Committee on Infrastructure

Meeting Packet

March 20, 2008
8:30 pm – 12:30 pm
404 House Office Building

Marco Rubio
Speaker

Rep. Rich Glorioso
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on Infrastructure

Start Date and Time:	Thursday, March 20, 2008 08:30 am
End Date and Time:	Thursday, March 20, 2008 12:30 pm
Location:	404 HOB
Duration:	4.00 hrs

Consideration of the following bill(s):

HB 619 Child-Restraint Requirements by Gelber
HB 711 Accessible Parking Spaces by Davis, D.
HB 831 Driver's License Fees by Llorente
HB 1123 Contract Carriers by Gibson, A.
HB 1177 Motor Vehicles by Bean
HB 1207 Railroads by Homan
HB 1245 Regional Transportation Authorities by Galvano
HB 1299 Driver Education by Ambler
HB 1399 Department of Transportation by Aubuchon
HB 1439 Motor Vehicle Sales Warranties by Robaina
HB 1509 Community Service for Infractions of Noncriminal Traffic Offenses by Braynon

NOTICE FINALIZED on 03/18/2008 16:04 by JJD

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 619 Child-Restraint Requirements
SPONSOR(S): Gelber and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 668

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

SUMMARY ANALYSIS

This bill revises child restraint requirements for children passengers in motor vehicles. Motor vehicle operators will be required to use child restraint devices for children aged through seven years of age, instead of the current four years of age. Under the bill's provisions, a safety belt alone is no longer sufficient protection for any child aged four through seven years. In addition, the bill specifies that certain child safety seats are appropriate restraint devices for children aged through four years, and certain child booster seats are appropriate restraint devices for children aged four through seven years.

An infraction is considered a moving violation punishable by a fine of $60 plus court costs and add-ons, and by assessment of three points against the driver's license. The court may dismiss a first violation if the operator produces proof of purchase of a federally approved child restraint device. The revised provisions take effect January 1, 2010. Beginning July 1, 2009, law enforcement officers may issue verbal warnings and educational literature to those persons who are in compliance with existing law, but who are violating the provisions of the child restraint law, which take effect in 2010.

The bill provides exceptions to the child restraint law for persons transporting a child aged four through seven years and who are:

- Visiting the state
- Transporting the child gratuitously and in good faith in response to a declared emergency situation or an immediate emergency involving the child
- Transporting a child with a medically necessary exception with appropriate documentation; or
- Acting generally as a Good Samaritan.

The bill may generate an indeterminate amount of additional fine revenues for state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Reduce Government: The bill increases government regulation in that it requires motorists carrying child passengers to use a child restraint device in cases where no such requirement is found in existing law.

Expand Individual Freedom: The bill does not increase opportunities for individuals or families to make personal choices, in that it renders unlawful certain activity that was previously lawful, and subjects individuals who violate the provisions to monetary sanctions.

Empower Families: The bill requires motorists to use a child restraint device to transport certain children where it is not currently required in law. This reduces the power of the family to choose how to transport its children.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Current Florida law requires a vehicle operator transporting a child to use a separate carrier or child seat for children through age 3. The child seat or carrier must be crash-tested and federally approved. Children, age 4 and 5, must be restrained by a separate carrier, child seat, or seat belt.[1]

Exceptions to the child restraint requirement are provided for:

- School buses
- Buses that charge for transportation or assist in school related activities
- Farm equipment
- Motorcycles, mopeds and bicycles.

There are currently no separate provisions for children aged 6 and 7 years, who fall under the general seat belt law.

Proposed Changes

This bill amends s. 316.613(1)(a), F.S., to increase the age for which use of a child restraint device is required from 5 years of age to 7 years of age. Such device may include a manufacturers integrated child seat, a separate child safety seat, or a child booster seat that displays the child's weight and height specifications. The device must be secured in accordance with manufacturers specifications. Courts are provided authority to dismiss a charge for a first time violation upon proof of the purchase of a federally approved child restraint device. An infraction is considered a moving violation punishable by a fine of $60 plus court costs and add-ons, and by assessment of three points against the driver's license.

This bill amends s. 316.613(2)(b), F.S., adding any passenger vehicle designed to accommodate 10 or more persons to the list of vehicles for which the statute does not apply.

These portions of the bill shall take effect on January 1, 2010.

[1] S. 316.613(1), F.S.

This bill would also permit law enforcement officers to issue verbal warnings and educational literature to persons whose conduct do not violate the current statutes but would constitute a violation of the statute as amended by this bill. This portion shall take effect July 1, 2009.

The bill provides exceptions to the child restraint law for persons transporting a child aged four through seven years and who are:

- Visiting the state
- Transporting the child gratuitously and in good faith in response to a declared emergency situation or an immediate emergency involving the child
- Transporting a child with a medically necessary exception with appropriate documentation; or
- Acting generally as a Good Samaritan

This provision shall take effect July 1, 2008, except as otherwise expressly provided in this act.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.613, F.S., by revising requirements for children seven years of age and younger; providing requirements for children six and seven years of age; and providing exceptions to penalties.

Section 2. Provides a grace period for implementation of the new child restraint requirements.

Section 3. Provides exceptions to the child restraint provisions for certain persons transporting children ages four through seven.

Section 4. Provides an effective date of July 1, 2008, except as otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   According to the Department, the bill may generate additional fine revenues for state and local governments, the amount of which is indeterminate.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   According to the Department, the bill may generate additional fine revenues for state and local governments, the amount of which is indeterminate.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Motor vehicle operators must use a separate carrier, an integrated child seat or a child booster seat to transport children within the age requirements. Seat belts alone will no longer be legal restraints for

children ages 6 and 7. This change will fiscally impact motorists in the amount it costs to acquire necessary restraint devices. Child safety restraints range widely in price from models offered by nonprofit agencies for low-income families that cost around $20 to customized high-back harness boosters that approach $350. However, the majority of child safety restraints generally cost from $50 to $120. Because the number of additional children who will need specific restraint devices is unknown, the amount of this impact cannot be determined. Violation of the law would be punishable by a fine of at least $60 and a 3 point assessment on the operator's driver's license.

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:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

Past Legislation:

In 2001 SB 1412, "Child Restraint Requirements", which is similar to HB 443, passed both chambers of the Legislature, but was vetoed by Governor Jeb Bush. In his veto message, Governor Bush cited enforceability, unintended consequences (such as a mandate on low-income families and shifting responsibility away from automobile manufacturers), how far the bill goes (at the time, the bill would place Florida far beyond other states in the level of requirements), and the appropriate role of state government (a "government-imposed regulatory solution at the outset rather than as a last resort", "we must place some trust in parents and recognize that almost every parent in our state, more so than government, wants their child to lead healthy, safe lives") as his concerns with the legislation and reasons for the veto.

Other Comments:

Advocates of the legislation argue that seatbelts designed to accommodate a large adult body frame do not fit or properly restrain a child ages 4 to 8, causing a group of injuries known as "seatbelt syndrome". They state that poverty-level parents may be less likely to have regular contact with a pediatrician who would tell them about the danger of inadequate child safety restraints and less able to afford long-term medical care if a motor vehicle accident seriously injures their child due to lack of appropriate restraint. In the case of age appropriate vehicle occupant restraints, advocates point to the fact that the state does not allow adults to choose for themselves.[2]

[2] http://www.jlflspac.org/BoosterSeatFiles/Comprehensive.pdf

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to child-restraint requirements; amending s. 316.613, F.S.; providing child-restraint requirements for children ages 4 through 7; redefining the term "motor vehicle" so as to exclude certain vehicles from such requirements; providing a grace period; providing exceptions to such requirements; providing effective dates.

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

Section 1. Effective January 1, 2010, paragraph (a) of subsection (1) and paragraph (b) of subsection (2) of section 316.613, Florida Statutes, are amended to read:

316.613 Child restraint requirements.--

(1)(a) Each ~~Every~~ operator of a motor vehicle ~~as defined herein~~, while transporting a child in a motor vehicle operated on the roadways, streets, or highways of this state, shall, if the child is 7 ~~5~~ years of age or younger, provide for protection of the child by properly using a crash-tested, federally approved child restraint device that is appropriate for the height and weight of the child. Such devices may include a vehicle manufacturer's integrated child seat, a separate child safety seat, or a child booster seat that displays the child's weight and height specifications for the seat on the attached manufacturer's label as required by Federal Motor Vehicle Safety Standards FMVSS213. The device must comply with standards of the United States Department of Transportation and be secured in the

vehicle in accordance with instructions of the manufacturer. For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat. For children aged 4 through 7 ~~5~~ years, a separate carrier, an integrated child seat, or a child booster seat ~~belt~~ may be used. The court may dismiss the charge against a motor vehicle operator for a first violation of this paragraph upon proof of purchase of a federally approved child restraint device.

(2) As used in this section, the term "motor vehicle" means a motor vehicle as defined in s. 316.003 that is operated on the roadways, streets, and highways of the state. The term does not include:

(b) A bus or a passenger vehicle designed to accommodate 10 or more persons and used for the transportation of persons for compensation, other than a bus regularly used to transport children to or from school, as defined in s. 316.615(1)(b), or in conjunction with school activities.

Section 2. Effective July 1, 2009, a driver of a motor vehicle who does not violate the then-existing provisions of s. 316.613(1)(a), Florida Statutes, but whose conduct would violate that provision, as amended January 1, 2010, may be issued a verbal warning and given educational literature by a law enforcement officer.

Section 3. This act does not apply to a person who is transporting a child aged 4 through 7 if the person is:

(1) Visiting in this state;

(2) Transporting the child gratuitously and in good faith in response to a declared emergency situation or an immediate

emergency involving the child;

(3) Transporting a child with a medically necessary exception with appropriate documentation from a health professional; or

(4) Acting generally as a Good Samaritan.

Section 4. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 711 Accessible Parking Spaces
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 1202

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

SUMMARY ANALYSIS

HB 711 requires a facility with five or more accessible parking spaces to set aside at least 20 percent of those parking spaces for the exclusive use of persons who have a disabled parking permit, who occupy a vehicle having an attached device to load or unload a wheelchair, and who require extra space to deploy a mobility device, lift, ramp, or other device to exit or enter such vehicle.

The bill requires such spaces to be posted with a yellow sign that bears the wheelchair emblem; the words, "VANS OR VEHICLES WITH ATTACHED WHEELCHAIR DEVICES ONLY"; and the penalty for illegal use of the space. The spaces must be marked for entry and exit on the passenger side of the vehicle.

A person without a disabled parking permit who parks in a space designated for vehicles with wheelchair devices is subject to a fine of $250.

There is a fiscal impact to state and local governments and the private sector to comply with the increased number of required parking spaces for vehicles with attached wheelchair devices, the amount of which is indeterminate.

HB 711 shall take effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government- The bill requires public and private facilities to set aside a certain percentage of their parking spaces for vehicles with attached wheelchair devices and provides a penalty of $250 for a person who parks in such a space without a permit.

Safeguard Individual Liberty- A person with a disabled parking permit who must use a mobility device, lift or ramp to enter and exit a vehicle is provided additional parking spaces for their use.

B. EFFECT OF PROPOSED CHANGES:

Section 553.5041, F.S., provides the criteria for parking spaces for persons with disabilities. The law specifies that if parking spaces are provided as self-parking for employees or visitors, accessible spaces must be included in these parking areas. These accessible spaces shall be designed and marked for the exclusive use of individuals who have a severe disability and have permanent or temporary mobility problems and who have been issued a disabled parking permit.[1] The number of accessible parking spaces must comply with the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) 4.1 and include:

- One accessible parking space in the immediate vicinity of a publicly-owned or leased building that houses a governmental entity if public parking is not provided on the premises.
- One accessible parking space for each 150 metered on-street parking spaces provided by state agencies and political subdivisions.
- Additional parking spaces for persons with disabilities based on a demonstrated and documented need.[2]

According to s. 553.5041, F.S., parking access aisles must be no less than 5 feet wide and must be part of an accessible route to a building. Each accessible parking space must be no less than 12 feet wide and must be located on an accessible route that is no less than 44 inches wide so that users do not have to walk or wheel behind parked vehicles. Also, each parking space is required to be prominently outlined with blue paint to be clearly distinguishable as a parking space designated for persons who have disabilities. These spaces must also be posted with a permanent sign at least 84 inches above the ground to the bottom of the sign. The sign shall display the international symbol of accessibility and the caption, "PARKING BY DISABLED PERMIT ONLY", and state the penalty for illegal use of the space. These signs must also comply with ADAAG 4.30.

The federal ADAAG have been adopted as the law of this state by s. 553.503, F.S. They require one in every eight accessible spaces to be "van accessible".[3] These spaces must provide minimum vertical clearance of 98 inches at the parking space and along at least one vehicle access route to the space.[4] These spaces must be marked with a sign that displays the symbol of accessibility and the caption "Van-Accessible".[5] The ADAAG Appendix 4.6.3 discusses the width specifications for van accessible parking spaces. The increasing use of vans with side-mounted lifts or ramps by persons with disabilities resulted in revisions in specifications for parking spaces and adjacent access aisles. Typically, an accessible parking space is 8-feet wide with an adjacent 5-feet wide access aisle. These measurements are not sufficient to permit lifts or ramps to be deployed and still leave room for a person using a wheelchair or other mobility

[1] s. 553.5041(3), F.S.
[2] s.553.5041(4), F.S.
[3] See ADAAG 4.1.2(5)(b)
[4] See ADAAG 4.6.5
[5] See ADAAG 4.6.4

aide to exit the lift platform or ramp. The "van accessible" parking space in the ADAAG requires an 8-foot wide space with an 8-foot wide adjacent access aisle, which is wide enough to maneuver and exit from a side mounted lift.

The federal ADAAG states that a sign is needed to alert van users to the presence of the wider aisle, but the space is not intended to be restricted to only vans. The ADAAG does not supersede state or local laws that provide greater or equal benefit to individuals with disabilities.

According to s. 553.513, F.S., it is the responsibility of each local government and each code enforcement agency to enforce the provisions of this act. Florida law provides for the imposition of a $100 fine for illegally parking or obstructing a parking space designated for people with disabilities under s. 316.1955, F.S.[6] A county or municipality may impose an additional fine in excess of the fine provided for pursuant to Florida law, but the total fine may not exceed $250.[7]

Proposed Changes

HB 711 amends s. 553.5041, F.S., to require a facility with five or more accessible parking spaces to set aside at least 20 percent for the exclusive use of persons who have a disabled parking permit and require extra room to deploy a mobility or other device to enter or exit the vehicle. These spaces that provide extra room must be posted with a sign stating, "VANS OR VEHICLES WITH ATTACHED WHEELCHAIR DEVICES" and stating the penalty for illegal use of the space. This is an increase over the current requirement of one in eight accessible parking spaces to be "van accessible", as provided in the ADAAG and adopted in statute.[8] The spaces must be in compliance with the guidelines for van accessible parking spaces, as found in ADAAG 4.

The spaces must be marked to allow for entry and exit from the passenger side of the vehicles.

A person who illegally parks in a space dedicated to vehicles with attached wheelchair devices is subject to a $250 fine.

C. SECTION DIRECTORY:

Section 1. Amends s. 553.5041, F.S., to provide for the reservation of accessible parking spaces for persons who require extra space to exit or enter a motor vehicle; require signage and specific markings; and provide for a penalty.

Section 2. Provides an effective date of October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   See FISCAL COMMENTS.

[6] s. 318.18(6), F.S.
[7] s. 316.008(4), F.S.
[8] s. 553.503, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS.

D. FISCAL COMMENTS:

To the extent state and local governments and private entities must designate or modify parking spaces for persons with disabilities to accommodate larger spaces for vans or vehicles with attached wheelchair devices, costs will be incurred. However, the number of parking spaces required to be modified or created is indeterminate. The potential impact on state and local governments, as well as the private sector, could be significant.

Individuals who park in a designated parking space without a disabled parking permit are subject to a fine of $250.

The bill may increase fine revenues collected by state and local governments, the amount of which is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill could require local governments to expend funds to reconfigure parking spaces to comply with the new van accessible parking space provisions. However, the number of local governments affected by these changes is unknown. Therefore, it is unknown whether the fiscal impact to local governments is significant.

   The bill does not state whether it fulfills an important state interest, however it does appear that the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not consistently indicate whether an additional parking space created pursuant to this bill would be for the exclusive use of those bearing a disabled parking permit and requiring additional space to enter and exit a vehicle. The proposed amendment to s. 553.5041(7)(a)(1), F.S., requires that the newly created parking space be for the exclusive use of an individual who has a disabled parking permit, who occupies a van or other vehicle having an attached device to load or unload a wheelchair, and who requires extra space to deploy the mobility device, lift, ramp or other device to exit from or enter such vehicle. The proposed amendment to s. 553.5041(b), which would impose a penalty of $250 if a person without a disabled parking permit parks in a space in violation of this section, does not address whether a person with a disabled parking permit who does not require additional space to deploy a mobility device would be subject to a penalty for parking in a space provided for by this section.

The signage requirement provided for in the proposed amendment to s.553.5041(7)(a)(2), F.S., is ambiguous to the extent that it does not appear to indicate whether a person with a disabled parking permit, but not otherwise requiring the additional space contemplated in this bill, would be subject to a penalty for parking in a space designated for "VANS OR VEHICLES WITH ATTACHED WHEELCHAIR DEVICES".

The bill, as presently drafted, may conflict with provisions of the American with Disabilities Act to the extent that the bill restricts access by disabled persons who are not mobility impaired.

D. STATEMENT OF THE SPONSOR

Statement of the Sponsor:

HB 711 provides an important benefit for disabled persons as it designates 1 in 5 disabled parking spaces (20%) a larger parking space for the specific use of vans or other vehicles that contain a wheelchair. 1 percent

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to accessible parking spaces; amending s. 553.5041, F.S.; providing for reservation of accessible parking spaces for persons who require extra space to exit from or enter a motor vehicle; requiring signage; requiring specific markings; providing a penalty; providing an effective date.

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

Section 1. Subsection (7) is added to section 553.5041, Florida Statutes, to read:

553.5041 Parking spaces for persons who have disabilities.--

(7)(a)1. If a facility has five or more accessible parking spaces pursuant to this section, at least 20 percent must be reserved for the temporary exclusive use of persons who have disabled parking permits, who occupy a van or other vehicle having an attached device to load or unload a wheelchair, and who require extra space to deploy the mobility device, lift, ramp, or other device to exit from or enter such vehicle.

2. In addition to any other signage requirements under this section or ADAAG s. 4.30, such spaces must be posted with a yellow sign that bears a wheelchair emblem and words stating "VANS OR VEHICLES WITH ATTACHED WHEELCHAIR DEVICES" and stating the penalty for illegal use of the space.

3. The spaces must be marked to allow for entry and exit from the passenger side of the vehicles.

(b) A person without a disabled parking permit who parks in a space in violation of paragraph (a) is subject to a fine of $250.

Section 2. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 831 Driver's License Fees
SPONSOR(S): Llorente and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 920

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

SUMMARY ANALYSIS

HB 831 increases the nonrefundable service charge collected by driver license offices, the clerk of the courts, or a driver licensing agent prior to reinstatement of the driver's license. A portion of the fee increases will be used to establish a recruitment and retention plan for the Department of Highway Safety's Florida Highway Patrol. Specifically the bill:

- Increases the nonrefundable service charge established in s. 318.15 (2), F.S., for reinstatement of a driver's license, from $47.50 to $60.00.
- Increases the fees established in s. 322.21, F.S., for reinstating a suspended driver's license or commercial driver's license from $35.00 to $45.00.
- Increases the service fee established in s. 322.21, F.S., to clear a revocation or disqualification from $60.00 to $75.00.
- Increases the administrative fee collected when the revocation or suspension of the driver's license was for violation of s. 316.193, or for refusal to submit to a lawful breath, blood, or urine test is increased from $115 to $130.

The bill is estimated to generate approximately $2.7 million in the first year based on a January 1st implementation date. The annualized impact is approximately $5.5 million. The funds resulting from the proposed increases to the driver license reinstatement fees are to be deposited into the Highway Safety Operating Trust Fund. The bill authorizes the department to use revenue generated from reinstatement fees to establish a recruitment and retention salary payment plan for officers of the Florida Highway Patrol.

This bill is effective January 1, 2009.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not implicate any House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

1. Suspension of Driver's License Fees

Section 318.15 (2), F.S., provides if a person fails to comply with the civil penalties within the specified time period, fails to attend driver improvement school, or fails to appear at a scheduled hearing, the clerk of the court shall notify the department of such failure within 10 days. Upon receipt of such notice, the department shall immediately issue an order suspending the driver's license and privilege to drive of that person effective 20 days after the date the order of suspension is mailed. Any such suspension of the driving privilege which has not been reinstated, including a similar suspension imposed outside Florida, shall remain on the records of the department for a period of 7 years from the date imposed and shall be removed from the records after the expiration of 7 years from the date it is imposed.

In addition to suspensions related to civil penalties, s. 322.245, F.S., provides a driver's license shall be suspended if a person charged with specified offense under Chapter 316, Chapter 320, or this chapter fails to comply with directives ordered by traffic court or upon failure to pay child support cases, as provided in Chapter 61, F.S., or fails to pay any financial obligation in any other criminal case.

Every person applying for the return of a license suspended under s. 318.15, F.S., or s. 322.245, F.S., shall present to the department certification from the court that he or she has complied with all obligations and penalties imposed on the person pursuant to s. 318.15, F.S., or in the case of a suspension pursuant to s. 322.245, F.S., that the person has complied with all directives of the court and the requirements of s. 322.245, F.S., and shall pay to the department a nonrefundable service fee of $47.50, of which $37.50 shall be deposited into the General Revenue Fund and $10.00 shall be deposited into the Highway Safety Operating Trust Fund. If reinstated by the clerk of the court or tax collector, $37.50 shall be retained and $10.00 shall be remitted to the Department of Revenue for deposit into the Highway Safety Operating Trust Fund. However, the service fee is not required if the person is required to pay a $35 fee or $60 fee under the provisions of s. 322.21, F.S.

2. Reinstatement of Driver's License Fees

Section 322.21, F.S., provides that any person who applies for reinstatement following the suspension or revocation of a driver's license shall pay a service fee of $35.00 following a suspension, and $60 following a revocation. 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 $60.00. The department shall collect all of these fees at the time of reinstatement. At the time of collection, the department shall issue proper receipts for such fees and transmit all funds received by it as follows:

- Of the $35.00 fee received from a licensee for reinstatement following a suspension, the department shall deposit $15.00 in the General Revenue Fund and $20.00 in the Highway Safety Operating Trust Fund.

- Of the $60.00 fee received from a licensee for reinstatement following a revocation or disqualification, the department shall deposit $35.00 in the General Revenue Fund and $25.00 in the Highway Safety Operating 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 $115.00 must be charged. The department shall collect the $115.00 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.

Proposed Changes

1. Suspension of Driver's License Fees

HB 831 amends s. 318.15 (2), F.S., and s. 322.29, F.S., to increase the nonrefundable service charge from $47.50 to $60.00 collected by a driver license office, the clerk of the court, or a driver licensing agent prior to reinstatement of the driver's license.

This bill increases the amount to be deposited into the Highway Safety Operating Trust Fund from $10.00 to $22.50.

2. Reinstatement of Driver's License Fees

This bill amends s. 322.21, F.S., and increases the fees for reinstating a suspended or revoked driver's license or commercial driver's license. The service fee to clear a suspension is increased $10.00, from $35.00 to $45.00. The service fee to clear a revocation or disqualification is increased $15.00, from $60.00 to $75.00. The bill provides for disposition of these proceeds as follows:

- The Department shall deposit $15.00 in the General Revenue Fund and $30.00 in the Highway Safety Operating Trust Fund of the $45.00 service fee received for reinstatement following a suspension.

- The Department shall deposit $35.00 in the General Revenue Fund and $40.00 in the Highway Safety Operating Trust Fund from the $75.00 service fee received for reinstatement following a revocation or disqualification.

- Requires that of the driver's license reinstatement fee that is deposited into the Highway Safety Operating Trust Fund, $15.00 shall be used to establish a recruitment and retention salary payment plan for officers of the highway patrol.

- Authorizes the Director of the Division of the Florida Highway Patrol to use the funds from the deposited reinstatement fees to structure a pay scale for highway patrol officers which is competitive with the average of the salaries of the six highest paid law enforcement agencies in the state. The director may develop a pay scale for members of the highway patrol which is based on an officer's years of service with the patrol and his or her job performance with respect to established patrol duty requirements.

Increases the administrative fee collected when the revocation or suspension of the driver's license was for violation of s. 316.193, F.S., or for refusal to submit to a lawful breath, blood, or urine test is increased from $115.00 to $130.00.

C. SECTION DIRECTORY:

Section 1: Amends s. 318.15 (2), F.S., increases the nonrefundable service charge paid to the Department of Highway Safety and Motor Vehicles to reinstate a suspended driver's license and privilege to drive.

Section 2: Amends s. 322.21, F.S., increases the fees for reinstating a suspended or revoked driver's license or commercial motor vehicle license; and requires that funds be appropriated to establish a recruitment plan for officers of the highway patrol and for a salary scale to ensure that the salary of highway patrol officers remains competitive with other law enforcement agencies.

Section 3: Amends 322.29, F.S., making conforming provisions to changes made by the act.

Section 4: Provides an effective date of January 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill will generate approximately $2.7 million in the first year based on a January 1st implementation date. The annualized impact is approximately $5.5 million.

2. Expenditures:

   If enacted, this bill will require contracted programming for modifications to the driver license software systems of which the cost will be absorbed within the Department's existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HB 831 increases the nonrefundable service charge to reinstatement of the driver's license. Persons reinstating their driver's license would pay an increased reinstatement fee. This reinstatement fee only applies to drivers with suspensions, revocations, and disqualifications of their drivers license for violation of current laws.

D. FISCAL COMMENTS:

The projected revenue increase is based on actual fiscal year 2006-2007 activity and the fee increases as prescribed in this bill.

According to the Department of Highway Safety and Motor Vehicles, based on the number of nonrefundable service charges, reinstatement fees, and administrative fees paid in fiscal year 2006-07, all increased fees could generate an estimated $2,772,821 for the six months in fiscal year 2008-09 and $5,545,640 the following years. However, of this revenue increase, only $791,485 in fiscal year 2008-09 and $1,582,970 the following years would be provided to fund the recruitment and retention plan for the Florida Highway Patrol. The remaining revenues would be used to fund general operating costs of DHSMV. The remaining funds generated would be deposited into the Highway Safety Operating Trust Fund, but are not specifically addressed as to their use.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

For clarification, it is suggested that the language of the newly created s. 322.21(8)(c), F.S., be inserted completely after the administrative fees are addressed in s. 322.21(8)(b) and after the service charges are addressed in s. 318.15(2). While this bill states that the additional penalties and fees are to be deposited into the Highway Safety Trust Fund, it provides that only the $15 reinstatement fee for a suspended or disqualified driver's license be used to fund a recruitment and retention plan for the Florida Highway Patrol. This bill does not provide that the additional $12.50 civil penalty service fee, the additional $10 reinstatement fee following a suspension, or the additional $15 administrative fee will be used to fund the Florida Highway Patrol recruitment and retention plan.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to driver's license fees; amending s. 318.15, F.S.; increasing the nonrefundable service charge paid to the Department of Highway Safety and Motor Vehicles or to the clerk of the court to reinstate a suspended driver's license and privilege to drive; amending s. 322.21, F.S.; increasing the fees for reinstating a suspended or revoked driver's license or commercial motor vehicle license; requiring the Department of Highway Safety and Motor Vehicles to collect the fees and deposit them into the General Revenue Fund and the Highway Safety Operating Trust Fund; requiring that the deposited funds be appropriated to establish a recruitment plan for officers of the highway patrol and for a salary scale to ensure that the salary of highway patrol officers remains competitive with other law enforcement agencies; amending s. 322.29, F.S., relating to the surrender and return of a license; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (2) of section 318.15, Florida Statutes, is amended to read:

318.15 Failure to comply with civil penalty or to appear; penalty.--

(2) After suspension of the driver's license and privilege to drive of a person under subsection (1), the license and

privilege may not be reinstated until the person complies with all obligations and penalties imposed on him or her under s. 318.18 and presents to a driver license office a certificate of compliance issued by the court, together with a nonrefundable service charge of up to $60 ~~$47.50~~ imposed under s. 322.29, or presents a certificate of compliance and pays the aforementioned service charge of up to $60 ~~$47.50~~ to the clerk of the court or a driver licensing agent authorized in s. 322.135 clearing such suspension. Of the charge collected by the clerk of the court or driver licensing agent, $22.50 ~~$10~~ shall be remitted to the Department of Revenue to be deposited into the Highway Safety Operating Trust Fund. Such person shall also be in compliance with requirements of chapter 322 prior to reinstatement.

Section 2. Section 322.21, Florida Statutes, is amended to read:

322.21 License fees; procedure for handling and collecting fees; distribution of funds to the highway patrol.--

(1) Except as otherwise provided herein, the fee for:

(a) An original or renewal commercial driver's license is $50, which shall include the fee for driver education provided by s. 1003.48; however, if an applicant has completed training and is applying for employment or is currently employed in a public or nonpublic school system that requires the commercial license, the fee shall be the same as for a Class E driver's license. A delinquent fee of $1 shall be added for a renewal made not more than 12 months after the license expiration date.

(b) An original Class E driver's license is $20, which shall include the fee for driver's education provided by s.

1003.48; however, if an applicant has completed training and is applying for employment or is currently employed in a public or nonpublic school system that requires a commercial driver license, the fee shall be the same as for a Class E license.

(c) The renewal or extension of a Class E driver's license or of a license restricted to motorcycle use only is $15, except that a delinquent fee of $1 shall be added for a renewal or extension made not more than 12 months after the license expiration date. The fee provided in this paragraph shall include the fee for driver's education provided by s. 1003.48.

(d) An original driver's license restricted to motorcycle use only is $20, which shall include the fee for driver's education provided by s. 1003.48.

(e) Each endorsement required by s. 322.57 is $5.

(f) A hazardous-materials endorsement, as required by s. 322.57(1)(d), shall be set by the department by rule and shall reflect the cost of the required criminal history check, including the cost of the state and federal fingerprint check, and the cost to the department of providing and issuing the license. The fee shall not exceed $100. This fee shall be deposited in the Highway Safety Operating Trust Fund. The department may adopt rules to administer this section.

(2) It is the duty of the Director of the Division of Driver Licenses to set up a division in the department with the necessary personnel to perform the necessary clerical and routine work for the department in issuing and recording applications, licenses, and certificates of eligibility, including the receiving and accounting of all license funds and

their payment into the State Treasury, and other incidental clerical work connected with the administration of this chapter. The department is authorized to use such electronic, mechanical, or other devices as necessary to accomplish the purposes of this chapter.

(3) The department shall prepare sufficient forms for certificates of eligibility, applications, notices, and license materials to supply all applicants for driver's licenses and all renewal licenses.

(4) If the department determines from its records or is otherwise satisfied that the holder of a license about to expire is entitled to have it renewed, the department shall mail a renewal notice to him or her at his or her last known address, not less than 30 days prior to the licensee's birthday. The licensee shall be issued a renewal license, after reexamination, if required, during the 30 days immediately preceding his or her birthday upon presenting a renewal notice, his or her current license, and the fee for renewal to the department at any driver's license examining office.

(5) The department shall collect and transmit all fees received by it under this section to the Chief Financial Officer to be placed in the General Revenue Fund of the state, and sufficient funds for the necessary expenses of the department shall be included in the appropriations act. The fees shall be used for the maintenance and operation of the department.

(6) Any member of the Armed Forces or his or her spouse, daughter, son, stepdaughter, or stepson, who holds a Florida driver's license and who presents an affidavit showing that he

or she was out of the state due to service in the Armed Forces of the United States at the time of license expiration is exempt from paying the delinquent fee, if the application for renewal is made within 15 months after the expiration of his or her license and within 90 days after the date of discharge or transfer to a military or naval establishment in this state as shown in the affidavit. However, such a person is not exempt from any reexamination requirement.

(7) Any veteran honorably discharged from the Armed Forces who has been issued a valid identification card by the Department of Veterans' Affairs in accordance with s. 295.17, or has been determined by the United States Department of Veterans Affairs or its predecessor to have a 100-percent total and permanent service-connected disability rating for compensation, or has been determined to have a service-connected total and permanent disability rating of 100 percent and is in receipt of disability retirement pay from any branch of the United States Armed Services, and who is qualified to obtain a driver's license under this chapter is exempt from all fees required by this section.

(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 $45 ~~$35~~ following a suspension, and $75 ~~$60~~ following a revocation, which is in addition to the fee for a license. 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 $75 ~~$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 $45 ~~$35~~ fee received from a licensee for reinstatement following a suspension, the department shall deposit $15 in the General Revenue Fund and $30 ~~$20~~ in the Highway Safety Operating Trust Fund.

(b) Of the $75 ~~$60~~ fee received from a licensee for reinstatement following a revocation or disqualification, the department shall deposit $35 in the General Revenue Fund and $40 ~~$25~~ in the Highway Safety Operating Trust Fund.

(c) Of the driver's license reinstatement fee that is deposited into the Highway Safety Operating Trust Fund, $15 shall be used to establish a recruitment and retention salary payment plan for officers of the highway patrol. The Director of the Division of the Florida Highway Patrol may use the funds from the deposited reinstatement fees to structure a pay scale for highway patrol officers which is competitive with the average of the salaries of the six highest-paid law enforcement agencies in the state. The director may develop a pay scale for members of the highway patrol which is based on an officer's years of service with the patrol and his or her job performance with respect to established patrol-duty requirements.

