

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	CS/CS/HB 7125	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Economic Affairs Committee; Transportation & Economic Development Appropriations Subcommittee; Transportation & Highway Safety Subcommittee; Raburn; Campbell and others (CS/CS/SB 1458)	114 Y's	1 N's
<b>COMPANION BILLS:</b>		<b>GOVERNOR'S ACTION:</b>	Pending

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### SUMMARY ANALYSIS

CS/CS/HB 7125 passed the House on April 25, 2013. The bill was amended by the Senate on May 2, 2013, and subsequently passed the House on May 2, 2013. The bill is a broad, omnibus transportation bill that makes numerous changes to law administered by the Florida Department of Highway Safety and Motor Vehicles (DHSMV). In addition to other substantive, technical, and conforming changes, the bill:

- Revises state law to mirror federal law with respect to commercial motor vehicles;
- Reclassifies Florida Highway Patrol captains to Select Exempt Service;
- Revises Florida's red light camera statute;
- Clarifies DHSMV's rulemaking authority over driver improvement courses;
- Requires DHSMV to conduct a pilot program for rebuilt inspections to be offered by the private sector;
- Allows a motor vehicle e-title to remain electronic when transferred during a private, casual sale;
- Requires a person to settle the debt created by a prior insufficient funds check before allowing that person to conduct certain future transactions with DHSMV;
- Provides motor vehicle dealers the option of applying for two-year dealer licenses;
- Authorizes administrative driver license suspension hearings to be conducted via telephone;
- Lowers the ignition interlock device fail-rate to 0.025 breath-alcohol content (BAC) from 0.05 BAC;
- Clarifies that DUI convictions adjudicated on the same date, but that arise from separate arrest dates, constitute separate convictions under Florida's DUI law;
- Allows a person that has been arrested for DUI to waive his or her right to a formal hearing and receive a driver license restricted to business purposes only, if otherwise eligible;
- Creates new specialty license plates;
- Prevents a private entity from swiping a person's driver license or identification card except under certain, limited circumstances; and
- Authorizes a motorist to display his or her proof of automobile insurance in a paper or electronic format.

For the 2013-2014 fiscal year, the bill appropriates \$400,000 in recurring funds from the General Inspection Trust Fund in the Department of Agriculture and Consumer Services' Oyster Planting appropriation category, and \$300,000 in recurring funds from the Marine Resources Conservation Trust Fund in the Florida Fish and Wildlife Conservation Commission (FWC) to the FWC's Boating Safety Education Program appropriation category. This funding results from a reduction in the amount of vessel registration fee revenues retained by DHSMV for administering the vessel registration program

Other provisions in the bill will have an indeterminate fiscal impact on state and local government revenues and expenditures.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2013.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7125z.THSS

DATE: May 14, 2013

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **International Registration Plan (Plan)** (Sections 2, 16, 27, 29, 30, 31)

##### Current Situation

The Plan is a special plan for registering vehicles that must travel in two or more member jurisdictions; specifically, the Plan is a registration reciprocity agreement among states of the United States, the District of Columbia and the provinces of Canada providing for payment of apportionable fees on the basis of total distance traveled in all jurisdictions.

All commercial motor vehicles domiciled in Florida and engaged in interstate commerce must register under the provisions of the Plan and must display apportioned license plates.<sup>1</sup>

Under the Plan, interstate truck operators are required to file an application with their base jurisdiction. The base jurisdiction, in turn, issues one registration cab card and one tag for the vehicle. In member jurisdictions, the single apportioned license plate and cab card are the only registration credentials required to operate interstate and intrastate. The cab card indicates all jurisdictions and weights for which the carrier paid apportioned fees.

All jurisdictions have agreed to allow one jurisdiction to collect apportioned registration fees for each jurisdiction at one time. These fees are then divided among the other jurisdictions according to:

- percentage of mileage traveled in each jurisdiction;
- vehicle identification information; and
- maximum weight.

Florida law inconsistently uses the terms 'apportioned motor vehicle' and 'apportionable vehicle' when referring to the Plan.

##### Effect of Proposed Change

The bill amends ss. 207.002, 316.545, 320.01, 320.03, 320.071, and 320.0715, F.S., to correct the inconsistent terms and references with regard to the International Registration Plan. The bill also slightly revises the gross vehicle weight (from 26,001 pounds to 26,000 pounds) for purposes of defining the term 'apportionable vehicle'. These provisions have no fiscal impact.

#### **DUI and Ignition Interlock Devices (IID)** (Sections 12, 56 – 61, 64)

*Lowers the IID threshold to 0.025 BAC from 0.05 BAC* (Section 12)

##### Current Situation

In Florida, an IID is required for all repeat DUI offenders.<sup>2</sup> An IID is required for first-time DUI offenders in two cases: (1) if the offender's BAC is 0.15 or higher; or (2) if children under 18 are in the vehicle at the time of the offense.<sup>3</sup> Before starting a vehicle with an IID installed, the driver must blow into a breathalyzer tube. If the IID detects a BAC above the pre-set maximum level, the IID will prevent the vehicle from starting. By statute, this level is set at 0.05 BAC, or as otherwise set by the court.<sup>4</sup>

Additionally, modern IIDs conduct randomized tests while the vehicle is being operated in order to help ensure that the driver did not use another person's breath sample to start the car, or did not begin drinking after starting the vehicle; for example, by drinking in a bar while leaving the vehicle running. If

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<sup>1</sup> s. 320.0715, F.S.

<sup>2</sup> s. 316.193(2), F.S.

<sup>3</sup> s. 316.193(4), F.S.

<sup>4</sup> s. 316.1937(1), F.S.

the IID detects BAC above the pre-set level during one of these tests, the IID will not stop or disable the engine, but will record the violation. When violations occur, the IID must be checked and reset by the IID servicer and the record will be sent to the proper authorities.

The offending driver pays for the installation, maintenance, and monitoring of the IID. However, Florida law contains provisions for those the court determines are unable to pay. For example, the court may order that any portion of a fine paid as a result of a DUI offense be counted against installation costs.<sup>5</sup> The cost (plus tax) to the driver for an ignition interlock device is:

- \$75.00 for installation;
- \$72.50 for monthly monitoring and calibration; and
- \$100 refundable deposit or a \$5 monthly insurance charge.<sup>6</sup>

In addition to the above, DHSMV receives a \$12 interlock fee for each IID installation. This fee is deposited into the Highway Safety Operating Trust Fund.

With regard to attempts to circumvent the IID, s. 316.1937, F.S., prohibits the following acts:

- tampering with or circumventing the operation of an IID;
- requesting or soliciting another person to blow into the IID for the purpose of starting or operating the motor vehicle;
- blowing into an IID for the purpose of starting or operating the motor vehicle for another; and
- knowingly leasing or lending a motor vehicle to a person who has been required to have an IID installed on his or her motor vehicle.<sup>7</sup>

A violation of the above carries a one year driver license suspension.<sup>8</sup> A subsequent violation of the above during the same period of IID installation carries a five year license suspension.<sup>9</sup> If a person commits any of the prohibited acts specified above and is not a licensed driver, he or she will be subject to a fine between \$250 and \$500 for each violation.<sup>10</sup>

Currently, Florida and New Jersey are the only states that set the pre-set level at 0.05 BAC. Twenty-four states are currently at 0.025 BAC.

#### Effect of Proposed Change

The bill lowers the statutory pre-set level on an IID to 0.025 BAC from 0.05 BAC. However, the bill does not change a court's discretionary authority to set its own threshold level; that discretion remains with the court. According to DHSMV, the proposed change may increase the number of IID violators being monitored by DHSMV.

#### *Temporary driver license reinstatement (Section 56)*

#### Current Situation

Currently, s. 322.25(7), F.S., allows a driver convicted of DUI to obtain a court order reinstating the driver's driving privilege on a temporary basis, provided the driver completes an approved driver training and/or substance abuse course (course must be completed prior to issuance). The permit is valid for no more than 45-days and driving privileges are restricted to business or employment purposes only. In practice, however, DHSMV relies on ss. 322.271 and 322.28, F.S., as part of the more detailed "Florida DUI Law", to grant a driver convicted of DUI a "hardship" license for business or employment purposes only if the driver has met specified criteria.

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<sup>5</sup> s. 316.1937(2)(d), F.S.

<sup>6</sup> See DHSMV's website at <http://www.flhsmv.gov/ddl/iid.html> (Last viewed 3/5/13).

<sup>7</sup> s. 316.1937(6), F.S.

<sup>8</sup> s. 316.1937(5)(a), F.S.

<sup>9</sup> Id.

<sup>10</sup> s. 316.1937(5)(b), F.S.

In light of the more detailed “Florida DUI Law”, s. 322.25(7), F.S., is never used. According to DHSMV’s analysis on the bill, no court orders have been issued under this section since 1982.<sup>11</sup>

#### Effect of Proposed Change

The bill repeals s. 322.25(7), F.S., in favor of the more detailed “Florida DUI Law”. This provision has no fiscal impact.

*Driver license suspension hearings before the Bureau of Administrative Review (Sections 57, 58, 64)*

#### Current Situation

Florida law sets varying administrative and criminal penalties for each DUI arrest and conviction. Penalties may include jail time, a fine, and various periods of driver license suspension or revocation. In the case of an administrative driver license suspension, DHSMV does not have statutory authority to conduct hearings before the Bureau of Administrative Review via telephone or other audio/visual means.

Hearing officers that conduct formal or informal administrative driver license suspension hearings must be DHSMV employees. In formal hearings, the hearing officer is authorized to administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas for officers and witnesses to appear at the hearing, question witnesses, and make a ruling on the suspension.

Formal hearings may be conducted upon a review of reports submitted by law enforcement (including breath technicians), however, the respondent licensee may subpoena these and other individuals as well. Subpoenaed witnesses often fail to appear. When this happens, the current process requires the respondent licensee to seek enforcement of the subpoena by filing a separate new case in circuit court.

#### Effect of Proposed Change

The bill amends ss. 322.2615, 322.2616, and 322.64, F.S., to authorize DHSMV to conduct administrative driver license suspension hearings before the Bureau of Administrative Review via “communications technology”, but doesn’t define the term. This provision is expected to have an indeterminate positive fiscal impact due to anticipated savings on travel time and fuel expenditures. However, the proposed change may lead to the elimination of an unknown number of full-time equivalent positions (FTEs) within DHSMV’s Bureau of Administrative Review.

The bill removes the requirement that hearing officers conducting formal or informal administrative driver license suspension hearings be employees of the department. Rather, the bill merely requires the department to designate a hearing officer.

The bill specifies that the failure of a subpoenaed witness to appear at the formal hearing does not – in and of itself – provide sufficient grounds to invalidate the suspension, unless the witness is the arresting officer or breathe technician. In instances where a subpoenaed witness (other than the arresting officer or breath technician) fails to appear at the formal hearing, the bill allows the respondent licensee to file a subpoena enforcement action in the licensee’s existing criminal case, in lieu of requiring enforcement through the filing of, and payment of fees for, a separate, new case in circuit court – although that will remain an option.

The bill conforms a cross-reference in s. 322.64, F.S.

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<sup>11</sup> See DHSMV’s agency bill analysis for SB 1458 (HB 7125). A copy of the agency bill analysis is on file with the Florida House of Representatives, Transportation & Highway Safety Subcommittee.

Current Situation

Under Florida law, an arrest for DUI carries administrative penalties as well as possible criminal penalties. Upon arrest, the licensee will be given a notice of suspension and, if eligible, a 10-day temporary driving permit.<sup>12</sup> Pursuant to the notice of suspension, the licensee's driver license will be administratively suspended for the following period:

- For a refusal to submit to a lawful breath, blood, or urine test:
  - 1 year for a first refusal.
  - 18 months if the licensee has a prior refusal.
- For an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher:
  - 6 months for a first offense.
  - 1 year for a second or subsequent offense.<sup>13</sup>

The licensee may request a formal or informal review of the suspension within 10 days after issuance of the notice of suspension.

An informal review consists solely of an examination by DHSMV of the materials submitted by the law enforcement officer (breath, blood, or urine test results, affidavit, etc.) and licensee; the law enforcement officer's presence is not required at the informal review.

If the licensee requests a formal review, DHSMV must schedule it within 30 days after receiving the request. The formal review is held before a DHSMV hearing officer that is authorized to administer oaths, issue subpoenas, examine witnesses, take testimony, receive relevant evidence, regulate the course and conduct of the hearing, and make a ruling on the driver license suspension. In a formal review hearing, the formal review hearing officer must determine by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate the driver license suspension. The scope of review is limited to the following issues:

- If the licensee's driver license was suspended for driving with an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher:
  - Whether the law enforcement officer had probable cause to believe that the person whose driver license was suspended was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances.
  - Whether the person whose driver license was suspended had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher.
- If the licensee's driver license was suspended for refusal to submit to a breath, blood, or urine test:
  - Whether the law enforcement officer had probable cause to believe that the person whose driver license was suspended was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances.
  - Whether the licensee refused to submit to any such test after being requested to do so by a law enforcement officer.
  - Whether the licensee was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

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<sup>12</sup> s. 322.2615(1)(a), F.S.

<sup>13</sup> ss. 322.2615(1)(b)1.a. and 322.2615(1)(b)1.b., F.S.

DHSMV must send notice of the formal review hearing officer's decision as to whether sufficient cause exists to sustain, amend, or invalidate the driver license suspension within seven business days after a formal review hearing. If the suspension is sustained, the licensee may be eligible for a "hardship" driver license that allows driving, but restricts the privilege to "business purposes only." However, there is a waiting period. If the licensee failed to submit to a breath, blood, or urine test and the driver license suspension is sustained, the waiting period is 90 days; if the licensee did submit to a breath, blood, or urine test and was found to have a blood-alcohol level or breath-alcohol level of 0.08 or higher, and the driver license suspension is sustained, the waiting period is 30 days.

