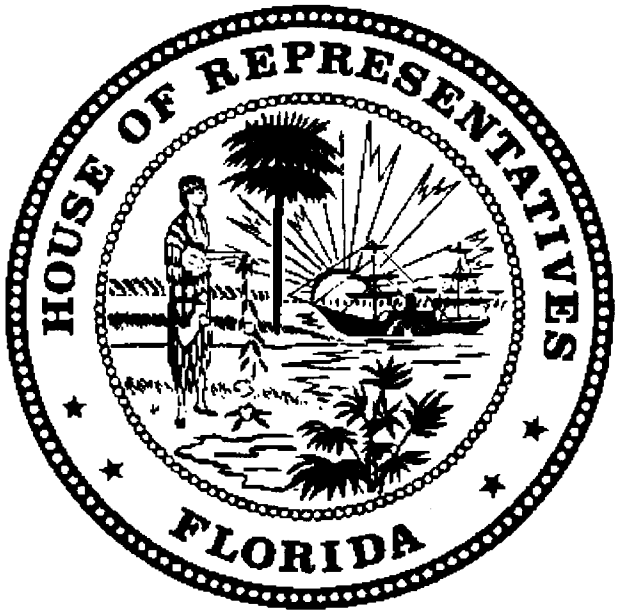

Transportation & Highway Safety Subcommittee

MEETING PACKET

Tuesday, February 4, 2014
1:30 PM – 3:30 PM
Sumner Hall (404 HOB)

Will Weatherford
Speaker

Daniel Davis
Chair

The Florida House of Representatives

Economic Affairs Committee

Transportation & Highway Safety Subcommittee

Will Weatherford
Speaker

Daniel Davis
Chair

Meeting Agenda
February 4, 2014
1:30 PM - 3:30 PM
Sumner Hall (404 HOB)

I. **Call to Order & Opening Remarks by Chair Davis**

II. **Consideration of the following bill(s):**

HB 343 Rental Car Surcharge by Rep. Nunez
HB 345 Transportation by Rep. Beshears
HB 599 Pub. Rec./Automated License Plate Recognition Systems by Rep. Hutson

III. **OPPAGA Pesentation:**

Driver's License Suspensions and Revocations

IV. **Closing Remarks and Adjournment by the Chairman**

204 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4822 Fax: (850) 410-0129

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 343 Rental Car Surcharge
SPONSOR(S): Nuñez
TIED BILLS: **IDEN./SIM. BILLS:** SB 484

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee		Johnson	Miller
2) Finance & Tax Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Section 212.0606(1), F.S., provides that a surcharge of $2 per day, or part of a day, is imposed upon the lease or rental of a motor vehicle for hire and designed to carry less than nine passengers regardless of whether the motor vehicle is licenses in Florida. The surcharge applies to the first 30 days of the term of any lease or rental and is subject to all taxes imposed by ch. 212, F.S.

The bill creates s. 212.0606(5), F.S., providing that if a member of a car-sharing service uses a motor vehicle pursuant to an agreement with a car-sharing service for less than 24 hours, in lieu of the daily rental car surcharge, a surcharge of 8 cents per hour of usage is imposed.

The bill defines "car-sharing service" as a membership based organization or business of division thereof which requires the payment of an application or membership fee and provides member access to motor vehicles:

- Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;
- Twenty-four hours per day, seven days per week;
- Only through automated means, which may include, but are not limited to, smartphone applications or electronic membership cards;
- On hourly or shorter increments;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car sharing service or its affiliates.

The bill provides that the lease, rental, or usage of a motor vehicle from an airport location is not eligible for the imposition of the surcharge for car-sharing services in lieu of the standard rental car surcharge.

The Revenue Estimating Conference estimates a negative fiscal impact of $100,000 to general revenue on a recurring basis; and negative fiscal impacts of $600,000 to state trust funds in the first year, which increases to $1 million in the second year. There is also an insignificant negative fiscal impact to local government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Rental Car Surcharge

Section 212.0606(1), F.S., imposes a surcharge of $2.00 per day or any part of a day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers, regardless of whether the vehicle is licensed in Florida. The surcharge is included in the lease or rental price on which sales tax is computed and must be listed separately on the invoice. Businesses that collect rental car surcharge are required to report surcharge collections according to the county to which the surcharge was attributed.