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 $130 ~~$115~~

must be charged. However, only one $130 ~~$115~~ fee may be collected from one person convicted of violations arising out of the same incident. The department shall collect the $130 ~~$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 (2) of section 322.29, Florida Statutes, is amended to read:

322.29 Surrender and return of license.--

(2) The provisions of subsection (1) to the contrary notwithstanding, no examination is required for the return of a license suspended under s. 318.15 or s. 322.245 unless an examination is otherwise required by this chapter. Every person applying for the return of a license suspended under s. 318.15 or s. 322.245 shall present to the department certification from the court that he or she has complied with all obligations and penalties imposed on him or her pursuant to s. 318.15 or, in the case of a suspension pursuant to s. 322.245, that he or she has complied with all directives of the court and the requirements of s. 322.245 and shall pay to the department a nonrefundable service fee of $60 ~~$47.50~~, of which $37.50 shall be deposited

into the General Revenue Fund and $22.50 ~~$10~~ shall be deposited into the Highway Safety Operating Trust Fund. If reinstated by the clerk of the court or tax collector, $37.50 shall be retained and $22.50 ~~$10~~ shall be remitted to the Department of Revenue for deposit into the Highway Safety Operating Trust Fund. However, the service fee is not required if the person is required to pay a $45 ~~$35~~ fee or a $75 ~~$60~~ fee under the provisions of s. 322.21.

Section 4. This act shall take effect January 1, 2009.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1123 Contract Carriers
SPONSOR(S): Gibson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2492

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

SUMMARY ANALYSIS

The bill makes numerous to specified rules and regulations to contract carriers employed by railroad companies. Specifically the bill:

- Requires contract carrier drivers to hold commercial driver's license;
- Requires contract carriers to perform alcohol and drug testing on drivers prior to employment, on suspicion of drug or alcohol use and at least once a year at random;
- Limits duties of contract carrier operators to a maximum of 14 hours per shift, with a total of 12 hours of driving. This provision also requires a minimum 10 hour rest period between shifts;
- Requires contract carriers to record hours of service, driving time, and total time worked per shift on a weekly basis. This provision also requires logs be retained for minimum of 3 years;
- Requires commercial for-hire carrier companies to maintain liability insurance coverage of $1.5 million per vehicle and underinsured and uninsured motorists coverage at an equal amount;
- Requires DOT to adopt rules regulating contract carriers employed by Florida railroad companies; and
- Requires DOT to inform contract carriers and railroad companies of applicable requirements and statutes.

The provision of HB 1123 requiring commercial for-hire carrier companies to maintain liability insurance coverage and underinsured and uninsured motorists coverage may have a fiscal impact on these companies if they do not currently have this coverage in place.

In addition, there may be administrative and enforcement costs to DOT to adopt rules and to enforce the new regulations.

The bill is effective July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not implicate any House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Sections 316.302 and 316.70, F.S., contain the safety requirements that apply to the operation of commercial vehicles on the public highways of the state. In general, these laws have adopted the Federal Motor Carrier Safety Regulations found in Chapter 49 of the Code of Federal Regulations (49 CFR), Parts 390 through 397, and the Hazardous Materials Transportation Regulations found in 49 CFR, Parts 100 through 180, as they apply to highway transportation.

For the purposes of compliance with the safety regulations, a commercial motor vehicle is any self-propelled or towed vehicle used on the public highways in commerce to transport passengers or cargo, if such vehicle:

- Has a gross vehicle weight rating of 10,000 pounds or more;
- Is designed to transport more than 15 passengers including the driver; or
- Is used in the transportation of hazardous materials.

This definition is not limited to vehicles operated by a trucking company. Such vehicles operated by any business or commercial enterprise will be subject to the regulations.

Safety Regulations

Safety inspections are conducted by DOT's Office of Motor Carrier Compliance (OMCC) personnel or by authorized agents at weigh stations and on the roadside. OMCC officers follow a procedure established by the Commercial Vehicle Safety Alliance (CVSA) to inspect both the driver and vehicle.

In addition to roadside inspections, motor carriers are subject to compliance reviews. These reviews will be conducted at the motor carrier's principal place of business to determine general compliance with the regulations, as well as the recordkeeping requirements. Such reviews include, but are not limited to, driver qualification files, vehicle maintenance records, and controlled substance and alcohol testing requirements. Violations found during these reviews may result in civil penalties being assessed. If defects or violations are discovered, one or more of the following things will happen:

- A 15-day time limit will be given to return the Driver-Vehicle Examination Report certifying the repairs have been made.

- If serious defects are discovered, the vehicle will be placed out of service and the repairs must be made before the vehicle can be driven again. If a vehicle that has been placed out of service is operated before the necessary repairs have been made, a penalty of $1,100.00 up to $2,750.00 may be assessed. Additionally, if the employer violates the Out-of-Service Order, an additional penalty of up to $11,000.00 may be assessed.

- A driver in violation of some requirements regarding hours of service (such as not having a log book when required, or exceeding the driving time limitations) may be placed out of service and assessed a penalty of $100.00.

- Additional penalties of up to $500.00 may be assessed for each hazardous material violation. Some hazardous material violations may subject the violator to criminal misdemeanor charges.

- Violations found during a compliance review may be assessed civil penalties up to a maximum of $25,000.00.

- Some driver license violations may subject the violator to criminal misdemeanor charges.

- A Uniform Traffic Citation may be issued for some traffic violations.

Commercial Drivers License (CDL)

A CDL is required if a person operates any of the following motor vehicles:

- A vehicle with a gross combination weight rating of 26,001 pounds or more with a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

- A vehicle with a gross vehicle weight rating of 26,001 pounds or more;

- A vehicle designed to transport 16 or more passengers, including the driver; or

- A vehicle of any size used to transport hazardous materials that is required to be placarded.

Medical Certificate Requirements

Interstate Commerce

Drivers are required to have a valid medical examiners certificate when operating a commercial motor vehicle with a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight of 10,001 pounds or more, whichever is greatest; or is designed to transport more than eight passengers (including the driver) for compensation; or is designed to transport more than 15 passengers, including the driver regardless of compensation; or is transporting placardable amounts of hazardous materials. Certain farm vehicle drivers and private motor carriers of passengers on business are exempted from this requirement. Medical certificates are valid for up to two years.

Intrastate Commerce

Drivers are required to possess a current medical certificate when operating a commercial vehicle 26,000 pounds or more gross vehicle weight, transporting passengers in a vehicle designed for more than 10 passengers, or transporting hazardous materials in amounts that require placards. Medical certificates are valid for up to 2 years.

Record of Duty (Log Book) and Hours of Service Limitations

Property Carrier-Interstate Commerce

Recently enacted federal hours of service legislation that became effective on January 4, 2004, includes the following limitations:

- A log book is required except if the driver is operating a commercial motor vehicle within a 150 air mile radius from where the vehicle is based, and;

    - Returns to base and goes off-duty within 12 hours;
    - Does not exceed 11 hours driving time; and
    - Has at least 10 consecutive hours off-duty before returning to duty; and time records are kept which shows the time the driver reports for duty, the number of hours on duty each day, and the time driver goes off-duty (records must be kept at least 6 months).

- Driver may not drive after:
    - Driving 11 hours after 10 consecutive hours off-duty;
    - Being on-duty 14 hours after 10 consecutive hours off-duty; or
    - Being on-duty 60 hours in 7 consecutive days or 70 hours in 8 consecutive days. (However, 34 or more consecutive off-duty hours resets and restarts the 7/8-day period.)

- Drivers may extend the 14-hour on-duty period by 2 additional hours, if they:
    - Are released from duty at the normal work location for the previous 5 duty tours;
    - Return to the normal work reporting location and are released from duty within 16 hours; and
    - Have not used this exception in the previous 7 days, except following a 34-hour restart of a 7/8-day period.

Passenger Carrier-Interstate/Intrastate Commerce

- A log book is required except if the driver is operating a commercial motor vehicle within a 100-air mile radius from where the vehicle is based, and:
    - Returns to base and goes off-duty within 12 hours;
    - Does not exceed 10 hours driving time;
    - Has at least 8 consecutive hours off-duty before returning to duty; and
    - Time records are kept which show the time driver reports for duty, the number of hours on-duty each day, and the time driver goes off-duty (records must be kept at least 6 months).

- The driver may not drive after:
    - 10 hours driving time;
    - 15 hours on-duty time;
    - 60 hours on-duty time in seven (7) consecutive days; or
    - 70 hours on-duty time in eight (8) consecutive days if the company operates every day of the week.

Property Carrier-Intrastate Commerce

- If transporting hazardous materials, interstate rules apply.
- If operating in intrastate commerce not transporting placardable amounts of hazardous materials:
    - A log book is required except if driver is operating a vehicle within a 150 air mile radius of where the vehicle is based, and time records are kept which show the time driver reports for duty, the number of hours on-duty each day, and the time driver goes off duty (records must be kept at least 6 months).
    - A log book is not required while transporting agricultural products, including horticultural or forestry products, from farm or harvest place to the first place of processing or storage, or from farm or harvest place directly to market.
    - A driver may not drive after the16th hour of on-duty time, and:
        - May not drive more than 12 hours after having 10 consecutive hours off duty;

- Accrue more than 70 hours on-duty time in 7 consecutive days or more than 80 hours on-duty time in 8 consecutive days; or
- After 34 consecutive hours of off-duty time, a new 7-day or 8-day period will begin.

This weekly limit does not apply to a person who operates a commercial motor vehicle solely within this state while transporting certain agricultural products, livestock, livestock feed, or farm supplies.

Hazardous Materials

If a carrier transports hazardous materials, in addition to the general safety regulations, they are subject to requirements found in 49 CFR, Parts 100 through 180. These regulations cover items such as shipping papers, marking and labeling of packages, placarding of vehicles, and the proper packaging to use for hazardous materials. These regulations are extensive, complex, and subject to change frequently. It is imperative that carriers understand what the requirements are for transporting these materials. Carriers must refer to the regulations for specific information regarding compliance. The following items are general guidelines on what is inspected when carriers are transporting hazardous materials.

- Almost all hazardous materials shipments must be accompanied by shipping papers which contain specific information, including:
  - Proper Shipping Name of the Material;
  - Hazard Class 4-digit Identification Number;
  - Packing Group of the Material, if applicable;
  - Emergency Telephone Number;
  - Emergency Response Information;
  - Identification Number and Proper Shipping Name on non-bulk packages;
  - Identification Number on bulk packages;
  - Labels identifying primary and secondary hazards (if applicable) on non-bulk packages;
  - Placards identifying primary and secondary hazards (if applicable) on vehicles and bulk packages. When placards are required on a vehicle, they must be displayed on all 4 sides of the vehicle. An empty cargo tank or portable tank which has been emptied of hazardous materials must remain placarded unless it has been cleaned of residue and purged of vapors, or has been refilled with a material which does not require placards;
  - If the class or amount of hazardous materials being transported requires the vehicle to be placarded, a CDL with an "H" endorsement is required. This is true even if the vehicle is of a size not otherwise requiring the driver to have a CDL; and
  - A tank vehicle with a capacity of 1001 gallons or more used to transport hazardous materials, requires a combination of the hazardous material endorsement and tank endorsement, or "X" endorsement.

If a shipper or carrier operating in interstate commerce or intrastate commerce transporting hazardous materials, they may be required to register with the United States Department of Transportation (USDOT). A registration statement must be submitted to the USDOT and the appropriate fee must be paid.

Proposed Changes

HB 1123 adds specific safety requirements for contract carriers employed by railroad companies to current law. Such contract carriers would also be subject to the general laws that have been adopted by the state that are currently included in the Federal Motor Carrier Safety Regulations found in Chapter 49 of the Code of Federal Regulations (49 CFR), Parts 390 through 397, and the Hazardous Materials Transportation Regulations found in 49 CFR, Parts 100 through 180, as they apply to highway transportation. Specifically the bill:

- Requires contract carrier drivers to hold commercial driver's license;

- Requires contract carriers to perform alcohol and drug testing on drivers prior to employment, on suspicion of drug or alcohol use, at least once a year at random;
- Limits duties of contract carrier operators to a maximum of 14 hours per shift, with a total of 12 hours of driving. This provision also requires a minimum 10 hour rest period between shifts;
- Requires contract carriers to record hours of service, driving time, and total time worked per shift on a weekly basis. This provision also requires logs be retained for minimum of 3 years;
- Requires commercial for-hire carrier companies to maintain liability insurance coverage of $1.5 million per vehicle and underinsured and uninsured motorists coverage at an equal amount;
- Requires DOT to adopt rules regulating contract carriers employed by Florida railroad companies. These rules must at a minimum comply with the contract carrier provisions listed above; and
- Requires DOT to inform contract carriers and railroad companies of applicable requirements and statutes.

C. SECTION DIRECTORY:

Section 1. Amends s 316.302, F.S., applying specified rules and regulations to contract carriers employed by railroad companies; requiring contract carrier drivers to hold a commercial driver's license; requiring contract carriers to perform alcohol and drug testing on drivers; limiting duties of contract carrier operators; requiring contract carriers to record certain information and keep certain logs for a certain time; requiring commercial for-hire carrier companies to maintain certain insurance coverage; requiring the DOT to adopt rules regulating such contract carriers; and requiring DOT to inform contract carriers and railroad companies of applicable requirements and statutes.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   There is a potential administrative cost to adopt rules and enforce the new regulations. DOT has not identified the impact at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HB 1123 requires commercial for-hire carrier companies to maintain liability insurance coverage of $1.5 million per vehicle and underinsured and uninsured motorists coverage at an equal amount. This will impact these companies in an amount equal to the insurance premiums. Some of these companies may currently have this coverage in place. The companies will also incur additional business expenses related to compliance with the bill's regulations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 2 of the bill gives DOT rule making authority to implement the regulatory requirements of the bill.

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 contract carriers; amending s. 316.302, F.S.; applying specified rules and regulations to contract carriers employed by railroad companies; requiring contract carrier drivers to hold a commercial driver's license; requiring contract carriers to perform alcohol and drug testing on drivers; limiting duties of contract carrier operators; requiring contract carriers to record certain information and keep certain logs for a certain time; requiring commercial for-hire carrier companies to maintain certain insurance coverage; requiring the Department of Transportation to adopt rules regulating such contract carriers; requiring the department to inform contract carriers and railroad companies of applicable requirements and statutes; providing an effective date.

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

Section 1. Subsections (8) through (11) of section 316.302, Florida Statutes, are renumbered as subsections (9) through (12), respectively, current subsection (8) is amended, and a new subsection (8) is added to that section, to read:

316.302 Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.--

(8) This section also applies to all contract carriers operating in this state and regularly employed by any railroad company. In addition:

(a) Each contract carrier driver must hold a commercial driver's license.

(b) Such contract carriers shall perform alcohol and drug testing on drivers before employment, on suspicion of drug or alcohol use, and randomly at least once every 365 days.

(c) Contract carrier operators must not perform duties in excess of 14 hours per shift, with a total driving time of 12 hours, and shall have a minimum of 10 hours rest between shifts.

(d) Contract carriers shall keep logs, signed by both the employee and the employer on a weekly basis, of hours of service recording time on duty, driving time, and total time worked per shift. The logs shall be kept by the contract carrier for a minimum of 3 years.

(e) Commercial for-hire carrier companies must maintain a minimum liability insurance coverage of $1,500,000 per vehicle and equivalent uninsured and underinsured motorist coverage.

(9) ~~(8)~~ For the purpose of enforcing this section, any law enforcement officer of the Department of Transportation or duly appointed agent who holds a current safety inspector certification from the Commercial Vehicle Safety Alliance may require the driver of any commercial vehicle operated on the highways of this state to stop and submit to an inspection of the vehicle or the driver's records. If the vehicle or driver is found to be operating in an unsafe condition, or if any required part or equipment is not present or is not in proper repair or adjustment, and the continued operation would present an unduly hazardous operating condition, the officer may require the vehicle or the driver to be removed from service pursuant to the

North American Uniform Out-of-Service Criteria, until corrected. However, if continuous operation would not present an unduly hazardous operating condition, the officer may give written notice requiring correction of the condition within 14 days.

(a) Any member of the Florida Highway Patrol or any law enforcement officer employed by a sheriff's office or municipal police department authorized to enforce the traffic laws of this state pursuant to s. 316.640 who has reason to believe that a vehicle or driver is operating in an unsafe condition may, as provided in subsection (11) ~~(10)~~, enforce the provisions of this section.

(b) Any person who fails to comply with an officer's request to submit to an inspection under this subsection commits a violation of s. 843.02 if the person resists the officer without violence or a violation of s. 843.01 if the person resists the officer with violence.

Section 2. (1) The Department of Transportation shall adopt rules regulating contract carriers employed by railroad companies operating in this state.

(2) Rules adopted under this section must, at a minimum:

(a) Require each contract carrier driver to hold a commercial driver's license.

(b) Require employers of the drivers to perform alcohol and drug testing on drivers before employment, on suspicion of drug or alcohol use, and randomly at least once every 365 days.

(c) Incorporate all statutory requirements for carriers, including, at a minimum, the requirements of section 316.302, Florida Statutes, and rules adopted under that section.

(d) Provide that contract carrier operators must not perform duties in excess of 14 hours per shift, with a total driving time of 12 hours, and must have a minimum of 10 hours of rest between shifts.

(e) Require contract carriers to keep logs, signed by both the employee and the employer on a weekly basis, of hours of service recording time on duty, driving time, and total time worked per shift, and require the logs be kept by the contract carrier for a minimum of 3 years.

(f) Require commercial for-hire carrier companies to maintain a minimum liability insurance coverage of $1,500,000 per vehicle and equivalent uninsured and underinsured motorist coverage.

(3) The Department of Transportation shall inform contract carriers and railroad companies in this state of the applicable requirements and statutes.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1177 Motor Vehicles

SPONSOR(S): Bean

TIED BILLS: **IDEN./SIM. BILLS:** SB 658

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 1177, the "Highway Safety Act," expresses the Legislature's finding that "road rage and aggressive careless driving are a growing threat to the public's health, safety, and welfare."

The bill defines "road rage," and requires that on roads, streets, or highways with two or more lanes allowing for movement in the same direction, no person is to continue to operate a motor vehicle in the most left-hand lane once such person knows or should reasonably know he or she is being overtaken from the rear by a motor vehicle traveling at a higher rate of speed except when such motor vehicle is in the process of overtaking a slower vehicle in an adjacent lane or is preparing for a left turn.

The bill increases the number of traffic violations from two to three that a person must commit simultaneously or in succession to be guilty of "aggressive careless driving" and includes failure to yield to overtaking vehicles as one of these traffic violations. A violation is a non-criminal traffic infraction punishable by a $60 fine plus applicable fees and court costs, and an assessment of applicable points. In addition, the bill provides increased fines ($100 for a first conviction; $250 to $500 for second or subsequent convictions), and mandatory hearings.

The bill directs half of the increased fines to the Department of Health Administrative Trust Fund to support certified trauma centers (25% to be distributed equally, 25% proportionally). The remaining half is split equally between support for "emergency medical services" and "rural emergency medical services."

The Department of Highway Safety and Motor Vehicles (DHSMV) is required to conduct a public awareness campaign to inform the motoring public about changes in the law in newly-printed educational guides and public safety awareness campaigns with the Florida Highway Patrol.

The potential increase in revenue to the state and local governments is indeterminate, as it is unclear how many violations could be issued annually.

The bill provides an effective date of July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government— The bill extends government regulation over the behavior of motorists by prohibiting currently lawful operation of motor vehicles in the left-hand lane of multi-lane roadways. The bill creates additional fines for certain driving violations.

Safeguard individual liberty— The bill restricts the freedom of an individual to operate a motor vehicle in the left-hand lane of a multi-lane roadway under certain circumstances, which is allowed under current law.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 316, F.S. provides the state with a uniform traffic code. Generally, drivers proceeding upon any roadway at *less than the normal speed of traffic* under prevailing conditions must stay in the right-hand lane.[1] However, this requirement does not apply when the motor vehicle is overtaking or passing another vehicle proceeding in the same direction, or when preparing for a left turn.[2] Motor vehicles are also prohibited from travelling in the leftmost lane of multiple lanes traveling in the same direction, where the leftmost lane is reserved for vehicles carrying multiple passengers.[3]

On a two-way roadway having four or more lanes, no vehicle may be driven to the left of the centerline of the roadway, except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except to overtake or pass, or to prepare for a left turn.[4]

Section 316.1923, F.S., defines "aggressive careless driving" as committing *two* or more of the following acts simultaneously or in succession:

- Exceeding the posted speed limit;
- Unsafely or improperly changing lanes;
- Following another vehicle too closely;
- Failing to yield the right-of-way;
- Improperly passing; or
- Violating traffic control and signal devices.

Drivers committing noncriminal traffic infractions are often permitted to pay a fine and attend a basic driver improvement course approved by the Department, without appearing before a hearing officer or a judge.[5] If the driver elects this option, the court is required to withhold adjudication, and may not assess points as provided by s. 322.27, F.S. In addition, the civil penalty imposed by section 318.18(3),

[1] Section 316.081(2), F.S.
[2] *Id.*
[3] Section 316.0741(3), F.S.
[4] Section 316.081(3), F.S.
[5] *See* Section 318.14, F.S. This exemption does not apply to holders of a commercial driver's license or to speed violations in excess of 30 miles per hour over the posted speed limit.

F.S., is reduced by 18 percent.[6] A driver is allowed to elect the course once every twelve months, but not more than five times in total.

Section 318.19, F.S., provides that citations for the following infractions require a mandatory hearing:

- Any infraction which results in a crash and causes the death of another person;
- Any infraction which results in a crash that causes "serious bodily injury" of another person;[7]
- Any infraction of failing to stop for a school bus;[8]
- Any infraction of failing to secure loads on vehicles;[9] or
- Any speed infraction exceeding 30 miles per hour over the speed limit.

Section 322.27, F.S., sets out a point system for traffic violations. Moving violations typically result in assessment of three points, unless the infraction or offense is among those considered more serious. For example, pursuant to section 322.27(3)(d), F.S., reckless driving, passing a stopped school bus, and speeding in excess of 15 mph over the posted limit all require assessment of four points. Leaving the scene of a crash and speeding resulting in a crash require assessment of six points.

The Department may suspend a driver for 30 days if the driver accumulates 12 or more points within a 12-month period,[10] up to three months if the driver accumulates 18 points in 18 months,[11] and up to one year if the driver accumulates 24 points within 36 months.[12]

Proposed Changes

HB 1177, entitled the "Highway Safety Act," provides legislative findings that road rage and aggressive careless driving are a growing threat to the public's health, safety, and welfare. It provides further,

> [t]he intent of the Legislature is to reduce road rage and aggressive careless driving, reduce the incidence of drivers' interfering with the movement of traffic, minimize crashes, and promote the orderly, free flow of traffic on the roads and highways of this state.

The bill provides a definition of road rage as "[t]he act of a driver or passenger to intentionally injure or kill another driver, passenger, or pedestrian, or to attempt or threaten to injure or kill another driver, passenger, or pedestrian."

The bill requires that on roads, streets, or highways with two or more lanes allowing for movement in the same direction, no person is to continue to operate a motor vehicle in the most left-hand lane once the person knows or should reasonably know he or she is being overtaken from the rear by another motor vehicle traveling at a higher rate of speed. The bill provides exceptions to this requirement when the slower motor vehicle is in the process of overtaking another vehicle in an adjacent lane or is preparing to turn left.

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[6] For most violations, this fine is $60, plus local court costs (which vary by jurisdiction). Speeding fines are tiered, ranging from $25 to $250 (plus local court costs), pursuant to section 318.18(3)(b), F.S.

[7] "Serious bodily injury" is defined by section 316.1933(1)(b), F.S., 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."

[8] *See* Section 316.172, F.S.

[9] *See* Section 316.520, F.S.

[10] Section 322.27(3)(a), F.S.

[11] Section 322.27(3)(b), F.S.

[12] Section 322.27(3)(c), F.S.

The bill also amends s. 316.1923, F.S., increasing the number of traffic violations from two to three that a person must commit simultaneously or in succession to be guilty of "aggressive careless driving." The bill also includes failing to yield to overtaking vehicles as one of these traffic violations. A violation is made a non-criminal traffic infraction punishable as a moving violation pursuant to Chapter 318, F.S. Offenders would be subject to a $60 fine (plus fees and court costs varying by jurisdiction) for each violation, and an assessment of applicable points against the driver's license for each of the acts violated.

The bill provides additional fines for aggressive careless driving beyond the current fines and accumulation of points under Chapters 318 and 322, F.S. HB 1177 provides that any person convicted of aggressive careless driving will be punished by an additional fine of $100 for a first conviction, and by both (i) a fine ranging from $250 to $500 and (ii) a mandatory hearing under s. 318.19, F.S., for a second or subsequent conviction.

The bill provides that moneys received from the increased fine for aggressive careless driving are to be remitted to the Department of Revenue and deposited into the Department of Health Administrative Trust Fund to provide financial support to verified trauma centers to ensure the availability and accessibility of trauma services throughout the state. These funds are required to be allocated as follows:

- Twenty-five percent shall be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services;
- Twenty-five percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as reported in the Department of Health Trauma Registry;
- Twenty-five percent shall be allocated for emergency medical services; and
- Twenty-five percent shall be allocated for rural emergency medical services.

The Department is required to conduct a public awareness campaign to inform the motoring public about changes in the law. The Department must provide information about the act in "all newly printed driver's license educational materials after October 1, 2008," and in public service announcements produced in cooperation with the Florida Highway Patrol.

C. SECTION DIRECTORY:

Section 1. Provides a popular name for the act.

Section 2. Provides legislative findings relating to road rage and aggressive careless driving.

Section 3. Amends s. 316.003, F.S., defining the term "road rage."

Section 4. Amends s. 316.083, F.S., requiring an operator of a motor vehicle to yield the left lane when being overtaken on a multilane highway; providing exceptions.

Section 5. Amends s. 316.1923, F.S., revising the number of specified acts necessary to qualify as an aggressive careless driver; providing specified punishments for aggressive careless driving.

Section 6. Amends s. 318.19, F.S., providing that a second or subsequent infraction as an aggressive careless driver requires attendance at a mandatory hearing; providing for the disposition of the increased penalties;

Section 7. Requires the Department to provide an educational awareness campaign about the Act.

Section 8. Reenacts s. 316.650(1)(a), F.S., relating to traffic citations, to incorporate the amendments made to s. 316.1923, F.S., in a reference thereto.

Section 9. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS, below.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A person violating the aggressive careless driving provision would be subject to a $60 fine plus applicable fees and court costs for each violation.

D. FISCAL COMMENTS:

The bill prohibits behavior that is currently lawful. It is unknown how many traffic citations will be issued pursuant to the bill's provisions, therefore the resulting increase in revenue to the state and local governments is indeterminate.

To the extent that the bill deters unsafe traffic activity in Florida, crash-related injuries and deaths could be reduced thereby decreasing associated medical and insurance costs.

The bill directs the Department to conduct a public awareness campaign (including public service announcements) regarding the changes in the law. Because the bill does not provide additional funding to the agency for the campaign, the scope of the public awareness campaign will be limited by what funds are available for such purposes within DHSMV's existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions 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

This bill is about safety and protection for the driving public. I believe holding back the flow of traffic in the left lane contributes to increased incidents of road rage. The Federal Uniform code acknowledges this and states: "Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic ..."

This bill is not a "free ticket" for speeding drivers nor a punishment for drivers doing the speed limit in the left lane. Speeders will remain subject to speeding tickets but with the legislation, "failure to yield" becomes an infraction for drivers in the left lane who simply fail to move over when there is an oncoming vehicle in the left lane.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to motor vehicles; creating the "Highway Safety Act"; providing legislative intent relating to road rage and aggressive careless driving; amending s. 316.003, F.S.; defining the term "road rage"; amending s. 316.083, F.S.; requiring an operator of a motor vehicle to yield the left lane when being overtaken on a multilane highway; providing exceptions; amending s. 316.1923, F.S.; revising the number of specified acts necessary to qualify as an aggressive careless driver; providing specified punishments for aggressive careless driving; amending s. 318.19, F.S.; providing that a second or subsequent infraction as an aggressive careless driver requires attendance at a mandatory hearing; providing for the disposition of the increased penalties; requiring the Department of Highway Safety and Motor Vehicles to provide an educational awareness campaign; reenacting s. 316.650(1)(a), F.S., relating to traffic citations, to incorporate the amendments made to s. 316.1923, F.S., in a reference thereto; providing an effective date.

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

Section 1. This act may be cited as the "Highway Safety Act."

Section 2. The Legislature finds that road rage and aggressive careless driving are a growing threat to the health, safety, and welfare of the public. The intent of the Legislature

is to reduce road rage and aggressive careless driving, reduce the incidence of drivers' interfering with the movement of traffic, minimize crashes, and promote the orderly, free flow of traffic on the roads and highways of the state.

Section 3. 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) ROAD RAGE.--The act of a driver or passenger to intentionally injure or kill another driver, passenger, or pedestrian, or to attempt or threaten to injure or kill another driver, passenger, or pedestrian.

Section 4. Present subsection (3) of section 316.083, Florida Statutes, is redesignated as subsection (4), and a new subsection (3) is added to that section, to read:

316.083 Overtaking and passing a vehicle.--The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

(3) On roads, streets, or highways having two or more lanes that allow movement in the same direction, a driver may not continue to operate a motor vehicle in the furthermost left-hand lane if the driver knows, or reasonably should know, that he or she is being overtaken in that lane from the rear by a motor vehicle traveling at a higher rate of speed. This subsection does not apply to the driver of a motor vehicle if he

or she is in the process of overtaking a slower motor vehicle in an adjacent right-hand lane or if he or she is preparing to make a left turn.

Section 5. Section 316.1923, Florida Statutes, is amended to read:

316.1923 Aggressive careless driving.--

(1) "Aggressive careless driving" means committing three ~~two~~ or more of the following acts simultaneously or in succession:

(a) ~~(1)~~ Exceeding the posted speed as defined in s. 322.27(3)(d)5.b.

(b) ~~(2)~~ Unsafely or improperly changing lanes as defined in s. 316.085.

(c) ~~(3)~~ Following another vehicle too closely as defined in s. 316.0895(1).

(d) ~~(4)~~ Failing to yield the right-of-way as defined in s. 316.079, s. 316.0815, or s. 316.123.

(e) ~~(5)~~ Improperly passing or failing to yield to overtaking vehicles as defined in s. 316.083, s. 316.084, or s. 316.085.

(f) ~~(6)~~ Violating traffic control and signal devices as defined in ss. 316.074 and 316.075.

(2) Any person convicted of aggressive careless driving shall be cited for a moving violation and punished as provided in chapter 318, and by the accumulation of points as provided in s. 322.27, for each act of aggressive careless driving.

(3) In addition to any fine or points administered under subsection (2), a person convicted of aggressive careless

driving shall also pay:

(a) Upon a first violation, a fine of $100.

(b) Upon a second or subsequent conviction, a fine of not less than $250 but not more than $500 and be subject to a mandatory hearing under s. 318.19.

(4) Moneys received from the increased fine imposed by subsection (3) shall be remitted to the Department of Revenue and deposited into the Department of Health Administrative Trust Fund to provide financial support to verified trauma centers to ensure the availability and accessibility of trauma services throughout the state. Funds deposited into the Administrative Trust Fund under this section shall be allocated as follows:

(a) Twenty-five percent shall be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services.

(b) Twenty-five percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as reported in the Department of Health Trauma Registry.

(c) Twenty-five percent shall be allocated for emergency medical services.

(d) Twenty-five percent shall be allocated for rural emergency medical services.

Section 6. Section 318.19, Florida Statutes, is amended to read:

318.19 Infractions requiring a mandatory hearing.--Any person cited for the infractions listed in this section shall not have the provisions of s. 318.14(2), (4), and (9) available

to him or her but must appear before the designated official at the time and location of the scheduled hearing:

(1) Any infraction which results in a crash that causes the death of another;

(2) Any infraction which results in a crash that causes "serious bodily injury" of another as defined in s. 316.1933(1);

(3) Any infraction of s. 316.172(1)(b);

(4) Any infraction of s. 316.520(1) or (2); ~~or~~

(5) Any infraction of s. 316.183(2), s. 316.187, or s. 316.189 of exceeding the speed limit by 30 m.p.h. or more; or~~.~~

(6) A second or subsequent infraction of s. 316.1923(1).

Section 7. The Department of Highway Safety and Motor Vehicles shall provide an educational awareness campaign informing the motoring public about the Highway Safety Act. The department shall provide information about the act in all newly printed driver's license educational materials after October 1, 2008, and in public service announcements produced in cooperation with the Florida Highway Patrol.

Section 8. For the purpose of incorporating the amendments made by this act to section 316.1923, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 316.650, Florida Statutes, is reenacted to read:

316.650 Traffic citations.--

(1)(a) The department shall prepare, and supply to every traffic enforcement agency in this state, an appropriate form traffic citation containing a notice to appear (which shall be issued in prenumbered books with citations in quintuplicate) and meeting the requirements of this chapter or any laws of this

state regulating traffic, which form shall be consistent with the state traffic court rules and the procedures established by the department. The form shall include a box which is to be checked by the law enforcement officer when the officer believes that the traffic violation or crash was due to aggressive careless driving as defined in s. 316.1923. The form shall also include a box which is to be checked by the law enforcement officer when the officer writes a uniform traffic citation for a violation of s. 316.074(1) or s. 316.075(1)(c)1. as a result of the driver failing to stop at a traffic signal.

Section 9. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1207 Railroads
SPONSOR(S): Homan
TIED BILLS: **IDEN./SIM. BILLS:** SB 2792

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

SUMMARY ANALYSIS

HB 1207 amends current law to require public railroad-highway grade crossings opened on or after July 1, 1972, to be maintained by a railroad company at its own expense. The bill provides that certain responsibilities of a railroad company to maintain and inspect public railroad-highway grade signal crossings shall not be abrogated, transferred, or nullified by contract or administrative rule.

The bill directs the Department of Transportation (DOT) to amend specified rules to delete provisions for DOT participation in the cost of maintaining grade crossing traffic control devices located on the State Highway System.