According to DHSMV, approximately 40,000 people are arrested for DUI each year, and the overwhelming majority of those that request a formal review hearing end up having their driver license suspensions sustained. Some of these licensees sit out the applicable waiting period and are issued a "hardship" driver license, however, some do not.

With regard to fees, DHSMV charges a \$25 fee for the formal review hearing, which is deposited into the Highway Safety Operating Trust Fund, a \$48 fee for the "hardship" driver license, which is deposited into the General Revenue Fund – plus a \$12 fee, which is deposited into the Highway Safety Operating Trust Fund, to place the "business purposes only" restriction on the driver license.

#### Effect of Proposed Changes

The bill amends s. 322.271, F.S., to allow a person that has been arrested for DUI to waive his or her right to a formal review hearing and receive a driver license restricted to business purposes only, if eligible, without having to sit out the applicable 30 or 90 day period. Because the overwhelming majority of licensees that currently request a formal review end up having their driver license suspensions sustained, waiver of this hearing will result in a cost savings for DHSMV and allow licensees to driver legally sooner. Under the bill, the licensee would still pay all applicable fees, but would not have to sit out the requisite waiting period. The exact fiscal impact on state funds is indeterminate, but positive.

#### *IID medical waiver (Section 60)*

#### Current Situation

Installation of an ignition interlock device (IID) may be required in certain instances for drivers convicted of DUI. In these cases, IID installation is in conjunction with a driver having his or her driving privileges reinstated, but restricted to business or employment purposes only. Before starting a motor vehicle with an IID installed, the driver must blow into a breathalyzer tube. If the IID detects a blood-alcohol content level above the pre-set minimum, the IID will prevent the vehicle from starting. Sometimes, a driver may have a documented medical condition, such as a pulmonary or respiratory condition, that would prohibit the device from functioning normally. Section 322.2715, F.S., is Florida's ignition interlock device statute. Among other things, the statute provides that "consideration" may be given to those individuals having a medical condition that would prohibit the device from functioning normally. However, the section does not articulate the type of "consideration" that may be given. As a result, the "consideration" has sometimes been in the form of a court order reinstating a driver's driving privileges.

#### Effect of Proposed Change

The bill amends s. 322.2715, F.S., to require a DUI offender that has been granted a medical waiver in lieu of required IID installation to seek issuance of a driver license restricted to employment purposes only, and be supervised by a licensed DUI program, in order to receive restricted driving privileges. An "employment purposes only" driver license means that the DUI offender will be limited to driving to and from work and any necessary on-the-job driving required by an employer or occupation. The cost of supervision by a licensed DUI program varies according to the course level that is required, which varies according to the number of previous DUI offenses. A Level I course is a 12-hour course and costs \$250. A Level II course is a 21-hour course and costs \$390. These fees increase each year on October 1, by the lessor of three percent or the percentage increase (if any) in the Consumer Price

Index as determined by the U.S. Department of Labor for the 12-month period ending on the preceding June 30, rounded to the nearest five dollars.

Because the number of DUI offenders that may wish to seek an employment purposes only driver license in connection with an IID medical waiver is unknown, this provision has an indeterminate fiscal impact. While the DUI offender qualifying for an employment purposes only license under this section will have to pay for the privilege, this cost may be minimal as compared to the potential costs of having no driving privileges at all.

#### *DUI convictions that occur on the same date (Section 61)*

##### Current Situation

A DUI arrest results in both an administrative case and a criminal case. Sometimes, months may pass before either case is resolved. During this period, it is possible for an individual to be arrested for DUI again while the first matter is still pending. In these cases, the court may consolidate the cases and resolve both on the same date. In these cases, DHSMV records may inaccurately reflect one “conviction”, instead of two.

##### Effect of Proposed Change

The bill amends s. 322.28, F.S., to clarify that in these cases, convictions that occur on the same date, but arise from separate offense dates, are treated as separate convictions. Because driver license suspension periods and eligibility requirements for driver license reinstatement are determined in part by the number and frequency of prior DUI convictions, this provision will have an indeterminate fiscal impact. Although the change is expected to increase the accuracy of DHSMV’s record-keeping and lower the costs related to data cleanup, the exact fiscal impact is indeterminate.

#### **Rulemaking authority related to Driver Improvement Courses (Sections 20 and 48)**

##### Current Situation

In 1995, the Florida Legislature amended s. 318.1451, F.S., to shift DHSMV’s focus from the regulation of driver improvement schools to approval of driver improvement courses. Throughout the state, there are fewer course providers than there are driver improvement schools. Today, DHSMV is required to consider whether a course has been designed to promote the following when considering it for approval:

- safety;
- driver awareness;
- crash avoidance techniques; and
- other factors or criteria to improve driver performance from a safety viewpoint.<sup>14</sup>

In addition to the requirements set out in s. 318.1451, F.S., DHSMV has promulgated Chapter 15A-8, F.A.C., to direct DHSMV personnel on how to approve course curriculum. The rules in this chapter were last amended in 1996. In late 2011, the Florida Legislature’s Joint Administrative Procedures Committee (JAPC) expressed concern with the substance of these rules, as well as the extent of DHSMV’s authority to promulgate them.

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.<sup>15</sup> Rulemaking authority is delegated by the legislature through statute and explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create a rule.<sup>16</sup>

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<sup>14</sup> s. 318.1451(2)(a), F.S.

<sup>15</sup> s. 120.52(16), F.S.

<sup>16</sup> s. 120.52(17), F.S.

### Effect of Proposed Change

The bill amends s. 318.1451, F.S., in response to JAPC's concerns. The proposed change further clarifies DHSMV's statutory rulemaking authority with respect to driver improvement courses. This provision has no fiscal impact.

### **Federal funding issues related to commercial drivers** (Sections 13, 14, 19, 53, and 63)

Federal law administered by the Federal Motor Carrier Safety Administration (FMCSA) requires states to comply with federal commercial motor vehicle and licensing regulations. The FMCSA has requested minor modifications to current Florida law regarding commercial motor vehicle issues.

#### *Commercial motor vehicle enforcement authorization statute* (Section 13)

### Current Situation

Section 316.302, F.S., subjects all commercial motor vehicle owners and operators to the federal rules and regulations contained in 49 C.F.R. parts 382,385, and 390-397 as such rules and regulations existed on October 1, 2011, but provides for certain exemptions at the state level. However, the federal Motor Carrier Safety Assistance Grant (Grant) does not allow these state level exemptions and requires enforcement of these rules and regulations. In order to comply with the Grant's requirements, Florida will need to take legislative action to remove these state level exemptions.

### Effect of Proposed Change

The bill removes certain state level exemptions to FMCSA federal rules and regulations currently afforded to commercial motor vehicle owners and operators. As such, the bill places relevant federal regulations as they existed on December 31, 2012, in the state level authorization statute and does the following:

- removes the state-level exemptions granted to transporters of liquefied petroleum gas;
- adopts the regulations contained in 49 C.F.R. part 107, subpart F, related to hazardous materials program procedures; and
- adopts the regulations contained in 49 C.F.R. part 383, relating to commercial driver license standards, requirements, and penalties.

The bill adds state-level emergency exceptions to 49 C.F.R. s. 392.82, which prohibits the use of a hand-held mobile telephone while driving a commercial motor vehicle. The emergency exceptions are provided for communications by utility drivers and utility contractor drivers during a Level 1 activation of the State Emergency Operations Center, or during a state of emergency declared by executive order or proclamation of the Governor. This provision implicates Florida's continued receipt of federal dollars related to the Grant. The exact amount of federal funds that may be impacted is unknown.

#### *Physical qualifications for drivers; texting for commercial drivers* (Section 14)

### Current Situation

49 C.F.R. 391.41 requires commercial motor vehicle drivers to be medically certified as physically qualified to drive, unless a medical variance applies. As of January 30, 2012, and no later than January 30, 2014, all commercial driver license (CDL) holders must provide information to their state driver license agency regarding the type of commercial motor vehicle operation they drive in or expect to drive in with their CDL. Florida has not adopted this federal regulation in state law.

The Federal Motor Carrier Safety Administration (FMCSA) and the Pipeline and Hazardous Materials Safety Administration issued a final rule prohibiting the use of a hand-held mobile telephone while operating a commercial truck or bus – a prohibition that includes-texting while-driving. Hands-free devices may be used. According to the FMCSA, "hands-free use of a mobile telephone is allowed using either a wired or wireless earpiece, or the speakerphone function of the mobile telephone." According to the final rule, the use of a hand-held mobile telephone means the following:



- using at least one hand to hold a mobile phone to make a call;
- dialing a mobile phone by pressing more than a single button; or
- reaching for a mobile phone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position, restrained by a seat belt.

“Texting” means “manually entering text into, or reading text from, an electronic device.” This definition includes, but is not limited to, the following:

- short message services;
- e-mailing;
- instant messaging;
- a command or request to access a Web page;
- pressing more than a single button to initiate or terminate a call using a mobile telephone; or
- engaging in any other form of electronic text retrieval or entry for present or future communication.

Drivers that violate the final rule (as adopted by state law) face civil penalties of \$500 - \$2,750, depending on the number of previous violations. Repeat offenders may be subject to permanent disqualification from operating a commercial motor vehicle.

The final rule (as adopted by state law) affects employers as well. Under the rule, commercial truck and bus companies that require (or allow) their drivers to violate the rule will face a maximum penalty of \$11,000.

There are exceptions. Most notably, the rule does not affect federal, state, or local government employees. Also, commercial drivers may still text if they pull the vehicle over to the side of the road where it does not impede traffic. Lastly, exceptions are provided for emergency communications to law enforcement.

According to FMCSA, the final rule became effective on January 3, 2012, and states have until January 2015 to comply.

#### Effect of Proposed Change

The bill amends s. 316.3025, F.S., by adopting the federal regulation that requires commercial motor vehicle drivers to provide medical certification information regarding the type of commercial motor vehicle operation they drive in or expect to drive in with their CDL to their state driver license agency by January 31, 2014. There is a \$100 civil penalty if a commercial motor vehicle driver violates this requirement. In as much as this provision subjects violators to a civil penalty, this provision has an indeterminate fiscal impact on the State Transportation Trust Fund (STTF), as fine amounts are distributed to the STTF for the purpose of maintaining and repairing state roads.

The bill adds a graduated fine structure for violations of the federal prohibition on the use of a hand-held mobile telephone while driving a commercial motor vehicle and texting-while-driving a commercial motor vehicle. The graduated fine structure is as follows:

- 1st violation - \$500;
- 2nd violation - \$1,000 and 60-day CDL disqualification;
- 3rd and subsequent violation - \$2,750 and a 120-day CDL disqualification.

An employer may be fined if it requires or allows a CDL holder employee to engage in the prohibited activity. Employer fine amounts are as follows:

- 1st violation - \$2,750;
- 2nd violation - \$5,000;

- 3rd and subsequent violation - \$11,000.

The bill requires that fine amounts paid by a commercial motor vehicle driver or his or her employer be paid to the Chief Financial Officer and credited to the State Transportation Trust Fund for the repair and maintenance of roads.

The bill also adds state-level emergency exceptions to the federal prohibition on the use of a hand-held mobile telephone while driving a commercial motor vehicle. The emergency exceptions are provided for communications between utility drivers and utility contractor drivers during a Level 1 activation of the State Emergency Operations Center, or during a state of emergency declared by executive order or proclamation of the Governor. This provision implicates Florida's continued receipt of federal dollars related to the Grant. The exact amount of federal funds that may be impacted is unknown.

### *Commercial learner's permit; Non-criminal traffic infractions (Section 19)*

#### Current Situation

As they relate to certain traffic infractions committed by commercial learner's permit (CLP) holders and commercial driver license (CDL) holders, federal rules and regulations prohibit a state from masking a conviction, deferring imposition of judgment, or allowing enrollment in a diversion program.<sup>17</sup> In accordance with these federal rules and regulations, a state is prohibited from allowing a CLP holder or CDL holder that has received a traffic citation from attending driver improvement school and having adjudication of guilt withheld by a court. Doing so would be considered 'masking a conviction.'

Florida law does prohibit a CDL holder from attending driver improvement school and electing to have adjudication of guilt withheld in the instances:

- driving without a valid license, or with a suspended license;
- driving without a valid registration;
- driving without valid proof of insurance;

However, there is no corresponding prohibition for a CLP holder. As a result, Florida is not in full compliance with the applicable federal rules and regulations.

#### Effect of Proposed Change

The bill amends s. 318.14, F.S., to also prohibit a CLP holder from having adjudication of guilt withheld after attending driver improvement school. In as much as the prohibition would disallow CLP holders from electing to have adjudication withheld, this provision will result in more CLP holders paying fines for traffic infractions.

### *Commercial driver license and commercial learner's permit; fraud (Section 53)*

#### Current Situation

The FMCSA has promulgated a rule containing a provision aimed at preventing fraud in connection with the issuance of a commercial driver license (CDL) or commercial learner's permit (CLP). Specifically, Federal Rule 49 C.F.R. 383.73(k)(1) requires that a "state must have policies in effect that result, at a minimum, in the disqualification of the CLP or CDL of a person who has been convicted of fraud related to the issuance of that CLP or CDL."<sup>18</sup> The disqualification must be for at least one year.

Florida is not in compliance with this rule. Currently, Florida law only requires a 60-day disqualification for providing false information in connection with a CDL application. There is no corresponding penalty for providing false information in connection with a CLP application.

<sup>17</sup> See 49 C.F.R. 384.226 on the FMCSA website at <http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrruletext.aspx?reg=384.226&keyword=384.226> (Last viewed on 3/5/13).