The surcharge applies to only the first 30 days of the term of any lease or rental, whether or not the vehicle is licensed in Florida. If the lease is renewed, the first 30 days of the renewed lease is subject to the surcharge. If payment for the lease or rental of a motor vehicle is made in Florida, the surcharge applies. The surcharge is not imposed on leases or rentals to tax-exempt entities. Section 216.0606(4), F.S., exempts from payment of the surcharge a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

After deduction for administrative fees and the General Revenue Service Charge, the rental car surcharge is distributed as follows:

- 80 percent to the State Transportation Trust Fund (STTF);
- 15.75 percent to the Tourism Promotional Trust Fund; and
- 4.25 percent to the Florida International Trade and Promotion Trust Fund.

The proceeds of the rental car surcharge deposited into the STTF are allocated to each Department of Transportation (DOT) district for transportation projects, based on the amount of proceeds collected in the counties within each respective district.

Car-Sharing Services

Car sharing is generally marketed as an alternative to conventional car rental or car ownership and exists in a number of forms.

> "Traditional carsharing provides members access to a vehicle for short-term daily use. Automobiles owned or leased by a carsharing operator are distributed throughout a network; members access the vehicles with a reservation and are charged per time and often per mile....
>
> Traditional carsharing is intended for short trips and as a supplement to public transit. Initial market entry in North America focused on the neighborhood carsharing model, characterized by a fleet of shared-use vehicles parked in designated areas throughout a neighborhood or municipality. In recent years, business models have advanced and diversified. Variations on the neighborhood model developed in North America include: business; college/university; government/institutional fleet; and public transit (carsharing provided at public transit stations or multi-modal nodes). Despite differences in target markets, these models share a similar organizational structure, capital ownership, and revenue stream.
>
> The next generation of shared-use vehicle services, which provide access to a fleet of shared-use vehicles, incorporates new concepts, technologies, and operational methods. These models represent innovative solutions and notable advances. They include one-way carsharing and

personal vehicle sharing. One-way carsharing, also known as "free-floating" carsharing, frees users from the restriction of having to return a vehicle to the same location from which it was accessed. Instead, users leave vehicles parked at any spot within the organization's operating area, allowing for the possibility of one-way trips. The one-way model resembles more traditional forms of carsharing—except for the logistics of vehicle redistribution and the need for expanded vehicle parking.

Personal vehicle sharing ... represents a more distinct model due to differences in organizational structure, capital stock, and liability. Personal vehicle sharing involves short-term access to privately-owned vehicles, enabling a lower operating cost and a wider vehicle distribution. ..."[1]

While car sharing began at the local, grassroots level, car-sharing services are now also provided by conventional rental car companies, such as Avis, Enterprise, and Hertz.[2]

Current Practice Relating to Surcharge

On September 17, 2012, the Department of Revenue (DOR) issued Technical Assistance Advisement 12A-022 in which the question presented to DOR was whether a member based car-sharing service is subject to the Florida rental car surcharge. The facts presented to DOR were as follows:

> "Taxpayer [the car-sharing service] offers a member based car-sharing service with a fleet of vehicles available for use by registered members at any time of the day, seven days a week. A member can reserve a vehicle before use, or simply locate one and access it. Each use is labeled as a "trip" and can last up to four consecutive days. A unique feature of Taxpayer's car-sharing service is members may, and often do, use a car for a much shorter period of time than typical car rentals. According to Taxpayer, the typical trip lasts twenty-five to 40 minutes, costing between $7 and $10 before taxes. Members are invoiced daily for all trips that occur and Taxpayer adds the rental car surcharge and sales tax to this invoice."

First noting taxpayer's assertion that it is not engaged in the "traditional" rental of cars, DOR concluded that the taxpayer is clearly renting cars, is engaged in the rental of motor vehicles and, therefore, the rental car surcharge does apply. However, DOR further cited its rule, Fla. Admin. Code 12A-16.002(3)(b): "When the terms of a lease or rental agreement authorize the lessee to extend the lease or rental beyond the initial lease term without executing an additional lease or agreement and without any action on the part of the lessor, the extension period will not be considered a new lease or rental."

Highlighting the fact that the taxpayer's members may make multiple trips in one day without executing any additional agreement and without any action required of the taxpayer, and that members are charged for every trip within the same twenty-four hour period on a single daily invoice, DOR concluded that the rental car "surcharge is due from Taxpayer's members once a day, regardless of the number of trips taken by a member in a twenty-four hour period." Therefore, car-sharing services must pay the $2.00 surcharge per day for each member who uses the car-sharing service that day.