In addition, the bill creates s. 351.31, F.S., relating to access to railroad property by government officials. The bill authorizes any governmental entity, or its agent, to access railroad real property adjoining public property as necessary to plan, facilitate, and complete road or highway construction, improvement, or repair projects and prohibits railroad companies from refusing this access and prohibits a railroad company from refusing such access. The provisions also include specific requirements related to railroad property access to include:

- Requiring the governmental entity, or its agent, to comply with laws and rules while on railroad property;
- Limiting liability of the railroad company for conduct of any governmental entity, or its agent, accessing railroad property;
- Providing procedures to be followed by the governmental entity prior to entry onto the railroad property;
- Requiring governmental entities to notify railroad companies at least 5 days prior to entry onto railroad properties, and providing procedures for the railroad company to object to access to railroad properties.

The bill will have a positive fiscal impact on the State Transportation Trust funds as a result of the amended rules. The elimination of the 50 percent participation requirements in the cost of maintaining grade crossing traffic control devices so long as the devices are located on the State Highway System have not been determined by DOT at this time. This provision will have a negative fiscal impact on railroad companies which will be required to pay 100 percent of these costs.

The bill may have fiscal impacts on railroad companies and governmental entities for court costs and attorney fees depending on circuit court decisions related to access requests.

The bill is effective July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not implicate any House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 335.141, F.S., provides for the regulation of public railroad-highway grade crossings. Current law specifically provides:

- DOT has regulatory authority over all public railroad-highway grade crossings in the state, including the authority to issue permits which shall be required prior to the opening and closing of such crossings.

- DOT, in cooperation with railroad companies operating in the state, shall develop and adopt a program for the expenditure of funds available for the construction of projects for the reduction of the hazards at public railroad-highway grade crossings.

- Every railroad company maintaining a public railroad-highway grade crossing shall, upon reasonable notice from DOT, install, maintain, and operate traffic control devices at crossings to provide motorists with warning of the approach of trains. DOT notices are based on its adopted program for the reduction of hazards at crossings and on construction efficiency considerations relating to the geographical proximity of crossings. The design of the railroad company's traffic control devices must be approved by DOT, and the cost of their purchase and installation must be paid from the funds available for the construction of projects for the reduction of the hazards at public railroad-highway grade crossings.

- Any public railroad crossing opened prior to July 1, 1972, shall be maintained by the railroad company at its own expense, unless the maintenance has been provided for in another manner by contractual agreement entered into prior to October 1, 1982. If the railroad company fails to maintain the crossing, the unit of government with jurisdiction over the public road that is crossed, after notifying the railroad company of the needed repairs and after giving the company 30 days after the date of receipt of the notice to make the repairs, shall proceed to make the repairs. The unit of government's cost of repairs will be recovered by means of a lien upon the railroad company's assets and is enforceable by law. In addition, any reasonable attorney's fees incurred by the unit of government are in addition to these costs and may also be recovered.

- Prior to construction, rehabilitation, or maintenance of the railroad grade or highway approaches at a public railroad-highway grade crossing, the railroad company or governmental entity initiating the work shall notify the other party in order to promote the coordination of activities and to ensure a safe crossing with smooth pavement transitions from the grade of the railroad to the highway approaches.

- DOT is authorized to regulate, by rule, the speed limit of railroad traffic on a municipal, county, regional, or statewide basis. DOT rules shall, at a minimum, provide for public input prior to the issuance of any orders.

- Any local governmental entity or other public or private agency planning a public event, such as a parade or race, that involves the crossing of a railroad track shall notify the railroad no less

than 72 hours in advance of the event so that the coordination of the crossing may be arranged by the agency and railroad to assure the safety of the railroad trains and the participants in the event.

Proposed Changes

HB 1207 revises s. 335.141, F.S., to provide that any public railroad-highway grade crossing opened on or after July 1, 1972, shall be maintained by the railroad company at its own expense. Current rule 14-57.011(3)(a), Florida Administrative Code provides that DOT shall participate in 50 percent of the cost of maintaining grade crossing traffic control devices so long as the devices are located on the State Highway System. The bill directs DOT to amend rule 14-57.011(3)(a), Florida Administrative Code, to delete the provision for DOT participation in the cost of maintaining grade crossing traffic control devices located on the State Highway System.

The bill also provides that it is responsibility of a railroad company to comply with federal requirements of maintenance and inspection of public railroad-highway grade signal crossings and the public policy of the state and that this responsibility is to be carried out by the railroad company at its own expense and shall not be abrogated, transferred, or nullified by contract or administrative rule.

HB 1207 creates s. 351.31, F.S., providing for governmental entity's access to railroad property and specifies conditions for access to these properties. Specifically this section provides:

- Authorization to governmental entities to access railroad property that is adjacent to, abutting, or intersecting public lands, roadways, or highways is authorized for governmental entities and their agents for all purposes necessary to plan, facilitate, and complete road or highway construction, improvement, or repair projects. This access applies during the period of time that the road or highway construction, improvement or repair project undertaken by or on behalf of the jurisdictional governmental entity is in progress. This access does not give any governmental entity or its agent the authority to destroy, injure, damage, or remove any private property belonging to the railroad or to make any physical improvements to or conduct any excavation of any real property belonging to the railroad without first obtaining written permission of the railroad company.

- No railroad company or railroad company representative shall refuse access to railroad real property as authorized above. Entry onto railroad property by a governmental entity, or its agent, does not constitute trespass is not subject to arrest or to a civil action. However, a governmental entity or its agent authorized to enter railroad property, must comply with all federal, state, and local laws, as well as agency rules pertaining to premises security and other health and safety requirements applicable to such property.

- A railroad company is not liable to any third party for civil or criminal acts or damages that result from the negligent or intentional conduct of any agent of a governmental entity who is on these railroad properties.

- Prior to entry onto railroad property by a governmental entity or its agent, the governmental entity must deliver to the railroad company written notice of its intended entry not less than 5 days before the date of entry. The notice must include:

    - The full name of each individual who is authorized to enter railroad property on its behalf as well as the name of his or her employer and immediate supervisor.

    - The name of the governmental entity on whose behalf the entering agents are acting.

    - The location, size, and area of the property to which access will be required.

- The name of the work project for which access is required.
- The estimated time required for access.
- A description of the work or other activity to be performed which makes access to railroad property necessary.

Within 72 hours after delivery of the written notice, a railroad company may file an action stating its objection in the circuit court of the jurisdiction in which the railroad property to be accessed is located. If no objection is filed by the railroad company within 72 hours after delivery of the written notice, access as specified in the written notice is authorized. If an objection is filed by the railroad company, the circuit court shall set a hearing to determine the basis for the objection. (A timely filed objection shall suspend authority to access railroad property for 10 days unless, before the end of the 10-day period, a hearing has been scheduled and a stay has been issued in which event authority to access the railroad property shall remain suspended pending resolution by order of the circuit court.)

At the hearing, the circuit court shall review the following issues:

1. Whether or not the access to railroad property is necessary in scope, duration, and purpose for the planning, facilitation, and completion of a road or highway construction, improvement, or repair project;
2. Whether or not the denial of access to the property necessary to avoid a substantial risk of physical harm to persons or railroad property;
3. Whether or not access to the property for the work or activity described would be in violation of federal, state, or local laws or agency rules pertaining to premises security or other health and safety requirements;
4. Whether or not there is a reasonable probability that railroad property would be damaged, destroyed, injured, or removed or real property excavated without permission of the railroad company;
5. Whether or not the activity described would cause a substantial impairment of railroad operations; and
6. Whether or not granting the access requested would constitute a taking of property under the Fifth Amendment to the United States Constitution or s. 6, Art. X of the State Constitution which related to eminent domain.

- A railroad company may not compel or require the use of flagging or other services provided by railroad company employees as a condition of allowing access to their property.

The bill will have a positive fiscal impact on the State Transportation Trust funds as a result of the amended rules. The elimination of the 50 percent participation requirements in the cost of maintaining grade crossing traffic control devices so long as the devices are located on the State Highway System have not been determined by DOT at this time. This provision will have a negative fiscal impact on railroad companies which will be required to pay 100 percent of these costs.

C. SECTION DIRECTORY:

Section 1. Amends s. 335.141, F.S.; requiring public railroad-highway grade crossings opened after a certain date to be maintained by the railroad company at its own expense; providing that certain responsibilities of a railroad company to maintain and inspect public railroad-highway grade signal

crossings shall not be abrogated, transferred, or nullified by contract or administrative rule; and directing the Department of Transportation to amend specified rules to delete the provision for department participation in the cost of maintaining grade crossing traffic control devices located on the State Highway System.

Section 2. Creates s. 351.31, F.S.; providing authorization for governmental entities to access railroad real property adjoining public property as necessary to plan, facilitate, and complete road or highway construction, improvement, or repair projects, subject to specified procedures; prohibiting a railroad company from refusing such access; providing that entry pursuant to such authorization is not trespass; requiring the governmental entity or its agent to comply with laws and rules; limiting liability of the railroad company for conduct of the agent; providing procedures to be followed by the governmental entity prior to entry onto the railroad property; requiring notification; providing procedures for the railroad company to object; providing for filing of the objection in court; providing specifications for court review and findings; providing for compensation if the court finds that granting access would result in a taking; and authorizing the court to order such conditions on granting access and certain limitations on activities as it deems necessary; providing that the railroad company may not condition access on the use of services provided by railroad company employees by contract, agreement, or otherwise; providing for applicability.

Section 3. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Section 1 of the bill will have a positive fiscal impact on the State Transportation Trust funds as a result of the amended rules. The elimination of the 50 percent participation requirements in the cost of maintaining grade crossing traffic control devices so long as the devices are located on the State Highway System have not been determined by DOT at this time.

2. Expenditures:

   Section 2 of the bill may have a negative fiscal impact on state governmental entities for court costs and attorney fees not recovered from the railroad companies if railroad property access is denied after circuit court decisions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Section 2 of the bill may have a negative fiscal impact on local governmental entities for court costs and attorney fees not recovered from the railroad companies if railroad property access is denied after circuit court decisions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 1 of the bill will have a negative fiscal impact on railroad companies in the state as a result of the amended rules. The elimination of the 50 percent participation requirements from DOT in the cost of maintaining grade crossing traffic control devices so long as the devices are located on the State Highway System will be assumed by these companies.

Section 2 of the bill may have a negative fiscal impact on railroad companies for court costs and attorney fees related to objections filed denying governmental entity access to railroad properties.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions 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:

Section 1 of the bill requires DOT to amend current rules to delete the provision for DOT participation in the cost of maintaining grade crossing traffic control devices located on the State Highway System.

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 railroads; amending s. 335.141, F.S.; requiring public railroad-highway grade crossings opened after a certain date to be maintained by the railroad company at its own expense; providing that certain responsibilities of a railroad company to maintain and inspect public railroad-highway grade signal crossings shall not be abrogated, transferred, or nullified by contract or administrative rule; directing the Department of Transportation to amend specified rules to delete the provision for department participation in the cost of maintaining grade crossing traffic control devices located on the State Highway System; creating s. 351.31, F.S.; providing authorization for governmental entities to access railroad real property adjoining public property as necessary to plan, facilitate, and complete road or highway construction, improvement, or repair projects, subject to specified procedures; prohibiting a railroad company from refusing such access; providing that entry pursuant to such authorization is not trespass; requiring the governmental entity or its agent to comply with laws and rules; limiting liability of the railroad company for conduct of the agent; providing procedures to be followed by the governmental entity prior to entry onto the railroad property; requiring notification; providing procedures for the railroad company to object; providing for filing of the objection in court; providing specifications for court review and findings; providing

for compensation if the court finds that granting access would result in a taking; authorizing the court to order such conditions on granting access and certain limitations on activities as it deems necessary; providing that the railroad company may not condition access on the use of services provided by railroad company employees by contract, agreement, or otherwise; providing for applicability; providing an effective date.

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

Section 1. Subsection (2) of section 335.141, Florida Statutes, is amended to read:

335.141 Regulation of public railroad-highway grade crossings; reduction of hazards.--

(2)(a) The department, in cooperation with the several railroad companies operating in the state, shall develop and adopt a program for the expenditure of funds available for the construction of projects for the reduction of the hazards at public railroad-highway grade crossings. The department and the railroad companies are not liable for any action or omission in the development of such program or for the priority given to any crossing improvement.

(b) Every railroad company maintaining a public railroad-highway grade crossing shall, upon reasonable notice from the department, install, maintain, and operate at such grade crossing traffic control devices to provide motorists with warning of the approach of trains. The department shall base its

notice on its adopted program for the reduction of hazards at such crossings and on construction efficiency considerations relating to the geographical proximity of crossings included in such program. The design of the grade crossing traffic control devices must be approved by the department, and the cost of their purchase and installation must be paid from the funds described in paragraph (a).

(c) Any public railroad-highway grade crossing opened on or after July 1, 1972, shall be maintained by the railroad company at its own expense. Any public railroad-highway grade ~~railroad~~ crossing opened prior to July 1, 1972, shall be maintained by the railroad company at its own expense, unless the maintenance has been provided for in another manner by contractual agreement entered into prior to October 1, 1982. If the railroad company fails to maintain the crossing, the unit of government with jurisdiction over the public road that is crossed, after notifying the railroad company of the needed repairs and after giving the company 30 days after the date of receipt of the notice to make the repairs, shall proceed to make the repairs. The cost of repairs shall thereupon become a lien upon the railroad and its rolling stock, which lien shall be enforceable by an ordinary suit at law. Any judgment rendered under this paragraph shall include a reasonable attorney's fee. The responsibility of a railroad company to comply with federal requirements of maintenance and inspection of public railroad-highway grade signal crossings and the public policy of the state that such responsibility be carried out by the railroad

company at its own expense shall not be abrogated, transferred, or nullified by contract or administrative rule.

(d) Prior to commencing the construction, rehabilitation, or maintenance of the railroad grade or highway approaches at a public railroad-highway grade crossing, the railroad company or governmental entity initiating the work shall notify the other party in order to promote the coordination of activities and to ensure a safe crossing with smooth pavement transitions from the grade of the railroad to the highway approaches.

(e) The department shall amend rule 14-57.011(3)(a), Florida Administrative Code, to delete the provision for department participation in the cost of maintaining grade crossing traffic control devices located on the State Highway System.

Section 2. Section 351.31, Florida Statutes, is created to read:

351.31 Access to railroad property by government officials; conditions of access prohibited.--

(1) Subject to the procedure provided in subsection (5), access to railroad real property that is adjacent to, abutting, or intersecting public lands, roadways, or highways is authorized for governmental entities and their agents for all purposes necessary to plan, facilitate, and complete road or highway construction, improvement, or repair projects. The access authorized under this section shall apply during the period of time that the road or highway construction, improvement or repair project undertaken by or on behalf of the jurisdictional governmental entity is in progress. Access

authorized under this section does not give authority to any governmental entity or its agent to destroy, injure, damage, or remove any private property belonging to the railroad or to make any physical improvements to or conduct any excavation of any real property belonging to the railroad without first obtaining written permission of the railroad company.

(2) No railroad company or railroad company representative shall refuse access to railroad real property authorized under subsection (1). Entry onto railroad property authorized by this section does not constitute trespass and neither governmental entities nor their agents shall be liable to arrest or to a civil action for trespass by reason of such entry.

(3) A governmental entity or its agent authorized to enter railroad property under this section shall do so in compliance with all federal, state, and local laws, as well as agency rules pertaining to premises security and other health and safety requirements applicable to such property.

(4) A railroad company is not liable to any third party for civil or criminal acts or damages that result from the negligent or intentional conduct of any agent of a governmental entity who is on railroad property under the authority granted under this section.

(5)(a) Prior to entry onto railroad property by a governmental entity or its agent pursuant to this section, the governmental entity must deliver to the railroad company written notice of its intended entry not less than 5 days before the date of entry. The notice must include:

1. The full name of each individual who is authorized to enter railroad property on its behalf as well as the name of his or her employer and immediate supervisor.

2. The name of the governmental entity on whose behalf the entering agents are acting.

3. The location, size, and area of the property to which access will be required.

4. The name of the work project for which access is required.

5. The estimated time required for access.

6. A description of the work or other activity to be performed which makes access to railroad property necessary.

(b) Within 72 hours after delivery of the written notice, a railroad company may file an action stating its objection in the circuit court of the jurisdiction in which the railroad property to be accessed is located. If no objection is filed by the railroad company within 72 hours after delivery of the written notice, access as specified in the written notice is authorized. Upon receipt of an objection, the circuit court shall set a hearing to determine the basis for the objection. A timely filed objection shall suspend authority to access railroad property granted under this section for 10 days unless, before the end of the 10-day period, a hearing has been scheduled and a stay has been issued in which event authority to access the railroad property shall remain suspended pending resolution by order of the circuit court.

(c) At the hearing, the circuit court shall have for review the following issues:

1. Whether or not the access to railroad property is necessary in scope, duration, and purpose for the planning, facilitation, and completion of a road or highway construction, improvement, or repair project;

2. Whether or not the location of the property or the purpose for which entry is sought is of such a nature that denial of access is necessary to avoid a substantial risk of physical harm to persons or railroad property;

3. Whether or not, based on the description of the work or activity to be done on the property, access to the property for the work or activity described would be in violation of federal, state, or local laws or agency rules pertaining to premises security or other health and safety requirements applicable to such property;

4. Whether or not, based on the description of the work or activity to be done on the property, there is a reasonable probability that railroad property would be damaged, destroyed, injured, or removed or real property excavated without permission of the railroad company.

5. Whether or not, based on the description of the work or activity to be done on the property, the activity to be done would cause a substantial impairment of railroad operations. For purposes of this section "substantial impairment of railroad operations" means that it has been established by clear and convincing evidence that the granting of access for the purpose or activity intended would significantly delay or prevent the scheduled operation of any train, as defined in s. 341.301.

6. Whether or not granting the access requested would constitute a taking of property under the Fifth Amendment to the United States Constitution or s. 6, Art. X of the State Constitution.

a. In determining whether or not granting access to the property constitutes a taking, the court shall consider to what extent, if any, granting the requested access would:

(I) Prevent the railroad from using the property for the purpose or in the manner in which it is ordinarily used; or

(II) Deprive the railroad of its beneficial use of the property at issue for the period of time access is granted.

b. If the court finds that granting access would result in a taking, the amount of compensation shall be limited to cover only the period of time for which access is authorized.

(d) At the hearing, the court may order such conditions on granting access to railroad property as it determines necessary to mitigate the risk of harm to persons or property, except that this section shall not be construed to authorize the court to require the governmental entity or its agent to procure the services of railroad employees as a condition of authorizing entry onto such property. In issuing its order, the court may limit the number of persons granted access and the duration of such access authorized under this section. In addition, the court may limit the activities which may be conducted on the railroad property as well as the time, place, and manner in which those activities are conducted.

(6) A railroad company may not compel or require the use of flagging or other services provided by railroad company

employees by contract, agreement, or otherwise as a condition of allowing access to their property as authorized in subsection (1).

(7) This section does not authorize access to railroad property in violation of the requirements of federal law or to an employee of a railroad or a contractor to a railroad who is performing work within the definition of roadway worker as defined in 49 C.F.R. s. 214.7.

(8) For purposes of this section "jurisdictional governmental entity" means any public body vested with the power to exercise eminent domain over the property for which access is sought.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1245 Regional Transportation Authorities
SPONSOR(S): Galvano
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

HB 1245 provides that 80 percent of the rental car surcharge revenues be deposited into accounts of specified regional transportation authority's (RTAs). Currently the revenues are deposited in the State Transportation Trust Fund (STTF) to fund transportation projects in the district of collection. The bill requires the Department of Revenue (DOR) to provide the RTAs with annual surcharge revenue information by a date certain of each fiscal year.

Provision in the bill also relieve the Department of Transportation's (DOT) funding obligations to certain RTAs that receive State Transportation Trust Funding in an amount equal to the local government contribution for intercity or commuter rail service development projects.

The bill also relieves Broward, Palm Beach, and Dade counties of their annual $45 million in funding obligations for SFRTA's capital, operating and maintenance expenses, which is required only when all three counties served by the South Florida Regional Transportation Authority (SFRTA) impose a local option funding source.

HB 1245 has a negative recurring fiscal impact on the State Transportation Trust Fund of approximately $71 million in fiscal year 2008-09 and up to $78 million in fiscal year 2012-13, based on a 3 percent inflation rate. This results in an estimated $371 million impact to the STTF over the five year work program period, based on the March 2008 Revenue Estimating Conference estimates.

The bill takes effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – HB 1123 places additional administrative responsibilities on the Department of Revenue (DOR) to collect and distribute the local-option surcharge.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Regional Transportation Authorities

Currently, there are five regional transportation authorities created in chapter 343, F.S.; the South Florida Regional Transportation Authority; the Central Florida Regional Transportation Authority; the Tampa Bay Commuter Transit Authority; the Northwest Florida Regional Transportation Corridor Authority; the Tampa Bay Area Regional Transportation Authority; and one local transportation authority, the Jacksonville Transportation Authority, created in chapter 349, F.S. These six authorities have various membership structures, and powers and duties. All have some form of bond financing authority to carry out their individual transportation missions.

South Florida Regional Transportation Authority (SFRTA)

In an attempt to ease the disruptions created for commuters while it was six-laning I-95 in the mid-1980s, the Department of Transportation (DOT) purchased an 81-mile rail corridor from CSXT for $264 million and began building a commuter train system. Under terms of the sale, CSXT continued to operate its freight trains in the corridor; maintain the tracks, buildings, and signaling; and dispatches all trains using the tracks--its own, Tri-Rail and Amtrak trains. In 1989, the Legislature passed the Tri-County Commuter Rail Authority Act as Part 1 of Chapter 343, F.S., creating a commuter railroad to serve Miami-Dade, Broward and Palm Beach counties.

In 2003, the Legislature reconfigured the Tri-Rail Commuter Rail Authority as the SFRTA. The SFRTA is empowered to construct, finance, and manage a variety of mass transit options, not just commuter rail, as an integrated system. It has numerous powers and responsibilities, including the power to acquire, sell, and lease property; to use eminent domain; to enter into purchasing agreements and other contracts; to enforce collection of system rates, fees, and other charges; and to approve revenue bonds issued on its behalf by the State Division of Bond Finance.

The 2003 law also required each of the three counties served by the SFRTA to dedicate funding of $2.67 million annually, no later than October 31 of each fiscal year and a total of $45 million of a recurring funding source if the counties served by the Authority impose a local option funding source.

The potential sources of this dedicated funding include:

- Local-option fuel taxes;
- Each county's share of the local ninth-cent fuel tax; or
- Other non-federal funds.

In addition, each county must provide annual funding for operations of at least $1.565 million. These local funding requirements are repealed if the Authority does not obtain federal matching funds by December 31, 2015.

Rental-car Surcharge

In 1989, the Legislature created s. 212.0606, F.S., to impose a statewide rental-car surcharge. The surcharge was initially levied at 50 cents per day upon the lease or rental of for-hire motor vehicles designed to carry fewer than nine passengers. The surcharge was increased to $2 per day in 1990.

The surcharge was used initially to fund children and adolescent substance abuse programs and law enforcement needs, but has been amended in subsequent years to remove the initial funding uses and replace them with funding the state's transportation needs, the state's tourism promotion and marketing efforts, and the state's international trade and promotion efforts. The actual distribution of the $2 per day surcharge is: $1.49 to the State Transportation Trust Fund; 29 cents to the Tourism Promotion Trust Fund; 8 cents to the Florida International Trade & Promotion Trust Fund; about 14 cents to the General Revenue Fund (7.3-percent service charge); and less than 1 cent to the Department of Revenue as an administrative charge.

The statewide surcharge is levied per day on the lease or rental of a motor vehicle licensed for hire and designed to carry fewer than nine passengers regardless of whether the motor vehicle is licensed in Florida. The surcharge applies only to the first 30 days of the term of any lease or rental. The surcharge does not apply to a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

DOR is responsible for collecting and distributing monies collected under the rental car surcharge as well as enforcing its collection. According to DOR, the rental car surcharge is collected from 1,800 rental car dealers, of which 130 operate in more than one county.

The distribution of monies placed in the State Transportation Trust Fund was amended in 2002 to require that beginning in FY 2007-08, the proceeds deposited from the surcharge would be allocated on an annual basis in DOT's work program to each of the seven transportation districts, except the Turnpike Enterprise. The amount allocated to each district must be based on the amount of proceeds collected in the counties within each respective district.

The manner in which dealers reported surcharges was amended by the 2003 Legislature to authorize DOR to require dealers to report surcharge collections according to the county in which the surcharge was collected, in order to facilitate the allocation of surcharge revenues to each DOT district. This requirement was authorized to begin January 1, 2004. The change in law was intended to help DOT meet its statutory requirement that proceeds of the surcharge be allocated to each DOT district for projects, based on the amount of proceeds collected in the counties within each respective district.

In addition, s. 341.303, F.S., authorizes DOT to fund up to 50 percent of the net operating costs of any eligible intercity or commuter rail service development project that is local in scope, not to exceed the local match.

Proposed Changes

Specifically, HB 1245 provides:

- 80 percent of the rental car surcharge revenues collected in a county that is served by an RTA are to be deposited into accounts of specified regional transportation authority's (RTAs);
- Requires the DOR to provide the RTAs with annual surcharge revenue information by September 1st of each year fiscal year;
- Amends DOT's obligation to fund up to 50 percent of the net operating costs of any eligible intercity or commuter rail service development project, by specifying DOT has no obligation to fund any regional transportation authority that receives a recurring dedicated funding source that provides 80 percent of rental-car surcharge proceeds collected in counties within the

authority's service territory or an equivalent recurring funding source and after receipt of funds from such recurring dedicated funding source begins.

- Relieves Broward, Palm Beach, and Dade counties of their annual $45 million in funding obligations to the SFRTA for capital, operating and maintenance expenses, required only when all three counties served by the authority impose a local option funding source.

C. SECTION DIRECTORY:

Section 1. Amends s. 120.52, F.S., revising a definition.

Section 2. Amends s. 212,0606, F.S., providing for deposit of a certain percentage of rental car surcharge revenues into accounts of regional transportation authorities; and requiring the DOT to provide authorities with certain annual surcharge revenue information.

Section 3. Amends s. 341.303, F.S.; relieving DOT's funding obligation to certain regional transportation authorities to conform; and revising DOT's obligation to fund certain regional transportation authorities under certain circumstances.

Section 4. Amends s. 343.58, F.S.; relieving certain counties of certain funding obligations to the South Florida Regional Transportation Authority under certain circumstances to conform.

Section 5. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Based on the March 2008 Revenue Estimating Conference estimates inflated at 3 percent annually, HB 1245 has an estimated negative fiscal impact on the State Transportation Trust Fund as follows:

- FY 2008-09-$71 million
- FY 2009-10-$72 million
- FY 2010-11-$74 million
- FY 2011-12-$76 million
- FY 2012-13-$78 million

For an estimated total of $371 million over the five year work program period.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Section 2 of the bill relieves Broward, Palm Beach, and Dade counties of their annual $1.565 million funding obligation required to fund the operations of the South Florida Regional Transportation Authority when a dedicated recurring revenue source provides at least 80 percent of the amount of rental car surcharge revenues collected.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

Although HB 1245 relieves Broward, Palm Beach, and Dade counties of their annual $45 million in funding obligations to the South Florida Regional Transportation Authority (SFRTA) for capital, operating and maintenance expenses, none of these counties have currently dedicated this funding due to the fact no local option funding source has been imposed.

HB 1245 has a positive fiscal impact on the RTAs by requiring that 80 percent of rental-car surcharge revenues, collected in a county served by an RTA, be redirected from the State Transportation Trust Fund to the authorities. The revenues to be directed to each authority will vary as to the amount collected by each county served by the authority. The chart below displays the actual fiscal year 2006-07 collections that would be distributed to the various RTA's as provided by this bill.

Revenue Increases by RTA
(based 2006-07 actual collections)

Authority	Estimated Revenue Increase
Central Florida Regional Transportation Authority	$ 22,385,265
Northwest Florida Transportation Corridor Authority	$ 3,824,250
South Florida Regional Transportation Authority	$ 31,629,824
Tampa Bay Area Regional Transportation Authority	$ 6,478,412
Tampa Bay Commuter Rail Transit	$ 6,966,984
Total	**$ 71,284,736**

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions 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 regional transportation authorities; amending s. 120.52, F.S.; revising a definition; amending s. 212.0606, F.S.; providing for deposit of a certain percentage of rental car surcharge revenues into accounts of regional transportation authorities; requiring the Department of Revenue to provide authorities with certain annual surcharge revenue information; amending s. 341.303, F.S.; relieving the department's funding obligation to certain regional transportation authorities to conform; revising the department's obligation to fund certain regional transportation authorities under certain circumstances; amending s. 343.58, F.S.; relieving certain counties of certain funding obligations to the South Florida Regional Transportation Authority under certain circumstances to conform; providing an effective date.

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

Section 1. Subsection (1) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.--As used in this act:

(1) "Agency" means:

(a) The Governor in the exercise of all executive powers other than those derived from the constitution.

(b) Each:

1. State officer and state department, and each departmental unit described in s. 20.04.

2. Authority, including a regional water supply authority.

3. Board, including the Board of Governors of the State University System and a state university board of trustees when acting pursuant to statutory authority derived from the Legislature.

4. Commission, including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.

5. Regional planning agency.

6. Multicounty special district with a majority of its governing board comprised of nonelected persons.

7. Educational units.

8. Entity described in chapters 163, 373, 380, and 582 and s. 186.504.

(c) Each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.

This definition does not include any legal entity or agency created in whole or in part pursuant to chapter 361, part II, any metropolitan planning organization created pursuant to s. 339.175, any separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member, an expressway authority pursuant to chapter 348 or <u>any</u> transportation authority under <u>chapter 343 or</u> chapter 349, any legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), unless any party

to such agreement is otherwise an agency as defined in this subsection, or any multicounty special district with a majority of its governing board comprised of elected persons; however, this definition shall include a regional water supply authority.

Section 2. Paragraph (c) is added to subsection (2) of section 212.0606, Florida Statutes, to read:

212.0606 Rental car surcharge.--

(2)

(c) Notwithstanding any other provision of law, in fiscal year 2008-2009 and each year thereafter, 80 percent of the proceeds of this surcharge collected in each county within the service territory of the regional transportation authority established under part I of chapter 343 shall be deposited into an account of the authority and 80 percent of the proceeds of this surcharge collected in each county within the service territory of a regional transportation authority established under part II, part III, part IV, or part V of chapter 343 may be deposited into an account of the authority. The department shall provide each regional transportation authority with rental car surcharge revenue information for the previous state fiscal year by September 1 of each year.

Section 3. Paragraph (a) of subsection (4) of section 341.303, Florida Statutes, is amended to read:

341.303 Funding authorization and appropriations; eligibility and participation.--

(4) FUND PARTICIPATION; SERVICE DEVELOPMENT.--

(a) The department may ~~is authorized to~~ fund up to 50 percent of the net operating costs of any eligible intercity or

commuter rail service development project that is local in scope, not to exceed the local match, except the department has no obligation to provide such funding to any regional transportation authority established pursuant to chapter 343 if such authority receives a recurring dedicated funding source that provides 80 percent of the amount of rental car surcharge proceeds collected pursuant to s. 212.0606(2)(c) in counties within the authority's service territory or an equivalent recurring funding source and after receipt of funds from such recurring dedicated funding source begins. If such receipt of funds begins in the middle of a fiscal year, the department's funding of any of the authority's operating costs pursuant to this paragraph shall be prorated. If the funding source is discontinued for any reason, the department shall have the same authorization to fund net operating costs of the authority as any other commuter rail service in the state.

Section 4. Section 343.58, Florida Statutes, is amended to read:

343.58 County funding for the South Florida Regional Transportation Authority.--

(1) Each county served by the South Florida Regional Transportation Authority must dedicate and transfer not less than $2.67 million to the authority annually. The recurring annual $2.67 million must be dedicated by the governing body of each county before October 31 of each fiscal year.

(2) If ~~At least $45 million of~~ a state-authorized~~, local option~~ recurring funding source is dedicated ~~available to Broward, Miami-Dade, and Palm Beach counties is directed~~ to the

authority to fund its capital, operating, and maintenance expenses, which source provides at least 80 percent of the amount of rental car surcharge revenues collected pursuant to s. 212.0606 in counties within the authority's service territory or is an equivalent recurring funding source, counties within the authority's service territory may be relieved of their funding obligation under subsection (3). ~~The funding source shall be dedicated to the authority only if Broward, Miami-Dade, and Palm Beach counties impose the local option funding source.~~

(3) In addition, each county shall continue to annually fund the operations of the South Florida Regional Transportation Authority in an amount not less than $1.565 million. Revenue raised pursuant to this subsection shall also be considered a dedicated funding source.

(4) ~~The current funding obligations under subsections (1) and (3) shall cease upon commencement of the collection of funding from the funding source under subsection (2).~~ If the funding under subsection (2) is discontinued for any reason, the funding obligations under subsections (1) and (3) shall resume when collection from the funding source under subsection (2) ceases. If counties are relieved of any funding obligations under subsection (3):

(a) Payment by the counties shall be on a pro rata basis the first year following collection ~~cessation~~ of the funding under subsection (2).

(b) The authority shall refund a pro rata share of the payments for the current fiscal year made pursuant to the current funding obligations under subsections (1) and (3) as

soon as reasonably practicable after it begins to receive funds under subsection (2).

If, by December 31, 2015, the South Florida Regional Transportation Authority has not received federal matching funds based upon the dedication of funds under subsection (1), subsection (1) shall be repealed.

Section 5. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1299 Driver Education

SPONSOR(S): Ambler

TIED BILLS: **IDEN./SIM. BILLS:** SB 2678

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 1299 provides that the Department of Highway Safety and Motor Vehicles may not issue a driver's license to a minor unless the minor has completed a specified driver education course. These courses may be from public schools, nonpublic schools, or commercial driving schools. Instruction must be offered by district school boards; however the bill directs the State Board of Education to develop a uniform curriculum. The bill clarifies that the driver education course "must include classroom instruction and behind-the-wheel training, which may include use of a simulator."