<sup>18</sup> See 49 C.F.R. 383.73(k)(1) on the FMCSA's website at <http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrruletext.aspx?reg=383.73> (Last viewed on April 19, 2013).

### Effect of Proposed Change

The bill amends s. 322.212, F.S., to require a one year disqualification for providing false information or fraud in connection with an application for a CDL or CLP. This provision has no fiscal impact.

### *CDL and CLP disqualifications (Section 63)*

#### Current Situation

Florida law does not subject commercial learner's permit (CLP) holders to the same traffic violations criteria that now disqualify commercial driver license (CDL) holders from operating a commercial motor vehicle. Additionally, Florida law requires disqualification for violations not specified by federal rules and regulations.

### Effect of Proposed Change

The bill amends s. 322.61, F.S., to subject CLP holders to the same traffic violations criteria that now disqualify CDL holders from operating a commercial motor vehicle. This change will align Florida law with federal rules and regulations. This provision has no fiscal impact.

### **Registration and Certificates of Title & Repossession (Sections 18, 22, 23, 24, 26, 28, 70, 71, 72, 73)**

### *Certificates of repossession (Sections 18, 24, 26)*

#### Current Situation

When a lienholder repossess a motor vehicle, the lienholder has the option of obtaining either a certificate of repossession or a certificate of title. Because the lienholder must possess a certificate of title when selling the vehicle, there is no need for a certificate of repossession. If the vehicle is not sold immediately after repossession, an affidavit is satisfactory proof of right of possession and ownership.

### Effect of Proposed Change

The bill amends ss. 317.0016, 319.28, and 319.323, F.S., to eliminate the certificate of repossession in favor of the certificate of title, which is the same price. Because the price for a certificate of title and a certificate of repossession are the same, this provision has no fiscal impact.

### *Transfer and reassignment forms; odometer disclosure statements (Section 22)*

#### Current Situation

The law does not specifically address how to transfer e-titles in a casual or private sale. The National Highway Transportation Safety Administration (NHTSA) has approved the DHSMV request for a variance; consequently the department needs to incorporate the variance for acquiring and maintaining odometer reading records. The NHTSA has approved the department's request to use an alternate form to record odometer readings.

When a vehicle is bought or sold in Florida as part of a private casual sale, the vehicle identification number and mileage (odometer disclosure) must be recorded. This information provides proof of ownership and is required in order for the buyer to register the vehicle and apply for a title in his or her name. Usually, the buyer and seller complete the odometer disclosure statement on the face of the title. This is usually done at the county tax collector's office. In an effort to eliminate the risk of losing a motor vehicle title and to prevent fraud, DHSMV has implemented a system providing for electronic titles. However, the transfer of title process in a private casual sale remains antiquated and requires a paper form to be printed – even if the buyer wishes for the title to remain electronic. The paper form is then signed and scanned into DHSMV's database.

### Effect of Proposed Change

The bill amends s. 319.225, F.S., to require that when a dealer sells a vehicle to an out of state resident or out of state dealer and the power of attorney form is applicable to the transaction, the dealer must

photocopy the completed original and mail it to the department within 5 business days after the certificate of title and dealer reassignment form are delivered by the dealer to its purchaser.

The bill also allows for proper maintenance of electronic titles. The change will allow a new form for the buyer and seller in transferring motor vehicle electronic titles and will allow for those titles to remain electronic. If the transferee agrees to maintain the title electronically, both the transferor and the transferee must complete a secure reassignment document which discloses the odometer reading and which is signed by both at the tax collector's office or license plate agency.

#### *Identity documents (Sections 23, 28, 70, 71)*

##### Current Situation

Sections 319.23 and 328.01, F.S., lay out the requirements for applying for a certificate of title for a motor vehicle or vessel. Among other requirements, the application must contain the following:

- the applicant's full name;
- date of birth;
- sex;
- the vehicle's license plate number or the hull identification number; and
- personal or business identification, which may include, but need not be limited to, a driver license number, Florida identification card number, or federal employer identification number.

Sections 320.02, and 328.48, F.S., lay out the requirements for registering a motor vehicle or vessel in the state. Among other requirements, the registration application must include the following:

- the registrant owner's permanent resident address<sup>19</sup>, or permanent business address; and
- the registrant owner's personal or business identification information, which may include, but need not be limited to, a driver license number, Florida identification card number, or federal employer identification number.

##### Effect of Proposed Change

The bill amends ss. 319.23, 328.01, 320.02, and 328.48, F.S., to expand the list of acceptable documentation to prove identity on an application for a certificate of title or registration for a motor vehicle or vessel. As such, the bill allows DHSMV to accept a valid out-of-state driver license, valid out-of-state identification card, or a valid U.S. or out-of-country passport, in addition to the other acceptable documents. This provision has no fiscal impact.

#### *Excess vessel registration program funds (Sections 72, 92 and 93)*

##### Current Situation

Florida law authorizes DHSMV to retain up to \$1.4 million in annual fees collected from vessel registrations, the balance of which is disbursed to various funds set by statute, and then deposited into the Florida Fish and Wildlife Conservation Commission (FWC) Marine Resources Conservation Trust Fund to provide, among other things, recreational channel marking, marine mammal protection, law enforcement, and quality control programs.

The \$1.4 million retained by DHSMV is used to cover the vessel registration program's administrative costs. According to the March 22, 2013, Revenue Estimating Conference assumptions, due to reorganization and efficiencies, the department estimated administrative costs for the program are \$803,728.

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<sup>19</sup> Active duty members of the United States Armed Forces (who are Florida residents) are exempt from this requirement. See s. 320.02, F.S.

### Effect of Proposed Change

The bill amends s. 328.76, F.S., to adjust DHSMV's retention of vessel registration revenues from a fixed \$1.4 million to "the amount equal to any administrative costs."

Additionally, after all administrative costs are funded, and after current statutory distributions listed in s. 328.76(1)(a)-(1)(d), F.S., are made, the bill requires up to \$400,000 to be transferred by DHSMV to the General Inspection Trust Fund of the Department of Agriculture and Consumer Services to fund activities relating to the protection, restoration, and research of the natural oyster reefs and beds of the state.

The bill also allows up to \$300,000 to be used by the Florida Fish and Wildlife Conservation Commission for boating safety education.

Appropriations for the 2013-2014 fiscal year are made to provide the required spending authority for these funds.

### *Title fee revenue redirection (Section 73)*

#### Current Situation

Section 319.32, F.S., provides for the distribution of fees and various service charges related to motor vehicle certificates of title. Of the total \$70 fee for a motor vehicle certificate of title, \$47 is deposited into the State Transportation Trust Fund (STTF), until the annual amount deposited (per fiscal year) pursuant to this distribution reaches \$200 million. The portion of the \$47 earmarked for the STTF that is in excess of \$200 million is deposited into the General Revenue Fund. This distribution is for the 2012-2013 fiscal year only.

Starting in the 2013-2014 fiscal year, and for 30 years, \$10 million is to be used to fund any seaport project identified in the Florida Department of Transportation's (DOT) adopted work program. Additionally, the money may be assigned, pledged, or set aside for the payment of principal or interest on revenue bonds or other forms of debt in connection with Florida's ports.

#### Effect of Proposed Changes

The bill makes technical and clarifying changes to the requirements for the seaport bonding program established in s. 319.32, F.S. The bill requires the Division of Bond Finance to issue revenue bonds at DOT's request, and provides that the bonds are secured by motor vehicle certificate of title fees deposited into the STTF. The bill provides that revenue bonds issued at DOT's request are to be considered a first lien on the revenues to the STTF derived from the motor vehicle certificate of title fees. As required under s. 11(f), Art. VII of the Florida Constitution, the bill provides Legislative approval of bond financing for the seaport projects included in the department's adopted work program, including any projects added to the work program by a work program amendment.

After the money is used to fund the seaport bond program described above, the remaining funds are to be used as specified in the section for Florida's Turnpike Enterprise, the Transportation Disadvantage Program, the Small County Outreach Program, and other strategic transportation projects.

### **Dealer licensing (Sections 42-46)**

#### Current Situation

#### *Motor vehicle dealers, manufacturers, distributors, and importers (Sections 42 and 43)*

In Florida, motor vehicle dealers are licensed and regulated by DHSMV under s. 320.27, F.S. Any person, firm, partnership, or corporation that buys, sells, offers for sale, displays for sale, or deals in three or more motor vehicles in any 12-month period is presumed to be a motor vehicle dealer and

must have an appropriate dealer license. There are six license classes applicable to motor vehicle dealers. They are the following:

- Independent dealer – for a person dealing in used motor vehicles only. This license permits the licensee to transact business at retail or wholesale.
- Franchise dealer – allows the licensee to sell new motor vehicles under an agreement with a manufacturer. This license also permits the licensee to sell used motor vehicles.
- Service facility – is a dealership that performs only service as defined in s. 320.60(16), F.S., and will not or does not sell or lease motor vehicles.
- Wholesale dealer – licensees may only buy from, sell to, and deal at wholesale with other licensed dealers.
- Auction dealer – licensees are licensed to sell, on behalf of licensed dealers, through a bidding process. Those holding an auction dealer license may not sell at retail.
- Salvage dealer – allows the licensee to deal in salvage or wrecked vehicles. Any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts must have a salvage dealer license. If the dealer rebuilds salvaged or wrecked vehicles, the title must be reassigned to an independent dealer for retail sale.

In addition to the six classes of motor vehicle dealer licenses, there are also licenses for motor vehicle manufacturers, distributors, and importers.

Currently, a motor vehicle dealer that applies for an original or renewal motor vehicle dealer's license will be issued a license that is valid through the end of the specified licensing period, which varies across classifications. For instance, a franchise dealer license expires annually on December 31<sup>st</sup>. Conversely, an independent, wholesale, or auction dealer license expires annually on April 30<sup>th</sup>. The annual expiration date for a manufacturer, distributor, and importer license is September 30<sup>th</sup>.

The initial, one-year motor vehicle dealer, license fee is \$300. The one-year renewal fee is \$75. For motor vehicle manufacturers, distributors, and importers, the initial one-year license fee is \$300, while the one-year renewal fee is \$100. The fees collected are deposited into the General Revenue Fund.

#### *Mobile home and RV dealers, manufacturers, distributors, and importers (Sections 44, 45, 46)*

Mobile home dealers are licensed and regulated by DHSMV under s. 320.77, F.S. Any person, firm, partnership, or corporation that buys, sells, deals in, or offers, or displays for sale, or who acts as the agent for the sale of one or more mobile homes in any 12-month period is presumed to be a mobile home dealer and must have an appropriate dealer license. There are two license classes applicable to mobile home dealers. They are the following:

- Mobile home dealer – allows a person to deal in new or used mobile homes. This license permits the licensee to transaction business at retail or wholesale.
- Mobile home broker – allows the licensee to sell used mobile homes only. This license permits the licensee to transact business at retail or wholesale.

Currently, a mobile home dealer license expires annually on October 1<sup>st</sup>.

Recreational vehicle dealers are licensed and regulated by DHSMV under s. 320.771, F.S. Any person, firm, partnership, or corporation that buys, sells, offers for sale, displays for sale, or deals in one or more recreational vehicles in any 12-month period is presumed to be a recreational vehicle dealer and must have an appropriate recreational vehicle dealer license. There are two license classes applicable to mobile dealers. They are the following:

- New recreational vehicle dealer – allows the licensee to sell new and used recreational vehicles.
- Used recreational vehicle dealer – allows the licensee to sell only used recreational vehicles.

Currently, a recreational vehicle dealer license expires annually on October 1<sup>st</sup>.

In addition to the mobile home dealer and recreational vehicle dealer license classes, there is also a license available for mobile home and recreational vehicle manufacturers, distributors, and importers, which expire annually on September 30<sup>th</sup>.

Initial mobile home and recreational vehicle dealer, manufacturer, distributor, and importer licenses carry a \$300 license fee, and the renewal fee for all is \$100. All fees collected are deposited into the General Revenue Fund.

#### Effect of Proposed Change

The bill amends Florida's dealer licensing laws to provide motor vehicle, mobile home, and recreational vehicle dealers the option of choosing a one or two-year licensing period. Specifically, the proposed change for each license type is the following:

- s. 320.27, F.S., motor vehicle dealer license – the licensee applicant will pay \$300 for the first year and \$75 for the second year. Upon renewal, the licensee applicant will choose to pay either \$75 for a one-year renewal or \$150 for a two-year renewal.
- s. 320.62, F.S., motor vehicle manufacturers, distributors, and importer license – the licensee applicant will pay \$300 for the first year and \$100 for the second year. Upon renewal, the licensee applicant will pay \$100 for a one-year renewal or \$200 for a two-year renewal.
- s. 320.77, F.S., mobile home dealer license – the licensee applicant will pay \$300 for the first year and \$100 for the second year. Upon renewal, the licensee applicant will pay \$100 for a one-year renewal or \$200 for a two-year renewal.
- s. 320.771, F.S., recreational vehicle dealer license – the licensee applicant will pay \$300 for the first year and \$100 for the second year. Upon renewal, the licensee applicant will pay \$100 for a one-year renewal or \$200 for a two-year renewal.
- s. 320.8225, F.S., mobile home and recreational vehicle manufacturer, distributor, and importer license – the initial applicant shall pay to the department a fee of \$300 for the first year and \$100 for the second year. An applicant for a renewal license shall pay to the department \$100 for a one-year renewal or \$200 for a two-year renewal.

All fees will be deposited into the General Revenue Fund. Essentially, a dealer that chooses the two-year licensing option will pay for both years in year one and will owe nothing in year two.

