.20, contributions received under this subsection are not income of a revenue nature.

Section 2. Subsection (6) of section 322.08, Florida Statutes, is amended to read:

322.08 Application for license.--

(6) The application form for a driver's license or duplicate thereof shall include language permitting the following:

(a) A voluntary contribution of $5 per applicant, which contribution shall be transferred into the Election Campaign Financing Trust Fund.

(b) A voluntary contribution of $1 per applicant, which contribution shall be deposited into the Florida Organ and Tissue Donor Education and Procurement Trust Fund for organ and tissue donor education and for maintaining the organ and tissue donor registry.

(c) A voluntary contribution of $1 per applicant, which contribution shall be distributed to the Florida Council of the Blind.

(d) A voluntary contribution of $2 per applicant, which shall be distributed to the Hearing Research Institute, Incorporated.

(e) A voluntary contribution of $1 per applicant, which shall be distributed to the Juvenile Diabetes Foundation International.

(f) A voluntary contribution of $1 per applicant, which shall be distributed to the Children's Hearing Help Fund.

(g) Notwithstanding s. 322.081, a voluntary contribution of $1 per applicant to aid the homeless. Contributions made pursuant to this paragraph shall be deposited into the Grants and Donations Trust Fund of the Department of Children and Family Services and used by the State Office on Homelessness to supplement grants made under s. 420.622(4) and (5), provide information to the public about homelessness in the state, and provide literature for homeless persons seeking assistance.

A statement providing an explanation of the purpose of the trust funds shall also be included. For the purpose of applying the service charge provided in s. 215.20, contributions received under paragraphs (c), (d), (e), ~~and~~ (f), and (g) and under s. 322.18(9)~~(a)~~ are not income of a revenue nature.

Section 3. Subsection (9) of section 322.18, Florida Statutes, is amended to read:

322.18 Original applications, licenses, and renewals; expiration of licenses; delinquent licenses.--

(9)(a) The application form for a renewal issuance or renewal extension shall include language permitting a voluntary contribution of $1 per applicant, to be quarterly distributed by the department to Prevent Blindness Florida, a not-for-profit organization, to prevent blindness and preserve the sight of the residents of this state. A statement providing an explanation of the purpose of the funds shall be included with the application form.

~~(b)~~ Prior to the department distributing the funds collected pursuant to this paragraph ~~(a)~~, Prevent Blindness Florida must submit a report to the department that identifies how such funds were used during the preceding year.

(b) The application form for a renewal issuance or renewal extension shall include language permitting a voluntary contribution of $1 per applicant to aid the homeless. Contributions made pursuant to this paragraph shall be deposited into the Grants and Donations Trust Fund of the Department of Children and Family Services and used by the State Office on Homelessness to supplement grants made under s. 420.622(4) and (5), provide information to the public about homelessness in the state, and provide literature for homeless persons seeking assistance.

Section 4. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 641 License Plates

SPONSOR(S): Chestnut

TIED BILLS: **IDEN./SIM. BILLS:** SB 732

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure		Suarez	Miller
2) Economic Expansion & Infrastructure Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Bethune-Cookman College license plate was created by an act of the legislature and enacted into law on February 15, 1997. The name of Bethune-Cookman College was changed to Bethune-Cookman University to commemorate the school's accreditation as a Level III Master's Degree institution by the Southern Association of Colleges and Schools (SACS) on February 14, 2007. This bill amends Florida Statutes authorizing the Bethune-Cookman College specialty license plate to be reissued as the Bethune-Cookman University specialty license plate.

This act has no fiscal impact and takes effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Currently, specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. The particular annual use fees ranging from $15 to $25, paid in addition to required license taxes and service fees, are distributed to an organization or organizations in support of a particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative, or it can do so at the request of an organization.

The Bethune-Cookman College license plate was created by an act of the legislature and enacted into law on February 15, 1997. Section 320.08056(4)(m) authorizes the Bethune-Cookman College specialty license plate. All proceeds collected from the $25 annual use fee authorized by s.320.08056(4)(m), F.S., are distributed to Bethune-Cookman College and are used to fund academic scholarships. The Department of Highway Safety & Motor Vehicles (DHSMV) reports that sales of the specialty license plate have generated revenues of $167,575 (FY06/07), $166,750 (FY05/06) and $160,550 (FY04/05).