The bill provides that a driver under 18 who has not completed the driver education course shall be restricted to having only one passenger in the motor vehicle, unless the driver is accompanied by a person holding a valid driver's license and is at least 21.

In addition to current school board funding of driver education courses from a 50-cents per driver's license fee, funds collected under an optional $5 surcharge on traffic citations may be utilized by the board of county commissioners to meet the additional requirements of the bill.

The fiscal impact of the bill is indeterminate, but may vary based on current school boards' methods of instruction. Those districts already having significant driver education plans (instructors, vehicles, simulators, etc.) may not incur a fiscal impact, whereas those districts without significant current investment in driver education programs may see a significant fiscal impact.

The bill is effective July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill provides for the creation of a statewide driver education course curriculum; the bill adds potential additional restrictions on driver's licenses for drivers under the age of 18.

Safeguard Individual Liberty – The bill restricts a driver under the age of 18 from carrying more than one underage passenger in his or her vehicle if the person is unwilling or unable to take a driver education course.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Department of Highway Safety and Motor Vehicles

The Department of Highway Safety and Motor Vehicles (the Department) is currently required by section 322.18, F.S., to examine every first time applicant prior to the issuance of an original Florida driver license. The examination includes a test of eyesight and hearing, ability to read and understand highway signs, knowledge of traffic laws, and a demonstration of motor vehicle operation skills.

To earn an operator's license, a driver must be at least 16 years old and have held a learner's license for at least one year without any traffic convictions. If the person is under 18, a parent or guardian must certify that the teen has completed at least 50 hours of behind the wheel driving experience, of which 10 hours must have been at night.[1]

Under current Florida law, the following operating restrictions are placed on a minor's driver's license:

- 15 years old (Learner's Permit) – May operate a vehicle only during daylight hours, but after 3 months, may operate a vehicle until 10pm. Must be accompanied by a holder of a valid driver's license who is at least 21 years of age.[2]
- Under 17 – Must be accompanied by a holder of a valid driver's license who is at least 21 years of age during the hours of 11:01pm and 5:59am, unless driving to or from work.[3]
- 17 years old – Must be accompanied by a holder of a valid driver's license who is at least 21 years of age during the hours of 1:01am and 4:59am, unless driving to or from work.[4]

For the six-month period between June 1, 2007 and November 30, 2007, there were over 88,800 licenses issued to new drivers between the ages of 16 and 18, according to the Department's driver's license issuance data.

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[1] s. 322.05(3), F.S.
[2] s. 322.1615, F.S.
[3] s. 322.16(2), F.S.
[4] s. 322.16(3), F.S.

Drivers age 15 to 19 in the state of Florida have the highest rate per 10,000 licensed drivers of crash involvement and the highest rate in fatal crashes.[5] Sixteen-year-old drivers have crash rates that are three times greater than 17-year-old drivers, five times greater than 18-year-old drivers, and twice the rate of 85-year-old drivers, according to the National Highway Traffic Safety Administration.

Chapter 488 regulates commercial driving schools, and provides that the Department shall oversee and license all such schools.[6] Section 488.03, F.S., states that "an application for a license shall be made in the form prescribed by the Department." Section 488.04, F.S., states that "no person shall receive compensation" for providing driver education, or "act in the capacity of a driving school," without obtaining a certificate from the Department. It further states that an applicant for an instructor's certificate "shall be required to take special eye tests, written tests, and road tests, and to furnish proof of his or her qualifications and ability as an instructor."[7] Section 488.02, F.S., grants the Department authority to adopt rules to implement the provisions of the chapter.

The Department website contains an application form for receiving a commercial driving school license. The application form requires the following information:

- The name and location of the school;
- The name of the owner, partnership interests, or corporate ownership details;
- A description of the program of instruction, including the amount of classroom time, individual instruction, gender diversity of classes, number of instructors, and other data;
- A copy of the contract signed between the school and customers;
- A list of vehicles used by the school;
- Information regarding the applicant's prior criminal record, including all misdemeanors and felonies;
- A sworn affidavit of accuracy;
- A copy of the school's fictitious name filing with the Division of Corporations at the Department of State;
- A copy of a certificate of insurance covering the school's vehicles;
- An FDLE background report on all owners, partners, directors, officers, or principal stockholders; and
- The statutorily determined fees.[8]

The application form to become a certified commercial driving school instructor requires the applicant to have no suspensions, revocations, cancellations, or disqualifications for three years prior to the date of the application. The form also requires extensive identification and background information, current residence information, past driving records, explanations of past "crimes, misdemeanors, and traffic infractions" in any state, a description of the applicant's educational history, a description of prior work experience, a requirement that the applicant take the "Department approved 32 hour course in driver education," and the statutorily determined fees.[9]

According to the Department's website, the "Department-approved 32-hour course" is offered by two entities:

A Treasure Coast Driving School
9198 U.S. Highway 1
Port St. Lucie, FL 34952

Florida Safety Council
427 North Primrose Drive
Orlando, FL 32803

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[5] *Traffic Crash Statistics Report 2005*, Florida Department of Highway Safety and Motor Vehicles, 2005.
[6] Section 488.01, F.S.
[7] Section 488.04(1), F.S.
[8] Generally, a $250 payment which includes $200 license fee plus $ 50 application fee. A renewal costs $100.
[9] The fee is $25. This is also the fee to act as an agent of the school and receive an "agent identification card" from the Department. *See* section 488.045, F.S.

Department of Education

Section 1003.48, F.S., requires each district school board to make available a "course of study in the safe and lawful operation of a motor vehicle."[10] The course may not, however, be made part of, or a substitute for, any minimum graduation requirement.

School boards are permitted to use any of the following procedures to provide the course:

- Use instructional personnel employed by the district school board;
- Contract with commercial driving schools licensed under Chapter 488; or
- Contract with an instructor certified under the provisions of Chapter 488.

For the purpose of funding this process, section 322.21, F.S. contains an additional 50-cent fee on every driver's license issued in the state. School boards then receive funds based on the number of full-time equivalent students at the "appropriate basic program cost factor." This amount is the same regardless of the instructional method the board selects (contractor vs. employee).

School boards may prescribe course and personnel standards at the district level, if they elect to provide the course by school board employees. Certified instructors or licensed commercial driving schools are presumed qualified, and "shall not be required to meet any standards in lieu of those proscribed in Chapter 488."

Proposed Changes

HB 1299 creates a new section 322.093, F.S., prohibiting the Department from issuing a driver's license to any person under age 18 unless the person has successfully completed a driver education course given by:

- a public secondary school in compliance with s. 1003.48, F.S.;
- a nonpublic school meeting the standards prescribed in s. 1003.48, F.S.; or
- a commercial driving school licensed under chapter 488.

Upon completing the course, the student shall be presented with a certificate of completion.

Prescribing course and personnel standards, including standard curriculum requirements, are shifted by the bill to the State Board of Education. The bill clarifies that under the new uniform standards, certified instructors and licensed driving schools must ensure that their curriculum meets the required minimums developed by the State Board of Education. It also clarifies that the driver education course "must include classroom instruction and behind-the-wheel training, which may include use of a simulator."

HB 1299 provides that a driver under 18 who has not completed the required driver education course must have a restriction placed on their learner's driver's license. The driver is restricted to having only one passenger in the motor vehicle unless the driver is accompanied by a person holding a valid driver's license and is at least 21.

Funds collected under s. 318.1215, F.S.[11] may be utilized by boards of county commissioners to meet the additional requirements of the bill.

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[10] "Motor vehicle" is defined by the statute as "the same meaning as in s. 320.01(1)(a), and shall include motorcycles and mopeds."

[11] Section 318.1215, F.S., allows boards of county commissioners to collect up to an additional $5 for each civil traffic penalty, in order to fund certain driver education programs.

C. SECTION DIRECTORY:

Section 1 Creates section 322.093, F.S., providing that the Department may not issue a driver's license to a minor unless the minor has completed a specified driver education course; providing for issuance of a certificate upon successful completion.

Section 2. Amends section 1003.48, F.S., providing requirements for a school district course of instruction in the operation of motor vehicles; authorizing boards of county commissioners to supplement funds for driver education programs; requiring the State Board of Education to prescribe standards and curriculum requirements; requiring certified instructors or commercial driving schools offering the course to meet the standards and requirements; providing for a restricted driver's permit under certain circumstances.

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:

   See FISCAL COMMENTS, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a direct economic impact for licensed commercial driving schools and certified instructors, as the bill would presumably increase the public's desire for the services they provide.

D. FISCAL COMMENTS:

The Department of Education has not provided fiscal information or other comments on HB 1299; however, the fiscal impact of the bill is indeterminate. The impact on each district school board may vary based on current methods of instruction in each district. Those districts already having significant driver education plans (instructors, vehicles, simulators, etc.) may not incur a fiscal impact. Those districts without significant current investment in driver education programs may see a fiscal impact related to the addition of such resources.

The State Board of Education may incur costs in developing a statewide curriculum; such costs are also indeterminate.

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, but see Drafting Issues, below.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The curriculum requirements to be developed by the State Board of Education may require formal rulemaking pursuant to Chapter 120, Florida Statutes. If so, the bill should contain an express grant of such rulemaking authority, as detailed in s. 120.54, F.S.

The bill creates a new section 322.093, F.S., which states in part, "the Department may not issue a driver's license... unless the person has successfully completed a driver education course..." However, the bill also amends s. 1003.48, F.S., to say that a student not completing such a course, "shall have a restriction place on his or her driver's permit," limiting the number and age of passengers in the vehicle of the driver not taking the course. These two statements appear to be in conflict.

On lines 81 – 84, it may be advisable to change the word "student" to "driver," and the word "permit" to "license," in order to maintain continuity with existing statutes.

The additional restriction on driver's licenses, contained in the new s. 1003.48(5), F.S., would more logically be placed in Chapter 322, Florida Statutes.

D. STATEMENT OF THE SPONSOR

Statement of the Sponsor:

Thank you for the opportunity to respond to the staff analysis on HB 1299. This Driver Education bill is the result of the "Ought to be a Law" student bill drafting competition. Senator Crist and I have sponsored the "OTBAL" program for the fourth year and this year invited all 25 high schools in Hillsborough County to participate in drafting a bill idea that was presented at a competition in front of House and Senate members. With the help of the committee, we then selected one idea that "outta be a law" to sponsor in the 2008 legislative session which is now HB 1299.

This bill is the culmination of one student's vision and his fellow teammate's goal of improving Florida's young drivers education thereby probably reducing deaths.

In the words of T.J. Mouse, the student at Chamberlain High School that introduced his idea to the Hillsborough area House and Senate Members, affirming the need for this bill, "Every year, nearly 6,000 teenagers alone die from a car crash, and more than 300,000 are injured. Personally, I am taking Driver's Ed, and it is probably one of the most important courses I will take throughout my life. You may grow up and never have to do Algebra or Calculus ever again, but you will drive for the rest of your life. Florida is one of the few states that does not make it mandatory, but that can change. This might also significantly reduce insurance rates state-wide."

The student team and I would like to note that we are working with staff to address the drafting issues mentioned in the analysis through the amendatory process if not at this committee meeting, then the next committee of reference.

The students and I will present an amendment to address the drafting issues noted in the bill analysis to provide:

- Express rulemaking authority for the State Board of Education;
- Clarify the statements in 322.093 and 1003.48 that appear to be in conflict;
- Change the word "student" to driver" and the word "permit to "license" in lines 81-84 to maintain continuity with existing statues; and,
- Consider placing the additional restriction on driver's licenses contained in the new s. 1003.48(5) in Chapter 322, F.S.

For further information on the "Ought to be a Law" program you can visit:

http://www.sdhc.k12.fl.us/otbal/

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to driver education; creating s. 322.093, F.S.; providing that the Department of Highway Safety and Motor Vehicles may not issue a driver's license to a minor unless the minor has successfully completed a specified driver education course; providing for issuance of a certificate for successful course completion; amending s. 1003.48, F.S.; providing requirements for a school district course of instruction in the operation of motor vehicles; authorizing a board of county commissioners to supplement funds for driver education programs; requiring the State Board of Education to prescribe standards and curriculum requirements; requiring certified instructors or commercial driving schools offering the course to meet the standards and requirements; providing for a restricted driver's permit under certain circumstances; providing an effective date.

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

Section 1. Section 322.093, Florida Statutes, is created to read:

322.093 Driver education for minors.--The department may not issue a driver's license to a person who has not attained 18 years of age unless the person has successfully completed a driver education course of instruction in the operation of motor vehicles given by a public secondary school in compliance with s. 1003.48, a nonpublic school meeting the standards prescribed

under s. 1003.48, or a commercial driving school licensed under chapter 488. The school shall issue a certificate to each student who successfully completes the driver education course.

Section 2. Section 1003.48, Florida Statutes, is amended to read:

1003.48 Instruction in operation of motor vehicles.--

(1) A course of study and instruction in the safe and lawful operation of a motor vehicle shall be made available by each district school board to students in the secondary schools in the state. As used in this section, the term "motor vehicle" shall have the same meaning as in s. 320.01(1)(a) and shall include motorcycles and mopeds. The course must include classroom instruction and behind-the-wheel training, which may include use of a simulator, except that instruction in motorcycle or moped operation may be limited to classroom instruction. The course shall not be made a part of, or a substitute for, any of the minimum requirements for graduation.

(2) In order to make such a course available to any secondary school student, the district school board may use any one of the following procedures or any combination thereof:

(a) Utilize instructional personnel employed by the district school board.

(b) Contract with a commercial driving school licensed under the provisions of chapter 488.

(c) Contract with an instructor certified under the provisions of chapter 488.

(3)(a) District school boards shall earn funds on full-time equivalent students at the appropriate basic program cost

factor, regardless of the method by which such courses are offered.

(b) For the purpose of financing the driver education program in the secondary schools, there shall be levied an additional 50 cents per year to the driver's license fee required by s. 322.21. The additional fee shall be promptly remitted to the Department of Highway Safety and Motor Vehicles, which shall transmit the fee to the Chief Financial Officer to be deposited in the General Revenue Fund.

(c) A board of county commissioners may use funds received pursuant to s. 318.1215 to supplement funds for driver education programs in public and nonpublic schools as provided in s. 318.1215.

(4) The State Board of Education ~~district school board~~ shall prescribe standards and curriculum requirements for the course required by this section and for instructional personnel directly employed by the district school board. Notwithstanding any other provision of law, any certified instructor or licensed commercial driving school offering the course pursuant to subsection (2) shall ~~be deemed sufficiently qualified and shall not~~ be required to meet the State Board of Education standards and curriculum requirements prescribed for the course ~~any standards in lieu of or~~ in addition to those prescribed under chapter 488.

(5) Any student under 18 years of age who has not satisfactorily completed the course required under this section shall have a restriction placed on his or her driver's permit. The student shall be restricted when operating a motor vehicle

to having one passenger in the motor vehicle unless the student is accompanied by a driver who holds a valid license to operate a motor vehicle and who is at least 21 years of age.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1399 Department of Transportation
SPONSOR(S): Aubuchon
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure		Creamer	Miller
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1399 is an omnibus bill that addresses a variety of transportation financing, planning, and administrative issues. Among its key provisions, the proposed legislation:

- Allows Transportation Concurrency Authorities to issue debt to address transportation concurrency backlogs and establishes a 40 year maturity date of debt issued;
- Requires all hybrid and other low emission and energy efficient vehicles using the High Occupancy Vehicle (HOV) lanes to comply with federally mandated minimum fuel economy standards;
- Authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to withhold license plate issuances for owners of vehicles that fail to pay tolls;
- Lowers the blood and breath alcohol level (BAL) for the purposes of triggering driving under the influence enhanced penalties to maintain eligibility for federal safety grant funding;
- Provides that the Department of Transportation (DOT) performs duties assigned to the Field Administrator of the Federal Motor Carrier Safety Administration under the federal rules;
- Directs DOT to maintain specified training programs for professional engineer and right of way trainees and authorizes incremental pay increases for trainees completing certain phases of training;
- Includes claims arising out of certain maintenance contracts in the State Arbitration Board process;
- Requires DOT or a local governmental entity to pay the cost of relocation of a utility interfering with public road or publicly owned rail corridor improvements if the utility facility serves the DOT or governmental entity exclusively;
- Directs DOT to pursue and implement technologies and processes to provide all electronic toll collections and requires that all new and replacement electronic toll collection systems belonging to other toll entities be interoperable with the DOT's system;
- Removes specific mention of state owned toll facilities under DOT's authority that are currently authorized for bond financing; clarifies that public transit is an option for use of toll revenues generated by the State Highway System;
- Revises the DOT's authority to amend the adopted work program by increasing the minimum threshold for certain work program amendments from $150,000 to $500,000;
- Revises provisions for the DOT's logo sign program and requires the DOT to set annual permit fees not to exceed $3,000 by DOT rule based upon factors such as population, traffic volume, market demand, and costs.

The bill is effective upon becoming law, with exception of section 5 of the bill which is effective October 1, 2008. The bill will have an indeterminate positive fiscal impact to DOT, see fiscal analysis and Economic impact statement for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principals.

B. EFFECT OF PROPOSED CHANGES:

Transportation Concurrency Backlog Authorities

Current Situation

Section 163.3182, F.S., was passed during the 2007 Legislative Session and provides that a county or municipality may create a transportation concurrency backlog authority if it has an identified transportation concurrency backlog. Acting as the transportation concurrency backlog authority within the authority's jurisdictional boundary, the governing body of a county or municipality is authorized to adopt and implement a plan to eliminate all identified transportation concurrency backlogs in the established transportation concurrency backlog area. The authority shall establish a local transportation concurrency backlog trust fund. The trust fund is established in the first fiscal year after the creation of the authority, each local trust fund shall be funded by the proceeds of an ad valorem tax increment collected within each transportation concurrency backlog area annually. The increment collected shall be equal to 25 percent of the difference between:

- The amount of ad valorem tax levied each year by each taxing authority, exclusive of any amount from any debt service millage, on taxable real property contained within the jurisdiction of the transportation concurrency backlog authority and within the transportation backlog area; and

- The amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for each taxing authority, exclusive of any debt service millage, upon the total of the assessed value of the taxable real property within the transportation concurrency backlog area as shown on the most recent assessment roll used in connection with the taxation of such property of each taxing authority prior to the effective date of the ordinance funding the trust fund.

Transportation concurrency backlog authorities have the powers to make and execute contracts; to undertake and carry out transportation concurrency backlog projects for transportation facilities that have a concurrency backlog within the authority's jurisdiction; to invest any transportation concurrency backlog funds not required for immediate disbursement; to borrow money; to apply for and accept advances, loans, grants, contributions, and any other forms of financial assistance from the federal government or the state, county, or any other public or private entity; to enter into and carry out contracts or agreements; and to adopt, approve, modify, or amend transportation concurrency backlog plans.

Each transportation concurrency backlog authority is required to adopt a transportation concurrency backlog plan as a part of the local government comprehensive plan within six months after the creation of the authority. These plans shall:

- Identify all transportation facilities that have been designated as deficient and require the expenditure of moneys to upgrade, modify, or mitigate the deficiency.

- Include a priority listing of all transportation facilities that have been designated as deficient and do not satisfy concurrency requirements and the applicable local government comprehensive plan.

- Establish a schedule for financing and construction of transportation concurrency backlog projects that will eliminate transportation concurrency backlogs within the jurisdiction of the authority within 10 years after the transportation concurrency backlog plan adoption. The schedule must also be adopted as part of the local government comprehensive plan.

Upon adoption of a transportation concurrency backlog plan as a part of the local government comprehensive plan, and the plan going into effect, the area subject to the plan shall be deemed to have achieved and maintained transportation level-of-service standards, and to have met requirements for financial feasibility for transportation facilities. In addition, proportionate fair-share mitigation shall be limited to ensure that a development inside a transportation concurrency backlog area is not responsible for the additional costs of eliminating backlogs.

Proposed Changes

HB 1399 specifically:

- Provides legislative findings regarding the public purpose of transportation concurrency backlog authorities;
- Authorizes transportation concurrency backlog authorities to issue debt including, but not limited to, bonds, notes, certificates, or similar debt instruments;
- Requires that the debt issued must not exceed a term of 40 years;
- Requires that the local trust funds continue to be funded for the period of time until projects included in the transportation concurrency backlog plan are completed or until all debt incurred to finance or refinance the projects is satisfied;
- Increases the percentage of funding from ad valorem taxes from 25 percent to 50 percent of the incremental difference described above;
- Provides that when all of the affected taxing authorities agree pursuant to an interlocal agreement, a particular local trust fund may be funded by the proceeds of an ad valorem tax increment greater than 50 percent; and
- Clarifies that the transportation concurrency backlog authorities are not dissolved until all issued debt is repaid or defeased.

High Occupancy Vehicles Lanes

Current Situation

Current federal law (23 U.S.C. sec. 166) provides that a state agency with jurisdiction over the operation of a High Occupancy Vehicle (HOV) facility shall establish occupancy requirements for HOV lanes, allowing no fewer than two vehicle occupants with the following exceptions:

- Motorcycles and bicycles are allowed to use the HOV facility, unless either or both create a safety hazard. If so, the state must certify, the DOT Secretary must accept certification, and it must be published in the Federal Register with opportunity for public comment;

- Public transportation vehicles are allowed if vehicle identification requirements are established and enforced;

- High occupancy toll (HOT) vehicles are allowed to use the facility if the vehicles pay a toll; if a program is established to address enrollment and participation; if the vehicles are prepared to accommodate automatic toll collections; and if variable pricing and enforcement procedures have been established;

- Inherently low-emission and energy-efficient vehicles (as established by EPA prior to September 30, 2009), may be allowed to use HOV facilities if procedures for enforcing restrictions on use are established; and if vehicles are certified and labeled under federal regulations;

- Other low emission and energy-efficient vehicles (as established by EPA prior to September 30, 2009), may be allowed to use the facilities if they pay a toll; if the vehicles are certified and labeled by the Environmental Protection Agency (EPA); if a program is established for vehicle selection and enforcement of restrictions on use of facility. State agency may charge "no toll," or a toll that is less than tolls charged for public transportation vehicles.

A state agency that chooses to allow exceptions to HOV requirements for vehicles in the latter two exception categories must certify to the United States Department of Transportation (USDOT) Secretary that it has established a program to monitor, assess, and report on the impacts that the vehicles may have on the operation of the facility and adjacent highways. An adequate enforcement program is also required, as well as provision for limiting or discontinuing exemptions if the facility becomes seriously degraded.

Pursuant to the provisions of the federal transportation reauthorization act, SAFETEA-LU, EPA was to promulgate a rule by February 6, 2006, that was to establish requirements for certification of vehicles as low-mission and energy-efficient vehicles and requirements for their labeling, as well as to establish guidelines and procedures for making vehicle comparisons and performance calculations necessary to determine which vehicles qualify as low emission and energy-efficient vehicles. To date, that final rule has not been promulgated.

Section 316.0741, F.S., authorizes the following vehicles to use an HOV lane without regard to occupancy:

- Inherently low-emission vehicles that are certified and labeled in accordance with federal regulations; and
- Hybrid vehicles upon the state's receipt of written notice authorizing such use.

However, no provision of current state law requires such vehicles to comply with the specified minimum fuel economy standards and no provision addresses compliance with the anticipated EPA final rule. The Department of Highway Safety and Motor Vehicles (DHSMV) is required by statute to issue decals for the use of HOV lanes by such vehicles, but DHSMV has no authority to limit or discontinue decal issuance to drivers of these vehicles for reasons of operation and management of HOV lanes.

Rulemaking authority with regard to s. 316.0741, F.S., relating to HOV lanes currently rests with DHSMV, but DHSMV has promulgated no applicable rule.

Current law does not address toll payment for use of HOV lanes redesignated as HOT lanes.

Proposed Changes

HB 1399 specifically:

- Requires all hybrid and other low-emission and energy-efficient vehicles that do not meet the minimum occupancy requirement and are driven in a HOV lane to comply with federally mandated minimum fuel economy standards;

- Provides for determination of continued eligibility of hybrid and other low-emission and energy-efficient vehicles for operation in an HOV lane;

- Authorizes limitation or discontinuance of vehicle decals for use of an HOV lane if the facilities are degraded due to congestion;

- Provides that vehicles eligible to be driven in an HOV lane that is redesignated as a high-occupancy toll (HOT) lane may continue to be driven in the HOT lane without payment of a toll; and

- Transfers rulemaking responsibility with regard to HOV lanes from the DHSMV to the DOT.

These changes are expected to enable the DOT to comply with the monitoring and enforcement provisions of federal law relating to the use of HOV lanes by hybrid and other low-emission and energy-efficient vehicles and to submit the required annual certification to the USDOT Secretary. These changes would also ensure that HOV facilities do not become degraded, thereby facilitating mobility.

Toll Enforcement

Current Situation

Current law provides that if a person fails to comply with certain civil penalties, which includes failure to pay a toll, within the time period specified, fails to attend driver improvement school, or fails to appear at a scheduled hearing, the clerk of the court shall notify the DHSMV of such failure within 10 days. Upon receipt of such notice, DHSMV shall immediately issue an order suspending the driver's license of such person effective 20 days after the date the order of suspension is mailed.

Although DHSMV has not questioned its authority and duty to suspend driver's licenses upon receipt of notice from the clerk of the court as set forth in section 318.15(1)(a), F.S., with regard to unpaid citations issued for toll violations, and has been suspending driver's licenses in such cases, DHSMV has questioned its authority to rely on similar notices from the clerks of the court with regard to vehicle registration stops and has not been issuing such registration stops.

Current law concerning registration stops for the failure to resolve a citation issued for the non-payment of a prescribed toll are sections 316.1001(4) and 320.03(8), F.S. Section 316.1001(4), F.S., provides that any governmental entity may supply the DOT with data that is machine readable by the DOT's computer system, listing persons who have one or more outstanding violations of this section. Pursuant to s. 320.03(8), those persons may not be issued a license plate or revalidation sticker for any motor vehicle. Section 320.20(8), F.S., concerning registration and the duties of tax collectors, provides that 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.

Proposed Changes

HB 1399 provides clarification of the existing statute regarding notice to DHSMV for registration stops for the failure of the vehicle owner to address an unpaid citation issued for the failure to pay a required toll.

This provisions specifically authorize DHSMV to accept, from the clerks of the court, lists of persons who have one or more outstanding violations under s. 316.1001, F.S., the failure to pay a prescribed toll, a noncriminal traffic infraction; and pursuant to s. 320.03(8), F.S., those persons will not be issued a license plate or revalidation sticker for any motor vehicle, by the tax collector or license tag agency,

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.

The bill also provides for lists to include license plate numbers, where the person is a business entity without a driver's license, instead of a natural person.

This bill is in response to the position taken by DHSMV that subsection (4) of section 316.1001, F.S., needs to be amended to clarify their authority as to registration stops for the failure to resolve a citation issued for the non-payment of a prescribed toll, a noncriminal traffic infraction.

Toll Collection

1. Inoperability of Toll Collections

Current Situation

There is currently no requirement that all toll collection systems be compatible and interoperable. The DOT maintains one toll collection system statewide, SunPass, which is compatible with the systems of most independent toll agencies within Florida. Interoperability enhances the usefulness to the users of toll facilities statewide, and incompatible tolling technologies create confusion for users and are detrimental for efficient operation of all toll facilities.

Proposed Changes

HB 1399 provides that all operators of limited access toll facilities in the state shall implement a toll collection system that may be used by their customers on limited access toll facilities statewide. This bill applies to all agencies and operators that build and operate limited access facilities and electronic toll collection systems for those transportation facilities, including public-private partnerships.

2. All Electronic Toll Collection

Current Situation

DOT currently maintains two methods of toll collection on the turnpike system: cash collection and electronic toll collection via its SunPass program. Electronic toll collection is more cost effective and provides improved mobility as compared to cash toll collection. Since the deployment of the SunPass program in 2001, over $450 million of costs have been avoided by not having to expand toll facilities for increased cash transactions. Currently, 65 percent of turnpike customers pay through electronic toll collection. The DOT established a goal to increase the number of customers that pay electronically to 75 percent by December 2008.

Proposed Changes

HB 1399 directs DOT to pursue and implement new technologies and processes in its operations and collection of tolls and the collection of other amounts associated with road and infrastructure usage, including without limitation video billing and variable pricing.

As electronic toll collection continues to increase, the DOT intends to modify its toll collection to provide more payment options to customers and improve mobility by eliminating cash toll collection at the roadside. All electronic tolling provides for non-stop toll collection. The DOT plans to phase-out cash toll collection at the roadside, so that all toll collection is done electronically.

DOT will enhance its existing SunPass program by providing a low-cost sticker tag in addition to the traditional transponder. The sticker tag gives customers the option of replenishing their account as it is done today, but it also allows the option of cash replenishment so that customers who wish to pay with

cash and not provide customer information may do so. This cash payment method will be maintained off the roadway, so these cash customers will enjoy the same non-stop travel as traditional SunPass customers.

The DOT will also deploy a video billing system. This method of payment will allow customers to use the roadway and use their license plate for billing. Video billing provides for pre-payment and post-payment opportunities. Customers who pre-pay with video billing will call a customer service center and establish an account with license plate and credit card information to allow for payment. Customers who post-pay may establish the account after the fact; however, this payment option is more expensive to administer and would result in a higher cost. Finally, customers who do not register for video billing will be identified based on their license plate information and will be billed through the mail for their toll activity. This method of toll collection has significant processing costs, and therefore, will require additional administrative fees.

3. Uniform Toll Rate - Administrative Costs

Current Situation

Currently DOT has no specific authorization to impose and recover certain administrative amounts in connection with the collection of tolls. Other states, such as those administering the EZ-Pass program, allocate various administrative costs to their customers in connection with services provided and collection efforts involved.

DOT has implemented innovative toll collection methods which includes the use of Unpaid Toll Notices, Video Accounts and Image-based Tolling. Unpaid Toll Notices are issued to customers that inadvertently use a toll facility without paying a toll. At present, this notification method requests payment of the original toll amount due with no enforcement action taken as long as the payment is received within 21 days from the date of the Unpaid Toll Notice. This notification process has proven to be very effective, but the DOT is incurring much higher operating costs due to the image processing, verification, and mail costs associated with such program.

DOT has also implemented a new Video Account pilot program called Toll-by-Plate whereby infrequent customers or rental car users can create an account that uses the vehicle's license plate number as a form of identification. A prepaid account or credit card guarantee is used to fund transactions whenever a license plate matching process determines the user has a valid Video Account. The Toll-by-Plate program will be an integral part of the DOT's strategy to eliminate the need for all vehicles to stop at toll plazas to pay their tolls. Due to the higher operating costs associated with image processing and license plate verification and matching, the DOT is seeking clear authority to fix and collect amounts to cover the expenses of this new service. The new Video Account will be an optional service that customers may select if it best serves their individual needs.

SunPass also uses a similar license plate number matching process called Image-based Tolling to safeguard against issuing violation notices to valid customers when temporary transponder failures occur due to dead batteries or localized malfunctions. These customer actions lead to higher operating costs associated with image processing and license plate verification and matching.

Proposed Changes

HB 1399 authorizes DOT to recover administrative costs for additional customer toll payment options. The proposed deletion of the reference to a "uniform system rate," is necessary to remove any obstacles to future innovative methods of toll collection, such as variable pricing.

4. Toll Revenues and Bonding

Current Situation

Section 338.165, F.S., provides that toll revenues remaining after the costs of operating and maintaining the facility and the debt service on all bonds issues is paid, must be used within the county, or counties, in which the toll is generated. The use of these funds is limited to construction, maintenance, or improvements for roads on the State Highway System. Current law also authorizes the DOT to request issuance of bonds secured by toll revenues collected on the Alligator Alley, the Sunshine Skyway Bridge, the Beeline-East Expressway, the Navarre Bridge, and the Pinellas Bayway to fund transportation projects located within the county or counties in which the project is located and contained in the adopted work program. Legislative approval of projects to be funded by bonds is required by s.11, Article VII, of the State Constitution.

Proposed Changes

HB 1399 specifically:

- Clarifies that the DOT may use remaining toll revenues for public transit as an additional tool to enhance mobility on the State Highway System; and

- Deletes specific references revenue producing facilities to alleviate the need for repeated statutory changes to include new facilities within the DOT's existing authority to request bond issuance.

Blood Alcohol Level (BAL)-Driving Under the Influence (DUI)

Current Situation

Section 316.193, F.S., proscribes driving under the influence of alcohol or drugs to the extent normal faculties are impaired or driving with a blood alcohol level of 0.08 or more grams of alcohol per 100 millimeters of blood or with a breath alcohol level of 0.08 or more grams of alcohol per 210 liters of breath (DUI). Penalties for DUI vary according to the frequency of previous convictions, the offender's blood alcohol level (BAL) when arrested, and whether serious injury or death results. Section 316.656, F.S., provides that no trial judge may accept a plea of guilty to a lesser offense from a person charged with DUI who has a BAL level of 0.20 or more.

Generally, modified misdemeanor penalties apply when there is no property damage or personal injury and when there are fewer than three DUI convictions. For example, a first-time offender is subject to a fine ranging from $250 to $500, as well as being subject to serving up to 6 months in county jail. An offender must also be on probation for up to 1 year and participate in 50 hours of community service.

However, if the first-time offender's BAL is 0.20 or more, or if a passenger under 18 years of age is present in the vehicle while the driver is DUI, the penalty is enhanced to a fine ranging from $500 to $1,000 and imprisonment not exceeding 9 months in jail.

A second DUI conviction carries a fine ranging from $500 to $1,000 and imprisonment for a period of up to 9 months. However, if that offense occurs within 5 years of a previous DUI conviction, there is a mandatory imprisonment period of at least 10 days. At least 48 hours of this confinement must be consecutive.