#### **Insufficient Funds Checks (Sections 41 and 54)**

##### Current Situation

Florida law authorizes DHSMV to cancel a licensee's driver license in certain circumstances. These circumstances are listed in s. 322.22, F.S., and include the following:

- a determination that the licensee was not entitled to the driver license;
- if the licensee failed to give the required or correct information on the driver license application;
- if the licensee fraudulently completed the driver license application; and
- if the licensee has two or more driver licenses on file, each with the same picture but a different name.

DHSMV is also authorized to cancel a licensee's driver license, identification card, vehicle or vessel registration, or fuel-use decal if the licensee or registrant pays with a dishonored (or insufficient funds) check. DHSMV, however, does not have statutory authority to prohibit future transactions by a licensee who has paid with a dishonored (or insufficient funds) check.

The origin of the problem stems from the separation of DHSMV's registration and driver licensing database systems. For example, driver licenses are generally valid for eight years, while motor vehicle registrations expire every year, or once every two years. If a person pays for a driver license with a

dishonored check, DHSMV is unable to collect the outstanding debt when that same person next renews his or her registration. Instead, DHSMV must wait until that person next renews his or her driver license.

#### Effect of Proposed Change

The bill amends ss. 320.18 and 322.22, F.S., to authorize DHSMV to prohibit future transactions by a licensee who has had his or her credentials canceled for paying with a dishonored (or insufficient funds) check. The effect of the proposed change will allow DHSMV to collect a greater amount of outstanding debt.

#### **Driver licenses** (Sections 49, 50, 51, 55, 62)

##### *Medical Advisory Board* (Section 49)

#### Current Situation

DHSMV's Medical Advisory Board (Board) advises DHSMV on medical issues relating to driver licensing standards. In fulfillment of this duty, the Board assists in developing and keeping current with medical and scientific advancements, and among other things, reports on the individual physical and mental qualifications of a licensee or applicant.

Florida law requires that the Board have between 12 and 25 members. Every member but two must be a licensed doctor of medicine (any state) and must be a member in good standing of the Florida Medical Association or the Florida Osteopathic Association. Additionally, at least one member must be a Florida licensed optometrist and a member in good standing of the Florida Optometric Association.

#### Effect of Proposed Change

The bill amends s. 322.125, F.S., to eliminate the requirements related to membership in the Florida Medical Association, Florida Osteopathic Association, and Florida Optometric Association. This provision has no fiscal impact.

##### *Driver license re-exams* (Section 50)

#### Current Situation

Florida law requires that all driver license issuance services be assumed by the constitutional tax collectors by June 30, 2015.<sup>20</sup> The transition is to follow a defined schedule. The schedule was drafted by DHSMV in conjunction with the Florida Tax Collectors Association and the Florida Association of Counties.

Some tax collectors have already started the transition and are offering full driver license services. Some tax collectors have begun the transition, but are uncertain as to whether they have the statutory authority to conduct driver license re-examinations.

Section 322.135(4), F.S., prohibits tax collectors from issuing a driver license to any person believed to be physically or mentally unqualified. However, the section states that the tax collector may direct the person to DHSMV for re-examination.

#### Effect of Proposed Change

The bill amends s. 322.135(4), F.S., to remove the language stating that the "tax collector may direct the person to DHSMV for re-examination." The effect of the proposed change will further aid plans to transition more driver licensing services to the tax collectors. In as much as the tax collector charges a fee for every driver license transaction, the potential increase in the number of driver license transactions, specifically driver license re-examinations, is expected to have an indeterminate positive fiscal impact on tax collector revenue.

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<sup>20</sup> s. 322.135(5), F.S.



Current Situation

Florida driver licenses and identification cards hold digital data containing almost all of the personal information displayed on the license or ID card. Data contained digitally on the license or card includes the following information:

- name;
- address;
- date of birth;
- height;
- weight;
- gender;
- eye Color;
- lens restrictions;
- organ donor status; and
- driver License or ID card number.

The digital data does not reflect other information such as driving habits, traffic citations, or emergency contact information.

An increasing number of businesses have acquired the technology to collect or confirm this data by “swiping” the driver license or ID card through a magnetic strip or bar code reader. Typically, the information gained from swiping the driver license or ID card is used for confirmation of age restriction compliance (e.g., to prevent the sale of alcoholic beverages to minors), to confirm identification when paying by check, marketing purposes, or to track the sale of controlled substances. The only data contained on the magnetic strip that is readable is also on the face of the driver license – i.e., the name, address, date of birth, and driver license identification number. Florida law does not control how such data may be stored or used.

Effect of Proposed Change

The bill creates s. 322.143, F.S., prohibiting a private entity, except a financial institution<sup>21</sup>, from swiping an individual’s driver license or identification card, except for the following purposes:

- to verify the authenticity of a driver license or identification card or to verify the identity of the individual, if the individual pays for a good or service with a method other than cash, returns an item, or requests a refund;
- to verify the individual’s age when providing an age-restricted good or service;
- to prevent fraud or other criminal activity if an individual returns an item or requests a refund and the private entity uses a fraud prevention service company or system;
- to transmit information to a check services company for the purpose of approving negotiable instruments, electronic funds transfers, or similar methods of payment; and
- to comply with a legal requirement to record, retain, or transmit the driver license information.

If a private entity swipes an individual’s driver license or identification in accordance with either of the first two bullet points above, the private entity may not store, sell, or share the personal information collected.

If a private entity swipes an individual’s driver license or identification in accordance with the third or fourth bullet point above, the private entity may store or share the personal information collected to prevent fraud or criminal activity against the private entity.

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<sup>21</sup> As defined in s. 655.005(i), F.S.; the term includes institutions such as banks, savings banks, trust companies and credit unions.

Notwithstanding the prohibition created by the bill, an individual may give his or her informed consent to allow the private entity to swipe his or her driver license or identification card.

The bill allows the private entity to manually collect the personal information needed from the individual if that person does not want the private entity to swipe his or her driver license or identification card.

A private entity that violates the bill's prohibition may be subject to a civil penalty not to exceed \$5,000 per occurrence.

#### *Electronic Notification by Clerks of Court (Section 55)*

##### Current Situation

A clerk of the court must order that a licensee's driver license be suspended in certain instances. Among these instances is the licensee's failure to comply with court directives after having been issued a uniform traffic citation. After mailing notice of the order of suspension to the licensee, the clerk of the court must direct DHSMV to immediately suspend the licensee's driving privileges. Section 322.245(3), F.S., requires that this notification be made within ten days. Some clerks of the court have elected to notify DHSMV through regular mail, rather than electronically.

##### Effect of Proposed Change

The bill amends s. 322.245(3), F.S., to require a clerk of the court to notify DHSMV of suspension orders electronically. This provision has no fiscal impact.

#### *Habitual Traffic Offenders (Section 62)*

##### Current Situation

Section 322.264, F.S., relating to holder of commercial driver's license, defines a "habitual traffic offender" as a licensee whose driving record shows that he or she has accumulated at least three of any one or more of the following convictions within a five-year period:

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

The definition of "habitual traffic offender" also includes a licensee who has accumulated 15 convictions for specified moving traffic offenses for which points may be assessed, as described in s. 322.27, F.S. The following offenses are among the many described in the section:

- reckless driving, willful and wanton;
- leaving the scene of a crash resulting in property damage of more than \$50;
- unlawful speeding resulting in a crash;
- passing a stopped school bus;
- unlawful speed; and
- running a red light.<sup>22</sup>

The statutory minimum driver license revocation period for a habitual traffic offender is five years.<sup>23</sup> After five years, a habitual traffic offender must petition DHSMV to have his or her driving privileges

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<sup>22</sup> The full list of offenses that may count towards the accumulation of the 15 convictions is listed in s. 322.27, F.S.

<sup>23</sup> See s. 322.27(5), F.S.

reinstated. In acting on the petition, DHSMV must investigate the habitual traffic offender's qualification and fitness to drive and must hold an administrative hearing. At the administrative hearing, DHSMV must determine whether driving privileges shall be restored either on an unrestricted basis or on a restricted basis solely for business or employment purposes.

According to DHSMV, the administrative hearing is cursory because all petitioners meeting the above requirements are granted the option to reinstate. This is the only circumstance that requires a hearing before reinstatement of driving privileges.

The habitual traffic offender pays \$12 for the driver license reinstatement hearing. Last year, DHSMV conducted 1,028 of these hearings.

#### Effect of Proposed Change

The bill repeals s. 322.331, F.S., to eliminate the administrative hearing requirement. This provision has an insignificant negative fiscal impact.

### **Automobile Insurance (Sections 66 - 69)**

#### *Insurance company reporting requirement (Section 66)*

##### Current Situation

Florida's no-fault insurance law requires vehicle owners to carry at least \$10,000 of personal injury protection (PIP) coverage and \$10,000 property damage liability (PDL) coverage. Florida licensed insurers electronically report information on the insured's policy to DHSMV when the policy is issued, renewed or not renewed, or canceled. The insurer must submit this information within a certain time frame, which is dictated by the type of issuance. Section 324.0221, F.S., sets the following time frames:

- 30-days upon issuance of a policy providing PIP or PDL coverage to a named insured not previously insured by the insurer during that calendar year (new insureds); and
- 45-days after the effective date for each renewal, non-renewal, or cancellation, of a PIP or PDL policy.

##### Effect of Proposed Change

The bill amends s. 324.0221, F.S., to shorten the time frame for which insurers have to submit the required information to DHSMV to within ten days after the policy's processing date or effective date. The effect of the proposed change will no longer distinguish between new insured's and renewals, non-renewals, or cancellations. DHSMV contends the proposed change will help reduce the number of uninsured motorists and also help DHSMV maintain accurate records. This provision has an indeterminate fiscal impact.

#### *Self-insurance provisions (Section 67 and 69)*

##### Current Situation

The Florida Motor Vehicle No-Fault Law requires motor vehicle owners to maintain a minimum of \$10,000 of no-fault personal injury protection (PIP) insurance and \$10,000 in property damage (PD) insurance.<sup>24</sup> Prior to registering a motor vehicle in the state, motor vehicle owners must provide proof that these minimum requirements have been met and are currently in place.<sup>25</sup>

Florida's Financial Responsibility Law requires motorists to demonstrate the ability to pay monetary damages for bodily injury and property damage when the motorist has been in an accident or a serious traffic violation has occurred.<sup>26</sup>

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<sup>24</sup> ss. 627.730 – 627.7405, F.S.

<sup>25</sup> s. 320.02, F.S.

<sup>26</sup> ch. 324, F.S.

Florida motorists may prove financial responsibility by:

- Carrying minimum bodily injury and property damage coverage<sup>27</sup>;
- Posting a surety bond<sup>28</sup>;
- Depositing cash or securities<sup>29</sup>; or
- Furnishing a certificate of self-insurance.<sup>30</sup>

Generally, the minimum amount of financial responsibility required is 10/20/10, broken down in the following manner:

- \$10,000 for the bodily injury to, or death of, one person in any one crash;
- \$20,000 for the bodily injury to, or death of, two or more persons in any one crash (up to \$10,000 for each person); and
- \$10,000 for the injury to, or destruction of, others' property in any one crash.<sup>31</sup>

If a motorist proves financial responsibility by depositing cash or securities, or furnishing a certificate of self-insurance, the following provisions apply:

- For a deposit of cash or securities – the deposit must be in the amount of \$30,000.<sup>3233</sup>

A cash deposit must be in the form of a cashier's check made payable to DHSMV. After receipt of the cashier's check, DHSMV will deposit the cashier's check into the Security Deposit Trust Fund and all interest earned belongs to DHSMV.

A deposit of securities must be in the form of a certificate of deposit purchased from a bank located in the county in which the depositor resides or has its principal place of business. The certificate of deposit must be made payable to DHSMV for the use and benefit of the depositor. The certificate of deposit will then be held by DHSMV's Bureau of Accounting and all interest earned belongs to the depositor.

- For a certificate of self-insurance – the insured must have a net unencumbered worth of at least \$40,000.<sup>34</sup>

While the minimum amount of financial responsibility required is generally 10/20/10, broken down as shown above, a higher amount may be required in certain instances. For example, a motorist who has been found guilty (or entered a guilty plea) of or plead no contest to DUI, is required to maintain higher

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<sup>27</sup> ss. 324.031(1) and 324.021(7) and (8), F.S. Note: Florida's Financial Responsibility Law also requires minimum bodily injury and property damage coverage from commercial motor vehicle and nonpublic sector bus owners. *See* ss. 324.031, 324.021(7) and (8), 627.7415, and 627.742, F.S.

<sup>28</sup> ss. 324.031(2) and 324.021(7), F.S.

<sup>29</sup> ss. 324.031(3) and 324.161, F.S.

<sup>30</sup> ss. 324.031(4), and 324.171, F.S.

<sup>31</sup> s. 324.021(7), F.S. Note: Florida's Financial Responsibility Law also extends to commercial motor vehicle and nonpublic sector bus owners. The specific requirements applicable to both may be found in ss. 324.021(7), 627.7415, and 627.742, F.S.

<sup>32</sup> s. 324.161, F.S.

<sup>33</sup> If the depositor is a firm, partnership, association, corporation, or other person – other than a natural person, the amount must be \$30,000 for each vehicle (up to \$120,000). In addition, the firm, partnership, association, corporation, or other person – other than a natural person, must maintain insurance coverage in excess of \$10,000/20,000/10,000 or \$30,000 combined single limits, and such excess insurance shall provide minimum limits of \$125,000/250,000/50,000 or \$300,000 combined single limits. *See* s. 324.031, F.S.