Effect of Proposed Changes

Effective February 14, 2007 Bethune-Cookman College changed its name to Bethune-Cookman University. The Bethune-Cookman College Board of Directors authorized the name change on February 14, 2007 to coincide with the school's accreditation as a Level-III Master's Degree institution by the Southern Association of Colleges and Schools (SACS) Commission on Colleges. The name of the school was legally changed upon filing an amendment to the Articles of Incorporation on file with the Florida Secretary of State on April 9, 2007.

This bill amends s.320.0805(4)(m), F.S., to provide for the "Bethune-Cookman College" specialty license plate to be issued as the "Bethune-Cookman University" specialty license plate. Additionally, the bill conforms s.320.08058(13), F.S., to instruct DHSMV to develop a "Bethune-Cookman University" specialty license plate and distribute annual use fees to Bethune-Cookman University.

C. SECTION DIRECTORY:

Section 1. Amends s. 320.08056(4)(m), F.S., replacing "College" with "University" in statute providing for $25 annual use fee for issuance of specialty license plate.

Section 2. Amends s. 320.08058(13), F.S., replacing "College" with "University" in statute authorizing issuance of specialty license plate, and replaces "College" with "University" in statute authorizing distribution of annual use fees.

Section 3. Provides and effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   SEE FISCAL COMMENTS

2. Expenditures:

   SEE FISCAL COMMENTS

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears to have no direct impact on the private sector. Persons who elect to purchase the specialty license plate will be required to pay an annual use fee of $25 in addition to applicable taxes and administrative charges. DHSMV reports that sales of the specialty license plate have generated revenues of $167,575 (FY06/07), $166,750 (FY05/06) and $160,550 (FY04/05).

D. FISCAL COMMENTS:

The bill appears to have no fiscal impact. DHSMV reports that inventory levels would be managed so as to create no fiscal impact in implementing the modifications to the specialty license plate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rule making authority is required to implement the full provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

DHSMV recommends that this act take effect October 1, 2008 instead of July 1, 2008 to allow time for implementation. The sponsor's staff has indicated that the sponsor is willing to offer an amendment to change the effective date.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to license plates; amending ss. 320.08056 and 320.08058, F.S.; changing references from Bethune-Cookman College to Bethune-Cookman University in statutes relating to collegiate license plates; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (m) of subsection (4) of section 320.08056, Florida Statutes, is amended to read:

320.08056 Specialty license plates.--

(4) The following license plate annual use fees shall be collected for the appropriate specialty license plates:

(m) Bethune-Cookman University ~~College~~ license plate, $25.

Section 2. Subsection (13) of section 320.08058, Florida Statutes, is amended to read:

320.08058 Specialty license plates.--

(13) BETHUNE-COOKMAN UNIVERSITY ~~COLLEGE~~ LICENSE PLATES.--

(a) The department shall develop a Bethune-Cookman University ~~College~~ license plate to commemorate Bethune-Cookman University ~~College~~.

(b) The annual use fees must be distributed to Bethune-Cookman University ~~College~~.

Section 3. This act shall take effect July 1, 2008.

Strategic Aggregates
Review Task Force

Strategic Aggregates Review Task Force (SARTF) – Final Recommendations

Authorized by 2007 Legislature
CS/CS/HB 985-Transportation
Construction Aggregate Materials

Reference: February 1, 2008 Final Report and Recommendations

1

SARTF: Public Involvement

- **Meeting Dates and Locations – Representing all areas of Florida**
  - December 18-19, 2008 – Tampa, Florida
  - January 8-9, 2008 – Miami, Florida
  - January 15-16, 2008 – Jacksonville, Florida
  - January 29-31, 2008 – Tallahassee, Florida
- **Approximately 70 Hours of Task Force Meetings**
  - Communications included information gathering, presentations, member discussions , question and answer sessions
- **Public Information**
  - Task Force website offered subscription-based electronic mailing list, meeting materials, transcripts, reports and related documentation, public comment form and member background information

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SARTF: Primary Issues

- **Issue 1** - Construction Aggregate Materials Resource Management
- **Issue 2** - State and Local Planning and Regulation of Mining
- **Issue 3** - Infrastructure Improvements
- **Issue 4** - The Future of the Strategic Aggregates Review Task Force

3

SARTF: Final Report

- **Recommendation Development Process**
  - Open discussion/deliberations meeting format
  - Solutions outlined in final report were categorized as follows:
    - **Consensus Recommendations**
      The Task Force reached agreement on the issue
    - **Non-Consensus Items**
      The Task Force did not reach agreement on the issue, therefore, options were identified

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SARTF: Issue 1 – Construction Aggregate Materials Resource Management