It should be noted that car-sharing is also subject to the state's sales and use tax.

Proposed Changes

The bill creates s. 212.0606(5), F.S., providing that if a member of a car-sharing service uses a motor vehicle pursuant to an agreement with a car-sharing service for less than 24 hours, in lieu of the daily rental car surcharge,[3] a surcharge of 8 cents per hour of usage is imposed. Any fraction of an hour is to be rounded up to the nearest whole hour for purposes of calculating the surcharge. If a member of a

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[1] Shaheen, Susan, Mark Mallery, and Karly Kingsley (2012). "Personal Vehicle Sharing Services in North America,"*Research in Transportation Business & Management*, Vol. 3, pp.71-81.

[2] Kell, John, Jan. 2, 2013, "Avis to Buy Car-Sharing Service Zipcar," *The Wall Street Journal.*

[3] This surcharge is imposed pursuant to s. 212.0606(1), F.S.

car-sharing service uses the same motor vehicle for 24 consecutive hours or more, the surcharge of $2 per day or any part of a day shall be imposed.

The bill defines "car-sharing service" as a membership based organization or business of division thereof which requires the payment of an application or membership fee and provides member access to motor vehicles:

- Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;
- Twenty-four hours per day, seven days per week;
- Only through automated means, which may include, but are not limited to, smartphone applications or electronic membership cards;
- On hourly or shorter increments;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car sharing service or its affiliates.

The bill provides that the lease, rental, or usage of a motor vehicle for a location owned, operated, or leased by of for the benefit of an airport or airport authority is not eligible for the imposition of the surcharge for car-sharing services in lieu of the standard rental car surcharge.

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

B. SECTION DIRECTORY:

Section 1 Amends s. 212.0606, F.S., relating to the rental car surcharge.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference met on this bill on January 10, 2014. It provides the following impact to general revenue and trust fund revenue:

Fiscal Year	General Revenue	Trust Funds
2014-2015	($100,000)	($600,000)
2015-2016	($100,000)	($1,000,000)
2016-2017	($100,000)	($1,300,000)
2017-2018	($100,000)	($1,600,000)
2018-2019	($100,000)	($1,800,000)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference met on this bill on January 10, 2014. It adopted an insignificant negative fiscal impact to local governments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons using car-sharing services for less than a 24-hour period will see a reduction in the rental car surcharge that they will pay.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DOR may need to revise its rules regarding the rental car surcharge[4] to conform to provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DOR, a July 1, 2014, effective date does not give it enough time to implement the bill. DOR will have to change its form to allow for the remittance of the surcharge and have to reprogram its systems to accept the rental car surcharge for partial days. Additionally, DOR's vendor for printing the forms will not be able to have the forms printed in enough time to implement the bill. DOR recommends that the effective date be changed to January 1, 2015.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[4] Ch. 12A-16, F.A.C.

A bill to be entitled

An act relating to the rental car surcharge; amending s. 212.0606, F.S.; providing an alternative rental car surcharge rate for use of a motor vehicle pursuant to an agreement with a car-sharing service for less than a specified number of hours; defining the term "car-sharing service"; providing for applicability; providing an effective date.

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

Section 1. Subsection (1) of section 212.0606, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

212.0606 Rental car surcharge.—

(1) A surcharge of $2 ~~$2.00~~ per day or any part of a day is imposed upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers regardless of whether such motor vehicle is licensed in Florida. The surcharge applies to only the first 30 days of the term of any lease or rental. The surcharge is subject to all applicable taxes imposed by this chapter.

(5) Notwithstanding subsection (1), if a member of a car-sharing service uses a motor vehicle pursuant to an agreement with a car-sharing service for less than 24 hours, in lieu of the surcharge imposed under subsection (1), a surcharge of 8 cents per hour of usage is imposed. Any fraction of an hour shall be rounded up to the nearest whole hour for purposes of

calculating the surcharge. If a member of a car-sharing service uses the same motor vehicle for 24 consecutive hours or more, the surcharge of $2 per day or any part of a day shall be imposed pursuant to subsection (1). For purposes of this subsection, the term "car-sharing service" means a membership-based organization or business or division thereof which requires the payment of an application or membership fee and provides member access to motor vehicles:

(a) Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;

(b) Twenty-four hours per day, 7 days per week;

(c) Only through automated means, which may include, but are not limited to, smartphone applications or electronic membership cards;

(d) On hourly or shorter increments;

(e) Without a separate fee for refueling the motor vehicle;

(f) Without a separate fee for minimum financial responsibility liability insurance; and

(g) Owned or controlled by the car-sharing service or its affiliates.