<sup>34</sup> If the insured is a firm, partnership, association, corporation, or other person – other than a natural person, the insured must have a net unencumbered worth of at least \$40,000 for the first motor vehicle, and \$20,000 for each additional motor vehicle; or sufficient net worth as determined by DHSMV rules (promulgated by DHSMV and the Office of Insurance Regulation of the Financial Services Commission). *See* s. 324.171, F.S.

limits for a minimum of three years.<sup>35</sup> These higher limits are 100/300/50, broken down in the following manner:

- \$100,000 for the bodily injury to, or death of, one person in any one crash;
- \$300,000 for the bodily injury to, or death of, two or more persons in any one crash (up to \$100,000 for each person); and
- \$50,000 for the injury to, or destruction of, others' property in any one crash.<sup>36</sup>

#### Effect of Proposed Change

The bill amends ss. 324.031 and 324.161, F.S., which modifies two of the four methods by which motorists may prove financial responsibility. Specifically, the proposed change eliminates the option to prove financial responsibility via surety bond.

The bill also modifies the deposit of cash or securities process; under the bill, DHSMV will no longer hold the deposit. Instead, the new process will require a person to obtain a certificate of deposit in the amount of \$30,000<sup>37</sup> issued and held by a financial institution. DHSMV contends that the effect of the proposed change will lower its exposure to what it calls unnecessary risk because it will no longer have to hold deposits.

#### *Insurance verification notices (Section 68)*

#### Current Situation

Section 324.091, F.S., requires each owner and operator involved in an accident (or serious traffic violation that falls within Florida's Financial Responsibility Law) to furnish proof that he or she had sufficient motor vehicle insurance at the time of the accident. If the owner/operator did not have sufficient motor vehicle insurance at the time of the accident, the owner/operator must furnish proof of a surety bond. The time period to furnish either type of proof to DHSMV is 14 days. Upon receipt of the proof of insurance or surety bond, DHSMV is required to forward the information to the applicable insurer by U.S. mail. Mistakes sometimes occur during this process, and an insurer is not required by law to verify that the information it receives is correct. According to DHSMV, insurers verify the information on an infrequent basis, and when they do, it may take months. When this happens, DHSMV contends it leads to an inconsistent database and may even lead to erroneous suspensions.

#### Effect of Proposed Change

The bill amends s. 324.091, F.S., to allow DHSMV to electronically send insurance verification notices to insurers. The effect of the proposed change will eliminate the current requirement that DHSMV send insurance verification notices via U.S. mail. The effect of the proposed change also requires insurers to respond to DHSMV within 20 days after the notice informing DHSMV whether or not the insured was covered during the time in question. Because insurers are technically not required to verify this information at the present time, the proposed change adds a new requirement, and as such, the fiscal impact to insurers, particularly small insurers is unknown. By eliminating the requirement that DHSMV send insurance verification notices via U.S. mail, the proposed change is expected to have a positive fiscal impact on DHSMV.

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<sup>35</sup> s. 324.023, F.S.

<sup>36</sup> Id.

<sup>37</sup> If the depositor is a firm, partnership, association, corporation, or other person – other than a natural person, the amount must be \$30,000 for each vehicle (up to \$120,000). In addition, the firm, partnership, association, corporation, or other person – other than a natural person, must maintain insurance coverage in excess of \$10,000/20,000/10,000 or \$30,000 combined single limits, and such excess insurance shall provide minimum limits of \$125,000/250,000/50,000 or \$300,000 combined single limits.

Current Situation

The National Motor Vehicle Title Information System (NMVTIS) is a system that allows participating states to instantly and reliably verify the information on a motor vehicle's paper title with the electronic data from the state that issued the title.<sup>38</sup> NMVTIS is designed to protect consumers from fraud and unsafe vehicles and to keep stolen vehicles from being resold. NMVTIS is also a tool that assists states and law enforcement in deterring and preventing title fraud and other crimes.<sup>39</sup> Costs for NMVTIS vehicle history reports vary and are determined by individual service providers.<sup>40</sup> The Anti-Car Theft Act requires that the system be funded through user fees and not dependent on federal funds.<sup>41</sup> For this reason, NMVTIS has been designated as a fee-for-service system.<sup>42</sup> Current fees range from approximately \$2.95 to \$12.99 per report.<sup>43</sup>

Currently, Florida law defines a motor vehicle (vehicle) or mobile home (vehicle) as a 'total loss'<sup>44</sup> when:

- an insurance company pays the vehicle owner to replace the wrecked or damaged vehicle with one of like kind and quality or when an insurance company pays the vehicle owner upon the theft of the vehicle<sup>45</sup>; or
- an uninsured vehicle is wrecked or damaged and the cost, at the time of loss, of repairing or rebuilding the vehicle is 80 percent or more of the cost to the vehicle owner of replacing the wrecked or damaged vehicle with one of like kind and quality.<sup>46</sup>

However, the vehicle owner and the owner's insurance company may reach an agreement to repair, rather than replace, the vehicle. In this case, the vehicle is not considered a 'total loss,' unless the actual cost to repair the vehicle to the insurance company exceeds 100 percent of the cost of replacing the vehicle with one of like kind and quality. If the cost to repair does in fact exceed 100 percent of the replacement cost, the vehicle owner must request that DHSMV brand the vehicle's certificate of title with the words 'Total Loss Vehicle.'

Under Florida law, when a vehicle is considered a 'total loss,' it is considered 'salvage,'<sup>47</sup> and may be acquired by a salvage motor vehicle dealer. A 'salvage motor vehicle dealer' is a person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.<sup>48</sup>

Before a total loss vehicle may be acquired by a salvage motor vehicle dealer, the vehicle owner (or insurance company) must apply for a salvage certificate of title or a certificate of destruction. When applying for a salvage certificate of title or certificate of destruction, the vehicle owner (or insurance company) must provide DHSMV with an estimate of the costs of repairing the physical and mechanical damage.<sup>49</sup> If the estimated costs of repairing the vehicle are equal to 80 percent or more of the current retail cost of the vehicle, as established in any official used car or used mobile home guide, DHSMV is required to declare the vehicle unrebuildable and print a certificate of destruction.

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<sup>38</sup> See more info on NMVTIS on DHSMV's website at <http://www.flhsmv.gov/dmv/nmvtis.html> (Last viewed on 3/18/13).

<sup>39</sup> See more info on NMVTIS on the National Motor Vehicle Title Information System at <http://www.vehiclehistory.gov/> (Last viewed 3/18/13).

<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Id.

<sup>44</sup> s. 319.30(3)(a), F.S.

<sup>45</sup> s. 319.30(3)(a)1.a., F.S.

<sup>46</sup> s. 319.30(3)(a)1.b., F.S.

<sup>47</sup> s. 319.30(1)(r), F.S.

<sup>48</sup> s. 320.27(1)(c)5., F.S.

<sup>49</sup> S. 319.30(3)(b), F.S.

A salvage certificate of title indicates that the vehicle is repairable and a certificate of destruction indicates that the vehicle is not repairable. Current law states provides a \$2 fee for each salvage certificate of title, which is deposited into the General Revenue Fund, and a \$3 fee for each certificate of destruction, which is also deposited into the General Revenue Fund.<sup>50</sup>

Before a salvage motor vehicle dealer resells a salvage motor vehicle or its parts, the salvage motor vehicle must go through a physical rebuilt inspection conducted by DHSMV.<sup>51</sup> The purpose of the rebuilt inspection is to assure the identity of the vehicle and all major component parts which have been repaired or replaced.<sup>52</sup> After the rebuilt inspection, DHSMV affixes a decal to the vehicle that identifies the vehicle as a rebuilt vehicle.<sup>53</sup>

Subsection 319.32(1), F.S. states there is a \$40 fee for the initial rebuilt inspection, which is deposited into the General Revenue Fund. If a subsequent inspection is required, there is a \$20 fee, which is deposited into the Highway Safety Operating Trust Fund.

Currently, Florida law allows a person claiming a lien on a motor vehicle for unpaid labor or services to enforce the lien through the sale of the motor vehicle. In doing so, the lienholder must give proper notice to the vehicle's registered owner and certain other interested individuals identified through the lienholder's own records, or as disclosed by DHSMV records or the records of a corresponding agency from another state. Proper notice includes publication in a local newspaper, and the lienholder is required to keep records of the notice and return receipt from the mailing. If proper notice is not possible because the vehicle's registered owner or other persons are unable to be found, the lienholder must notify local law enforcement that the lienholder has made a good faith effort to locate the registered owner. "Good faith effort" means that, at a minimum, the following checks have been performed:

- a check of the vehicle for any type of tag, tag record, temporary tag, or regular tag;
- a check of the vehicle for an inspection sticker or other stickers and decals that could indicate the state of possible registration; and
- a check of the interior of the vehicle for any papers that could be in the glove box, trunk, or other areas for the state of registration.

Before public sale of the vehicle takes place, the vehicle's owner, or any person claiming an interest in the vehicle, may file a demand for a hearing with the clerk of the appropriate circuit court. Any purchaser for value takes title to the vehicle free and clear of all claims, liens, and encumbrances, unless otherwise provided by court order.

#### Effect of Proposed Change

The bill amends s. 319.30, F.S. to revise the process for applying for a salvage certificate of title or certificate of destruction for a salvage motor vehicle. In doing so, the bill requires that the vehicle owner (or insurance company) input the vehicle's history in NMVTIS.

The bill requires a salvage motor vehicle dealer to notify the NMVTIS system, or an equivalent commercially available system, when a motor vehicle, recreational vehicle, or mobile home is sold, transported, delivered to, or received by the salvage motor vehicle dealer, in addition to other current law requirements.

The bill amends s. 713.585, F.S., to require that in addition to the above, the lienholder check the NMVTIS system, or an equivalent commercially available system, to find the vehicle owner's location information, as well as location information for any person holding a lien on the vehicle, before a public

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<sup>50</sup> ss. 319.32, 713.78(11)(b), and 713.785(7)(b), F.S.

<sup>51</sup> s. 319.14(1)(b), F.S.

<sup>52</sup> Id.

<sup>53</sup> Id.

sale of the vehicle may take place. The bill also requires the lienholder to keep a record of the check of the NMVTIS database.

### **DOT crash reports (Section 3)**

#### Current Situation

Crash reports that reveal personal information about the parties involved in the crash are confidential and exempt for 60 days after the report is filed.<sup>54</sup> Although they are ordinarily confidential and exempt, the parties involved in the crash, their legal representatives and their insurers, law enforcement agencies, and other similar types of agencies may immediately receive these reports.

#### Effect of Proposed Change

The bill amends s. 316.066, F.S., relating to written reports of crashes, adds the Florida Department of Transportation to the list of entities that may immediately receive a crash report that is ordinarily confidential and exempt for 60 days after the date the report is filed. The provision has no fiscal impact.

### **Electronic proof of insurance (Section 17, 28)**

#### Current Situation

Florida law requires a motorist to have proof of insurance in his or her immediate possession at all times while driving a motor vehicle. Currently under ss. 316.646 and 320.02, F.S., DHSMV requires that the proof-of-insurance card be in a paper format.

#### Effect of Proposed Change

The bill authorizes an insured motorist to display his or her proof of automobile insurance in a paper or electronic format. The bill also specifies that if the insured motorist displays proof of automobile insurance on an electronic device that (1) the insured motorist is not consenting to access to any information on the electronic device other than the displayed proof-of-insurance card, and that (2) the insured motorist assumes liability for any damage to the electronic device. The bill authorizes DHSMV to make rules to implement this provision. This provision has no fiscal impact.

### **License Plates (Sections 32 - 40)**

#### Current Situation

Current law provides for several types of license plates. In addition to plates issued for governmental or business purposes, DHSMV offers four basic types of plates to the general public:

- **Standard Plates:** The standard license plate currently comes in three configurations: the county name designation, the state motto designation or the state slogan designation.
- **Specialty License Plates:** Specialty license plates are used to generate revenue for colleges, universities and other civic organizations. The recipient of the plate must pay applicable license taxes and an additional annual use fee, in order to receive a specialty license plate. Benefitting organizations that receive annual use fees from the sale of their respective specialty license plates are responsible for ensuring the annual use fees are used in accordance with statutory directives. In addition, each benefitting organization is required to attest, under penalties of perjury, that it has used the funds in accordance with law on an annual basis, unless that organization is subject to auditing by DHSMV. If DHSMV finds that the benefitting organization is not using the funds in accordance with law, current law requires DHSMV to discontinue distributing the funds to the benefitting organization until the benefitting organization complies. If the benefitting organization does not comply, DHSMV is required to deposit the funds into the Highway Safety Operating Trust Fund to offset its costs related to the issuance of specialty

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<sup>54</sup> s. 316.066(2)(a), F.S.



license plates. There is a statutory moratorium on the creation of new specialty license plates by DHSMV until July 1, 2014.<sup>55</sup>

- **Personalized Prestige License Plates:** Personalized license plates allow motorists to define the alpha numeric design (up to seven characters) on a standard plate that must be approved by DHSMV. The cost for a personalized prestige license plate (in addition to the applicable taxes) is \$15, pursuant to s. 320.0805, F.S.
- **Special Use License Plates:** Certain members of the general public may be eligible to apply for special use license plates if they are able to document their eligibility pursuant to various sections of ch. 320, F.S. This category of plates primarily includes special military license plates as well as plates for the handicapped. Examples include the Purple Heart, National Guard, United States Armed Forces, Pearl Harbor, Iraqi Freedom, Enduring Freedom,<sup>56</sup> Disabled Veteran<sup>57</sup> and Paralyzed Veterans of America plates.<sup>58</sup> The first \$100,000 of revenue from the sales of these special plates is deposited into the Grants and Donations Trust Fund under the Veterans' Nursing Homes of Florida Act. Any additional revenues are deposited into the State Homes for Veterans Trust Fund and used to construct, operate, and maintain domiciliary and nursing homes for veterans.