- **Finding**
  - An abundant supply of construction aggregate materials is critical to the economy of the State
  - Florida lacks a short or long-term comprehensive vision which addresses demand and supply (i.e. Where are the deposit reserves? And Where will these materials be needed as the state continues to grow?)
- **Consensus Recommendations**
  - Development of the Strategic Aggregate Resource Assessment funded jointly by the FDOT and the industry
  - Encourage the use of recycled and reused construction aggregate materials
  - Investigate and encourage the use of alternative material substitutions for construction aggregate materials

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SARTF: Issue 1 – Construction Aggregate Materials Resource Management (Continued)

- **Consensus Recommendations**
  - State and local government should protect existing mines from the encroachment of incompatible land uses and, in consideration of the infrastructure investment associated with these, plan for their expansion
- **Non-Consensus Items**
  - Florida Strategic Aggregate Resource Area Planning – The majority of the aggregate reserves are limited to 7 specific regions of the State. Some members felt that in order to ensure timely access to these resources the State would be served by initiating detailed plans for each of these now. Others felt these plans would result in further delay.

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SARTF: Issue 2 – State and Local Planning and Regulation of Mining

- **Consensus Recommendations**
  - Future procedures for siting and permitting of mines should be based on earlier/more interagency coordination
- **Non-Consensus Items**
  - Local government land use controls
    - Encourage planning and zoning measures to restrict encroachment of development
    - Amend Chapter 163, F.S., to have local governments identify the impacts their land use decisions will have on local, regional and statewide supplies
    - Require real estate disclosure
    - Retain local authority and provide additional guidance
    - Denial of a mining permit by a super-majority vote

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SARTF: Issue 2 – State and Local Planning and Regulation of Mining (Continued)

- State and Local Environmental Regulation
  - No limitation on home rule authority of local governments and improve existing state regulations
  - Expressly limit local government authority to regulate specified environmental impacts and confirm FDEP as the lead agency
  - Provide FDEP authority to create a new rule, provide for an appropriate fee, provide for protection of water resources, provide for pre-application meetings and local government compliance
  - Retain local authority while providing for pre-application process

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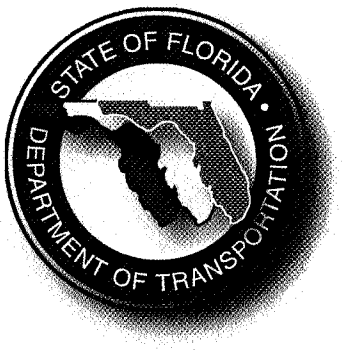
SARTF: Issue 3 – Infrastructure Improvements

- **Consensus Recommendations**
  - Provide FDOT statutory authority to enter into P3 partnerships for development of rail and port infrastructure
  - Identify/prioritize funding sources for improvement of rail and port facilities
  - Aggregate resource counties should be offered incentives and given priority as to transportation funding

SARTF: Issue 4 – The Future of SARTF

- **Non-Consensus Items**
  - Continue SARTF deliberations through 2009
    - The members of the task force appreciated the opportunity to discuss such a critical issue, and although short on time accomplished a great deal. Given all the issues and plans that are being recommended, some felt that the State would be served by having the SARTF continue to monitor progress by the state and local governments, and as needed bring that information back to the legislature.



11

Committee on Infrastructure
Amendment Packet

Thursday, February 21, 2008
1:30 pm – 3:30 pm
404 HOB

Marco Rubio
Speaker

Rep. Richard Glorioso
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 167**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Infrastructure Committee

Representative Cretul offered the following:

Amendment (with title amendment)

Remove lines 32 through 53, and insert:

(8) The department shall ~~may~~ administer an electronic system for licensed motor vehicle dealers to use for ~~in~~ issuing temporary tags ~~license plates~~. Upon issuing a temporary tag ~~license plate~~, the dealer shall access the electronic system and enter the appropriate vehicle and owner information within the timeframe specified by department rule. If a dealer fails to comply with the department's requirements for issuing temporary tags ~~license plates~~ using the electronic system, the department may deny, suspend, or revoke a license under s. 320.27(9)(b)16. upon proof that the licensee has failed to comply with the department's requirements. The department may adopt rules to administer this section.

(9) The department shall implement a secure print-on-demand electronic temporary tag registration, record retention, and issue system for use by every department-authorized issuer of temporary tags by the end of the 2007-08 fiscal year. This system shall enable the department to issue, on demand, a

temporary tag number in response to a request from the issuer via a secure electronic exchange of data and then enable the issuer to print the temporary tag with all required information. The department may adopt rules as necessary to implement this program. A motor vehicle dealer licensed under chapter 320 shall be authorized to charge a fee to comply with this section.