The lease, rental, or usage of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority is not eligible for imposition of the surcharge under this subsection in lieu of the surcharge imposed under subsection (1).

Section 2. This act shall take effect July 1, 2014.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 343 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Transportation & Highway Safety Subcommittee

Representative Nuñez offered the following:

Amendment

Remove line 57 and insert:

Section 2. This act shall take effect January 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 345 Transportation
SPONSOR(S): Beshears
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 218

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee		Johnson	Miller
2) Transportation & Economic Development Appropriations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill revises provisions related to certain transportation-related utility relocation expenses, outdoor advertising permit exemptions, and the tourist oriented directional sign program. Specifically, the bill:

- Provides an additional exemption for payment to relocate certain municipally or county owned utilities located in road and rail corridors under specified conditions.
- Eliminates unnecessary rulemaking authority relating to lighting restrictions for certain outdoor advertising signs.
- Exempts from permitting certain signs placed by tourist-oriented businesses, farm signs placed during harvest season, acknowledgement signs on publicly funded school premises, and displays on specific sports facilities.
- Provides that certain exemptions from sign permitting may not be implemented if such exemptions will adversely affect the allocation of federal funds to the Department of Transportation (DOT).
- Directs DOT to notify a sign owner that a sign must be removed if federal funds are adversely impacted.
- Authorizes DOT to remove a sign and assess costs to the sign owner under certain circumstances
- Clarifies provisions relating to the tourist-oriented directional sign program.

DOT may see an increase in expenditures and certain municipally owned or county-owned utilities may see a reduction in expenditures due to the utility relocation provision.

Local governments may receive some permit fees from tourist-oriented directional signs.

Failure of the state to maintain control of its outdoor advertising could result in a 10 percent reduction in federal highway funds, which correlates to approximately $160 million annually. However, the bill provides that the outdoor advertising exemptions may not be implemented or continued if the Federal Government notifies DOT that federal funds will be adversely affected.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Utility Relocation

Current Situation

Section 337.104, F.S., addresses the use of road and rail corridor right-of-way by utilities,[1] authorizing the Department of Transportation (DOT) and local government entities[2] to prescribe and enforce reasonable regulations relating to the placing and maintaining of any utility lines along, across, or on any road or publicly-owned rail corridors under their respective jurisdictions.

Section 337.403, F.S., provides that, other than the exceptions below, if an authority determines that a utility upon, under, over, or along a public road or publicly-owned rail corridor, is interfering with the safe continuous use, maintenance, improvement, extension or expansion of the road or rail corridor. The utility, upon 30 days written notice, is required to begin work to remove or relocate the utility at its own expense. The exceptions are:

- When the project is on the federal aid interstate system and federal funding is identified for at least 90 percent of the cost, DOT pays for the removal or relocation with federal funds.
- When utility work is performed as part of a transportation facility construction contract, DOT may participate in those costs in an amount limited to the difference between the official estimate of all the work in the agreement plus 10 percent of the amount awarded for the utility work in the construction contract.
- When utility work is performed in advance of a construction contract, DOT may participate in the cost of clearing and grubbing necessary for relocation.
- If the utility being removed or relocated was initially installed to serve an authority or its tenants, or both, the authority bears the cost of the utility work but is not responsible for the cost of removal or relocation of any subsequent additions to the facility for the purpose of serving others.
- If, in an agreement between the utility and an authority entered into after July 1, 2009, the utility convey, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority without the agreement expressly addressing future responsibility for cost of removal or relocation the authority bears the cost of the utility work, but nothing impairs or restricts, or may be used to interpret, the terms of any agreement entered into prior to July 1, 2009.
- If the utility is an electric facility being relocated underground to enhance vehicular, bicycle, and pedestrian safety, and if ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past five years, DOT bears the cost of the necessary utility work.
- An authority may bear the cost of utility work when the utility is not able to establish a compensable property right in the property where the utility is located if:
    - The utility was physically located on the particular property before the authority acquired rights in the property;
    - The utility demonstrates that it has a compensable property right in all adjacent properties along the alignment of the utility; and
    - The information available to the authority does not establish the relative priorities of the authority's and the utility's interest in the property.