### Effect of Proposed Change

#### *Operation Desert Storm and Operation Desert Shield (Section 32)*

The bill amends s. 320.089 to create a special use license plate for current and former armed service members that participated in Operation Desert Storm, Operation Desert Shield, or both. To be eligible to receive the plate, the vehicle owner or lessee must be a Florida resident and a current or former member of the United States military who was deployed and served in Saudi Arabia, Kuwait, or another area of the Persian Gulf during Operation Desert Storm or Operation Desert Shield.

When applying for the plate, the vehicle owner or lessee will be required to pay the regular license tax for the vehicle, but will not pay any additional fees for the plate. The plate will be stamped with the words 'Operation Desert Storm' or 'Operation Desert Shield.' DHSMV's costs for designing and marketing the plate are indeterminate.

#### *Hispanic Achievers Specialty License Plate (Section 33)*

The bill decreases the percentage of annual use fees from the sale of the currently existing Hispanic Achievers specialty license plate that may be used for the cost of administration of the Hispanic Achievers License Plate Fund, the Hispanic Achievers Grant Council, and related matters. Under the bill's provisions, the percentage is decreased to five percent from 10 percent. The bill also authorizes up to 20 percent of the annual use fees to be used to market and promote the Hispanic Achievers license plate.

#### *American Legion Specialty License Plate (Sections 34 and 35)*

The bill creates a new specialty license plate for the American Legion. The annual use fee for the voluntary plate is \$25. The American Legion Department of Florida is required to submit a proposed art design for the plate to DHSMV no later than 60 days after the bill becomes law. Within 120 days after the bill becomes law, DHSMV is required to issue specialty license plate vouchers to the American Legion Department of Florida, and the American Legion Department of Florida is required to pre-sell at

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<sup>55</sup> The moratorium on new specialty license plates is created by ch. 2008-176, L.O.F., as amended by ch. 2010-223, L.O.F.

<sup>56</sup> Section 320.089, F.S. Some of these plates require payment of the annual license tax in s. 320.08, F.S., while others are exempt from the tax.

<sup>57</sup> Section 320.084, F.S. The statute provides that an eligible person may receive one free Disabled Veteran license plate, although other taxes apply.

<sup>58</sup> Section 320.0845, F.S. This plate requires payment of the annual license tax in s. 320.08, F.S.

least 1,000 vouchers within 24 months after the vouchers are issued before DHSMV is required to manufacture the plate. If the pre-sell requirement is not met, the plate will be deauthorized and anyone that has purchased a pre-sell voucher may use the annual use fee paid as a credit for another specialty license plate or may apply for a refund.

If the pre-sell requirement is met, DHSMV is required to manufacture the plate and is authorized to retain annual use fees from the sale of the plate until all startup costs for developing and issuing the plate are recovered. Once startup costs have been recovered, the annual use fees collected from the sale of the plate are to be distributed to the American Legion Department of Florida to support American Legion Boys State, the American Legion Auxiliary Girls State, the American Legion Department of Florida Veteran Affairs and Rehabilitation program, the Gilchrist Endowment Fund, and other appropriate activities. The American Legion Department of Florida may use up to 10 percent of the annual use fees for administrative costs and marketing of the plate.

#### *Lauren's Kids Specialty License Plate (Sections 36 and 37)*

The bill creates a new specialty license plate for Lauren's Kids, to prevent child sexual abuse. The annual use fee for the voluntary plate is \$25. Lauren's Kids, Inc., a Florida nonprofit corporation, is required to submit a proposed art design for the plate to DHSMV no later than 60 days after the bill becomes law. Within 120 days after the bill becomes law, DHSMV is required to issue specialty license plate vouchers to Lauren's Kids, Inc., and Lauren's Kids, Inc., is required to pre-sell at least 1,000 vouchers within 24 months after the vouchers are issued before DHSMV is required to manufacture the plate. If the pre-sell requirement is not met, the plate will be deauthorized and anyone that has purchased a pre-sell voucher may use the annual use fee paid as a credit for another specialty license plate or may apply for a refund.

If the pre-sell requirement is met, DHSMV is required to manufacture the plate and is authorized to retain annual use fees from the sale of the plate until all startup costs for developing and issuing the plate are recovered. Once startup costs have been recovered, the annual use fees collected from the sale of the plate are to be distributed to Lauren's Kids, Inc., to prevent sexual abuse through awareness and education and to help survivors heal with guidance and support. Lauren's Kids, Inc., may use up to 10 percent of the annual use fees for administrative costs and marketing of the plate.

#### *Big Brothers/Big Sisters Specialty License Plate (Section 39)*

The bill creates a new specialty license plate for Big Brothers Big Sisters. The annual use fee for the voluntary plate is \$25. Big Brothers Big Sisters Association of Florida, Inc., is required to submit a proposed art design for the plate to DHSMV no later than 60 days after the bill becomes law. Within 120 days after the bill becomes law, DHSMV is required to issue specialty license plate vouchers to Big Brothers Big Sisters Association of Florida, Inc., and Big Brothers Big Sisters Association of Florida, Inc., is required to pre-sell at least 1,000 vouchers within 24 months after the vouchers are issued before DHSMV is required to manufacture the plate. If the pre-sell requirement is not met, the plate will be deauthorized and anyone that has purchased a pre-sell voucher may use the annual use fee paid as a credit for another specialty license plate or may apply for a refund.

If the pre-sell requirement is met, DHSMV is required to manufacture the plate and is authorized to retain annual use fees from the sale of the plate until all startup costs for developing and issuing the plate are recovered. Once startup costs have been recovered, the annual use fees collected from the sale of the plate are to be distributed to Big Brothers Big Sisters Association of Florida, Inc., to promote mentoring. Big Brothers Big Sisters Association of Florida, Inc., may use up to 10 percent of the annual use fees for administrative costs and marketing of the plate.

The bill revises the specialty license plate program auditing and attestation requirements. Under the bill's provisions, DHSMV will no longer be required to discontinue distributing funds to a benefitting organization. Instead, the bill authorizes DHSMV, with approval of the Legislative Budget Commission, to redirect previously collected and future annual use fees to an organization that is able to perform the same or similar purpose as the original benefitting organization.

### **Rebuilt inspection pilot program (Section 21)**

#### Current Situation

Before a salvage motor vehicle dealer resells a salvage motor vehicle or its parts, the salvage motor vehicle must go through a physical rebuilt inspection conducted by DHSMV.<sup>59</sup> The purpose of the rebuilt inspection is to assure the identity of the vehicle and all major component parts which have been repaired or replaced.<sup>60</sup> After the rebuilt inspection, DHSMV affixes a decal to the vehicle that identifies the vehicle as a rebuilt vehicle.<sup>61</sup>

Currently, more rebuilt inspections are conducted in Miami-Dade and Hillsborough counties than in any other county statewide.

Subsection 319.32(1), F.S. states there is a \$40 fee for the initial rebuilt inspection, which is deposited into the General Revenue Fund. If a subsequent inspection is required, there is a \$20 fee, which is deposited into the Highway Safety Operating Trust Fund.

#### Effect of Proposed Change

The bill creates s. 319.141, F.S., which requires DHSMV to conduct a pilot program to evaluate alternatives for rebuilt inspection services to be offered by the private sector, with a particular focus on the cost impact to the consumer and the potential savings to DHSMV. The pilot program is limited to Miami-Dade and Hillsborough counties. The bill sets guidelines for the pilot program. Among the guidelines is that DHSMV is required to ensure, through a memorandum of understanding with the participating entity, that the entity meet basic criteria designed to protect the public, which at a minimum, includes:

- that the entity have and maintain a surety bond or irrevocable letter of credit, executed by the applicant, in the sum of \$50,000;
- have and maintain garage liability insurance for the rebuilt inspection facility;
- have completed background checks of all owners, partners, corporate officers, and rebuilt inspectors employed by the applicant's company.

The bill also requires DHSMV to provide a report to the President of the Senate and the Speaker of the House of Representatives regarding results of the pilot program by February 1, 2015. The pilot program is to end on July 1, 2015, unless otherwise extended by the Florida Legislature. It is not known how many rebuilt inspections will be conducted by the private sector as part of the pilot program instead of by DHSMV. For this reason, the anticipated cost impacts to the consumer, including a salvage motor vehicle dealer that repairs and resells salvaged motor vehicles, and the potential savings to DHSMV are indeterminate.

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<sup>59</sup> s. 319.14(1)(b), F.S.

<sup>60</sup> Id.

<sup>61</sup> Id.

## **Left-lane courtesy (Section 11)**

### Current Situation

Florida law requires a driver that is traveling at less than the normal speed of traffic to move to the far right-hand lane when possible, and except when overtaking and passing another vehicle.<sup>62</sup> “Normal speed of traffic” is not defined in this area of Florida law. A driver that violates this provision of Florida law commits a noncriminal traffic infraction, punishable as a moving violation, as provided in s. 318.18(3)(a), F.S., which carries a \$60 fine.

### Effect of Proposed Change

The bill amends s. 316.081, F.S., to revise Florida law that a driver may not drive at any speed which is more than 10 miles per hour slower than the posted speed limit in the furthestmost left-hand lane if the driver knows, or reasonably should know that he or she is being overtaken by a driver traveling at a higher rate of speed. This provision applies to any road, street, or highway having two more lanes that allow traffic to flow in the same direction, but does not apply in the following circumstances:

- if the driver is passing another vehicle that is traveling in the same direction; or
- if the driver is preparing to make a left-turn at an intersection.

The effect of the proposed change is that a driver who violates this provision may be subject to a \$60 fine that currently exists in statute. However, the provision may give law enforcement officials an additional tool to ensure efficient and orderly flow of traffic.

## **Unauthorized Wrecker Operators (Section 65)**

### Current Situation

Florida law provides requirements for participation in county or municipal wrecker operator systems. Under s. 323.002, F.S., it is unlawful for an unauthorized wrecker operator to do any of the following:

- monitor police radio in order to determine the location of a wrecked or disabled vehicle;
- drive by the scene of a wrecked or disabled vehicle before the arrival of an authorized wrecker operator, initiate contact with the owner by soliciting or offering towing services, and tow such vehicle;
- fail to disclose, when signaled to stop by the wrecked vehicle’s owner, that he or she is not the authorized wrecker operator that has been dispatched to the scene;
- fail to disclose in writing a fee schedule when signaled to stop by the wrecked vehicle’s owner; and
- to falsely identify himself or herself as being part of the authorized wrecker operator system.

Section 775.082, F.S., – Penalties, and 775.83, F.S., – Fines, describes a violation of the first point above, as a noncriminal violation and subject to a fine up to \$500. A violation of points two, three, and four is a second-degree misdemeanor and subject to a fine up to \$500 or up to 60 days in jail. A violation of point five is a first-degree misdemeanor and subject to a fine up to \$1,000 or up to one year in jail.

### Effect of Proposed Change

The bill amends s. 323.002, F.S., by requiring that, in addition to a written fee schedule and disclosure that he or she is not the authorized wrecker operator that has been dispatched to the scene, an unauthorized wrecker operator do the following:

- disclose in writing his or her full name and driver license number;

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<sup>62</sup> s. 316.081, F.S.

- disclose that the motor vehicle is not being towed for the owner or operator's insurance company or lienholder;
- disclose the maximum charges for towing or storage which will apply before the vehicle is connected to the towing apparatus;
- disclose whether he or she has in effect an insurance policy providing at least \$300,000 of liability insurance and at least \$50,000 of on-hook cargo insurance; and
- provide a copy of the disclosure to the owner or operator in the presence of a law enforcement officer if one is present at the scene of a motor vehicle accident.

## **FHP trooper reclassification (Section 1)**

### Current Situation

Captain positions within the Florida Highway Patrol (FHP) are currently classified as Career Service.<sup>63</sup> FHP Captains carry managerial, policy and budgetary responsibility equivalent to State positions which are typically classified as Selected Exempt Service.<sup>64</sup>

### Effect of Proposed Change

The bill amends s. 110.205, F.S., to reclassify 47 Captain positions within FHP and places them in the Selected Exempt Service. According to DHSMV, the proposed change will ensure FHP Captains are measured by a standard of accountability which is equivalent to their level of responsibility. Additionally, DHSMV maintains that the proposed change will provide FHP Captains with the level of benefits appropriate for the position.

## **Red Light Cameras (Sections 4 - 10)**

### Current Situation

#### *Notice of violations and uniform traffic citations*

In 2010, the Florida Legislature enacted Ch. 2010-80, L.O.F. The law authorized DHSMV, counties, and municipalities to employ red light camera programs. As of December 2012, there were 77 local jurisdictions in Florida operating red light camera programs pursuant to adopted local ordinances. DHSMV has not implemented a red light camera program under the 2010 law.

If a red light camera captures an image of a driver running a red light, the visual information is reviewed by a traffic infraction enforcement officer.<sup>65</sup> A notice of violation (NOV) must be sent to the registered owner of the vehicle – who may or may not be the actual driver of the vehicle – by first-class mail within 30 days of the alleged violation.<sup>66</sup> The NOV must be accompanied by a photograph or other recorded image of the violation, and must include a statement of the registered owner's right to review images or video of the violation, and the time, place, and Internet location where the evidence may be reviewed.<sup>67</sup> Along with the notice, is a statement that the photographic or electronic images or the streaming video evidence of the violation constitute a "rebuttable presumption against the owner of the vehicle." A NOV carries a \$158 fine, although no points may be assessed against the driver's driver license and the NOV may not be used for the purpose of setting motor vehicle insurance rates.<sup>68</sup>

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<sup>63</sup> Part II, Chapter 110, F.S.

<sup>64</sup> s. 110.205, F.S.