Enhanced penalties also apply when the second-time offender's BAL is 0.20 or more, or when a passenger under the age of 18 is present in the vehicle while the driver is DUI. These penalties require a fine ranging from $1,000 to $2,000, and imprisonment not exceeding 12 months.

A third or subsequent DUI conviction occurring more than 10 years after a prior conviction carries a fine ranging from $1,000 to $2,500 and possible imprisonment of up to 12 months. However, if that offense

occurs within 10 years of a previous DUI conviction, it is a third degree felony, punishable by a minimum fine of $1,000 but not exceeding $5,000, and a term of imprisonment not to exceed 5 years. There is also a 30-day minimum mandatory imprisonment period. At least 48 hours of this confinement must be consecutive.

Enhanced penalties also apply when a third-time (or subsequent) offender's BAL is 0.20 or more, or when a passenger under the age of 18 is present in the vehicle while the driver is DUI. These penalties require a fine ranging from $2,000 to $5,000 and imprisonment not exceeding 12 months.

A fourth or subsequent DUI conviction is a third degree felony penalty, which is punishable by a minimum fine of $1,000 but not exceeding $5,000, and a term of imprisonment not to exceed 5 years.

If a DUI offense involves property damage, it is a first degree misdemeanor, punishable by a fine not exceeding $1,000 and/or imprisonment up to 1 year in jail. A DUI offense involving serious injury is a third degree felony, punishable by a fine not exceeding $5,000 and/or imprisonment up to 5 years. A DUI offense resulting in death is a second degree felony, punishable by a fine not exceeding $10,000 and/or imprisonment up to 15 years.

DOT receives federal safety grant funds which are used to fund transportation safety projects. In the Safe, Accountable, Flexible, Efficient, Transportation Equity Act (SAFETEA-LU) Congress revised eligibility requirements for states' receipt of grants by setting up a set of eight criteria, five of which must be met by fiscal years 2008 and 2009.

Proposed Changes

HB 1399 lowers the BAL for purposes of triggering DUI enhanced penalties from 0.20 or more to 0.15 or more. The bill also facilitates the application of appropriate sanctions and the receipt of substance abuse assistance for these most serious offenders. The changes included in the bill would ensure DOT's continued eligibility for receipt of federal safety grant funds.

For the purpose of incorporating these changes, numerous sections of law related to DUI violations are reenacted. (See sections 24-63 of the bill.)

Motor Carrier Compliance

Current Situation

DOT's Office of Motor Carrier Compliance is charged with enforcement of laws relating to the operation of commercial motor vehicles within the state, including those safety regulations applicable to owners or drivers engaged in intrastate commerce. Section 316.302(1)(b), F.S., provides for the adoption of specified federal safety regulations, as they existed on October 1, 2005.

Proposed Changes

HB 1399 makes technical changes to authorize DOT to enforce the most current federal regulations applicable to owners and operators of commercial motor vehicles.

Professional Engineer and Right-of-Way Training

Current Situation

DOT administers three separate trainee programs:

- Engineer Training Program;
- Senior Engineer Training Program; and
- Right of Way Training Program

The combined Engineer and Senior Engineer Training Programs constitute the Professional Engineer Training Program. These programs have been in effect within the DOT for over 20 years and operating under adopted internal guidelines. These programs are intended to enhance the recruitment and retention of highly specialized professional staff.

Section 216.251(3), F.S., became effective July 1, 2006, and provides that "an agency may not provide general salary increases or pay additives for a cohort of positions sharing the same job classification or job occupations which the Legislature has not authorized in the General Appropriations Act or other laws". This has prevented DOT from providing the incremental pay increases associated with these training programs. In order to continue these programs, DOT was granted the authority to continue its training programs and to provide the pay incentive package for trainees in these programs in Section 8 of the General Appropriations Act (GAA) for fiscal year 2007-08.

Proposed Changes

HB 1399 codifies in statute DOT's authority granted in fiscal year 2007-08, by the GAA, which authorizes pay incentive package for trainees in these programs.

State Arbitration Board

Current Situation

Section 337.185, F.S., establishes a State Arbitration Board to facilitate the prompt settlement of claims for additional compensation arising out of construction contracts between the DOT and the various contractors with whom it transacts. This section requires that the board arbitrate every unresolved contractual claim in an amount:

- up to $250,000 per contract;
- up to $500,000 per contract at the claimant's option; or
- up to $1 million per contract, upon agreement of the parties.

As an exception, either party may request that the claim be submitted to binding private arbitration.

DOT and the contractors with whom it transacts have very successfully utilized this negotiation and board process to resolve many claims arising out of construction contracts. Most frequently, matters are presented without active legal representation by either party, little or no formal discovery is taken, and the costs of the proceeding are substantially less than those involved in a civil law suit. The overall result benefits both the DOT and the contractors by facilitating prompt claim settlement and reducing or eliminating litigation costs.

Proposed Changes

HB 1399 revises current law to include claims for additional compensation arising out of maintenance contracts in the existing State Arbitration Board process for claims arising out of construction contracts. Maintenance contracts have not previously been included in this process, but the same benefits would be realized by including maintenance contracts in the negotiation and board process.

Utility Relocation

Current Situation

Section 337.403, F.S., requires that any utility placed upon, under, over, or along any public road or publicly owned rail corridor that is found to be unreasonably interfering in with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of a public road or publicly owned rail corridor shall, within 30 days' of written notice by DOT, or a governmental entity, to the utility or its agent, be removed or relocated by the utility at its own expense with the exception of the following:

- If the relocation of utility facilities is necessitated by the construction of a project on the federal-aid interstate system, including extensions within urban areas, and the cost of such project is eligible and approved for reimbursement by the federal government to the extent of 90 percent or more under the Federal Aid Highway Act, then the utility owning or operating the facilities shall relocate such facilities upon order of DOT, or a governmental entity, and the state shall pay the entire expense for the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility;

- When a joint agreement between DOT, or a governmental entity and the utility is executed for utility improvement, relocation, or removal work as part of a contract for construction of a transportation facility, the DOT may participate in those utility improvements, relocations, or removal costs that exceed the DOT's official estimate for cost more than 10 percent. The amount of participation shall be limited to the difference between the official estimate of all the work in the joint agreement plus 10 percent and the amount awarded for this work in the construction contract. DOT, or the governmental entity, may not participate in any utility improvement, relocation, or removal costs that occur as a result of changes or additions during the course of the contract; or

- When an agreement between DOT, or the governmental entity, and the utility is executed for utility improvements, relocations, or removal work to be accomplished in advance of a contract for construction of a transportation facility, the DOT may participate in the cost of clearing and grubbing necessary to perform the work.

Proposed Changes

HB 1399 adds an additional exception to s. 337.403, F.S., providing that DOT, or a governmental entity, will bear all costs of the removal or relocation of a utility, when the utility facility only serves the purpose of the DOT or the governmental entity.

Work Program Amendments

Current Situation

Section 339.165, F.S., provides that DOT may amend the adopted work program at any time during the fiscal year. Major changes to the current year of the work program will be accommodated through the official amendment process. The following amendments to the DOT's adopted work program transferring fixed capital outlay appropriations for projects within the same appropriations category or between categories must be submitted to the Governor's Office for approval and the Legislature for review:

- Any amendment that deletes any project or project phase;

- Any amendment that adds a project estimated to cost over $150,000;

- Any amendment that advances or defers to another fiscal year a right of way phase, a construction phase, or a public transportation project phase estimated to cost over $500,000, except an amendment advancing or deferring a phase for a period of 90 days or less; and

- Any amendment that advances or defers to another fiscal year any preliminary engineering phase or design phase estimated to cost over $150,000, except an amendment advancing or deferring a phase for a period of 90 days or less.

Proposed Changes

HB 1399 revises the thresholds so that only the following amendments would be required to be submitted to the Governor's Office and Legislature for approval:

- Any amendment that deletes a project or project phase;
- Any amendment that adds a project estimated to cost over $500,000;
- Any amendment that advances or defers to another fiscal year a right of way phase, a construction phase, or a public transportation project phase estimated to cost over $500,000, except an amendment advancing a phase to the current fiscal year by one fiscal year or less or deferring a phase for a period of 90 days or less; and
- Any amendment that advances or defers to another fiscal year any preliminary engineering phase or design phase estimated to cost over $500,000, except an amendment advancing a phase to the current fiscal year by one fiscal year or less or deferring a phase for a period of 90 days or less.

Increasing the two threshold amounts is intended to provide increased efficiency by alleviating time delay local governments incur to add, advance, or defer a project and would provide increased flexibility in the DOT's ability to cooperate with local governments on needed projects. The proposed changes also would allow greater flexibility to respond to changing market conditions in a timely manner.

Transportation Planning

Current Situation

Federal law requires states to adhere to certain requirements in the transportation planning process. These federal requirements have been amended on various occasions, and the State of Florida has revised its statutes from time to time in accordance with federal revisions as they have occurred. As to more recent changes, the federal Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) contained 23 planning factors to be considered in the statewide planning process and 16 planning factors to be included in the metropolitan planning process. Subsequently, the Transportation Equity Act for the 21st Century (TEA-21) was passed by Congress in June of 1998, which consolidated the statewide and metropolitan planning factors into seven broad areas to be considered. Florida law was amended by the 1999 Legislature to accommodate the TEA-21 revisions, and s. 339.155, F.S., currently reflects the seven broad factors to be considered in the planning process. However, the 2005 federal legislation, SAFETEA-LU, separated the "safety and security" factor into two separate factors and modified the wording of other factors. Florida's statutes do not accurately reflect the most recent federal requirements that must be adhered to in statewide transportation planning.

Further, the federal requirement that each state have a "Long-Range Transportation Plan" was amended in the SAFETEA-LU legislation to be a "Long-Range Statewide Transportation Plan." Federal legislation has not required a short-range component of the long-range plan or an annual performance report. DOT has, in the past, issued a separate Short Range Component of the Florida Transportation Plan and an Annual Performance Report, but most recently combined those reports into a single report. The Short Range Component is not an annual update of the Florida Transportation Plan but rather documents the DOT's efforts to implement the Florida Transportation Plan.

DOT and the Florida Transportation Commission conduct extensive performance measurement of Florida's transportation system and the DOT. An annual Long Range Program Plan is also submitted by the DOT to the Governor and Legislature that reflects state goals, agency program objectives and service outcomes.

Proposed Changes

HB 1399 would simply reference that portion of the United States Code in which the planning factors are contained. This proposal would also delete the short-range component of the long-range plan and the annual performance report requirements from state law, as they are not required by federal law and contain duplicative information provided in other reports described above.

Outdoor Advertising

Current Situation

Florida has an estimated 20,900 permitted outdoor advertising signs on 13,700 billboard structures. Chapter 479, F.S., governs billboards and other forms of outdoor advertising. Advertising companies and other owners of outdoor signs must be licensed by DOT and obtain permits, regulating height, size and other characteristics of the billboards. The majority of the provisions specify DOT's duties and authority as they relate to permitting, removing, and otherwise regulating billboards along the interstate highway system and the federal–aid primary highway system, which includes state roads.

Because federal dollars are used to build and maintain federal and state roads in Florida, DOT must adhere to federal laws and regulations concerning billboards. The Highway Beautification Act of 1965 (chapter 23 U.S. Code section 131), chapter 23 Code of Federal Regulations section 750, and Federal Highway Administration (FHWA) Policy Guidance relate to the regulation of billboards. Under federal law, regulation, and policy guidance:

- Nonconforming signs must remain substantially the same as they were on the effective date of the state law or regulations that made them nonconforming;
- Reasonable repair and maintenance of the sign, including a change of advertising message, is allowable;
- Nonconforming signs may continue as long as they are not destroyed, abandoned, or discontinued. States may pass laws for exceptions to be made for nonconforming signs destroyed due to vandalism and other criminal or tortuous acts;
- Each state must develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights; and
- When nonconforming rights are terminated under state law, the sign must be removed as an illegal sign without compensation. However, lawfully erected signs, even if they are now nonconforming, cannot be removed by a state without payment of just compensation.

Proposed Changes

This proposal would impact several areas of Chapter 479, F.S., and is primarily technical in nature. Specifically the bill would:

- Recognize that an "automatic changeable facing" may be changed by other than mechanical means;

- Provide a more stable regulatory structure by requiring permits for signs on the State Highway System outside an urban area, rather than an outside incorporated area (the urban area boundaries change much less frequently than those of incorporated areas);

- Define a specific placement of permit tags other than the sign face and would give the industry 2 years within which to comply;

- Direct the DOT to establish by rule a fee for replacement tags in an amount that covers actual cost (the current service fee is $3);

- Allow a time period for correction of violations of the chapter, but would not allow a correction period for a permit application containing knowingly false or misleading information; and

- Revise language to be consistent with the description of the controlled area in s. 479.01, F.S.

According to DOT, these technical revisions are expected to resolve known problems and make the regulatory process more manageable for both the agency and the regulated industry.

Logo Signs

Current Situation

Current law requires that signs on the interstate highway system are regulated and approved by the Federal Highway Administration (FHWA). Section 479.261(1), F.S., requires DOT to establish a logo sign program for the rights of way of the interstate highway system to provide information to motorists about available gas, food, lodging, camping, and attraction services. The FHWA approves new categories of signs from time to time. However, the statute as currently written does not allow the addition of other categories of services as they are federally approved.

Permits for participation in the gas, food, lodging, and camping categories are based on a set annual fee. However, participation in the attractions category is unique in that an admission fee for entry to the attraction is required, and permits must be awarded annually by the DOT to the highest bidder.

DOT is required to establish permit fees in an amount sufficient to offset the total cost of administering the logo sign program, and the current fee is capped at $1,250. The annual fee is currently set at $1,000 by DOT rule. The program is implemented and operated through a privatized consultant contract which will expire on December 31, 2008.

The existing logo program is essentially based on a first-come, first-served priority with the option for qualifying businesses to renew participation on an annual basis. This has resulted in the generation of extensive waiting lists of other businesses desiring to participate in the Logo program for several interchanges on the interstate system where the structure displaying the particular business category is full.

Proposed Changes

HB 1399 authorizes signs for "other" services "which are approved by the FHWA.

The bill also removes the admission fee and the competitive bid requirements for the attractions category of services. This change is intended to encourage more business participation and improve administration of the program and make the attractions category consistent with the annual permit fees of the other Logo categories.

In addition, the bill increases the $1,250 cap on the annual permit fee for business participants to $3,000. The fees within this cap are to be established by DOT rule in a reasonable amount determined

by factors such as, population, traffic volume, market demand, and costs. Proceeds are to be deposited in the State Transportation Trust Fund to be used for transportation purposes after all costs have been accounted for.

The bill provides for establishing a periodic rotation for program participants by agency rule. According to DOT, this will provide for the eventual replacement of participating businesses at interchanges where lists exist in that respective category.

C. SECTION DIRECTORY:

Section 1. Amends s. 163.3182, F.S., relating to transportation concurrency backlog authorities; providing legislative findings and declarations; expanding the power of authorities to borrow money to include issuing certain debt obligations; providing a maximum maturity date for certain debt incurred to finance or refinance certain transportation concurrency backlog projects; authorizing authorities to continue operations and administer certain trust funds for the period of the remaining outstanding debt; requiring local transportation concurrency backlog trust funds to continue to be funded for certain purposes; and providing for increased ad valorem tax increment funding for such trust funds under certain circumstances.

Section 2. Amends s. 316.0741, F.S., requiring vehicles to comply with certain federal standards to be driven in an HOV lane at any time, regardless of occupancy; and providing for the DHSMV to limit or discontinue issuance of decals for the use of HOV facilities by hybrid and low-emission and energy-efficient vehicles under certain circumstances.

Section 3. Amends s. 316.1001, F.S., revising provisions prohibiting the DHSMV from issuing a license plate or revalidation sticker to a person who is on a list of persons with outstanding toll violations; specifying that the list may be supplied by the clerk of court; prohibiting issuance of the plate or sticker until the person's name is no longer on the list or until the person presents a receipt from the clerk showing all amounts owed have been paid.

Section 4. Amends s. 316.193, F.S., revising the prohibition against driving under the influence of alcohol; and revising the blood-alcohol or breath-alcohol level at which certain penalties apply.

Section 5. Amends s. 316.302, F.S., revising references to rules, regulations, and criteria governing commercial motor vehicles engaged in intrastate commerce; providing that the DOT performs duties assigned to the Field Administrator of the Federal Motor Carrier Safety Administration under the federal rules and may enforce those rules.

Section 6. Amends s. 316.656, F.S., revising the prohibition against a judge accepting a plea to a lesser offense from a person charged under certain DUI provisions; and revising the blood-alcohol or breath-alcohol level at which the prohibition applies.

Section 7. Amends s. 334.044, F.S., requiring the DOT to maintain certain training programs; and authorizing such programs to provide for incremental increases to base salary for employees successfully completing training phases.

Section 8. Amends s. 337.185, F.S., providing for the State Arbitration Board to arbitrate certain claims relating to maintenance contracts; and providing for a member of the board to be elected by maintenance companies as well as construction companies.

Section 9. Amends s. 337.403, F.S., requiring the DOT or local governmental entity to pay the cost of relocation of a utility that is found to be interfering with the use, maintenance, improvement, extension, or expansion, of a public road or publicly owned rail corridor if the facility serves the DOT or governmental entity exclusively.

Section 10. Amends s. 338.01, F.S., requiring new and replacement electronic toll collection systems to be interoperable with the DOT's system.

Section 11. Amends s. 338.165, F.S., revising provisions for use of certain toll revenue.

Section 12. Amends s. 338.2216, F.S., directing the Florida Turnpike Enterprise to implement new technologies and processes in its operations and collection of tolls and other amounts.

Section 13. Amends s. 338.223, F.S., conforming a cross-reference.

Section 14. Amends s. 338.231, F.S., revising provisions for establishing and collecting tolls.

Section 15. Amends s. 338.231, F.S., revising the DOT's authority to amend the adopted work program.

Section 16. Amends s. 339.155, F.S., revising provisions for development of the Florida Transportation Plan.

Sections 17 and 18. Amends ss. 339.2819 and 339.285, F.S., conforming cross-references.

Section 19. Amends s. 479.01, F.S., revising provisions for outdoor advertising; and revising the definition of the term "automatic changeable facing".

Section 20. Amends s. 479.07, F.S., revising a prohibition against signs on the State Highway System; revising requirements for display of the sign permit tag; and directing the DOT to establish by rule a fee for furnishing a replacement permit tag.

Section 21. Amends s. 479.08, F.S., revising provisions for denial or revocation of a sign permit.

Section 22. Amends s. 479.11, F.S., revising a prohibition against certain signs located outside an urban area.

Section 23. Amends s. 479.261, F.S., revising provisions for the logo sign program; revising requirements for businesses to participate in the program; authorizing the DOT to adopt rules for removing and adding businesses on a rotating basis; removing a provision for an application fee; revising the provisions for an annual permit fee; and providing for rules to phase in the fee.

Sections 24-63. Reenacts ss. 316.066(3)(a), 316.072(4)(b), 316.1932(3), 316.1933(4), 316.1937(1) and (2)(d), 316.1939(1)(b), 316.656(1), 318.143(4) and (5), 318.17(3), 320.055(1)(c), 322.03(2), 322.0602(2)(a), 322.21(8), 322.25(5), 322.26(1)(a), 322.2615(14)(a) and (16), 322.2616(15) and (19), 322.264(1)(b), 322.271(2)(a), (c) and (4), 322.2715(2), (3)(a), (c), and (4), 322.28(2), 322.282(2)(a), 322.291(1)(a), 322.34(9)(a), 322.62(3), 322.63(2)(d) and (6), 322.64(1), (2), (7)(a), (8)(b), (14), and (15), 323.001(4)(f), 324.023, 324.131, 327.35(6), 337.195(1), 440.02(17)(c), 440.09(7)(b), 493.6106(1)(d), 627.7275(2)(a), 627.758(4), 790.06(2)(f) and (10)(f), 903.36(2), and 907.041(4)(c), F.S., to incorporate references in changes made by the act.

Section 64. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Section 2, requiring HOV's to comply with federal standards has an indeterminate fiscal impact. According to DOT, federal law reveals no specific penalty to be assessed against a state for non-compliance, and the DOT assumes the EPA final rule will set forth that penalty. It is expected that the penalty will involve the diversion of use of federal funds for construction purposes to some other program. The number of $5 decals issued could go down if a facility is identified as degraded. DHSMV administrative expenses for decal issuance could decline if an HOV facility is identified as degraded and issuance is limited or discontinued. County tax offices that issue decals could experience a reduction in decal issuance and administrative expenses as described for DHSMV above. Nonpayment of tolls for use of HOT lanes that were formerly HOV lanes is not expected to present a fiscal impact, as vehicles currently eligible to be driven in HOV lanes do not pay tolls.

Sections 4 and 6, revising DUI provisions and enforcement, may prevent the loss of about $5 million annually in federal safety grant funds.

Section 5, revising references to federal rules, regulations, and criteria governing commercial motor vehicles engaged in intrastate commerce may prevent the loss of about $7 million annually in federal Motor Carrier Safety Assistance grant funds.

Section 14, authorizing DOT to recover administrative costs for toll collection would positively impact the State Transportation Trust Fund, the Turnpike Trust Fund, and any other toll facility revenues.

Section 20, authorizing DOT to set by rule a service fee, in an amount that recovers actual cost, for replacement of lost, stolen, or destroyed permit tags placed on outdoor advertising signs would have a positive fiscal impact on the State Transportation Trust Fund. The amount is indeterminate due to the fact it is unknown how many tags will be replaced. The current $3 fee is well below actual cost for the tags.

Section 23, increasing the cap for Logo signs on the interstate would have positive fiscal impact on the State Transportation Trust Fund. This amount is indeterminate due to the fact the fees have not been established by DOT rule at this time.

2. Expenditures:

Section 9, requiring DOT, or governmental entity, to pay all costs associated with the removal or relocation of utilities when the utility being relocated exclusively serves DOT could have a negative impact on the State Transportation Trust Fund should a project require removal or relocation of utilities that exclusively serve DOT .

Section 12, requiring all tolling technology to be compatible. This results in standardization throughout the state and may result in indeterminate implementation costs. Currently, the only incompatible system in the state is in Miami-Dade County on the Rickenbacker and the Venetian Bridges. According to DOT, Miami-Dade County is currently working towards making its system compatible.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Section 9, requiring DOT, or governmental entity, to pay all costs associated with the removal or relocation of utilities when the utility being relocated exclusively serves the governmental entity

could have a negative impact on local government revenues should a project require removal or relocation of utilities that exclusively serve the governmental entity.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 3 of the bill would require repeat toll violators who have ignored both the issuing agencies' attempts and the court's attempts to resolve toll violations.

Sections 4 and 6, revising DUI provisions and enforcement, would impact person's who drive under the influence alcohol.

Section 14, authorizes toll rates to include an amount necessary to cover the costs of administration for convenience toll collection methods, this would increase toll rates paid by citizens using a convenience method.

Section 20, revising the outdoor advertising permit tag fee would have initial cost to the industry to relocate or place tags in accordance with the statute. However, this is spread over 2 years to allow this to occur as part of routine maintenance activities and the number of replacement tags requested is expected to decrease.

Section 23, increasing the cap for Logo signs on the interstate could have a negative or positive impact on businesses requesting these signs. This amount is indeterminate due to the fact the fees have not been established by DOT rule at this time.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

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 the Department of Transportation; amending s. 163.3182, F.S., relating to transportation concurrency backlog authorities; providing legislative findings and declarations; expanding the power of authorities to borrow money to include issuing certain debt obligations; providing a maximum maturity date for certain debt incurred to finance or refinance certain transportation concurrency backlog projects; authorizing authorities to continue operations and administer certain trust funds for the period of the remaining outstanding debt; requiring local transportation concurrency backlog trust funds to continue to be funded for certain purposes; providing for increased ad valorem tax increment funding for such trust funds under certain circumstances; amending s. 316.0741, F.S.; requiring vehicles to comply with certain federal standards to be driven in an HOV lane at any time, regardless of occupancy; providing for the Department of Highway Safety and Motor Vehicles to limit or discontinue issuance of decals for the use of HOV facilities by hybrid and low-emission and energy-efficient vehicles under certain circumstances; amending s. 316.1001, F.S.; revising provisions prohibiting the Department of Highway Safety and Motor Vehicles from issuing a license plate or revalidation sticker to a person who is on a list of persons with outstanding toll violations; specifying that the list may be supplied by the clerk of court; prohibiting issuance of the plate or

sticker until the person's name is no longer on the list or until the person presents a receipt from the clerk showing all amounts owed have been paid; amending s. 316.193, F.S.; revising the prohibition against driving under the influence of alcohol; revising the blood-alcohol or breath-alcohol level at which certain penalties apply; amending s. 316.302, F.S.; revising references to rules, regulations, and criteria governing commercial motor vehicles engaged in intrastate commerce; providing that the Department of Transportation performs duties assigned to the Field Administrator of the Federal Motor Carrier Safety Administration under the federal rules and may enforce those rules; amending s. 316.656, F.S.; revising the prohibition against a judge accepting a plea to a lesser offense from a person charged under certain DUI provisions; revising the blood-alcohol or breath-alcohol level at which the prohibition applies; amending s. 334.044, F.S.; requiring the department to maintain certain training programs; authorizing such programs to provide for incremental increases to base salary for employees successfully completing training phases; amending s. 337.185, F.S.; providing for the State Arbitration Board to arbitrate certain claims relating to maintenance contracts; providing for a member of the board to be elected by maintenance companies as well as construction companies; amending s. 337.403, F.S.; requiring the department or local governmental entity to pay the cost of relocation of a utility that is found to

be interfering with the use, maintenance, improvement, extension, or expansion, of a public road or publicly owned rail corridor if the facility serves the department or governmental entity exclusively; amending s. 338.01, F.S.; requiring new and replacement electronic toll collection systems to be interoperable with the department's system; amending s. 338.165, F.S.; revising provisions for use of certain toll revenue; amending s. 338.2216, F.S.; directing the Florida Turnpike Enterprise to implement new technologies and processes in its operations and collection of tolls and other amounts; amending s. 338.223, F.S.; conforming a cross-reference; amending s. 338.231, F.S.; revising provisions for establishing and collecting tolls; amending s. 339.135, F.S.; revising the department's authority to amend the adopted work program; amending s. 339.155, F.S.; revising provisions for development of the Florida Transportation Plan; amending ss. 339.2819 and 339.285, F.S.; conforming cross-references; amending s. 479.01, F.S.; revising provisions for outdoor advertising; revising the definition of the term "automatic changeable facing"; amending s. 479.07, F.S.; revising a prohibition against signs on the State Highway System; revising requirements for display of the sign permit tag; directing the department to establish by rule a fee for furnishing a replacement permit tag; amending s. 479.08, F.S.; revising provisions for denial or revocation of a sign permit; amending s. 479.11, F.S.; revising a prohibition against

certain signs located outside an urban area; amending s. 479.261, F.S.; revising provisions for the logo sign program; revising requirements for businesses to participate in the program; authorizing the department to adopt rules for removing and adding businesses on a rotating basis; removing a provision for an application fee; revising the provisions for an annual permit fee; providing for rules to phase in the fee; reenacting ss. 316.066(3)(a), 316.072(4)(b), 316.1932(3), 316.1933(4), 316.1937(1) and (2)(d), 316.1939(1)(b), 316.656(1), 318.143(4) and (5), 318.17(3), 320.055(1)(c), 322.03(2), 322.0602(2)(a), 322.21(8), 322.25(5), 322.26(1)(a), 322.2615(14)(a) and (16), 322.2616(15) and (19), 322.264(1)(b), 322.271(2)(a), (c) and (4), 322.2715(2), (3)(a), (c), and (4), 322.28(2), 322.282(2)(a), 322.291(1)(a), 322.34(9)(a), 322.62(3), 322.63(2)(d) and (6), 322.64(1), (2), (7)(a), (8)(b), (14), and (15), 323.001(4)(f), 324.023, 324.131, 327.35(6), 337.195(1), 440.02(17)(c), 440.09(7)(b), 493.6106(1)(d), 627.7275(2)(a), 627.758(4), 790.06(2)(f) and (10)(f), 903.36(2), and 907.041(4)(c), F.S., relating to written reports of crashes, obedience to and effect of traffic laws, tests for alcohol, chemical substances, or controlled substances, implied consent, refusal, blood test for impairment or intoxication in cases of death or serious bodily injury, right to use reasonable force, ignition interlock devices, requiring, unlawful acts, refusal to submit to testing, penalties, mandatory

adjudication, prohibition against accepting plea to lesser included offense, sanctions for infractions by minors, offenses excepted, registration periods, renewal periods, drivers must be licensed, penalties, youthful drunk driver visitation program, license fees, procedure for handling and collecting fees, when court to forward license to department and report convictions, temporary reinstatement of driving privileges, mandatory revocation of license by department, suspension of license, right to review, suspension of license, persons under 21 years of age, right to review, "habitual traffic offender" defined, authority to modify revocation, cancellation, or suspension order, ignition interlock device, period of suspension or revocation, procedure when court revokes or suspends license or driving privilege and orders reinstatement, driver improvement schools or dui programs, required in certain suspension and revocation cases, driving while license suspended, revoked, canceled, or disqualified, driving under the influence, commercial motor vehicle operators, alcohol or drug testing, commercial motor vehicle operators, holder of commercial driver's license, driving with unlawful blood-alcohol level, refusal to submit to breath, urine, or blood test, wrecker operator storage facilities, vehicle holds, financial responsibility for bodily injury or death, period of suspension, boating under the influence, penalties, "designated drivers," limits on liability, definitions, coverage, license requirements, posting,

motor vehicle liability, surety on auto club traffic arrest bond, conditions, limit, bail bond, license to carry concealed weapon or firearm, guaranteed arrest bond certificates as cash bail, and pretrial detention and release, to incorporate references in changes made by the act; providing effective dates.

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

Section 1. Paragraph (c) is added to subsection (2) of section 163.3182, Florida Statutes, and paragraph (d) of subsection (3), paragraph (a) of subsection (4), and subsections (5) and (8) of that section are amended, to read:

163.3182 Transportation concurrency backlogs.--

(2) CREATION OF TRANSPORTATION CONCURRENCY BACKLOG AUTHORITIES.--

(c) The Legislature finds and declares that there exists in many counties and municipalities areas with significant transportation deficiencies and inadequate transportation facilities; that many such insufficiencies and inadequacies severely limit or prohibit the satisfaction of transportation concurrency standards; that such transportation insufficiencies and inadequacies affect the health, safety, and welfare of the residents of such counties and municipalities; that such transportation insufficiencies and inadequacies adversely affect economic development and growth of the tax base for the areas in which such insufficiencies and inadequacies exist; and that the elimination of transportation deficiencies and inadequacies and

the satisfaction of transportation concurrency standards are paramount public purposes for the state and its counties and municipalities.

(3) POWERS OF A TRANSPORTATION CONCURRENCY BACKLOG AUTHORITY.--Each transportation concurrency backlog authority has the powers necessary or convenient to carry out the purposes of this section, including the following powers in addition to others granted in this section:

(d) To borrow money, including, but not limited to, issuing debt obligations, such as, but not limited to, bonds, notes, certificates, and similar debt instruments; to apply for and accept advances, loans, grants, contributions, and any other forms of financial assistance from the Federal Government or the state, county, or any other public body or from any sources, public or private, for the purposes of this part; to give such security as may be required; to enter into and carry out contracts or agreements; and to include in any contracts for financial assistance with the Federal Government for or with respect to a transportation concurrency backlog project and related activities such conditions imposed pursuant to federal laws as the transportation concurrency backlog authority considers reasonable and appropriate and which are not inconsistent with the purposes of this section.

(4) TRANSPORTATION CONCURRENCY BACKLOG PLANS.--

(a) Each transportation concurrency backlog authority shall adopt a transportation concurrency backlog plan as a part of the local government comprehensive plan within 6 months after the creation of the authority. The plan shall:

1. Identify all transportation facilities that have been designated as deficient and require the expenditure of moneys to upgrade, modify, or mitigate the deficiency.

2. Include a priority listing of all transportation facilities that have been designated as deficient and do not satisfy concurrency requirements pursuant to s. 163.3180, and the applicable local government comprehensive plan.

3. Establish a schedule for financing and construction of transportation concurrency backlog projects that will eliminate transportation concurrency backlogs within the jurisdiction of the authority within 10 years after the transportation concurrency backlog plan adoption. The schedule shall be adopted as part of the local government comprehensive plan. Notwithstanding such schedule requirements, as long as the schedule provides for the elimination of all transportation concurrency backlogs within 10 years after the adoption of the concurrency backlog plan, the final maturity date of any debt incurred to finance or refinance the related projects may be no later than 40 years after the date such debt is incurred and the authority may continue operations and administer the trust fund established as provided in subsection (5) for as long as such debt remains outstanding.

(5) ESTABLISHMENT OF LOCAL TRUST FUND.--The transportation concurrency backlog authority shall establish a local transportation concurrency backlog trust fund upon creation of the authority. Each local trust fund shall be administered by the transportation concurrency backlog authority within which a transportation concurrency backlog has been identified. Each

local trust fund shall continue to be funded pursuant to this section for as long as the projects set forth in the related transportation concurrency backlog plan remain to be completed or until any debt incurred to finance or refinance the related projects are no longer outstanding, whichever occurs later. Beginning in the first fiscal year after the creation of the authority, each local trust fund shall be funded by the proceeds of an ad valorem tax increment collected within each transportation concurrency backlog area to be determined annually and shall be equal to 50 ~~25~~ percent of the difference between the amounts set forth in paragraphs (a) and (b), except that if all of the affected taxing authorities agree pursuant to an interlocal agreement, a particular local trust fund may be funded by the proceeds of an ad valorem tax increment greater than 50 percent of the difference between the amounts set forth in paragraphs (a) and (b):

(a) The amount of ad valorem tax levied each year by each taxing authority, exclusive of any amount from any debt service millage, on taxable real property contained within the jurisdiction of the transportation concurrency backlog authority and within the transportation backlog area; and

(b) The amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for each taxing authority, exclusive of any debt service millage, upon the total of the assessed value of the taxable real property within the transportation concurrency backlog area as shown on the most recent assessment roll used in connection with the taxation of such property of each taxing authority

prior to the effective date of the ordinance funding the trust fund.