[1] "Utility" means any electric transmission, telephone, telegraph, or other communications service lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structure. See s. 337.401(1)(a), F.S.
[2] Referred to in ss. 337.401-337.404, F.S., as the "authority."

Under DOT procedure 710-030-005, *Utility Work for Local Government Utilities,*[3] when a government entity cannot afford utility work necessitated by a DOT project, DOT will pay for the work and the government entity will sign a promissory note to reimburse DOT. Under these circumstances, if the entity does not reimburse DOT within 10 years, DOT can take steps to write off the loss as opposed to continuing the collection efforts.

Proposed Changes

The bill creates s. 337.403(h), F.S., providing that if a municipally owned or county-owned utility is located in a rural area of critical economic concern (RACEC)[4] and DOT determines that the utility is unable, and will not be able within the next 10 years to pay for the cost of utility work necessitated by a DOT project on the State Highway System, DOT may pay, in whole or in part, the cost of such utility work performed by DOT or its contractor.

According to DOT, this formalizes its current procedure of promissory note forgiveness for a local utility that meets certain criteria and demonstrates an inability to pay for utility work necessitated by a DOT project. DOT retains discretion to pay for work if the utility meets the prerequisites established in the bill.

According to DOT, it currently "has approximately $12 million in promissory notes for utility relocations that under the legislation would be eligible for waivers."[5]

Outdoor Advertising

Current Situation

Control of Outdoor Advertising

Since the passage of the Highway Beautification Act (HBA) in 1965,[6] FHWA has established controls for outdoor advertising along Federal-Aid Primary, Interstate and National Highway System (NHS) roads. The HBA allows the location of billboards in commercial and industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

The primary features of the Highway Beautification Act include:

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting and spacing provisions as agreed to by the state and federal governments. Billboard controls apply to all Interstates, Federal-Aid Primaries, and other highways that are part of the National Highway System.
- States have the discretion to remove legal nonconforming signs[7] along highways. However, the payment of just (monetary) compensation is required for the removal of any lawfully erected billboard along the Federal-Aid Primary, Interstate and National Highway System roads.
- States and localities may enact stricter laws than stipulated in the HBA.

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[3] http://www2.dot.state.fl.us/proceduraldocuments/procedures/proceduresbynumber.asp?index=7 (Last visited November 6, 2013.)

[4] Section 288.0656(2)(d) defines "rural area of critical economic concern" as "a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact."

[5] Department of Transportation bill analysis of SB 218. Copy on file with House Transportation and Highway Safety Subcommittee.

[6] 23 U.S.C. 131

[7] A "legal nonconforming sign" is a sign that was legally erected according to the applicable laws or regulations of the time, but which does not meet current laws or regulations.

- No new signs can be erected along the scenic portions of state designated scenic byways of the Interstate and Federal-Aid Primary highways, but billboards are allowed in segmented areas deemed un-scenic on those routes.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. While the states are not directly forced to control signs, failure to impose the required controls can result in a substantial penalty. The penalty for non-compliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.[8]

Under the provisions of a 1972 agreement[9] between the State of Florida and the U.S. Department of Transportation (USDOT) incorporating the HBA's required controls, DOT requires commercial signs to meet certain requirements when they are within 660 feet of Interstate and Federal-Aid Primary highways in urban areas, or visible at any distance from the same roadways when outside of urban areas. The agreement embodies the federally-required "effective control of the erection and maintenance of outdoor advertising signs, displays, and devices." Absent this effective control, the non-compliance penalty of 10 percent of federal highway funds may be imposed. Florida has never been penalized for loss of effective control of outdoor advertising signs.

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law and the 1972 agreement.

On Premise Signs/Lighting Restrictions/Rulemaking Authority

Section 479.16(1), F.S., currently allows, without the need for a permit, signs erected on the premises of an establishment that consists primarily of the name of the establishment or identify the principal or accessory merchandise, services, activities, or entertainment sold, produced, manufactured, or furnished on the premises of the establishment, provided the signs comply with the lighting restrictions "under department rule adopted pursuant to s. 479.11(5), F.S."

Section 479.11(5), F.S., prohibits on-premises signs that display "intermittent lights not embodied in the sign, or rotating or flashing light within 100 feet of the outside boundary of the right of way of any highway on the State Highway System, interstate highway system, or federal–aid primary highway system or which is illuminated in such a manner so as to cause glare or the impair the vision of motorists or otherwise distract motorists so as to interfere with the motorists' ability to safely operate the vehicle."