<sup>65</sup> s. 316.640(1)(b)3., F.S. A traffic infraction enforcement officer must successfully complete instruction in traffic enforcement procedures and court presentation through the Selective Traffic Enforcement Program as approved by the Division of Criminal Justice Standards and Training of the Department of Law Enforcement, or through a similar program, but may not necessarily otherwise meet the uniform minimum standards established by the Criminal Justice Standards and Training Commission for law enforcement officers or auxiliary law enforcement officers under s. 943.13, F.S.

<sup>66</sup> s. 316.0083(1)(b), F.S.

<sup>67</sup> Id.

<sup>68</sup> s. 322.27(3)(d)6., F.S.

If the registered owner of the vehicle does not pay the NOV within 30 days, the traffic infraction enforcement officer must issue a uniform traffic citation (UTC) to the registered owner, which after adding court costs and fees, may carry a fine of \$256 or higher.<sup>69</sup> The UTC must be mailed by certified mail, and must be issued no later than 60 days after the violation.<sup>70</sup> The UTC must also include the statements described above regarding review of the photographic or video evidence.<sup>71</sup> The report of an officer and images provided by a traffic infraction detector are admissible in court and provide a rebuttable presumption the vehicle was used to commit the violation.<sup>72</sup>

Under current law, a person that has been issued a notice of violation for a red light camera violation does not have the right to request a hearing at the notice of violation stage to challenge the violation. Rather, he or she must elect to not pay the notice of violation, wait until the notice of violation becomes a uniform traffic citation, and then elect to receive a hearing. This process subjects the person to increased penalties in the form of a higher fine, possible points added to his or her driver license, and a possible conviction entered on his or her driving record if found to have committed the violation.

Under current law, a person that has been identified on an affidavit as the actual driver of the vehicle is not given the opportunity to pay the lower-priced notice of violation. Due to statutory time constraints that require a uniform traffic citation be issued within 30 days after issuance of a notice of violation, this transfer of liability process requires the person to pay the higher-priced uniform traffic citation.

### *Right-on-red violations*

Under s. 316.0083, F.S., DHSMV, a city, or county may not issue a notice of violation and a traffic citation for a right on red violation if the motorist makes the right-hand turn in a “careful and prudent manner.”<sup>73</sup> However, s. 316.0083, F.S., does not define what constitutes a “careful and prudent manner.”

In December 2012, DHSMV released its Red Light Camera Program Analysis (Analysis).<sup>74</sup> The Analysis compiled information from cities and counties that operate red light camera programs and focused on three specific areas: (1) statistical data; (2) enhancement to traffic safety; and (3) procedural information. DHSMV collected the information through an online survey. The reporting period was July 1, 2011 through June 30, 2012.

In total, 73 agencies responded to the online survey.<sup>75</sup> Collectively, these 73 agencies reported that there were 404 intersections across the state with red light cameras.<sup>76</sup> Out of 73 agencies, at least 45 agencies issue a notice of violation and a traffic citation for a right-on-red violation.<sup>77</sup> Only 16 agencies had a policy defining “careful and prudent manner.”<sup>78</sup>

### Effect of Proposed Change

The bill provides guidance to DHSMV and local governments as to what constitutes a “careful and prudent manner” for the purpose of issuing a red light camera citation for a right-on-red violation. Under the bill, a notice of violation and uniform traffic citation may not be issued for a right-on-red violation if

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<sup>69</sup> s. 316.0083(1)(c), F.S.

<sup>70</sup> Id.

<sup>71</sup> Id.

<sup>72</sup> ss. 316.0083(1)(e) and 318.18, F.S.

<sup>73</sup> ss. 316.0083, (1)(a) and (2), F.S.

<sup>74</sup> See the DHSMV Analysis on its website at <http://www.flhsmv.gov/Reports/RedLightCameraAnalysis2012.pdf> (Last viewed on 3/13/2013).

<sup>75</sup> Id.

<sup>76</sup> Id.

<sup>77</sup> Id. Only 72 agencies responded to the question on whether the agency issues a notice of violation and traffic citation for a right on red violation. Of the 72 agencies that responded, 45 issue a notice of violation and traffic citation for a right on red violation.

<sup>78</sup> Id. Only 71 agencies responded to the question on whether the agency issued a notice of violation and traffic citation for a right on red violation.

the driver of the vehicle came to a complete stop before turning right (provided a right-hand turn is permissible) – even if the driver has stopped beyond the stop line or other point at which a stop is required.

The bill also allows a person that has been issued a notice of violation for a red light camera violation to elect to receive a hearing within 60 days of the notice of violation. The bill explicitly provides that no payment or fee may be required in order to receive the hearing. Further, if a person elects to receive a hearing, the bill provides that the person waives his or her right to challenge delivery of the notice of violation.

To facilitate the hearings, local governments may use their currently appointed code enforcement board or special magistrate to serve as the local hearing officer. If the person is found to have committed the violation, he or she will be required to pay the notice of violation and county or municipal costs not to exceed \$250, within 10 days unless he or she enters into a payment plan. If the person does not pay the notice of violation and associated costs within 10 days, or does not comply with the terms of his or her payment plan, the bill requires the Clerk of Court to notify DHSMV. Upon notification, DHSMV is required to place a hold on the person's (or business entity's) registration until the fine and costs are paid. In this case, the registration hold will be placed on any vehicle owned or coowned by the person.

The bill provides that upon receipt of an affidavit, DHSMV or the appropriate local government may issue the person identified on the affidavit as the actual driver of the vehicle a notice of violation and allow him or her to pay it before issuance of a uniform traffic citation. The effect of the proposed change lifts the time constraints on traffic infraction enforcement officers responsible for mailing notices of violations and uniform traffic citations, and gives the person identified on the affidavit as the actual driver the same rights as the registered owner of the vehicle. Specifically, the bill allows the person to pay the \$158 notice of violation that is not subject to court costs, fees, and risks associated with attending a hearing on a uniform traffic citation – namely the possibility of a conviction being noted on the person's driving record and points added to his or her driver license.

The fiscal impact of these provisions is indeterminate.

### **Voluntary Contributions on Driver License/Identification Card and Motor Vehicle Registration Applications (Sections 28 and 47)**

#### Current Situation

Section 320.023, F.S., outlines the procedure an organization must follow prior to seeking legislative authorization to request the creation of a new voluntary contribution fee and establish a corresponding voluntary contribution on a motor vehicle registration application (initial registration or renewal). The contribution allows a registered owner of a motor vehicle to voluntarily contribute to one or more of the authorized organizations. To become eligible, the organization must submit the following to DHSMV at least 90 days before the convening of the next regular session of the Legislature:

- a request for the contribution describing it in general terms;
- an application fee of not more than \$10,000 to defray DHSMV's costs for reviewing the application and developing the new check-off. State funds may not be used to pay the application fee; and
- a marketing strategy outlining short-term and long-term marketing plans for the contribution and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues to be derived from the contributions.<sup>79</sup>

DHSMV must discontinue the check-off if less than \$25,000 has been contributed by the end of the fifth year, or if less than \$25,000 is contributed during any subsequent five-year period.<sup>80</sup>

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<sup>79</sup> s. 320.023(1), F.S.

<sup>80</sup> s. 320.023(4)(a), F.S.

Section 320.02(8), (14) and (15), F.S., section 320.08047, F.S., and section 328.72(11) and (16), F.S., provide motor vehicle registration applicants with 24 options for voluntary contributions.

Section 322.081, F.S., outlines the procedure an organization must follow prior to seeking legislative authorization to request the creation of a new voluntary contribution fee and establish a corresponding voluntary contribution on a driver's license or identification card application (initial, renewal, or replacement). The contribution allows a person applying for, renewing, or replacing a Florida driver's license or identification card to voluntarily contribute to one or more of the authorized organizations during the transaction. To become eligible, the organization must submit the following to DHSMV at least 90 days before the convening of the next regular session of the Legislature:

- a request for the contribution describing it in general terms;
- an application fee of not more than \$10,000 to defray DHSMV's costs for reviewing the application and developing the new check-off. State funds may not be used to pay the application fee; and
- a marketing strategy outlining short-term and long-term marketing plans for the contribution and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues to be derived from the contributions.<sup>81</sup>

DHSMV must discontinue the contribution if less than \$25,000 has been contributed by the end of the fifth year, or if less than \$25,000 is contributed during any subsequent five-year period.<sup>82</sup>

Section 215.20, F.S., provides for an 8 percent service charge on all income that is of a revenue nature and that is deposited in trust funds. The service charge is deposited in the General Revenue Fund. However, certain driver's license or identification card application contributions that are not classified as income of a revenue nature are excluded from this General Revenue Fund service charge.

Section 322.08(7), F.S., provides driver license applicants with 17 options for voluntary contributions.

In 2010, the Legislature established a moratorium prohibiting DHSMV from establishing new voluntary check-offs for both registration transactions, and driver's license or identification card transactions. The moratorium period is effective "between July 1, 2010, and July 1, 2013". However, an exemption applies if an organization has:

- submitted a request to establish a voluntary contribution on a motor vehicle application or a driver's license or identification card application to DHSMV before May 1, 2010; and
- submitted a valid financial analysis, marketing strategy, and application fee before September 1, 2010; or
- filed a bill during the 2010 Legislative Session to establish a voluntary contribution and has met the requirements of s. 320.023, F.S., or s. 322.081, F.S.<sup>83</sup>

Effective October 1, 2011, Tampa-based AAA Auto Club South and Dearborn, Michigan-based, The Auto Club Group, affiliated and combined operations. The enterprise is known as The Auto Club Group and provides membership, travel, insurance, and financial services to more than 8.4 million members through a network of nearly 8,000 employees in approximately 300 office locations. Corporate headquarters are located in both Dearborn and Tampa. The Auto Club Group belongs to the national AAA federation with nearly 53 million members in the United States and Canada whose mission includes protecting and advancing freedom of mobility and improving travel safety.

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<sup>81</sup> s. 322.081(1), F.S.

<sup>82</sup> s. 322.081(4)(a), F.S.

<sup>83</sup> s. 26, chapter 2010-223, L.O.F.



The Auto Club Group Traffic Safety Foundation, Inc., is a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code. The foundation raises money to help fund AAA, The Auto Club Group traffic safety programs. The staff person responsible for the foundation is paid by AAA, not the foundation. AAA donates over \$500,000 each year to the foundation for the sole purpose of traffic safety programs.<sup>84</sup>

#### Effect of Proposed Change

Section 320.02, F.S., creates a \$1 voluntary contribution check-off on an application form for a motor vehicle registration and renewal registration for the Auto Club Group Traffic Safety Foundation, Inc. Funds received by the foundation must be used to improve traffic safety culture in communities through effective outreach, education, and activities in the state that will save lives, reduce injuries, and prevent crashes. The foundation is required to comply with the motor vehicle registration voluntary check-off request procedures provided in s. 320.023, F.S.

Section 322.08, F.S., creates a \$1 voluntary contribution check-off on an application form for an original, renewal, or replacement driver's license or identification card for the Auto Club Group Traffic Safety Foundation, Inc. Funds received by the foundation must be used to improve traffic safety culture in communities through effective outreach, education, and activities in the state that will save lives, reduce injuries, and prevent crashes. The foundation is required to comply with the driver's license or identification card voluntary check-off request procedures provided in s. 320.081, F.S.

The bill adds the voluntary contributions to the Auto Club Group Traffic Safety Foundation, Inc. to the list of contributions currently exempt from the General Revenue fund service charge.

#### **Maximum width, height, length (Section 15)**

##### Current Situation

Section 316.515, F.S., contains limitations on the width, height, and length of motor vehicles. The total outside width of any vehicle or its load may not exceed 102 inches, exclusive of safety devices determined by DHSMV to be necessary for the safe and efficient operation of motor vehicles. The height of a motor vehicle may not exceed 13 feet 6 inches, inclusive of its load. A combination of vehicles not qualifying as commercial motor vehicles may not exceed a total length of 65 feet, inclusive of their load. A straight truck may not exceed a length of 40 feet in extreme overall dimension, exclusive of safety and energy conservation devices approved by the department for use on vehicles using public roads.

There are, however, exceptions to these general limitations. For example, exceptions are provided for implements of husbandry and farm equipment, agricultural trailers, and forestry equipment.

Among the exceptions to the width and height limitations, is an exception provided for farming or agricultural equipment that is operate during daylight hours upon non-limited access roads.

To qualify for the exception, the farming or agricultural equipment must be operated within a 50 mile radius of real property owned, rented, or leased by the equipment's owner.

##### Effect of Proposed Change

The bill revises the exception to the width and height limitations provided for farming or agricultural equipment that is operated during daylight hours upon non-limited access roads, and within a 50 mile radius of real property owned, rented, or leased by the equipment's owner. Specifically, the bill expands the exception to include real property managed or harvested by the equipment owner.

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<sup>84</sup> Information submitted by AAA, The Auto Club Group, March 22, 2013 (on file with the Transportation & Highway Safety Subcommittee).

The bill also revises the length limitations for straight trucks. Under the bill, a straight truck may attach a forklift to the rear of the cargo bed, provided the overall combined length of the vehicle and the forklift does not exceed 50 feet.

**Cross references** (Sections 76 - 91)

The bill makes numerous cross-reference corrections to conform to other statutory changes in the bill.

**Effective Date** (Section 94)

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2013.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

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

See Fiscal Comments.

**D. FISCAL COMMENTS:**

**Section 1** reclassifies FHP Captains positions from Career Service to the Selected Exempt Service. The proposed change reclassifying the 47 FHP Captain positions will result in an \$88,000 recurring reduction to the Highway Safety Operating Trust Fund due to the increased costs of benefits, which can be absorbed within existing trust fund revenues.