(8) DISSOLUTION.--Upon completion of all transportation concurrency backlog projects and repayment or defeasance of all debt issued to finance or refinance such projects, a transportation concurrency backlog authority shall be dissolved, and its assets and liabilities shall be transferred to the county or municipality within which the authority is located. All remaining assets of the authority must be used for implementation of transportation projects within the jurisdiction of the authority. The local government comprehensive plan shall be amended to remove the transportation concurrency backlog plan.

Section 2. Section 316.0741, Florida Statutes, is amended to read:

316.0741 High-occupancy-vehicle ~~High occupancy vehicle~~ lanes.--

(1) As used in this section, the term:

(a) "High-occupancy-vehicle ~~High occupancy vehicle~~ lane" or "HOV lane" means a lane of a public roadway designated for use by vehicles in which there is more than one occupant unless otherwise authorized by federal law.

(b) "Hybrid vehicle" means a motor vehicle:

1. That draws propulsion energy from onboard sources of stored energy which are both an internal combustion or heat engine using combustible fuel and a rechargeable energy-storage system; and

2. That, in the case of a passenger automobile or light

truck, has received a certificate of conformity under the Clean Air Act, 42 U.S.C. ss. 7401 et seq., and meets or exceeds the equivalent qualifying California standards for a low-emission vehicle.

(2) The number of persons that must be in a vehicle to qualify for legal use of the HOV lane and the hours during which the lane will serve as an HOV lane, if it is not designated as such on a full-time basis, must also be indicated on a traffic control device.

(3) Except as provided in subsection (4), a vehicle may not be driven in an HOV lane if the vehicle is occupied by fewer than the number of occupants indicated by a traffic control device. A driver who violates this section shall be cited for a moving violation, punishable as provided in chapter 318.

(4)(a) Notwithstanding any other provision of this section, an inherently low-emission vehicle (ILEV) that is certified and labeled in accordance with federal regulations may be driven in an HOV lane at any time, regardless of its occupancy. In addition, upon the state's receipt of written notice from the proper federal regulatory agency authorizing such use, a vehicle defined as a hybrid vehicle under this section may be driven in an HOV lane at any time, regardless of its occupancy.

(b) All eligible hybrid and all eligible other low-emission and energy-efficient vehicles driven in an HOV lane must comply with the minimum fuel economy standards in 23 U.S.C. s. 166(f)(3)(B).

(c) Upon its effective date, the eligibility of hybrid and

other low-emission and energy-efficient vehicles for operation in an HOV lane regardless of occupancy shall be determined in accordance with the applicable final rule issued by the United States Environmental Protection Agency, pursuant to 23 U.S.C. s. 166(e).

(5) The department shall issue a decal and registration certificate, to be renewed annually, reflecting the HOV lane designation on ~~such~~ vehicles authorizing meeting the criteria in subsection (4) authorizing driving in an HOV lane at any time ~~such use~~. The department may charge a fee for a decal, not to exceed the costs of designing, producing, and distributing each decal, or $5, whichever is less. The proceeds from sale of the decals shall be deposited in the Highway Safety Operating Trust Fund. The department may, for reasons of operation and management of HOV facilities, limit or discontinue issuance of decals for the use of HOV facilities by hybrid and low-emission and energy-efficient vehicles, regardless of occupancy, if it has been determined by the Department of Transportation that the facilities are degraded as defined by 23 U.S.C. s. 166(d)(2).

(6) Vehicles having decals by virtue of compliance with the minimum fuel economy standards under 23 U.S.C. s. 166(f)(3)(B), and which are registered for use in high-occupancy toll lanes or express lanes in accordance with Department of Transportation rule, shall be allowed to use any HOV lanes redesignated as high-occupancy toll lanes or express lanes without payment of a toll.

~~(5) As used in this section, the term "hybrid vehicle" means a motor vehicle:~~

~~(a) That draws propulsion energy from onboard sources of stored energy which are both:~~

~~1. An internal combustion or heat engine using combustible fuel; and~~

~~2. A rechargeable energy storage system; and~~

~~(b) That, in the case of a passenger automobile or light truck:~~

~~1. Has received a certificate of conformity under the Clean Air Act, 42 U.S.C. ss. 7401 et seq.; and~~

~~2. Meets or exceeds the equivalent qualifying California standards for a low-emission vehicle.~~

(7) ~~(6)~~ The department may adopt rules necessary to administer this section.

Section 3. Subsection (4) of section 316.1001, Florida Statutes, is amended to read:

316.1001 Payment of toll on toll facilities required; penalties.--

(4) Any governmental entity, including, without limitation, a clerk of court, may supply the department with data that is machine readable by the department's computer system, listing persons who have one or more outstanding violations of this section, with reference to the person's driver's license number, or license plate number in the case of a business entity. Pursuant to s. 320.03(8), those persons may not be issued a license plate or revalidation sticker for any motor vehicle. Upon receipt of such lists of persons, in accordance with the provisions of s. 320.03(8), the department and its authorized agents shall not issue a license plate or

revalidation sticker for any motor vehicle owned by a person having any outstanding violations of this section until such person's name no longer appears on the department's list of persons with outstanding violations of this section or until such person presents a receipt from the clerk showing that all applicable amounts owed on outstanding violations have been paid.

Section 4. Subsection (4) of section 316.193, Florida Statutes, is amended to read:

316.193 Driving under the influence; penalties.--

(4)(a) Any person who is convicted of a violation of subsection (1) and who has a blood-alcohol level or breath-alcohol level of 0.15 ~~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:

1.~~(a)~~ By a fine of:

a.~~1.~~ Not less than $500 or more than $1,000 for a first conviction.

b.~~2.~~ Not less than $1,000 or more than $2,000 for a second conviction.

c.~~3.~~ Not less than $2,000 for a third or subsequent conviction.

2.~~(b)~~ By imprisonment for:

a.~~1.~~ Not more than 9 months for a first conviction.

b.~~2.~~ Not more than 12 months for a second conviction.

(b) For the purposes of this subsection, only the instant offense is required to be a violation of subsection (1) by a

person who has a blood-alcohol level or breath-alcohol level of 0.15 ~~0.20~~ or higher.

(c) In addition to the penalties in subparagraphs (a)1. and 2. ~~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 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 5. Effective October 1, 2008, paragraph (b) of subsection (1) and subsections (6) and (8) of section 316.302, Florida Statutes, are amended to read:

316.302 Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.--

(1)

(b) Except as otherwise provided in this section, all owners or drivers of commercial motor vehicles that are engaged in intrastate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397, with the exception of 49 C.F.R. s. 390.5 as it relates to the definition of bus, as such rules and regulations existed on October 1, 2008 ~~2005~~.

(6) The state Department of Transportation shall perform the duties that are assigned to the Field Administrator, Federal

Motor Carrier Safety Administration ~~Regional Federal Highway Administrator~~ under the federal rules, and an agent of that department, as described in s. 316.545(9), may enforce those rules.

(8) For the purpose of enforcing this section, any law enforcement officer of the Department of Transportation or duly appointed agent who holds a current safety inspector certification from the Commercial Vehicle Safety Alliance may require the driver of any commercial vehicle operated on the highways of this state to stop and submit to an inspection of the vehicle or the driver's records. If the vehicle or driver is found to be operating in an unsafe condition, or if any required part or equipment is not present or is not in proper repair or adjustment, and the continued operation would present an unduly hazardous operating condition, the officer may require the vehicle or the driver to be removed from service pursuant to the North American Standard ~~Uniform~~ Out-of-Service Criteria, until corrected. However, if continuous operation would not present an unduly hazardous operating condition, the officer may give written notice requiring correction of the condition within 14 days.

(a) Any member of the Florida Highway Patrol or any law enforcement officer employed by a sheriff's office or municipal police department authorized to enforce the traffic laws of this state pursuant to s. 316.640 who has reason to believe that a vehicle or driver is operating in an unsafe condition may, as provided in subsection (10), enforce the provisions of this section.

(b) Any person who fails to comply with an officer's request to submit to an inspection under this subsection commits a violation of s. 843.02 if the person resists the officer without violence or a violation of s. 843.01 if the person resists the officer with violence.

Section 6. Paragraph (a) of subsection (2) of section 316.656, Florida Statutes, is amended to read:

316.656 Mandatory adjudication; prohibition against accepting plea to lesser included offense.--

(2)(a) No trial judge may accept a plea of guilty to a lesser offense from a person charged under the provisions of this act who has been given a breath or blood test to determine blood or breath alcohol content, the results of which show a blood or breath alcohol content by weight of 0.15 ~~0.20~~ percent or more.

Section 7. Subsection (34) is added to section 334.044, Florida Statutes, to read:

334.044 Department; powers and duties.--The department shall have the following general powers and duties:

(34) The department shall maintain training programs for department employees and prospective employees who are graduates from an approved engineering curriculum of 4 years or more in a school, college, or university approved by the Board of Professional Engineers to provide broad practical expertise in the field of transportation engineering leading to licensure as a professional engineer. The department shall maintain training programs for department employees to provide broad practical experience and enhanced knowledge in the areas of right-of-way

property management, real estate appraisal, and business valuation relating to department right-of-way acquisition activities. These training programs may provide for incremental increases to base salary for all employees enrolled in the programs upon successful completion of training phases.

Section 8. Subsections (1), (2), and (7) of section 337.185, Florida Statutes, are amended to read:

337.185 State Arbitration Board.--

(1) To facilitate the prompt settlement of claims for additional compensation arising out of construction and maintenance contracts between the department and the various contractors with whom it transacts business, the Legislature does hereby establish the State Arbitration Board, referred to in this section as the "board." For the purpose of this section, "claim" shall mean the aggregate of all outstanding claims by a party arising out of a construction or maintenance contract. Every contractual claim in an amount up to $250,000 per contract or, at the claimant's option, up to $500,000 per contract or, upon agreement of the parties, up to $1 million per contract that cannot be resolved by negotiation between the department and the contractor shall be arbitrated by the board after acceptance of the project by the department. As an exception, either party to the dispute may request that the claim be submitted to binding private arbitration. A court of law may not consider the settlement of such a claim until the process established by this section has been exhausted.

(2) The board shall be composed of three members. One member shall be appointed by the head of the department, and one

member shall be elected by those construction or maintenance companies who are under contract with the department. The third member shall be chosen by agreement of the other two members. Whenever the third member has a conflict of interest regarding affiliation with one of the parties, the other two members shall select an alternate member for that hearing. The head of the department may select an alternative or substitute to serve as the department member for any hearing or term. Each member shall serve a 2-year term. The board shall elect a chair, each term, who shall be the administrator of the board and custodian of its records.

(7) The members of the board may receive compensation for the performance of their duties hereunder, from administrative fees received by the board, except that no employee of the department may receive compensation from the board. The compensation amount shall be determined by the board, but shall not exceed $125 per hour, up to a maximum of $1,000 per day for each member authorized to receive compensation. Nothing in this section shall prevent the member elected by construction or maintenance companies from being an employee of an association affiliated with the industry, even if the sole responsibility of that member is service on the board. Travel expenses for the industry member may be paid by an industry association, if necessary. The board may allocate funds annually for clerical and other administrative services.

Section 9. Subsection (1) of section 337.403, Florida Statutes, is amended to read:

337.403 Relocation of utility; expenses.--

(1) Any utility heretofore or hereafter placed upon, under, over, or along any public road or publicly owned rail corridor that is found by the authority to be unreasonably interfering in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor shall, upon 30 days' written notice to the utility or its agent by the authority, be removed or relocated by such utility at its own expense except as provided in paragraphs (a), (b), ~~and~~ (c), and (d).

(a) If the relocation of utility facilities, as referred to in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No. 627 of the 84th Congress, is necessitated by the construction of a project on the federal-aid interstate system, including extensions thereof within urban areas, and the cost of such project is eligible and approved for reimbursement by the Federal Government to the extent of 90 percent or more under the Federal Aid Highway Act, or any amendment thereof, then in that event the utility owning or operating such facilities shall relocate such facilities upon order of the department, and the state shall pay the entire expense properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

(b) When a joint agreement between the department and the utility is executed for utility improvement, relocation, or removal work to be accomplished as part of a contract for construction of a transportation facility, the department may

participate in those utility improvement, relocation, or removal costs that exceed the department's official estimate of the cost of such work by more than 10 percent. The amount of such participation shall be limited to the difference between the official estimate of all the work in the joint agreement plus 10 percent and the amount awarded for this work in the construction contract for such work. The department may not participate in any utility improvement, relocation, or removal costs that occur as a result of changes or additions during the course of the contract.

(c) When an agreement between the department and utility is executed for utility improvement, relocation, or removal work to be accomplished in advance of a contract for construction of a transportation facility, the department may participate in the cost of clearing and grubbing necessary to perform such work.

(d) If the facility being relocated exclusively serves the authority, the authority shall bear the cost of removal or relocation.

Section 10. Subsection (6) is added to section 338.01, Florida Statutes, to read:

338.01 Authority to establish and regulate limited access facilities.--

(6) All new limited access facilities and existing transportation facilities on which new or replacement electronic toll collection systems are installed shall be interoperable with the department's electronic toll collection system.

Section 11. Subsections (2) and (4) of section 338.165, Florida Statutes, are amended to read:

338.165 Continuation of tolls.--

(2) If the revenue-producing project is on the State Highway System, any remaining toll revenue shall be used within the county or counties in which the revenue-producing project is located for the construction, maintenance, or improvement of any road on the State Highway System or public transit ~~within the county or counties in which the revenue-producing project is located~~, except as provided in s. 348.0004.

(4) Notwithstanding any other law to the contrary, pursuant to s. 11, Art. VII of the State Constitution, and subject to the requirements of subsection (2), the Department of Transportation may request the Division of Bond Finance to issue bonds secured by toll revenues to be collected ~~on the Alligator Alley, the Sunshine Skyway Bridge, the Beeline East Expressway, the Navarre Bridge, and the Pinellas Bayway~~ to fund transportation projects located within the county or counties in which the project is located and contained in the adopted work program of the department.

Section 12. Paragraph (d) is added to subsection (1) of section 338.2216, Florida Statutes, to read:

338.2216 Florida Turnpike Enterprise; powers and authority.--

(1)

(d) The Florida Turnpike Enterprise is directed to pursue and implement new technologies and processes in its operations and collection of tolls and the collection of other amounts associated with road and infrastructure usage. This is to include, without limitation, video billing and variable pricing.

Section 13. Paragraph (b) of subsection (1) of section 338.223, Florida Statutes, is amended to read:

338.223 Proposed turnpike projects.--

(1)

(b) Any proposed turnpike project or improvement shall be developed in accordance with the Florida Transportation Plan and the work program pursuant to s. 339.135. Turnpike projects that add capacity, alter access, affect feeder roads, or affect the operation of the local transportation system shall be included in the transportation improvement plan of the affected metropolitan planning organization. If such turnpike project does not fall within the jurisdiction of a metropolitan planning organization, the department shall notify the affected county and provide for public hearings in accordance with s. 339.155(5)~~(6)~~(c).

Section 14. Section 338.231, Florida Statutes, is amended to read:

338.231 Turnpike tolls, fixing; pledge of tolls and other revenues.--The department shall at all times fix, adjust, charge, and collect such tolls and amounts for the use of the turnpike system as are required in order to provide a fund sufficient with other revenues of the turnpike system to pay the cost of maintaining, improving, repairing, and operating such turnpike system; to pay the principal of and interest on all bonds issued to finance or refinance any portion of the turnpike system as the same become due and payable; and to create reserves for all such purposes.

~~(1) In the process of effectuating toll rate increases~~

~~over the period 1988 through 1992, the department shall, to the maximum extent feasible, equalize the toll structure, within each vehicle classification, so that the per mile toll rate will be approximately the same throughout the turnpike system. New turnpike projects may have toll rates higher than the uniform system rate where such higher toll rates are necessary to qualify the project in accordance with the financial criteria in the turnpike law. Such higher rates may be reduced to the uniform system rate when the project is generating sufficient revenues to pay the full amount of debt service and operating and maintenance costs at the uniform system rate. If, after 15 years of opening to traffic, the annual revenue of a turnpike project does not meet or exceed the annual debt service requirements and operating and maintenance costs attributable to such project, the department shall, to the maximum extent feasible, establish a toll rate for the project which is higher than the uniform system rate as necessary to meet such annual debt service requirements and operating and maintenance costs. The department may, to the extent feasible, establish a temporary toll rate at less than the uniform system rate for the purpose of building patronage for the ultimate benefit of the turnpike system. In no case shall the temporary rate be established for more than 1 year. The requirements of this subsection shall not apply when the application of such requirements would violate any covenant established in a resolution or trust indenture relating to the issuance of turnpike bonds.~~

(1) ~~(2)~~ Notwithstanding any other provision of law, the

department may defer the scheduled July 1, 1993, toll rate increase on the Homestead Extension of the Florida Turnpike until July 1, 1995. The department may also advance funds to the Turnpike General Reserve Trust Fund to replace estimated lost revenues resulting from this deferral. The amount advanced must be repaid within 12 years from the date of advance; however, the repayment is subordinate to all other debt financing of the turnpike system outstanding at the time repayment is due.

(2) ~~(3)~~ The department shall publish a proposed change in the toll rate for the use of an existing toll facility, in the manner provided for in s. 120.54, which will provide for public notice and the opportunity for a public hearing before the adoption of the proposed rate change. When the department is evaluating a proposed turnpike toll project under s. 338.223 and has determined that there is a high probability that the project will pass the test of economic feasibility predicated on proposed toll rates, the toll rate that is proposed to be charged after the project is constructed must be adopted during the planning and project development phase of the project, in the manner provided for in s. 120.54, including public notice and the opportunity for a public hearing. For such a new project, the toll rate becomes effective upon the opening of the project to traffic.

(3)(a) ~~(4)~~ For the period July 1, 1998, through June 30, 2017, the department shall, to the maximum extent feasible, program sufficient funds in the tentative work program such that the percentage of turnpike toll and bond financed commitments in Dade County, Broward County, and Palm Beach County as compared

to total turnpike toll and bond financed commitments shall be at least 90 percent of the share of net toll collections attributable to users of the turnpike system in Dade County, Broward County, and Palm Beach County as compared to total net toll collections attributable to users of the turnpike system. The requirements of this subsection do not apply when the application of such requirements would violate any covenant established in a resolution or trust indenture relating to the issuance of turnpike bonds. The department at any time for economic considerations may establish lower temporary toll rates for a new or existing toll facility for a period not to exceed 1 year, after which the toll rates promulgated under s. 120.54 shall become effective.

(b) The department shall also fix, adjust, charge, and collect such amounts needed to cover the costs of administering the different toll collection and payment methods and types of accounts being offered and utilized, in the manner provided for in s. 120.54, which will provide for public notice and the opportunity for a public hearing before adoption. Such amounts may stand alone, or be incorporated in a toll rate structure, or be a combination thereof.

(4) ~~(5)~~ When bonds are outstanding which have been issued to finance or refinance any turnpike project, the tolls and all other revenues derived from the turnpike system and pledged to such bonds shall be set aside as may be provided in the resolution authorizing the issuance of such bonds or the trust agreement securing the same. The tolls or other revenues or other moneys so pledged and thereafter received by the

department are immediately subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge is valid and binding as against all parties having claims of any kind in tort or contract or otherwise against the department irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the department.

(5) ~~(6)~~ In each fiscal year while any of the bonds of the Broward County Expressway Authority series 1984 and series 1986-A remain outstanding, the department is authorized to pledge revenues from the turnpike system to the payment of principal and interest of such series of bonds and the operation and maintenance expenses of the Sawgrass Expressway, to the extent gross toll revenues of the Sawgrass Expressway are insufficient to make such payments. The terms of an agreement relative to the pledge of turnpike system revenue will be negotiated with the parties of the 1984 and 1986 Broward County Expressway Authority lease-purchase agreements, and subject to the covenants of those agreements. The agreement shall establish that the Sawgrass Expressway shall be subject to the planning, management, and operating control of the department limited only by the terms of the lease-purchase agreements. The department shall provide for the payment of operation and maintenance expenses of the Sawgrass Expressway until such agreement is in effect. This pledge of turnpike system revenues shall be subordinate to the debt service requirements of any future issue of turnpike bonds, the payment of turnpike system operation and maintenance

expenses, and subject to provisions of any subsequent resolution or trust indenture relating to the issuance of such turnpike bonds.

(6) ~~(7)~~ The use and disposition of revenues pledged to bonds are subject to the provisions of ss. 338.22-338.241 and such regulations as the resolution authorizing the issuance of such bonds or such trust agreement may provide.

Section 15. Paragraph (c) of subsection (7) of section 339.135, Florida Statutes, is amended to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.--

(7) AMENDMENT OF THE ADOPTED WORK PROGRAM.--

(c) The department may amend the adopted work program to transfer fixed capital outlay appropriations for projects within the same appropriations category or between appropriations categories, including the following amendments which shall be subject to the procedures in paragraph (d):

1. Any amendment which deletes any project or project phase;

2. Any amendment which adds a project estimated to cost over $500,000 ~~$150,000~~ in funds appropriated by the Legislature;

3. Any amendment which advances or defers to another fiscal year, a right-of-way phase, a construction phase, or a public transportation project phase estimated to cost over $500,000 in funds appropriated by the Legislature, except an amendment advancing a phase to the current fiscal year by one fiscal year or deferring a phase for a period of 90 days or less; or

4. Any amendment which advances or defers to another fiscal year, any preliminary engineering phase or design phase estimated to cost over $500,000 ~~$150,000~~ in funds appropriated by the Legislature, except an amendment advancing a phase to the current fiscal year by one fiscal year or deferring a phase for a period of 90 days or less.

Section 16. Section 339.155, Florida Statutes, is amended to read:

339.155 Transportation planning.--

(1) THE FLORIDA TRANSPORTATION PLAN.--The department shall develop ~~and annually update~~ a statewide transportation plan, to be known as the Florida Transportation Plan. The plan shall be designed so as to be easily read and understood by the general public. The purpose of the Florida Transportation Plan is to establish and define the state's long-range transportation goals and objectives to be accomplished over a period of at least 20 years within the context of the State Comprehensive Plan, and any other statutory mandates and authorizations and based upon the prevailing principles of: preserving the existing transportation infrastructure; enhancing Florida's economic competitiveness; and improving travel choices to ensure mobility. The Florida Transportation Plan shall consider the needs of the entire state transportation system and examine the use of all modes of transportation to effectively and efficiently meet such needs.

(2) SCOPE OF PLANNING PROCESS.--The department shall carry out a transportation planning process in conformance with s. 334.046(1) and 23 U.S.C. s. 135, as amended from time to time.

~~which provides for consideration of projects and strategies that will:~~

~~(a) Support the economic vitality of the United States, Florida, and the metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;~~

~~(b) Increase the safety and security of the transportation system for motorized and nonmotorized users;~~

~~(c) Increase the accessibility and mobility options available to people and for freight;~~

~~(d) Protect and enhance the environment, promote energy conservation, and improve quality of life;~~

~~(e) Enhance the integration and connectivity of the transportation system, across and between modes throughout Florida, for people and freight;~~

~~(f) Promote efficient system management and operation; and~~

~~(g) Emphasize the preservation of the existing transportation system.~~

(3) FORMAT, SCHEDULE, AND REVIEW.--The Florida Transportation Plan shall be a unified, concise planning document that clearly defines the state's long-range transportation goals and objectives ~~and documents the department's short-range objectives developed to further such goals and objectives~~. The plan shall:

(a) Include a glossary that clearly and succinctly defines any and all phrases, words, or terms of art included in the plan, with which the general public may be unfamiliar. ~~and shall consist of, at a minimum, the following components:~~

(b) ~~(a)~~ Document ~~A long-range component documenting~~ the

goals and long-term objectives necessary to implement the results of the department's findings from its examination of the prevailing principles and criteria provided under ~~listed in~~ subsection (2) and s. 334.046(1). ~~The long-range component must~~

(c) Be developed in cooperation with the metropolitan planning organizations and reconciled, to the maximum extent feasible, with the long-range plans developed by metropolitan planning organizations pursuant to s. 339.175. ~~The plan must also~~

(d) Be developed in consultation with affected local officials in nonmetropolitan areas and with any affected Indian tribal governments. ~~The plan must~~

(e) Provide an examination of transportation issues likely to arise during at least a 20-year period. ~~The long-range component shall~~

(f) Be updated at least once every 5 years, or more often as necessary, to reflect substantive changes to federal or state law.

~~(b) A short-range component documenting the short-term objectives and strategies necessary to implement the goals and long-term objectives contained in the long-range component. The short-range component must define the relationship between the long-range goals and the short-range objectives, specify those objectives against which the department's achievement of such goals will be measured, and identify transportation strategies necessary to efficiently achieve the goals and objectives in the plan. It must provide a policy framework within which the department's legislative budget request, the strategic~~

~~information resource management plan, and the work program are developed. The short-range component shall serve as the department's annual agency strategic plan pursuant to s. 186.021. The short-range component shall be developed consistent with available and forecasted state and federal funds. The short-range component shall also be submitted to the Florida Transportation Commission.~~

~~(4) ANNUAL PERFORMANCE REPORT.--The department shall develop an annual performance report evaluating the operation of the department for the preceding fiscal year. The report shall also include a summary of the financial operations of the department and shall annually evaluate how well the adopted work program meets the short-term objectives contained in the short-range component of the Florida Transportation Plan. This performance report shall be submitted to the Florida Transportation Commission and the legislative appropriations and transportation committees.~~

(4)~~(5)~~ ADDITIONAL TRANSPORTATION PLANS.--

(a) Upon request by local governmental entities, the department may in its discretion develop and design transportation corridors, arterial and collector streets, vehicular parking areas, and other support facilities which are consistent with the plans of the department for major transportation facilities. The department may render to local governmental entities or their planning agencies such technical assistance and services as are necessary so that local plans and facilities are coordinated with the plans and facilities of the department.

(b) Each regional planning council, as provided for in s. 186.504, or any successor agency thereto, shall develop, as an element of its strategic regional policy plan, transportation goals and policies. The transportation goals and policies must be prioritized to comply with the prevailing principles provided in subsection (2) and s. 334.046(1). The transportation goals and policies shall be consistent, to the maximum extent feasible, with the goals and policies of the metropolitan planning organization and the Florida Transportation Plan. The transportation goals and policies of the regional planning council will be advisory only and shall be submitted to the department and any affected metropolitan planning organization for their consideration and comments. Metropolitan planning organization plans and other local transportation plans shall be developed consistent, to the maximum extent feasible, with the regional transportation goals and policies. The regional planning council shall review urbanized area transportation plans and any other planning products stipulated in s. 339.175 and provide the department and respective metropolitan planning organizations with written recommendations which the department and the metropolitan planning organizations shall take under advisement. Further, the regional planning councils shall directly assist local governments which are not part of a metropolitan area transportation planning process in the development of the transportation element of their comprehensive plans as required by s. 163.3177.

(c) Regional transportation plans may be developed in regional transportation areas in accordance with an interlocal

agreement entered into pursuant to s. 163.01 by two or more contiguous metropolitan planning organizations; one or more metropolitan planning organizations and one or more contiguous counties, none of which is a member of a metropolitan planning organization; a multicounty regional transportation authority created by or pursuant to law; two or more contiguous counties that are not members of a metropolitan planning organization; or metropolitan planning organizations comprised of three or more counties.

(d) The interlocal agreement must, at a minimum, identify the entity that will coordinate the development of the regional transportation plan; delineate the boundaries of the regional transportation area; provide the duration of the agreement and specify how the agreement may be terminated, modified, or rescinded; describe the process by which the regional transportation plan will be developed; and provide how members of the entity will resolve disagreements regarding interpretation of the interlocal agreement or disputes relating to the development or content of the regional transportation plan. Such interlocal agreement shall become effective upon its recordation in the official public records of each county in the regional transportation area.

(e) The regional transportation plan developed pursuant to this section must, at a minimum, identify regionally significant transportation facilities located within a regional transportation area and contain a prioritized list of regionally significant projects. The level-of-service standards for facilities to be funded under this subsection shall be adopted

by the appropriate local government in accordance with s. 163.3180(10). The projects shall be adopted into the capital improvements schedule of the local government comprehensive plan pursuant to s. 163.3177(3).

(5) ~~(6)~~ PROCEDURES FOR PUBLIC PARTICIPATION IN TRANSPORTATION PLANNING.--

(a) During the development of the ~~long range component of the~~ Florida Transportation Plan and prior to substantive revisions, the department shall provide citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation, and other known interested parties with an opportunity to comment on the proposed plan or revisions. These opportunities shall include, at a minimum, publishing a notice in the Florida Administrative Weekly and within a newspaper of general circulation within the area of each department district office.

(b) During development of major transportation improvements, such as those increasing the capacity of a facility through the addition of new lanes or providing new access to a limited or controlled access facility or construction of a facility in a new location, the department shall hold one or more hearings prior to the selection of the facility to be provided; prior to the selection of the site or corridor of the proposed facility; and prior to the selection of and commitment to a specific design proposal for the proposed facility. Such public hearings shall be conducted so as to provide an opportunity for effective participation by interested

persons in the process of transportation planning and site and route selection and in the specific location and design of transportation facilities. The various factors involved in the decision or decisions and any alternative proposals shall be clearly presented so that the persons attending the hearing may present their views relating to the decision or decisions which will be made.

(c) Opportunity for design hearings:

1. The department, prior to holding a design hearing, shall duly notify all affected property owners of record, as recorded in the property appraiser's office, by mail at least 20 days prior to the date set for the hearing. The affected property owners shall be:

a. Those whose property lies in whole or in part within 300 feet on either side of the centerline of the proposed facility.

b. Those whom the department determines will be substantially affected environmentally, economically, socially, or safetywise.

2. For each subsequent hearing, the department shall publish notice prior to the hearing date in a newspaper of general circulation for the area affected. These notices must be published twice, with the first notice appearing at least 15 days, but no later than 30 days, before the hearing.

3. A copy of the notice of opportunity for the hearing must be furnished to the United States Department of Transportation and to the appropriate departments of the state government at the time of publication.

4. The opportunity for another hearing shall be afforded in any case when proposed locations or designs are so changed from those presented in the notices specified above or at a hearing as to have a substantially different social, economic, or environmental effect.

5. The opportunity for a hearing shall be afforded in each case in which the department is in doubt as to whether a hearing is required.

Section 17. Subsections (1) and (3) of section 339.2819, Florida Statutes, are amended to read:

339.2819 Transportation Regional Incentive Program.--

(1) There is created within the Department of Transportation a Transportation Regional Incentive Program for the purpose of providing funds to improve regionally significant transportation facilities in regional transportation areas created pursuant to s. 339.155(4) ~~(5)~~.

(3) The department shall allocate funding available for the Transportation Regional Incentive Program to the districts based on a factor derived from equal parts of population and motor fuel collections for eligible counties in regional transportation areas created pursuant to s. 339.155(4) ~~(5)~~.

Section 18. Subsection (6) of section 339.285, Florida Statutes, is amended to read:

339.285 Enhanced Bridge Program for Sustainable Transportation.--

(6) Preference shall be given to bridge projects located on corridors that connect to the Strategic Intermodal System, created under s. 339.64, and that have been identified as

regionally significant in accordance with s. 339.155(4)~~(5)~~(c), (d), and (e).

Section 19. Subsection (1) of section 479.01, Florida Statutes, is amended to read:

479.01 Definitions.--As used in this chapter, the term:

(1) "Automatic changeable facing" means a facing which ~~through a mechanical system~~ is capable of delivering two or more advertising messages through an automated or remotely controlled process ~~and shall not rotate so rapidly as to cause distraction to a motorist~~.

Section 20. Subsections (1) and (5) of section 479.07, Florida Statutes, are amended to read:

479.07 Sign permits.--

(1) Except as provided in ss. 479.105(1)(e) and 479.16, a person may not erect, operate, use, or maintain, or cause to be erected, operated, used, or maintained, any sign on the State Highway System outside an urban ~~incorporated~~ area, as defined in s. 334.03(32), or on any portion of the interstate or federal-aid primary highway system without first obtaining a permit for the sign from the department and paying the annual fee as provided in this section. For purposes of this section, "on any portion of the State Highway System, interstate, or federal-aid primary system" shall mean a sign located within the controlled area which is visible from any portion of the main-traveled way of such system.

(5)(a) For each permit issued, the department shall furnish to the applicant a serially numbered permanent metal permit tag. The permittee is responsible for maintaining a valid

permit tag on each permitted sign facing at all times. The tag shall be securely attached to the sign apron at the end nearest the highway ~~facing~~ or, if there is no apron ~~facing~~, on the pole nearest the highway at a point not less than 2 feet or more than 4 feet below the sign facing; and it shall be attached in such a manner as to be plainly visible from the main-traveled way. For signs holding valid permits on July 1, 2008, the tag posting requirement shall be effective July 1, 2010. The permit will become void unless the permit tag is properly and permanently displayed at the permitted site within 30 days after the date of permit issuance. If the permittee fails to erect a completed sign on the permitted site within 270 days after the date on which the permit was issued, the permit will be void, and the department may not issue a new permit to that permittee for the same location for 270 days after the date on which the permit became void.

(b) If a permit tag is lost, stolen, or destroyed, the permittee to whom the tag was issued must apply to the department for a replacement tag. The department shall establish by rule a service fee for replacement tags in an amount that will recover the actual cost of providing the replacement tag. Upon receipt of the application accompanied by the ~~a~~ service fee ~~of $3~~, the department shall issue a replacement permit tag.