Section 2. Section 320.96, Florida Statutes, is repealed.

Section 3. This act shall take effect upon becoming a law.

========== T I T L E A M E N D M E N T ==========

Remove lines 4 through 11, and insert:

placement of temporary tags on vehicles; revising provisions for implementation of an electronic system for entry of vehicle and owner data upon issuance of temporary tags; revising provisions for implementation of an electronic, print-on demand, temporary tag issuance system; authorizing certain motor vehicle dealers to charge a fee in certain circumstance; repealing s. 320.96, F.S., relating to implementation of an electronic, print-on-demand, temporary license plate system; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **317**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Infrastructure

Representative Kravitz offered the following:

Amendment (with title amendment)

Remove line 65 and insert:

performed in a reasonable manner and the cost of the test shall be paid by the person being tested. The blood test may be performed either at the scene of the accident by a person authorized to draw blood as provided in subsection (2)(a) or at the nearest facility where the blood draw can be performed by a person authorized to draw blood as provided under subsection (2)(a), as determined to be appropriate by the law enforcement officer. Notwithstanding s. 316.1932,

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T I T L E A M E N D M E N T

Remove line 14 and insert:

performed in a reasonable manner and requiring for payment for the test; providing where blood tests may be administered; providing that the test

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1(for drafter's use only)

Bill No. **HB 351**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Committee on Infrastructure

Representative(s) Reagan offered the following:

Amendment

Remove line(s) 203-205.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. **HB 351**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Committee on Infrastructure

Representative(s) Reagan offered the following:

Amendment

Remove line 106 and insert:

this section that provides for the use of a traffic infraction

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

Bill No. **HB 351**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Committee on Infrastructure

Representative(s) Reagan offered the following:

Amendment

Remove line 187 and insert:

authorized under this section who is employed by or under contract

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0369**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Committee on Infrastructure

Representative Simmons offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (2) and paragraph (c) of subsection (4) of section 316.193, Florida Statutes, are amended to read:

316.193 Driving under the influence; penalties.--

(2)(a) Except as provided in paragraph (b), subsection (3), or subsection (4), any person who is convicted of a violation of subsection (1) shall be punished:

1. By a fine of:

a. Not less than $250 or more than $500 for a first conviction; and~~.~~

b. Not less than $500 or more than $1,000 for a second conviction; and

2. By imprisonment for:

a. Not more than 6 months for a first conviction; and~~.~~

b. Not more than 9 months for a second conviction; and~~.~~

3. ~~For a second conviction,~~ By mandatory placement ~~for a period of at least 1 year~~, at the convicted person's sole expense, of an ignition interlock device approved by the

department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license, for:

a. At least 6 months for a first conviction if the person had a blood alcohol level or breath alcohol level of 0.15 or higher but less than 0.20 at the time of the offense.

b. At least 1 year for a second conviction. ~~The installation of such device may not occur before July 1, 2003.~~

(b)1. Any person who is convicted of a third violation of this section for an offense that occurs within 10 years after a prior conviction for a violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the court shall order the mandatory placement for a period of not less than 2 years, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. ~~The installation of such device may not occur before July 1, 2003.~~

2. Any person who is convicted of a third violation of this section for an offense that occurs more than 10 years after the date of a prior conviction for a violation of this section shall be punished by a fine of not less than $1,000 or more than $2,500 and by imprisonment for not more than 12 months. In addition, the court shall order the mandatory placement for a period of at least 2 years, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that

are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. ~~The installation of such device may not occur before July 1, 2003.~~

3. Any person who is convicted of a fourth or subsequent violation of this section, regardless of when any prior conviction for a violation of this section occurred, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, the fine imposed for such fourth or subsequent violation may be not less than $1,000.

(4) Any person who is convicted of a violation of subsection (1) and who has a blood-alcohol level or breath-alcohol level of 0.20 or higher, or any person who is convicted of a violation of subsection (1) and who at the time of the offense was accompanied in the vehicle by a person under the age of 18 years, shall be punished:

(c) In addition to the penalties in paragraphs (a) and (b), the court shall order the mandatory placement, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person for <u>at least 1 year</u> ~~up to 6 months~~ for the first offense and for at least 2 years for a second offense, when the convicted person qualifies for a permanent or restricted license. ~~The installation of such device may not occur before July 1, 2003.~~

Section 2. Subsection (8) of section 322.21, Florida Statutes, is amended to read:

322.21 License fees; procedure for handling and collecting fees.--

(8) Any person who applies for reinstatement following the suspension or revocation of the person's driver's license shall pay a service fee of $35 following a suspension, and $60 following a revocation, which is in addition to the fee for a license. The person required to have an interlock device installed pursuant to this chapter or chapter 316 shall pay a service fee of $15. Any person who applies for reinstatement of a commercial driver's license following the disqualification of the person's privilege to operate a commercial motor vehicle shall pay a service fee of $60, which is in addition to the fee for a license. The department shall collect all of these fees at the time of reinstatement. The department shall issue proper receipts for such fees and shall promptly transmit all funds received by it as follows:

(a) Of the $35 fee received from a licensee for reinstatement following a suspension, the department shall deposit $15 in the General Revenue Fund and $20 in the Highway Safety Operating Trust Fund.

(b) Of the $60 fee received from a licensee for reinstatement following a revocation or disqualification, the department shall deposit $35 in the General Revenue Fund and $25 in the Highway Safety Operating Trust Fund.

(c) The entire $15 fee received from the licensee required to have an ignition interlock device installed shall be deposited into the DUI Programs Coordination Trust Fund.

If the revocation or suspension of the driver's license was for a violation of s. 316.193, or for refusal to submit to a lawful breath, blood, or urine test, an additional fee of $115 must be charged. However, only one $115 fee may be collected from one person convicted of violations arising out of the same incident.

The department shall collect the $115 fee and deposit the fee into the Highway Safety Operating Trust Fund at the time of reinstatement of the person's driver's license, but the fee may not be collected if the suspension or revocation is overturned. If the revocation or suspension of the driver's license was for a conviction for a violation of s. 817.234(8) or (9) or s. 817.505, an additional fee of $180 is imposed for each offense. The department shall collect and deposit the additional fee into the Highway Safety Operating Trust Fund at the time of reinstatement of the person's driver's license.

Section 3. Subsection (1) and paragraph (a) of subsection (3) of section 322.2715, Florida Statutes, are amended to read:

322.2715 Ignition interlock device.--

(1) Before issuing a permanent or restricted driver's license under this chapter, the department shall require the placement of a department-approved ignition interlock device, installed in such a manner that the vehicle will not start if the operator's blood alcohol level is in excess of the level provided in s. 316.1937(1), for any person convicted of committing an offense of driving under the influence as specified in subsection (3), except that consideration may be given to those individuals having a documented medical condition that would prohibit the device from functioning normally. An interlock device shall be placed on all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person.

(3) If the person is convicted of:

(a) A first offense of driving under the influence under s. 316.193 and has an unlawful blood-alcohol level or breath-alcohol level as specified in s. 316.193(4), or if a person is convicted of a violation of s. 316.193 and was at the time of

the offense accompanied in the vehicle by a person younger than 18 years of age, the person shall have the ignition interlock device installed for 1 year ~~6 months~~ for the first offense and for at least 2 years for a second offense. The ignition interlock device shall be installed for at least 6 months for a first conviction if the person had a blood alcohol level or breath level of 0.15 or higher but less than 0.20 at the time of the offense and at least 1 year for a second conviction as specified in s. 316.193(2). If the court fails or neglects to order the ignition interlock device to be installed pursuant to this section, the department shall require the installation of the device.

Section 4. This act shall take effect October 1, 2008.

T I T L E A M E N D M E N T

Remove the entire title and insert:

A bill to be entitled

An act relating to driving under the influence; amending s. 316.193, F.S.; requiring that ignition interlock devices be used for a specified period after a first conviction of certain offenses; revising provisions relating to the period for which an ignition interlock device may be required for a second conviction of certain offenses; amending s. 322.21, F.S.; requiring a service fee for ignition interlock devices and providing for disposition of the fee proceeds; amending s. 322.2715, F.S.; requiring ignition interlock devices to be set to prevent vehicle starting if the operator's blood alcohol level exceeds a specified amount; revising the time that

ignition interlock devices must be used after a first conviction of certain offenses; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **575**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Infrastructure

Representative Cusack offered the following:

Amendment

Remove line(s) 28 and insert:

(f) Notwithstanding s. 320.023, the application form for

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. **575**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Infrastructure

Representative Cusack offered the following:

Amendment

Remove line(s) 107 and insert:

Section 4. This act shall take effect October 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1(for drafter's use only)

Bill No. **641**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Infrastructure

Representative Chestnut offered the following:

Amendment

Remove line 25 and insert:

Section 3. This act shall take effect October 1, 2008.