**Sections 4 – 10** prohibit a notice of violation and a traffic citation from being issued via a red light camera for a right-on-red violation if the driver came to a complete stop before turning right (where a right turn is permissible) – even if the driver has stopped beyond the stop line or other point at which a stop is required. This provision may lead to a decrease in the number of notices of violation and traffic citations being issued, which may have a corresponding decrease in revenue for the state and local governments. However, the exact fiscal impact is indeterminate.

These sections also allow the registered owner or driver to request a hearing within 60 days of receiving a red light camera notice of violation, rather than be forced to wait until the notice of violation becomes a uniform traffic citation. The local government that has issued the notice of violation may use its currently appointed code enforcement board or special magistrate to serve as the local hearing officer for purposes of conducting the hearing. If the local hearing officer finds that the violation has occurred, the registered owner or driver is to pay the \$158 notice of violation and up to \$250 in county or municipal costs. This provision may cause an increase in the number of red light camera notice of

violation challenges, and may lead to a corresponding decrease in revenue for the state and local governments.

The bill also permits the person identified on an affidavit as the actual driver of the vehicle to pay the \$158 notice of violation instead of forcing this person to pay the higher-priced uniform traffic citation, which is subject to added fines, fees, and service charges – a portion of which is deposited into the state's General Revenue Fund. Under this provision, the distribution of funds collected from the payment of the \$158 notice of violation remains the same, with \$70 deposited into the state's General Revenue Fund; \$10 deposited into the Florida Department of Health's (DOH) Emergency Medical Services Trust Fund; \$3 deposited into DOH's Brain and Spinal Cord Injury Trust Fund; and \$75 retained by the city or county that has issued the notice of violation. However, to the extent that this provision will result in a fewer number of uniform traffic citations being issued, the state's General Revenue Fund may see a decrease in funds derived from the service charge that is assessed on certain revenue that is deposited into various trust funds. Section 215.20, F.S., provides for an 8 percent service charge on all income that is of a revenue nature and that is deposited in trust funds, unless it is exempt. The service charge is deposited in the General Revenue Fund.

**Section 11** prohibits a driver from driving less than the posted speed limit in the furthestmost left-hand lane in certain circumstances. A driver who violates this provision may be subject to a \$60 fine that currently exists in statute. Fines associated with the violations of this section are estimated to be minimal and will have a minimal positive revenue impact on law enforcement entities.

**Section 12** lowers the IID threshold from 0.05 BAC to 0.025 BAC. According to DHSMV, the proposed change may increase the number of IID clients being monitored by DHSMV. However, the Department will not require additional positions to implement the change.

**Section 13** removes certain state level exemptions to FMCSA federal rules and regulations currently afforded to commercial motor vehicle owners and operators. As such, the bill places relevant federal regulations in the state level authorization statute. The removal of these state level exemptions is necessary; if not removed, Florida's continued receipt of federal dollars may be implicated, the exact amount of which is unknown.

**Section 14** adopts federal regulations that require commercial motor vehicle drivers to provide medical certification information to their state driver license agency by January 31, 2014. There is a \$100 civil penalty if a commercial motor vehicle driver violates this requirement. In as much as this provision subjects violators to a civil penalty, this provision while likely minimal, has an indeterminate positive fiscal impact on the State Transportation Trust Fund (STTF) as fine amounts are distributed to the STTF for the purpose of maintaining and repairing state roads.

In addition, the bill adds fines for violating a prohibition on the use of a hand-held mobile telephone while driving a commercial motor vehicle and texting-while-driving a commercial motor vehicle, which will have an indeterminate positive fiscal impact on the STTF.

**Section 19** prohibits a commercial learner's permit (CLP) holder from having adjudication of guilt withheld after attending driver improvement school. In as much as the prohibition would disallow CLP holders from electing to have adjudication withheld, this provision will result in more CLP holders paying fines for traffic infractions. This provision has an indeterminate positive fiscal impact on law enforcement entities receiving fines.

**Section 21** requires DHSMV to conduct a pilot program to evaluate alternatives for rebuilt inspection services to be offered by the private sector, with a particular focus on the cost impact to the consumer and the potential cost savings to DHSMV. The pilot program is limited to Miami-Dade and Hillsborough counties, and requires that DHSMV, through a memorandum of understanding with the participating entity, ensure that the entity meet basic criteria designed to protect the public, which at a minimum, includes:

- that the entity have and maintain a surety bond or irrevocable letter of credit, executed by the applicant, in the sum of \$50,000;
- have and maintain garage liability insurance for the rebuilt inspection facility; and
- have completed background checks of all owners, partners, corporate officers, and rebuilt inspectors employed by the applicant's company.

Currently, DHSMV charges a \$40 fee for the initial rebuilt inspection, which is deposited into the General Revenue Fund. If a subsequent inspection is required, there is a \$20 fee, which is deposited into the Highway Safety Operating Trust Fund. It is not known how many rebuilt inspections will be conducted by the private sector as part of the pilot program instead of by DHSMV. For this reason, the anticipated cost impacts to the consumer, a salvage motor vehicle dealer that repairs and resells salvaged motor vehicles, and the DHSMV are indeterminate.

**Section 22** allows a motor vehicle e-title to remain electronic when transferred during a private, casual sale. The consensus estimate from the March 22, 2013, Revenue Estimating Conference, projects an insignificant recurring loss to General Revenue related to filing electronic titles in casual sales.

**Section 32** creates a special use license plate for current and former armed service members that participated in Operation Desert Storm, Operation Desert Shield, or both. When applying for the plate, the vehicle owner or lessee will be required to pay the regular license tax for the vehicle, but will not pay any additional fees for the plate. The plate will be stamped with the words 'Operation Desert Storm' or 'Operation Desert Shield.' The fiscal impact is indeterminate negative, but likely insignificant to state trust funds. It is not known how many of these service members reside in Florida and would submit an application for the license plate. DHSMV's costs for designing and marketing the plate are indeterminate but hours can be incorporated into Information Systems Administration normal workload.

**Sections 33 – 37 and 39** create new specialty license plates for the American Legion, Lauren's Kids, and Big Brothers/Big Sisters. The annual use fee for each of the voluntary plates is \$25 and the benefitting organization must pre-sell at least 1,000 vouchers before DHSMV is required to create the plate. The bill also authorizes DHSMV to recover its startup costs incurred in connection with manufacturing the plate and offering it for sale. DHSMV anticipates overall startup costs for each plate to be \$60,000. Using the projected startup cost figure, each benefitting organization would have to sell 1,400 plates over and above the minimum 1,000 pre-sale vouchers before it would receive any distributions of the annual use fees.

**Sections 41 and 54** authorize DHSMV to prohibit future transactions by a licensee who has had his or her credentials canceled for paying with a dishonored (or insufficient funds) check. The effect of the proposed change will allow DHSMV to collect a greater amount of outstanding debt. This provision has an indeterminate positive fiscal impact on the General Revenue Fund as driver license fees are distributed to the General Revenue Fund.

**Sections 42 – 46** give motor vehicle, mobile home, and recreational vehicle dealers (including manufacturers, distributors, and importers) a two-year licensing option. All fees are deposited into the General Revenue Fund. Essentially, a dealer that chooses the two-year licensing option will pay for both years in year one and will owe nothing in year two. As a result, disbursements to the General Revenue Fund may be uneven from year-to-year, but are expected to be revenue neutral over the long term. It is unknown how many dealers will choose the two-year option.

**Section 50** removes the language stating that the "tax collector may direct the person to DHSMV for re-examination." The effect of the proposed change will further aid plans to transition more driver licensing services to the tax collectors. In as much as the tax collector charges a fee for every driver license transaction, the potential increase in the number of driver license transactions, specifically driver license re-examinations, is expected to have an indeterminate positive fiscal impact on the tax collector revenue.

**Sections 57, 58 and 64** authorize DHSMV to conduct administrative driver license suspension hearings via communications technology. This provision is expected to have a positive indeterminate fiscal impact on department employees, respondent licensees, and witnesses, due to anticipated savings on travel time and fuel expenditures. This provision could also lead to future departmental efficiencies should fewer FTEs be needed to conduct such hearings.

**Section 59** allows a person that has been arrested for DUI to waive his or her right to a formal review hearing and receive a driver license restricted to business purposes only, if eligible, without having to sit out the applicable 30 or 90 day period. Because the overwhelming majority of licensees that currently request a formal review hearing end up having their driver license suspensions sustained, waiver of this hearing will result in a cost savings for DHSMV and allow licensees to driver legally sooner. Under the bill, the licensee would still pay all applicable fees, but would not have to sit out the requisite waiting period.

With regard to fees, DHSMV charges a \$25 fee for the formal review hearing, which is deposited into the Highway Safety Operating Trust Fund, a \$48 fee for the “hardship” driver license, which is deposited into the General Revenue Fund – plus a \$12 fee, which is deposited into the Highway Safety Operating Trust Fund, to place the “business purposes only” restriction on the driver license.

The exact fiscal impact on state funds is indeterminate, but positive.

**Section 60** requires a DUI offender that has been granted a medical waiver in lieu of required ignition interlock device (IID) installation to seek issuance of a driver license restricted to employment purposes only, and be supervised by a licensed DUI provider, in order to receive restricted driving privileges. Because the number of DUI offenders that may wish to seek an employment purposes only driver license in connection with an IID medical waiver is unknown, this provision has an indeterminate negative fiscal impact on the number of IIDs issued, and subsequent remittance of \$12 for each installation the department receives for the operation of the Ignition Interlock Device Program. However, the DUI offender qualifying for an Employment Purposes Only (EPO) license or a restricted license under this section will have to pay \$48 for the privilege. The cost of supervision by a licensed DUI program varies according to the course level that is required, which varies according to the number of previous DUI offenses. A Level I course is a 12-hour course and costs \$250. A Level II course is a 21-hour course and costs \$390. These fees increase each year on October 1, by the lessor of three percent or the percentage increase (if any) in the Consumer Price Index as determined by the U.S. Department of Labor for the 12-month period ending on the preceding June 30, rounded to the nearest five dollars.

**Section 61** clarifies that DUI convictions that occur on the same date, but that arise from separate offense dates, are treated as separate convictions. Because driver license suspension periods and eligibility requirements for driver license reinstatement are determined in part by the number and frequency of prior DUI convictions, this provision will have an indeterminate positive fiscal impact on the entity receiving the fines. Although the change is expected to increase the accuracy of DHSMV’s record-keeping and lower the costs related to data cleanup, the exact fiscal impact is indeterminate.

**Section 56** eliminates the administrative hearing requirement in connection with the reinstatement of a habitual traffic offender’s (HTO) driving privilege, provided the HTO has met all of the department’s requirements for reinstatement. DHSMV anticipates this provision will have a \$12,336 negative fiscal impact on the Highway Safety Operating Trust Fund.

**Section 65** requires an unauthorized wrecker operator to disclose whether the unauthorized wrecker operator has in effect an insurance policy providing at least \$300,000 of liability insurance and at least \$50,000 of on-hook cargo insurance. To the extent that an unauthorized wrecker may not have an insurance policy in effect that provides coverage in these amounts, this provision may have a negative fiscal impact on the private sector.

**Section 66** shortens the time frame for which insurers have to submit the required information to DHSMV to within ten days of the policy's processing date or effective date. The effect of the proposed change will no longer distinguish between new insured's and renewals, non-renewals, or cancellations. DHSMV contends the proposed change will help reduce the number of uninsured motorists and also help DHSMV maintain accurate records. This provision has an indeterminate positive fiscal impact on the Highway Safety Operating Trust Fund.

**Section 67 and 69** modifies the deposit of cash or securities process; under the bill, DHSMV will no longer hold the deposit. Instead, the new process will require a person to obtain a certificate of deposit in the amount of \$30,000<sup>85</sup> issued and held by a financial institution. DHSMV contends that the effect of the proposed change will lower its exposure to what it calls unnecessary risk because it will no longer have to hold deposits. As a result, these provisions are expected to have an indeterminate positive fiscal impact on DHSMV Highway Safety Operating Trust Fund.

**Section 68** eliminates the current requirement that DHSMV send insurance verification notices via U.S. mail. By eliminating the requirement that DHSMV send insurance verification notices via U.S. mail, the proposed change is expected to have a positive fiscal impact on DHSMV Highway Safety Operating Trust Fund. The effect of the proposed change also requires insurers to respond to DHSMV within 20 days after the notice informing DHSMV whether or not the insured was covered during the time in question. Because insurers are technically not required to verify this information presently, this new requirement has an indeterminate impact on insurers.

**Sections 72, 92 - 93** adjust DHSMV's distribution of vessel registration revenues from a fixed \$1.4 million to "the amount equal to any administrative costs." Additionally, after all administrative costs are funded, and after current statutory distributions listed in s. 328.76(1)(a)-(1)(d), F.S., are made, the bill requires up to \$400,000 to be transferred by DHSMV to the General Inspection Trust Fund of the Department of Agriculture and Consumer Services to fund activities relating to the protection, restoration, and research of the natural oyster reefs and beds of the state. The bill also allows up to \$300,000 to be used by the Florida Fish and Wildlife Conservation Commission for boating safety education. Appropriations for the 2013-2014 fiscal year are made to provide the required spending authority for these funds.

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<sup>85</sup> If the depositor is a firm, partnership, association, corporation, or other person – other than a natural person, the amount must be \$30,000 for each vehicle (up to \$120,000). In addition, the firm, partnership, association, corporation, or other person – other than a natural person, must maintain insurance coverage in excess of \$10,000/20,000/10,000 or \$30,000 combined single limits, and such excess insurance shall provide minimum limits of \$125,000/250,000/50,000 or \$300,000 combined single limits.