Section 21. Section 479.08, Florida Statutes, is amended to read:

479.08 Denial or revocation of permit.--The department has the authority to deny or revoke any permit requested or granted under this chapter in any case in which it determines that the

application for the permit contains knowingly false or misleading information. The department has the authority to revoke any permit granted under this chapter in any case in which ~~or that~~ the permittee has violated any of the provisions of this chapter, unless such permittee, within 30 days after the receipt of notice by the department, ~~corrects such false or misleading information~~ ~~and~~ complies with the provisions of this chapter. Any person aggrieved by any action of the department in denying or revoking a permit under this chapter may, within 30 days after receipt of the notice, apply to the department for an administrative hearing pursuant to chapter 120. If a timely request for hearing has been filed and the department issues a final order revoking a permit, such revocation shall be effective 30 days after the date of rendition. Except for department action pursuant to s. 479.107(1), the filing of a timely and proper notice of appeal shall operate to stay the revocation until the department's action is upheld.

Section 22. Subsection (2) of section 479.11, Florida Statutes, is amended to read:

479.11 Specified signs prohibited.--No sign shall be erected, used, operated, or maintained:

(2) Beyond 660 feet of the nearest edge of the right-of-way of any portion of the interstate highway system or the federal-aid primary highway system outside an urban area, if the advertising message or informative contents of the ~~which~~ sign are visible from the main traveled way ~~is erected for the purpose of its message being read from the main traveled way of such system~~, except as provided in ss. 479.111(1) and 479.16.

Section 23. Subsection (1), subsection (3), subsection (4), and subsection (5) of section 479.261, Florida Statutes, are amended to read:

479.261 Logo sign program.--

(1) The department shall establish a logo sign program for the rights-of-way of the interstate highway system to provide information to motorists about available gas, food, lodging, ~~and~~ camping, attractions, and other services which are approved by the Federal Highway Administration ~~at interchanges, through the use of business logos, and may include additional interchanges under the program. A logo sign for nearby attractions may be added to this program if allowed by federal rules~~.

(a) An attraction as used in this chapter is defined as an establishment, site, facility, or landmark which is open a minimum of 5 days a week for 52 weeks a year; ~~which charges an admission for entry;~~ which has as its principal focus family-oriented entertainment, cultural, educational, recreational, scientific, or historical activities; and which is publicly recognized as a bona fide tourist attraction. ~~However, the permits for businesses seeking to participate in the attractions logo sign program shall be awarded by the department annually to the highest bidders, notwithstanding the limitation on fees in subsection (5), which are qualified for available space at each qualified location, but the fees therefor may not be less than the fees established for logo participants in other logo categories.~~

(b) The department shall incorporate the use of RV-friendly markers on specific information logo signs for

establishments that cater to the needs of persons driving recreational vehicles. Establishments that qualify for participation in the specific information logo program and that also qualify as "RV-friendly" may request the RV-friendly marker on their specific information logo sign. An RV-friendly marker must consist of a design approved by the Federal Highway Administration. The department shall adopt rules in accordance with chapter 120 to administer this paragraph, including rules setting forth the minimum requirements that establishments must meet in order to qualify as RV-friendly. These requirements shall include large parking spaces, entrances, and exits that can easily accommodate recreational vehicles and facilities having appropriate overhead clearances, if applicable.

(c) The department is authorized to implement by rule a rotation-based logo program providing for the removal and addition of participating businesses in the program.

(3) Logo signs may be installed upon the issuance of an annual permit by the department or its agent and payment of a ~~an application and~~ permit fee to the department or its agent.

(4) The department may contract pursuant to s. 287.057 for the provision of services related to the logo sign program, including recruitment and qualification of businesses, review of applications, permit issuance, and fabrication, installation, and maintenance of logo signs. The department may reject all proposals and seek another request for proposals or otherwise perform the work. ~~If the department contracts for the provision of services for the logo sign program, the contract must require, unless the business owner declines, that businesses~~

~~that previously entered into agreements with the department to privately fund logo sign construction and installation be reimbursed by the contractor for the cost of the signs which has not been recovered through a previously agreed upon waiver of fees.~~ The contract also may allow the contractor to retain a portion of the annual fees as compensation for its services.

(5) Permit fees for businesses that participate in the logo program must be established in an amount not less than that sufficient to offset the total cost to the department for the program, including contract costs. The department shall provide the services in the most efficient and cost-effective manner through department staff or by contracting for some or all of the services. ~~Such annual permit fee shall not exceed $1,250.~~ Annual permit fees not to exceed $3,000 shall be set by department rule based upon factors such as population, traffic volume, market demand, and costs. The annual permit fees shall be phased in by rule over a 4-year period of time.

Section 24. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) of section 316.066, Florida Statutes, is reenacted to read:

316.066 Written reports of crashes.--

(3)(a) Every law enforcement officer who in the regular course of duty investigates a motor vehicle crash:

1. Which crash resulted in death or personal injury shall, within 10 days after completing the investigation, forward a written report of the crash to the department or traffic records center.

2. Which crash involved a violation of s. 316.061(1) or s. 316.193 shall, within 10 days after completing the investigation, forward a written report of the crash to the department or traffic records center.

3. In which crash a vehicle was rendered inoperative to a degree which required a wrecker to remove it from traffic may, within 10 days after completing the investigation, forward a written report of the crash to the department or traffic records center if such action is appropriate, in the officer's discretion.

Section 25. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, paragraph (b) of subsection (4) of section 316.072, Florida Statutes, is reenacted to read:

316.072 Obedience to and effect of traffic laws.--

(4) PUBLIC OFFICERS AND EMPLOYEES TO OBEY CHAPTER; EXCEPTIONS.--

(b) Unless specifically made applicable, the provisions of this chapter, except those contained in ss. 316.192, 316.1925, and 316.193, shall not apply to persons, teams, or motor vehicles and other equipment while actually engaged in work upon the surface of a highway, but shall apply to such persons and vehicles when traveling to or from such work.

Section 26. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, subsection (3) of section 316.1932, Florida Statutes, is reenacted to read:

316.1932 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.--

(3) 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 breath 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 27. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, subsection (4) of section 316.1933, Florida Statutes, is reenacted to read:

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

(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 28. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in references thereto, subsection (1) and paragraph (d) of

subsection (2) of section 316.1937, Florida Statutes, are reenacted 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 0.05 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.

(2) If the court imposes the use of an ignition interlock device, the court shall:

(d) Determine the person's ability to pay for installation of the device if the person claims inability to pay. If the court determines that the person is unable to pay for installation of the device, the court may order that any portion of a fine paid by the person for a violation of s. 316.193 shall be allocated to defray the costs of installing the device.

Section 29. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 316.1939, Florida Statutes, is reenacted to read:

316.1939 Refusal to submit to testing; penalties.--

(1) Any person who has refused to submit to a chemical or physical test of his or her breath, blood, or urine, as described in s. 316.1932, and whose driving privilege was previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood, and:

(b) Who was placed under lawful arrest for a violation of s. 316.193 unless such test was requested pursuant to s. 316.1932(1)(c);

commits a misdemeanor of the first degree and is subject to punishment as provided in s. 775.082 or s. 775.083.

Section 30. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, subsection (1) of section 316.656, Florida Statutes, is reenacted to read:

316.656 Mandatory adjudication; prohibition against accepting plea to lesser included offense.--

(1) Notwithstanding the provisions of s. 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of s. 316.193, for manslaughter resulting from the operation of a motor vehicle, or for vehicular homicide.

Section 31. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in references thereto, subsections (4) and (5) of section 318.143, Florida Statutes, are reenacted to read:

318.143 Sanctions for infractions by minors.--

(4) For the first conviction for a violation of s. 316.193, the court may order the Department of Highway Safety and Motor Vehicles to revoke the minor's driver's license until the minor is 18 years of age. For a second or subsequent conviction for such a violation, the court may order the Department of Highway Safety and Motor Vehicles to revoke the minor's driver's license until the minor is 21 years of age.

(5) A minor who is arrested for a violation of s. 316.193 may be released from custody as soon as:

(a) The minor is no longer under the influence of alcoholic beverages, of any chemical substance set forth in s. 877.111, or of any substance controlled under chapter 893, and is not affected to the extent that his or her normal faculties are impaired;

(b) The minor's blood-alcohol level is less than 0.05 percent; or

(c) Six hours have elapsed after the minor's arrest.

Section 32. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, subsection (3) of section 318.17, Florida Statutes, is reenacted to read:

318.17 Offenses excepted.--No provision of this chapter is available to a person who is charged with any of the following offenses:

(3) Driving, or being in actual physical control of, any vehicle while under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893, in violation of s. 316.193, or driving with an unlawful blood-alcohol level;

Section 33. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, paragraph (c) of subsection (1) of section 320.055, Florida Statutes, is reenacted to read:

320.055 Registration periods; renewal periods.--The following registration periods and renewal periods are established:

(1)

(c) Notwithstanding the requirements of paragraph (a), the owner of a motor vehicle subject to paragraph (a) who has had his or her driver's license suspended pursuant to a violation of s. 316.193 or pursuant to s. 322.26(2) for driving under the influence must obtain a 6-month registration as a condition of reinstating the license, subject to renewal during the 3-year period that financial responsibility requirements apply. The registration period begins the first day of the birth month of the owner and ends the last day of the fifth month immediately following the owner's birth month. For such vehicles, the department shall issue a vehicle registration certificate that is valid for 6 months and shall issue a validation sticker that

displays an expiration date of 6 months after the date of issuance. The license tax required by s. 320.08 and all other applicable license taxes shall be one-half of the amount otherwise required, except the service charge required by s. 320.04 shall be paid in full for each 6-month registration. A vehicle required to be registered under this paragraph is not eligible for the extended registration period under paragraph (b).

Section 34. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, subsection (2) of section 322.03, Florida Statutes, is reenacted to read:

322.03 Drivers must be licensed; penalties.--

(2) Prior to issuing a driver's license, the department shall require any person who has been convicted two or more times of a violation of s. 316.193 or of a substantially similar alcohol-related or drug-related offense outside this state within the preceding 5 years, or who has been convicted of three or more such offenses within the preceding 10 years, to present proof of successful completion of or enrollment in a department-approved substance abuse education course. If the person fails to complete such education course within 90 days after issuance, the department shall cancel the license. Further, prior to issuing the driver's license the department shall require such person to present proof of financial responsibility as provided in s. 324.031. For the purposes of this paragraph, a previous conviction for violation of former s. 316.028, former s.

316.1931, or former s. 860.01 shall be considered a previous conviction for violation of s. 316.193.

Section 35. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) of section 322.0602, Florida Statutes, is reenacted to read:

322.0602 Youthful Drunk Driver Visitation Program.--

(2) COURT-ORDERED PARTICIPATION IN PROGRAM; PREFERENCE FOR PARTICIPATION.--

(a) If a person is convicted of a violation of s. 316.193, the court may order, as a term and condition of probation in addition to any other term or condition required or authorized by law, that the probationer participate in the Youthful Drunk Driver Visitation Program.

Section 36. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, subsection (8) of section 322.21, Florida Statutes, is reenacted 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. 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.

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 37. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, subsection (5) of section 322.25, Florida Statutes, is reenacted to read:

322.25 When court to forward license to department and report convictions; temporary reinstatement of driving privileges.--

(5) For the purpose of this chapter, the entrance of a plea of nolo contendere by the defendant to a charge of driving while intoxicated, driving under the influence, driving with an unlawful blood-alcohol level, or any other alcohol-related or drug-related traffic offense similar to the offenses specified in s. 316.193, accepted by the court and under which plea the court has entered a fine or sentence, whether in this state or any other state or country, shall be equivalent to a conviction.

Section 38. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 322.26, Florida Statutes, is reenacted to read:

322.26 Mandatory revocation of license by department.--The department shall forthwith revoke the license or driving privilege of any person upon receiving a record of such person's conviction of any of the following offenses:

(1)(a) Murder resulting from the operation of a motor vehicle, DUI manslaughter where the conviction represents a subsequent DUI-related conviction, or a fourth violation of s. 316.193 or former s. 316.1931. For such cases, the revocation of the driver's license or driving privilege shall be permanent.

Section 39. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in references thereto, paragraph (a) of subsection (14) and subsection (16) of section 322.2615, Florida Statutes, are reenacted to read:

322.2615 Suspension of license; right to review.--

(14)(a) The decision of the department under this section or any circuit court review thereof may not be considered in any trial for a violation of s. 316.193, and a written statement submitted by a person in his or her request for departmental review under this section may not be admitted into evidence against him or her in any such trial.

(16) The department shall invalidate a suspension for driving with an unlawful blood-alcohol level or breath-alcohol level imposed under this section if the suspended person is found not guilty at trial of an underlying violation of s. 316.193.

Section 40. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in references thereto, subsections (15) and (19) of section 322.2616, Florida Statutes, are reenacted to read:

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

(15) The decision of the department under this section shall not be considered in any trial for a violation of s. 316.193, nor shall any written statement submitted by a person in his or her request for departmental review under this section be admissible into evidence against him or her in any such

trial. The disposition of any related criminal proceedings shall not affect a suspension imposed under this section.

(19) A violation of this section is neither a traffic infraction nor a criminal offense, nor does being detained pursuant to this section constitute an arrest. A violation of this section is subject to the administrative action provisions of this section, which are administered by the department through its administrative processes. Administrative actions taken pursuant to this section shall be recorded in the motor vehicle records maintained by the department. This section does not bar prosecution under s. 316.193. However, if the department suspends a person's license under s. 322.2615 for a violation of s. 316.193, it may not also suspend the person's license under this section for the same episode that was the basis for the suspension under s. 322.2615.

Section 41. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 322.264, Florida Statutes, is reenacted 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:

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

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

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) 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. 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 42. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in references thereto, paragraphs (a) and (c) of subsection (2) and subsection (4) of section 322.271, Florida Statutes, are reenacted to read:

322.271 Authority to modify revocation, cancellation, or suspension order.--

(2)(a) Upon such hearing, the person whose license has been suspended, canceled, or revoked may show that such suspension, cancellation, or revocation of his or her license causes a serious hardship and precludes the person's carrying out his or her normal business occupation, trade, or employment and that the use of the person's license in the normal course of his or her business is necessary to the proper support of the

person or his or her family. Except as otherwise provided in this subsection, the department shall require proof of the successful completion of the applicable department-approved driver training course operating pursuant to s. 318.1451 or DUI program substance abuse education course and evaluation as provided in s. 316.193(5). Letters of recommendation from respected business persons in the community, law enforcement officers, or judicial officers may also be required to determine whether such person should be permitted to operate a motor vehicle on a restricted basis for business or employment use only and in determining whether such person can be trusted to so operate a motor vehicle. If a driver's license has been suspended under the point system or pursuant to s. 322.2615, the department shall require proof of enrollment in the applicable department-approved driver training course or licensed DUI program substance abuse education course, including evaluation and treatment, if referred, and may require letters of recommendation described in this subsection to determine if the driver should be reinstated on a restricted basis. If such person fails to complete the approved course within 90 days after reinstatement or subsequently fails to complete treatment, if applicable, the department shall cancel his or her driver's license until the course and treatment, if applicable, is successfully completed, notwithstanding the terms of the court order or any suspension or revocation of the driving privilege. The department may temporarily reinstate the driving privilege on a restricted basis upon verification from the DUI program that the offender has reentered and is currently participating

in treatment and has completed the DUI education course and evaluation requirement. If the DUI program notifies the department of the second failure to complete treatment, the department shall reinstate the driving privilege only after notice of completion of treatment from the DUI program. The privilege of driving on a limited or restricted basis for business or employment use shall not be granted to a person who has been convicted of a violation of s. 316.193 until completion of the DUI program substance abuse education course and evaluations as provided in s. 316.193(5). Except as provided in paragraph (b), the privilege of driving on a limited or restricted basis for business or employment use shall not be granted to a person whose license is revoked pursuant to s. 322.28 or suspended pursuant to s. 322.2615 and who has been convicted of a violation of s. 316.193 two or more times or whose license has been suspended two or more times for refusal to submit to a test pursuant to s. 322.2615 or former s. 322.261.

(c) For the purpose of this section, a previous conviction of driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, or any other similar alcohol-related or drug-related offense outside this state or a previous conviction of former s. 316.1931, former s. 316.028, or former s. 860.01 shall be considered a previous conviction for violation of s. 316.193.

(4) Notwithstanding the provisions of s. 322.28(2)(e), a person whose driving privilege has been permanently revoked because he or she has been convicted of DUI manslaughter in

violation of s. 316.193 and has no prior convictions for DUI-related offenses may, upon the expiration of 5 years after the date of such revocation or the expiration of 5 years after the termination of any term of incarceration under s. 316.193 or former s. 316.1931, whichever date is later, petition the department for reinstatement of his or her driving privilege.

(a) Within 30 days after the receipt of such a petition, the department shall afford the petitioner an opportunity for a hearing. At the hearing, the petitioner must demonstrate to the department that he or she:

1. Has not been arrested for a drug-related offense during the 5 years preceding the filing of the petition;

2. Has not driven a motor vehicle without a license for at least 5 years prior to the hearing;

3. Has been drug-free for at least 5 years prior to the hearing; and

4. Has completed a DUI program licensed by the department.

(b) At such hearing, the department shall determine the petitioner's qualification, fitness, and need to drive. Upon such determination, the department may, in its discretion, reinstate the driver's license of the petitioner. Such reinstatement must be made subject to the following qualifications:

1. The license must be restricted for employment purposes for not less than 1 year; and

2. Such person must be supervised by a DUI program licensed by the department and report to the program for such supervision and education at least four times a year or

additionally as required by the program for the remainder of the revocation period. Such supervision shall include evaluation, education, referral into treatment, and other activities required by the department.

(c) Such person must assume the reasonable costs of supervision. If such person fails to comply with the required supervision, the program shall report the failure to the department, and the department shall cancel such person's driving privilege.

(d) If, after reinstatement, such person is convicted of an offense for which mandatory revocation of his or her license is required, the department shall revoke his or her driving privilege.

(e) The department shall adopt rules regulating the providing of services by DUI programs pursuant to this section.

Section 43. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in references thereto, subsection (2), paragraphs (a) and (c) of subsection (3), and subsection (4) of section 322.2715, Florida Statutes, are reenacted to read:

322.2715 Ignition interlock device.--

(2) For purposes of this section, any conviction for a violation of s. 316.193, a previous conviction for a violation of former s. 316.1931, or a conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, or any other similar alcohol-related or drug-related traffic offense is a conviction of driving under the influence.

(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 6 months for the first offense and for at least 2 years for a second offense.

(c) A third offense of driving under the influence which occurs within 10 years after a prior conviction for a violation of s. 316.193, the ignition interlock device shall be installed for a period of not less than 2 years.

(4) If the court fails to order the mandatory placement of the ignition interlock device or fails to order for the applicable period the mandatory placement of an ignition interlock device under s. 316.193 or s. 316.1937 at the time of imposing sentence or within 30 days thereafter, the department shall immediately require that the ignition interlock device be installed as provided in this section, except that consideration may be given to those individuals having a documented medical condition that would prohibit the device from functioning normally. This subsection applies to the reinstatement of the driving privilege following a revocation, suspension, or cancellation that is based upon a conviction for the offense of driving under the influence which occurs on or after July 1, 2005.

Section 44. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, subsection (2) of section 322.28, Florida Statutes, is reenacted to read:

322.28 Period of suspension or revocation.--

(2) In a prosecution for a violation of s. 316.193 or former s. 316.1931, the following provisions apply:

(a) Upon conviction of the driver, the court, along with imposing sentence, shall revoke the driver's license or driving privilege of the person so convicted, effective on the date of conviction, and shall prescribe the period of such revocation in accordance with the following provisions:

1. Upon a first conviction for a violation of the provisions of s. 316.193, except a violation resulting in death, the driver's license or driving privilege shall be revoked for not less than 180 days or more than 1 year.

2. Upon a second conviction for an offense that occurs within a period of 5 years after the date of a prior conviction for a violation of the provisions of s. 316.193 or former s. 316.1931 or a combination of such sections, the driver's license or driving privilege shall be revoked for not less than 5 years.

3. Upon a third conviction for an offense that occurs within a period of 10 years after the date of a prior conviction for the violation of the provisions of s. 316.193 or former s. 316.1931 or a combination of such sections, the driver's license or driving privilege shall be revoked for not less than 10 years.

For the purposes of this paragraph, a previous conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, or any other alcohol-related or drug-related traffic offense similar to the offense of driving under the influence as proscribed by s. 316.193 will be considered a previous conviction for violation of s. 316.193, and a conviction for violation of former s. 316.028, former s. 316.1931, or former s. 860.01 is considered a conviction for violation of s. 316.193.

(b) If the period of revocation was not specified by the court at the time of imposing sentence or within 30 days thereafter, and is not otherwise specified by law, the department shall forthwith revoke the driver's license or driving privilege for the maximum period applicable under paragraph (a) for a first conviction and for the minimum period applicable under paragraph (a) for any subsequent convictions. The driver may, within 30 days after such revocation by the department, petition the court for further hearing on the period of revocation, and the court may reopen the case and determine the period of revocation within the limits specified in paragraph (a).

(c) The forfeiture of bail bond, not vacated within 20 days, in any prosecution for the offense of driving while under the influence of alcoholic beverages, chemical substances, or controlled substances to the extent of depriving the defendant of his or her normal faculties shall be deemed equivalent to a conviction for the purposes of this paragraph, and the department shall forthwith revoke the defendant's driver's

license or driving privilege for the maximum period applicable under paragraph (a) for a first conviction and for the minimum period applicable under paragraph (a) for a second or subsequent conviction; however, if the defendant is later convicted of the charge, the period of revocation imposed by the department for such conviction shall not exceed the difference between the applicable maximum for a first conviction or minimum for a second or subsequent conviction and the revocation period under this subsection that has actually elapsed; upon conviction of such charge, the court may impose revocation for a period of time as specified in paragraph (a). This paragraph does not apply if an appropriate motion contesting the forfeiture is filed within the 20-day period.

(d) When any driver's license or driving privilege has been revoked pursuant to the provisions of this section, the department shall not grant a new license, except upon reexamination of the licensee after the expiration of the period of revocation so prescribed. However, the court may, in its sound discretion, issue an order of reinstatement on a form furnished by the department which the person may take to any driver's license examining office for reinstatement by the department pursuant to s. 322.282.

(e) The court shall permanently revoke the driver's license or driving privilege of a person who has been convicted four times for violation of s. 316.193 or former s. 316.1931 or a combination of such sections. The court shall permanently revoke the driver's license or driving privilege of any person who has been convicted of DUI manslaughter in violation of s.

316.193. If the court has not permanently revoked such driver's license or driving privilege within 30 days after imposing sentence, the department shall permanently revoke the driver's license or driving privilege pursuant to this paragraph. No driver's license or driving privilege may be issued or granted to any such person. This paragraph applies only if at least one of the convictions for violation of s. 316.193 or former s. 316.1931 was for a violation that occurred after July 1, 1982. For the purposes of this paragraph, a conviction for violation of former s. 316.028, former s. 316.1931, or former s. 860.01 is also considered a conviction for violation of s. 316.193. Also, a conviction of driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, or any other similar alcohol-related or drug-related traffic offense outside this state is considered a conviction for the purposes of this paragraph.

Section 45. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in references thereto, paragraph (a) of subsection (2) of section 322.282, Florida Statutes, is reenacted to read:

322.282 Procedure when court revokes or suspends license or driving privilege and orders reinstatement.--When a court suspends or revokes a person's license or driving privilege and, in its discretion, orders reinstatement as provided by s. 322.28(2)(d) or former s. 322.261(5):

(2)(a) The court shall issue an order of reinstatement, on a form to be furnished by the department, which the person may take to any driver's license examining office. The department

shall issue a temporary driver's permit to a licensee who presents the court's order of reinstatement, proof of completion of a department-approved driver training or substance abuse education course, and a written request for a hearing under s. 322.271. The permit shall not be issued if a record check by the department shows that the person has previously been convicted for a violation of s. 316.193, former s. 316.1931, former s. 316.028, former s. 860.01, or a previous conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, or any similar alcohol-related or drug-related traffic offense; that the person's driving privilege has been previously suspended for refusal to submit to a lawful test of breath, blood, or urine; or that the person is otherwise not entitled to issuance of a driver's license. This paragraph shall not be construed to prevent the reinstatement of a license or driving privilege that is presently suspended for driving with an unlawful blood-alcohol level or a refusal to submit to a breath, urine, or blood test and is also revoked for a conviction for a violation of s. 316.193 or former s. 316.1931, if the suspension and revocation arise out of the same incident.

Section 46. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 322.291, Florida Statutes, is reenacted to read:

322.291 Driver improvement schools or DUI programs; required in certain suspension and revocation cases.--Except as provided in s. 322.03(2), any person:

(1) Whose driving privilege has been revoked:

(a) Upon conviction for:

1. Driving, or being in actual physical control of, any vehicle while under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893, in violation of s. 316.193;

2. Driving with an unlawful blood- or breath-alcohol level;

3. Manslaughter resulting from the operation of a motor vehicle;

4. Failure 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;

5. Reckless driving; or

shall, before the driving privilege may be reinstated, present to the department proof of enrollment in a department-approved advanced driver improvement course operating pursuant to s. 318.1451 or a substance abuse education course conducted by a DUI program licensed pursuant to s. 322.292, which shall include a psychosocial evaluation and treatment, if referred. If the person fails to complete such course or evaluation within 90 days after reinstatement, or subsequently fails to complete treatment, if referred, the DUI program shall notify the department of the failure. Upon receipt of the notice, the department shall cancel the offender's driving privilege, notwithstanding the expiration of the suspension or revocation of the driving privilege. The department may temporarily

reinstate the driving privilege upon verification from the DUI program that the offender has completed the education course and evaluation requirement and has reentered and is currently participating in treatment. If the DUI program notifies the department of the second failure to complete treatment, the department shall reinstate the driving privilege only after notice of completion of treatment from the DUI program.

Section 47. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, paragraph (a) of subsection (9) of section 322.34, Florida Statutes, is reenacted to read:

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

(9)(a) A motor vehicle that is driven by a person under the influence of alcohol or drugs in violation of s. 316.193 is subject to seizure and forfeiture under ss. 932.701-932.707 and is subject to liens for recovering, towing, or storing vehicles under s. 713.78 if, at the time of the offense, the person's driver's license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence.

Section 48. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, subsection (3) of section 322.62, Florida Statutes, is reenacted to read:

322.62 Driving under the influence; commercial motor vehicle operators.--

(3) This section does not supersede s. 316.193. Nothing in this section prohibits the prosecution of a person who drives a

commercial motor vehicle for driving under the influence of alcohol or controlled substances whether or not such person is also prosecuted for a violation of this section.

Section 49. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in references thereto, paragraph (d) of subsection (2) and subsection (6) of section 322.63, Florida Statutes, are reenacted to read:

322.63 Alcohol or drug testing; commercial motor vehicle operators.--

(2) The chemical and physical tests authorized by this section shall only be required if a law enforcement officer has reasonable cause to believe that a person driving a commercial motor vehicle has any alcohol, chemical substance, or controlled substance in his or her body.

(d) The administration of one test under paragraph (a), paragraph (b), or paragraph (c) shall not preclude the administration of a different test under paragraph (a), paragraph (b), or paragraph (c). However, a urine test may not be used to determine alcohol concentration and a breath test may not be used to determine the presence of controlled substances or chemical substances in a person's body. Notwithstanding the provisions of this paragraph, in the event a Florida licensee has been convicted in another state for an offense substantially similar to s. 316.193 or to s. 322.62, which conviction was based upon evidence of test results prohibited by this paragraph, that out-of-state conviction shall constitute a conviction for the purposes of this chapter.

(6) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information relating to the alcohol content of a person's blood or the presence of chemical substances or controlled substances in a person's 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 or s. 322.62 upon request for such information.

Section 50. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in references thereto, subsections (1) and (2), paragraph (a) of subsection (7), paragraph (b) of subsection (8), and subsections (14) and (15) of section 322.64, Florida Statutes, are reenacted to read:

322.64 Holder of commercial driver's license; driving with unlawful blood-alcohol level; refusal to submit to breath, urine, or blood test.--

(1)(a) A law enforcement officer or correctional officer shall, on behalf of the department, disqualify from operating any commercial motor vehicle a person who while operating or in actual physical control of a commercial motor vehicle is arrested for a violation of s. 316.193, relating to unlawful blood-alcohol level or breath-alcohol level, or a person who has refused to submit to a breath, urine, or blood test authorized by s. 322.63 arising out of the operation or actual physical control of a commercial motor vehicle. Upon disqualification of the person, the officer shall take the person's driver's license and issue the person a 10-day temporary permit for the operation

of noncommercial vehicles only if the person is otherwise eligible for the driving privilege and shall issue the person a notice of disqualification. If the person has been given a blood, breath, or urine test, the results of which are not available to the officer at the time of the arrest, the agency employing the officer shall transmit such results to the department within 5 days after receipt of the results. If the department then determines that the person was arrested for a violation of s. 316.193 and that the person had a blood-alcohol level or breath-alcohol level of 0.08 or higher, the department shall disqualify the person from operating a commercial motor vehicle pursuant to subsection (3).

(b) The disqualification under paragraph (a) shall be pursuant to, and the notice of disqualification shall inform the driver of, the following:

1.a. The driver refused to submit to a lawful breath, blood, or urine test and he or she is disqualified from operating a commercial motor vehicle for a period of 1 year, for a first refusal, or permanently, if he or she has previously been disqualified as a result of a refusal to submit to such a test; or

b. The driver violated s. 316.193 by driving with an unlawful blood-alcohol level and he or she is disqualified from operating a commercial motor vehicle for a period of 6 months for a first offense or for a period of 1 year if he or she has previously been disqualified, or his or her driving privilege has been previously suspended, for a violation of s. 316.193.

2. The disqualification period for operating commercial vehicles shall commence on the date of arrest or issuance of notice of disqualification, whichever is later.

3. The driver may request a formal or informal review of the disqualification by the department within 10 days after the date of arrest or issuance of notice of disqualification, whichever is later.

4. The temporary permit issued at the time of arrest or disqualification will expire at midnight of the 10th day following the date of disqualification.

5. The driver may submit to the department any materials relevant to the arrest.

(2) Except as provided in paragraph (1)(a), the law enforcement officer shall forward to the department, within 5 days after the date of the arrest or the issuance of the notice of disqualification, whichever is later, a copy of the notice of disqualification, the driver's license of the person arrested, and a report of the arrest, including, if applicable, an affidavit stating the officer's grounds for belief that the person arrested was in violation of s. 316.193; the results of any breath or blood test or an affidavit stating that a breath, blood, or urine test was requested by a law enforcement officer or correctional officer and that the person arrested refused to submit; a copy of the citation issued to the person arrested; and the officer's description of the person's field sobriety test, if any. The failure of the officer to submit materials within the 5-day period specified in this subsection or subsection (1) shall not affect the department's ability to

consider any evidence submitted at or prior to the hearing. The officer may also submit a copy of a videotape of the field sobriety test or the attempt to administer such test.

(7) In a formal review hearing under subsection (6) or an informal review hearing under subsection (4), the hearing officer shall determine by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate the disqualification. The scope of the review shall be limited to the following issues:

(a) If the person was disqualified from operating a commercial motor vehicle for driving with an unlawful blood-alcohol level in violation of s. 316.193:

1. Whether the arresting law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a commercial motor vehicle in this state while he or she had any alcohol, chemical substances, or controlled substances in his or her body.

2. Whether the person was placed under lawful arrest for a violation of s. 316.193.

3. Whether the person had an unlawful blood-alcohol level as provided in s. 316.193.

(8) Based on the determination of the hearing officer pursuant to subsection (7) for both informal hearings under subsection (4) and formal hearings under subsection (6), the department shall:

(b) Sustain the disqualification for a period of 6 months for a violation of s. 316.193 or for a period of 1 year if the person has been previously disqualified from operating a

commercial motor vehicle or his or her driving privilege has been previously suspended as a result of a violation of s. 316.193. The disqualification period commences on the date of the arrest or issuance of the notice of disqualification, whichever is later.

(14) The decision of the department under this section shall not be considered in any trial for a violation of s. 316.193, s. 322.61, or s. 322.62, nor shall any written statement submitted by a person in his or her request for departmental review under this section be admissible into evidence against him or her in any such trial. The disposition of any related criminal proceedings shall not affect a disqualification imposed pursuant to this section.

(15) This section does not preclude the suspension of the driving privilege pursuant to s. 322.2615. The driving privilege of a person who has been disqualified from operating a commercial motor vehicle also may be suspended for a violation of s. 316.193.

Section 51. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, paragraph (f) of subsection (4) of section 323.001, Florida Statutes, is reenacted to read:

323.001 Wrecker operator storage facilities; vehicle holds.--

(4) The requirements for a written hold apply when the following conditions are present:

(f) The vehicle is impounded or immobilized pursuant to s. 316.193 or s. 322.34; or

Section 52. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in references thereto, section 324.023, Florida Statutes, is reenacted to read:

324.023 Financial responsibility for bodily injury or death.--In addition to any other financial responsibility required by law, every owner or operator of a motor vehicle that is required to be registered in this state, or that is located within this state, and who, regardless of adjudication of guilt, has been found guilty of or entered a plea of guilty or nolo contendere to a charge of driving under the influence under s. 316.193 after October 1, 2007, shall, by one of the methods established in s. 324.031(1), (2), or (3), establish and maintain the ability to respond in damages for liability on account of accidents arising out of the use of a motor vehicle in the amount of $100,000 because of bodily injury to, or death of, one person in any one crash and, subject to such limits for one person, in the amount of $300,000 because of bodily injury to, or death of, two or more persons in any one crash and in the amount of $50,000 because of property damage in any one crash. If the owner or operator chooses to establish and maintain such ability by posting a bond or furnishing a certificate of deposit pursuant to s. 324.031(2) or (3), such bond or certificate of deposit must be in an amount not less than $350,000. Such higher limits must be carried for a minimum period of 3 years. If the owner or operator has not been convicted of driving under the influence or a felony traffic offense for a period of 3 years from the date of reinstatement of driving privileges for a

violation of s. 316.193, the owner or operator shall be exempt from this section.

Section 53. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, section 324.131, Florida Statutes, is reenacted to read:

324.131 Period of suspension.--Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent of the limits stated in s. 324.021(7) and until the said person gives proof of financial responsibility as provided in s. 324.031, such proof to be maintained for 3 years. In addition, if the person's license or registration has been suspended or revoked due to a violation of s. 316.193 or pursuant to s. 322.26(2), that person shall maintain noncancelable liability coverage for each motor vehicle registered in his or her name, as described in s. 627.7275(2), and must present proof that coverage is in force on a form adopted by the Department of Highway Safety and Motor Vehicles, such proof to be maintained for 3 years.

Section 54. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, subsection (6) of section 327.35, Florida Statutes, is reenacted to read:

327.35 Boating under the influence; penalties; "designated drivers".--

(6) With respect to any person convicted of a violation of subsection (1), regardless of any other penalty imposed:

(a) For the first conviction, the court shall place the defendant on probation for a period not to exceed 1 year and, as a condition of such probation, shall order the defendant to participate in public service or a community work project for a minimum of 50 hours. The court must also, as a condition of probation, order the impoundment or immobilization of the vessel that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant. The impoundment or immobilization order may be dismissed in accordance with paragraph (e) or paragraph (f). The total period of probation and incarceration may not exceed 1 year.

(b) For the second conviction for an offense that occurs within a period of 5 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 10 days. The court must also, as a condition of probation, order the impoundment or immobilization of the vessel that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 30 days or for the unexpired

term of any lease or rental agreement that expires within 30 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant. The impoundment or immobilization order may be dismissed in accordance with paragraph (e) or paragraph (f). At least 48 hours of confinement must be consecutive.

(c) For the third or subsequent conviction for an offense that occurs within a period of 10 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 30 days. The court must also, as a condition of probation, order the impoundment or immobilization of the vessel that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant. The impoundment or immobilization order may be dismissed in accordance with paragraph (e) or paragraph (f). At least 48 hours of confinement must be consecutive.

(d) The court must at the time of sentencing the defendant issue an order for the impoundment or immobilization of a vessel. Within 7 business days after the date that the court issues the order of impoundment, and once again 30 business days before the actual impoundment or immobilization of the vessel, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of each

vessel, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the vessel.

(e) A person who owns but was not operating the vessel when the offense occurred may submit to the court a police report indicating that the vessel was stolen at the time of the offense or documentation of having purchased the vessel after the offense was committed from an entity other than the defendant or the defendant's agent. If the court finds that the vessel was stolen or that the sale was not made to circumvent the order and allow the defendant continued access to the vessel, the order must be dismissed and the owner of the vessel will incur no costs. If the court denies the request to dismiss the order of impoundment or immobilization, the petitioner may request an evidentiary hearing.

(f) A person who owns but was not operating the vessel when the offense occurred, and whose vessel was stolen or who purchased the vessel after the offense was committed directly from the defendant or the defendant's agent, may request an evidentiary hearing to determine whether the impoundment or immobilization should occur. If the court finds that either the vessel was stolen or the purchase was made without knowledge of the offense, that the purchaser had no relationship to the defendant other than through the transaction, and that such purchase would not circumvent the order and allow the defendant continued access to the vessel, the order must be dismissed and the owner of the vessel will incur no costs.

(g) All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the vessel or, if the vessel is leased or rented, by the person leasing or renting the vessel, unless the impoundment or immobilization order is dismissed.

(h) The person who owns a vessel that is impounded or immobilized under this paragraph, or a person who has a lien of record against such a vessel and who has not requested a review of the impoundment pursuant to paragraph (e) or paragraph (f), may, within 10 days after the date that person has knowledge of the location of the vessel, file a complaint in the county in which the owner resides to determine whether the vessel was wrongfully taken or withheld from the owner or lienholder. Upon the filing of a complaint, the owner or lienholder may have the vessel released by posting with the court a bond or other adequate security equal to the amount of the costs and fees for impoundment or immobilization, including towing or storage, to ensure the payment of the costs and fees if the owner or lienholder does not prevail. When the bond is posted and the fee is paid as set forth in s. 28.24, the clerk of the court shall issue a certificate releasing the vessel. At the time of release, after reasonable inspection, the owner or lienholder must give a receipt to the towing or storage company indicating any loss or damage to the vessel or to the contents of the vessel.

(i) A defendant, in the court's discretion, may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced pursuant to this

section in a residential alcoholism treatment program or a residential drug abuse treatment program. Any time spent in such a program must be credited by the court toward the term of imprisonment.

For the purposes of this section, any conviction for a violation of s. 316.193, a previous conviction for the violation of former s. 316.1931, former s. 860.01, or former s. 316.028, or a previous conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, driving with an unlawful breath-alcohol level, or any other similar alcohol-related or drug-related traffic offense, is also considered a previous conviction for violation of this section.

Section 55. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, subsection (1) of section 337.195, Florida Statutes, is reenacted to read:

337.195 Limits on liability.--

(1) In a civil action for the death of or injury to a person, or for damage to property, against the Department of Transportation or its agents, consultants, or contractors for work performed on a highway, road, street, bridge, or other transportation facility when the death, injury, or damage resulted from a motor vehicle crash within a construction zone in which the driver of one of the vehicles was under the influence of alcoholic beverages as set forth in s. 316.193, under the influence of any chemical substance as set forth in s.

877.111, or illegally under the influence of any substance controlled under chapter 893 to the extent that her or his normal faculties were impaired or that she or he operated a vehicle recklessly as defined in s. 316.192, it is presumed that the driver's operation of the vehicle was the sole proximate cause of her or his own death, injury, or damage. This presumption can be overcome if the gross negligence or intentional misconduct of the Department of Transportation, or of its agents, consultants, or contractors, was a proximate cause of the driver's death, injury, or damage.

Section 56. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, paragraph (c) of subsection (17) of section 440.02, Florida Statutes, is reenacted to read:

440.02 Definitions.--When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(17)

(c) "Employment" does not include service performed by or as:

1. Domestic servants in private homes.

2. Agricultural labor performed on a farm in the employ of a bona fide farmer, or association of farmers, that employs 5 or fewer regular employees and that employs fewer than 12 other employees at one time for seasonal agricultural labor that is completed in less than 30 days, provided such seasonal employment does not exceed 45 days in the same calendar year. The term "farm" includes stock, dairy, poultry, fruit, fur-

bearing animals, fish, and truck farms, ranches, nurseries, and orchards. The term "agricultural labor" includes field foremen, timekeepers, checkers, and other farm labor supervisory personnel.

3. Professional athletes, such as professional boxers, wrestlers, baseball, football, basketball, hockey, polo, tennis, jai alai, and similar players, and motorsports teams competing in a motor racing event as defined in s. 549.08.

4. Labor under a sentence of a court to perform community services as provided in s. 316.193.

5. State prisoners or county inmates, except those performing services for private employers or those enumerated in s. 948.036(1).

Section 57. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, paragraph (b) of subsection (7) of section 440.09, Florida Statutes, is reenacted to read:

440.09 Coverage.--

(7)

(b) If the employee has, at the time of the injury, a blood alcohol level equal to or greater than the level specified in s. 316.193, or if the employee has a positive confirmation of a drug as defined in this act, it is presumed that the injury was occasioned primarily by the intoxication of, or by the influence of the drug upon, the employee. If the employer has implemented a drug-free workplace, this presumption may be rebutted only by evidence that there is no reasonable hypothesis that the intoxication or drug influence contributed to the

injury. In the absence of a drug-free workplace program, this presumption may be rebutted by clear and convincing evidence that the intoxication or influence of the drug did not contribute to the injury. Percent by weight of alcohol in the blood must be based upon grams of alcohol per 100 milliliters of blood. If the results are positive, the testing facility must maintain the specimen for a minimum of 90 days. Blood serum may be used for testing purposes under this chapter; however, if this test is used, the presumptions under this section do not arise unless the blood alcohol level is proved to be medically and scientifically equivalent to or greater than the comparable blood alcohol level that would have been obtained if the test were based on percent by weight of alcohol in the blood. However, if, before the accident, the employer had actual knowledge of and expressly acquiesced in the employee's presence at the workplace while under the influence of such alcohol or drug, the presumptions specified in this subsection do not apply.

Section 58. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 493.6106, Florida Statutes, is reenacted to read:

493.6106 License requirements; posting.--

(1) Each individual licensed by the department must:

(d) Not be a chronic and habitual user of alcoholic beverages to the extent that her or his normal faculties are impaired; not have been committed under chapter 397, former chapter 396, or a similar law in any other state; not have been

found to be a habitual offender under s. 856.011(3) or a similar law in any other state; and not have had two or more convictions under s. 316.193 or a similar law in any other state within the 3-year period immediately preceding the date the application was filed, unless the individual establishes that she or he is not currently impaired and has successfully completed a rehabilitation course.

Section 59. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) of section 627.7275, Florida Statutes, is reenacted to read:

627.7275 Motor vehicle liability.--

(2)(a) Insurers writing motor vehicle insurance in this state shall make available, subject to the insurers' usual underwriting restrictions:

1. Coverage under policies as described in subsection (1) to any applicant for private passenger motor vehicle insurance coverage who is seeking the coverage in order to reinstate the applicant's driving privileges in this state when the driving privileges were revoked or suspended pursuant to s. 316.646 or s. 324.0221 due to the failure of the applicant to maintain required security.

2. Coverage under policies as described in subsection (1), which also provides liability coverage for bodily injury, death, and property damage arising out of the ownership, maintenance, or use of the motor vehicle in an amount not less than the limits described in s. 324.021(7) and conforms to the requirements of s. 324.151, to any applicant for private

passenger motor vehicle insurance coverage who is seeking the coverage in order to reinstate the applicant's driving privileges in this state after such privileges were revoked or suspended under s. 316.193 or s. 322.26(2) for driving under the influence.

Section 60. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, subsection (4) of section 627.758, Florida Statutes, is reenacted to read:

627.758 Surety on auto club traffic arrest bond; conditions, limit; bail bond.--

(4) Notwithstanding the provisions of s. 626.311 or chapter 648, any surety insurer identified in a guaranteed traffic arrest bond certificate or any licensed general lines agent of the surety insurer may execute a bail bond for the automobile club or association member identified in the guaranteed traffic arrest bond certificate in an amount not in excess of $5,000 for any violation of chapter 316 or any similar traffic law or ordinance except for driving under the influence of alcoholic beverages, chemical substances, or controlled substances, as prohibited by s. 316.193.

Section 61. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in references thereto, paragraph (f) of subsection (2) and paragraph (f) of subsection (10) of section 790.06, Florida Statutes, are reenacted to read:

790.06 License to carry concealed weapon or firearm.--

(2) The Department of Agriculture and Consumer Services shall issue a license if the applicant:

(f) Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under chapter 397 or under the provisions of former chapter 396 or has been convicted under s. 790.151 or has been deemed a habitual offender under s. 856.011(3), or has had two or more convictions under s. 316.193 or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;

(10) A license issued under this section shall be suspended or revoked pursuant to chapter 120 if the licensee:

(f) Is convicted of a second violation of s. 316.193, or a similar law of another state, within 3 years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;

Section 62. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in a reference thereto, subsection (2) of section 903.36, Florida Statutes, is reenacted to read:

903.36 Guaranteed arrest bond certificates as cash bail.--

(2) The execution of a bail bond by a licensed general lines agent of a surety insurer for the automobile club or

association member identified in the guaranteed traffic arrest bond certificate, as provided in s. 627.758(4), shall be accepted as bail in an amount not to exceed $5,000 for the appearance of the person named in the certificate in any court to answer for the violation of a provision of chapter 316 or a similar traffic law or ordinance, except driving under the influence of alcoholic beverages, chemical substances, or controlled substances, as prohibited by s. 316.193. Presentation of the guaranteed traffic arrest bond certificate and a power of attorney from the surety insurer for its licensed general lines agents is authorization for such agent to execute the bail bond.

Section 63. For the purpose of incorporating the amendment made by this act to section 316.193, Florida Statutes, in references thereto, paragraph (c) of subsection (4) of section 907.041, Florida Statutes, is reenacted to read:

907.041 Pretrial detention and release.--

(4) PRETRIAL DETENTION.--

(c) The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046, and any other relevant facts, that any of the following circumstances exists:

1. The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's appearance at subsequent proceedings;

2. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted

or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;

3. The defendant is charged with trafficking in controlled substances as defined by s. 893.135, that there is a substantial probability that the defendant has committed the offense, and that no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings; or

4. The defendant is charged with DUI manslaughter, as defined by s. 316.193, and that there is a substantial probability that the defendant committed the crime and that the defendant poses a threat of harm to the community; conditions that would support a finding by the court pursuant to this subparagraph that the defendant poses a threat of harm to the community include, but are not limited to, any of the following:

a. The defendant has previously been convicted of any crime under s. 316.193, or of any crime in any other state or territory of the United States that is substantially similar to any crime under s. 316.193;

b. The defendant was driving with a suspended driver's license when the charged crime was committed; or

c. The defendant has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver's license was suspended or revoked in violation of s. 322.34;

5. The defendant poses the threat of harm to the community. The court may so conclude, if it finds that the defendant is presently charged with a dangerous crime, that there is a substantial probability that the defendant committed

such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons.

6. The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed; or

7. The defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial.

Section 64. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1439 Motor Vehicle Sales Warranties

SPONSOR(S): Robaina and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1190

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

SUMMARY ANALYSIS

HB 1439 adds motorcycles to the types of motor vehicles covered by the Motor Vehicle Warranty Enforcement Act, also known as the "Lemon Law." The bill will give consumers who purchase new motorcycles additional remedies against a manufacturer for defects or conditions that impair the use, value or safety of the motorcycle.

The bill is effective July 1, 2008, and may have an indeterminate fiscal impact.

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

In 1988, the Florida Legislature substantially revised a law that makes car manufacturers responsible - under certain conditions - for replacing defective vehicles or refunding consumers' money. Commonly known as Florida's automobile "Lemon Law," the Motor Vehicle Warranty Enforcement Act (the "Act") established arbitration boards throughout the state to hear and settle complaints between car manufacturers and owners.[1] The Act is codified in Chapter 681, F.S.

The Act applies to any "motor vehicle," which is defined as "a new vehicle, propelled by power other than muscular power... and includes a recreational vehicle or a vehicle used as a demonstrator or leased vehicle... but does not include... off-road vehicles, trucks over 10,000 pounds..., motorcycles, mopeds, or the living facilities of recreational vehicles...." The Act is meant to protect consumers purchasing or leasing motor vehicles in Florida for personal use that have a manufacturing defect or non-conformity which substantially impairs the vehicle's value, use, or safety.

The Act operates as follows: If an authorized service agent is unable to repair a manufacturing defect after three attempts, or if the car is out of service for a total of 15 or more days while repairs are being made, a consumer has the right to file a motor vehicle defect notification by certified mail.

- If the complaint is based on three failed repair attempts, the manufacturer has 10 days after receipt of the letter to give the consumer the opportunity to take the vehicle in for final repairs within a reasonable time, and then has up to 10 days to remedy the problem once the car is in the shop. If the manufacturer does not comply with this procedure or the vehicle still has the same problems after the final repair attempts, the consumer is entitled to move to the next phase.

- If the complaint is based on the vehicle being out of service for 15 or more days, the manufacturer or its authorized agent has the opportunity to inspect or repair the vehicle. If the vehicle still does not conform to the warranty for a total of 30 or more days and the manufacturer has had the opportunity to repair, the consumer is entitled to move to the next phase.

Many manufacturers have informal dispute settlement programs certified by the state. If the processes above have not resolved the issue, the consumer must request a settlement through the manufacturer's program before requesting state arbitration. If the manufacturer has no such program or if the consumer is not satisfied after attempting the program, the consumer may notify the Florida Department of Agriculture and Consumer Services that he or she wishes to request a ruling by the New Motor Vehicle Arbitration Board. This request must be made within two years and 60 days from the

[1] This material adapted from *About the Florida Lemon Law Program,* Florida Department of Agriculture and Consumer Services, Division of Consumer Affairs, available online at the division's website, here: http://www.800helpfla.com/lemonlaw/lemon_text.html.

original date of delivery or within 30 days after final action by certified procedure, whichever date occurs later.

Under the informal dispute settlement program, a decision must be made within 40 days of filing a claim; otherwise the consumer may withdraw from the program and file with the state. If the New Motor Vehicle Arbitration Board accepts a consumer's request, it will hear the dispute within 40 days and render its decision within 60 calendar days of the date the request was approved.

If the board's decision is in the consumer's favor, the manufacturer has 40 calendar days to refund the purchase price of the vehicle plus collateral and incidental expenses or replace the vehicle with a new one. In either case, there will be a reasonable charge for usage.

Once the Arbitration Board rules on a case, either side may appeal the decision in a court of law. To protect the consumer, a judge may double or triple damages if the manufacturer appeals a case in bad faith.

According to the Florida Department of Agriculture and Consumer Affairs, "[t]he Lemon Law program has proven to be an effective means of recourse for Florida residents. Since the program's inception in 1988, Floridians have received over $198 million in refunds and replacement vehicles through the state Lemon Law arbitration program."

Proposed Changes

HB 1439 modifies the current definition of "motor vehicle" found in section 681.102, F.S., by including "a motorcycle" in the types of motor vehicles covered by the act, and removing "motorcycles" from the types of motor vehicles excluded from the act. This modification gives consumers who purchase new motorcycles additional remedies, under the Lemon Law, against a manufacturer for defects or conditions that impair the use, value or safety of the motorcycle.

The bill also provides a definition of "motorcycle" as "any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor or a moped."

C. SECTION DIRECTORY:

Section 1. Amends s. 681.102, F.S., clarifying that "motorcycle" is included in the definition of "motor vehicle;" removing "motorcycle" from the exclusions of the that definition; defining "motorcycle."

Section 2. 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:

The bill could have an indeterminate fiscal impact, based on the number of claims submitted to, and accepted for hearing by, the New Motor Vehicle Arbitration Board within the Department of Agriculture and Consumer Affairs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on consumers whose motor vehicles would now receive the protections of the Motor Vehicle Warranty Enforcement Act. Conversely, the bill may have a negative economic impact on manufacturers of motor vehicles that require coverage under the Act.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill's definition of "motorcycle" is identical to the definition of "motorcycle" contained in s. 320.01, F.S., relating to motor vehicles generally. In the event that the more general definition in Chapter 320, F.S., is modified by future legislation,[2] it may be advisable to replace the definition in this bill with a cross-reference to the s. 320.01, F.S. definition.

[2] *See, e.g.,* current HB 1111.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to motor vehicle sales warranties; amending s. 681.102, F.S.; defining the term "motorcycle;" providing that the provisions of the Motor Vehicle Warranty Enforcement Act apply to motorcycles; providing an effective date.

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

Section 1. Subsection (15) of section 681.102, Florida Statutes, is amended, present subsections (16) through (23) of that section are redesignated as subsections (17) through (24), respectively, and a new subsection (16) is added to that section, to read:

681.102 Definitions.--As used in this chapter, the term:

(15) "Motor vehicle" means a new vehicle, propelled by power other than muscular power, which is sold in this state to transport persons or property, and includes a motorcycle, a recreational vehicle, or a vehicle used as a demonstrator or leased vehicle if a manufacturer's warranty was issued as a condition of sale~~,~~ or the lessee is responsible for repairs, but does not include vehicles run only upon tracks, off-road vehicles, trucks over 10,000 pounds gross vehicle weight, ~~motorcycles,~~ mopeds, or the living facilities of recreational vehicles. "Living facilities of recreational vehicles" are those portions designed, used, or maintained primarily as living quarters and include, but are not limited to, the flooring, plumbing system and fixtures, roof air conditioner, furnace,

generator, electrical systems other than automotive circuits, the side entrance door, exterior compartments, and windows other than the windshield and driver and front passenger windows.

(16) "Motorcycle" means any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor or a moped.

Section 2. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1509 Community Service for Infractions of Noncriminal Traffic Offenses

SPONSOR(S): Braynon and others

TIED BILLS: **IDEN./SIM. BILLS:** HB 597, SB 858

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

SUMMARY ANALYSIS

HB 1509 provides that a person ordered to pay a civil penalty for a noncriminal traffic infraction may present evidence of a "demonstrable financial hardship." Upon a finding of such hardship, the court must allow the person to satisfy the civil penalty by participating in community service in lieu of payment. The bill also allows the court, at its discretion, to allow a person to participate in community service without a finding of financial hardship.

The bill specifies that either the federal minimum wage or the "prevailing wage rate" for a specified "trade or profession" may be used to determine a specific value for the community service, and provides a reporting mechanism between the agency overseeing the community service and the clerk of court authorized to collect payment from the offender.

HB 1509 states that a person ordered to pay a civil penalty for a non-criminal traffic infraction cannot be imprisoned for failing to pay such penalty if the person is unable to pay, and states that notwithstanding any other provision of law, a person's license cannot be suspended for failure to pay a civil penalty without a finding that person has the ability to pay.

The bill is effective July 1, 2008.

The fiscal impact of the bill is indeterminate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – The bill prevents the suspension of a driver's license for a person unable to pay a civil penalty, if the person proves an inability to pay such penalty; the person may perform community service, at the discretion of the court.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Traffic Infraction Penalties

Section 318.18, F.S., provides penalties for non-criminal traffic infractions, which typically must be paid within 30 days.[1] The penalties include:

- A $15 fine for pedestrian infractions, bicycle infractions, and certain other infractions involving persons under 14;[2]
- A $30 fine all non-moving violations; failure to update a driver's license address, certificate of title, or vehicle registration; and expiration of a driver's license;[3]
- Speeding fines ranging from $25 - $250, depending on the rate of excess speed, and including additional fines for exceeding the speed limit in a school zone, construction zone, or other special circumstance;[4]
- A $100 fine for failing to stop for a school bus,[5] or $200 for passing a school bus on the side from which children enter and exit, if the bus displays a stop signal;[6]
- A $100 fine for illegally parking in a handicap space;[7]
- A $100 fine for each failure to pay a toll when required;[8]
- A $100 fine for failing to obey railroad crossing signals;[9]
- A $25 fine for unlawfully operating an all-terrain vehicle under s. 316.2074, F.S.;[10]
- A $200 fine for overloading a vehicle or improperly securing a vehicle's load;[11]
- A $125 fine for failure to obey traffic signals generally, and red lights specifically;[12] and
- A $60 fine for any moving violation that is not otherwise specified and does not trigger a mandatory hearing.[13]

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[1] Section 318.14(4), F.S.
[2] Section 318.18(1)(a) – (c), F.S.
[3] Section 318.18(2), F.S.
[4] Section 318.18(3), F.S. Additional special circumstances are provided in s. 318.18(3)(c) – (h), F.S.
[5] Section 318.18(5)(a), F.S.
[6] Section 318.18(5)(b), F.S.
[7] Section 318.18(6), F.S.
[8] Section 318.18(7), F.S.
[9] Section 318.18(9), F.S.
[10] Section 318.18(10), F.S.
[11] Section 318.18(12), F.S.
[12] Section 318.18(15), F.S.
[13] Section 318.18(3)(a), F.S.

This section also contains additional costs to be added to the fines above. Clerks of court are authorized to collect:

- An additional $2.50 for every infraction, "to help pay for criminal justice education and training programs pursuant to s. 938.15, F.S.;"[14]
- An additional $3 for every infraction towards the Court Cost Clearing Trust Fund created by s. 928.01, F.S. and an additional $2 for every infraction to assist with criminal justice education for local government, pursuant to s. 938.15, F.S., when the penalty is assessed by a municipality or county;[15]
- An additional $3 for each pedestrian infraction, $16 for nonmoving traffic infractions, and $30 for moving traffic infractions, to be paid into the fine and forfeiture fund established pursuant to s. 142.01, F.S.[16]
- In Brevard, Bay, Alachua, and Pinellas counties, an additional $3 for every infraction to support their criminal justice selection centers or criminal justice access and assessment centers.[17]

In addition, many boards of county commissioners and other local governments are authorized to impose a surcharge of up to $15 for any infraction or violation to fund state court facilities.[18] Boards of county commissioners may also require by ordinance a $5 fine with any civil traffic penalty, to fund driver education programs.[19]

Failure to Pay Penalties

Section 318.18(8)(a), F.S., provides that any person who fails to comply with the court's requirements or who fails to pay civil penalties must pay an additional penalty of $12, $2.50 of which must be deposited in the General Revenue Fund, and $9.50 of which must be deposited in the Highway Safety Operating Trust Fund.

If a person persists in failing to pay a civil penalty, the person's driver's license is eventually suspended pursuant to s. 318.15, F.S. The clerk of court is directed to notify the Department of Highway Safety and Motor Vehicles, Division of Driver's Licenses within 10 days of the person's failure to pay. Upon receipt, the Department immediately issues a suspension effective 20 days after mailing to the person. The person's privilege to drive is not restored until the person complies with the provisions of s. 318.18, F.S., and pays a service charge of $47.50 to the clerk, thereby clearing the suspension.[20]

Financial Hardship

Section 318.18(8)(b), F.S., provides that any person who fails to comply with the court's requirements "due to demonstrable financial hardship shall be authorized to satisfy such civil penalties by public works or community service."

The community service is presumed to be valued "at the rate of the minimum wage," and credited toward payment of the person's civil penalties. However, if the person has a "trade or profession for which there is a community service need and application," the person may be credited not at the minimum wage, but at the "average standard wage for such trade or profession."

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[14] Section 318.18(11)(c), F.S.
[15] Section 318.18(11)(d), F.S.
[16] Section 318.18(11)(a), F.S.
[17] Section 318.18(11)(b), F.S.
[18] *See* Section 318.18(13)(a) and 318.18(14), F.S.
[19] Section 318.1215, F.S.
[20] Section 318.15(2), F.S. The person must otherwise be in compliance with Chapter 322, F.S., regarding driver's licenses.

Even if a person does not demonstrate financial hardship, the person "may also, at the discretion of the court, be authorized to satisfy such civil penalties by public works or community service in the same manner."

By way of comparison, pursuant to s. 938.30, F.S., a statute regarding criminal penalties, a court may require a person liable for payment of an obligation to appear and be examined under oath concerning the person's financial ability to pay the obligation. The judge may convert the statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining a person's inability to pay. However, this criminal statute also allows for judicial liens on non-exempt property (forfeiture), payment plans, and other judicial remedies to make victims whole, and allows the court to charge the convicted person with associated costs related to these collection actions.

Community Service "Valuation"

Community service is valued in various ways in different sections of the Florida Statutes. For example, s. 316.193, F.S., regarding driving under the influence, states that a first conviction penalty must include at least 50 hours of community service; however, these hours may be "bought out" at a rate of $10 per hour, if the judge makes certain determinations. Section 569.11, F.S., regarding underage possession of tobacco products or attempts to purchase tobacco products, states that violations are punishable by 16 hours of community service, or a $25 fine – a conversation rate of just over $1.56 per hour. Under s. 806.13, F.S., a minor violating certain prohibitions against graffiti may have his or her driver's license suspended, but in hardship cases may "buy back" his or her license at the rate of one hour of community service per day of driving privileges.[21]

Proposed Changes

HB 1509 creates a new section 318.185, F.S. The new section provides that a person ordered to pay a civil penalty for a noncriminal traffic infraction may present evidence of a "demonstrable financial hardship." Upon a finding of such hardship, the court "shall allow the person to satisfy the civil penalty by participating in community service..." The bill also allows the court, in its discretion, to allow an offender to participate in community service without a finding of financial hardship.

The bill defines "community service" as "uncompensated labor for a community service agency," and defines a "community service agency" as a:

- not-for-profit corporation,
- community organization,
- charitable organization,
- public officer,
- the state or any political subdivision of the state, or
- any other body the purpose of which is to improve the quality of life or social welfare of the community and which agrees to accept community service from persons unable to pay civil penalties for noncriminal traffic infractions.

HB 1509 values community service at the "specified hourly credit rate per hour." This phrase is defined as either:

- "The wage rate specified in 29 U.S.C. 206(a)(1) under the federal Fair Labor Standards Act of 1938, that is then in effect and that an employer subject to that provision must pay per hour to each employee who is subject to that provision," [*i.e.*, the federal minimum wage], or

[21] In other words, a minor whose license is suspended for 120 days for a graffiti violation, who is able to show a hardship reason to keep the license, may perform 120 hours of community service in lieu of the 120 days' license suspension. The statute expresses a preference that the community service be at least 100 hours, and be directly related to cleaning graffiti from public areas.

- If the person has a trade or profession for which there is a need from a community service agency, the "prevailing wage rate" for such trade or profession.

The community service performed under the bill must be reported by the community service agency to the clerk of court in a report on official letterhead, bearing the signature of the person designated to represent the community service agency. When the value of the community service reaches the amount of the fine, the clerk shall so certify to the court, and the clerk shall report the fine as paid.

HB 1509 also states that a person ordered to pay a civil penalty for a non-criminal traffic infraction cannot be imprisoned for failing to pay such penalty if the person is unable to pay.

Notwithstanding any other provision of law, the bill prevents a person's license from being suspended for failure to pay a civil penalty without a finding that person has the ability to pay.

C. SECTION DIRECTORY:

Section 1. Creates s. 318.185, F.S., requiring a court to allow a person to satisfy a civil penalty for certain infractions by participating in community service if the person demonstrates a financial hardship, or if the court otherwise deems community serve appropriate; providing certain wage rates regarding the service performed; providing responsibilities for community service agencies; prohibiting the imprisonment of a person who defaults on the payment of a civil penalty because the person does not have the ability to pay the civil penalty; defining the terms "community service" and "community service agency."

Section 2. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS, below.

2. Expenditures:

   See FISCAL COMMENTS, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS, below.

2. Expenditures:

   See FISCAL COMMENTS, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on indigent drivers who commit traffic violations.

D. FISCAL COMMENTS:

The bill may have an indeterminate effect on the revenues and expenditures of state and local court systems. It is unclear how many potential hardship cases might request a "conversion" of their civil penalty into community service hours. As a result, the secondary impacts (*e.g.* the decrease in the amount of revenue collected from civil penalties, additional costs to clerks of court to implement and verify the accurate tracking of legitimate community service hours, etc.) are similarly difficult to estimate.

Community Service Agencies, as defined by the bill, could benefit from additional "free" labor to the extent that judges authorize community service hours in lieu of payment of civil penalties.

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:

Portions of the bill appear to exist, in large part, in current statute, specifically in s. 318.18(8)(b), F.S.

The bill states that a person ordered to pay a civil penalty for a non-criminal traffic infraction cannot be imprisoned for failing to pay such penalty if the person is unable to pay. As traffic infractions are specifically non-criminal offenses, imprisonment is not authorized under current statute.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to community service for infractions of noncriminal traffic offenses; creating s. 318.185, F.S.; requiring a court to allow a person to satisfy a civil penalty for an infraction of a noncriminal traffic offense by participating in community service if the person is unable to pay the civil penalty due to a demonstrable financial hardship; authorizing a court to allow a person to participate in community service even if the person does not demonstrate financial hardship; providing that a person participating in community service shall receive credit for the civil penalty at the specified hourly credit rate per hour of community service performed or at the prevailing wage rate for a trade or profession; defining the term "specified hourly credit rate"; providing responsibilities for community service agencies; prohibiting the imprisonment of a person who defaults on the payment of a civil penalty because the person does not have the ability to pay the civil penalty; defining the terms "community service" and "community service agency"; providing an effective date.

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

Section 1. Section 318.185, Florida Statutes, is created to read:

318.185 Civil penalties for noncriminal traffic infractions; inability to pay; community service.--

(1)(a) If a person has been ordered to pay a civil penalty for a noncriminal traffic infraction and the person is unable to comply with the court's order due to demonstrable financial hardship, the court shall allow the person to satisfy the civil penalty by participating in community service until the civil penalty is paid.

(b) If a person has been ordered to pay a civil penalty for a noncriminal traffic infraction but cannot demonstrate financial hardship, a person may also, at the discretion of the court, be authorized to satisfy the civil penalty by participating in community service until the civil penalty is paid.

(2)(a) If a court orders a person to perform community service, the person shall receive credit for the civil penalty at the specified hourly credit rate per hour of community service performed, and each hour of community service performed shall reduce the civil penalty by that amount.

(b) As used in this subsection, the term "specified hourly credit rate" means the wage rate that is specified in 29 U.S.C. 206(a)(1) under the federal Fair Labor Standards Act of 1938, that then is in effect, and that an employer subject to that provision must pay per hour to each employee who is subject to that provision.

(c) However, if a person ordered to perform community service has a trade or profession for which there is a community service need, the specified hourly credit rate for each hour of community service performed by that person shall be the average

prevailing wage rate for the trade or profession that the community service agency needs.

(3)(a) The community service agency supervising the person shall record the number of hours of community service completed and the date the community service hours were completed. The community service agency shall submit the data to the clerk of court on the letterhead of the community service agency, which must also bear the signature of the person designated to represent the community service agency.

(b) When the number of community service hours completed by the person equals the amount of the civil penalty, the clerk of court shall certify this fact to the court. Thereafter, the clerk of court shall record in the case file that the civil penalty has been paid in full.

(4) A person ordered to pay a civil penalty for a noncriminal traffic infraction may not be imprisoned for defaulting on payment of the civil penalty if the person does not have the ability to pay the civil penalty. Furthermore, notwithstanding any other law, a person's driver's license may not be suspended for failing to pay the civil penalty without a finding that the person has the ability to pay the civil penalty.

(5) As used in this section, the term:

(a) "Community service" means uncompensated labor for a community service agency.

(b) "Community service agency" means a not-for-profit corporation, community organization, charitable organization, public officer, the state or any political subdivision of the

state, or any other body the purpose of which is to improve the quality of life or social welfare of the community and which agrees to accept community service from persons unable to pay civil penalties for noncriminal traffic infractions.

Section 2. This act shall take effect July 1, 2008.