DOT currently has no adopted rule that addresses lighting restrictions for on-premise signs and relies on the quoted statute.

Other Permit Exemptions

Section 479.16, F.S., currently identifies a number of other signs for which permits are not required, including:

- Signs on property stating only the name of the owner, lessee, or occupant of the premises and not exceeding eight square feet in area;
- Signs that are not in excess of eight square feet that are owned by and relate to the facilities or activities of churches, civic organizations, fraternal organizations, charitable organizations, or units or agencies of government;
- Signs place on benches, transit shelters, and waste receptacles; and
- Signs not in excess of 16 square feet placed at a road junction with the State Highway System denoting only the distance or direction of a residence or farm operation, or, in a rural area where a hardship is created because a small business is not visible from the road junction, one sign

[8] 23 U.S.C. 131(b)

[9] A copy of the 1972 agreement is available at http://www.dot.state.fl.us/rightofway/Documents.shtm (Last visited November 26, 2013).

not in excess of 16 square feet, denoting only the name of, and the distance and direction to, the business.

The latter provision does not apply to charter counties and may not be implemented if the federal government notifies DOT that implementation will adversely affect the allocation of federal funds to DOT.

Tourist-Oriented Directional Sign Program

Section 479.262, F.S., establishes a tourist-oriented directional (TOD) sign program for intersections on rural and conventional state, county, or municipal roads. The program is intended to provide directions to rural tourist-oriented businesses, services, and activities in rural counties identified by criteria and population in s. 288.0656, F.S., when approved and permitted by county or local government entities.

The latter section of law defines a "rural area of critical economic concern" as a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.[10] "Rural community" is defined to mean a county with a population of 75,000 or fewer, and a county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer.

A county or local government that issues permits for a TOD sign program is responsible for sign construction, maintenance, and program operation for roads on the State Highway System and may establish permit fees sufficient to offset associated costs. TOD signs installed on the State Highway System must comply with the requirements of the Manual on Uniform Traffic Control Devices (MUTCD) and rules established by DOT.

TOD signs may be installed on the State Highway System only after being permitted by DOT and placement of TOD signs is limited to rural conventional roads, as required in the MUTCD. TOD signs may not be placed within the right-of-way of limited access facilities; within the right-of-way of a limited access facility interchange, regardless of jurisdiction or local road classification; on conventional roads in urban areas; or at interchanges on freeways or expressways.

Proposed Changes

The bill clarifies the already existing permit exemption of signs for rural business directional signs to make the provision applicable to signs located outside an incorporated area. The bill also repeals the language that provides that the rural small business sign permit exemption does not apply in charter counties.

The bill provides the following new exemptions with the caveat that they may not be implemented or continued if the Federal Government notifies DOT that the implementation or continuation will adversely affect the allocation of federal funds to DOT:

- Signs placed by a local tourist oriented business located within a RACEC which signs meet the following criteria:
    - Not more than eight square feet in size or more than four feet in height;
    - Located only in rural areas on a facility that does not meet the definition of a limited access facility as defined by DOT rule;
    - Located within two miles of the business location and not less than 500 feet apart;
    - Located only in two directions leading to the business;
    - Not located within the road right-of-way.

[10] A list of rural areas of critical economic concern is available at: http://www.eflorida.com/FloridasFuture.aspx?id=2108 (Last visited November 25, 2013).

Businesses placing such signs must be a minimum of four miles from any other business utilizing this exemption and such business may not participate in any other DOT directional signage program.

- Signs not in excess of 32 square feet placed temporarily during harvest season of a farm operation for a period of no more than four months at a road junction with the State Highway System denoting only the distance or direction of the farm operation.
- Acknowledgement signs erected upon publicly funded school premises relating to a specific public school club, team or event placed no closer than 1,000 feet from another acknowledgement sign on the same side of the roadway. All sponsors on an acknowledgement sign may constitute no more than 100 square feet of the sign.[11]
- Displays erected upon a sports facility that displays content directly related to the facility's activities or where a presence of the products or services offered on the property exists. Displays are to be mounted flush or flat to the surface of the sports facility and rely upon the building façade for structural support.[12]

The bill provides that if certain exemptions are not implemented or continued due to Federal Government notification that the allocation of federal funds to DOT will be adversely affected, DOT shall provide notice to the sign owner that the sign must be removed within 30 days. If the sign is not removed within 30 days, DOT is authorized to remove the sign and all costs associated with sign removal are to be assessed against and collected from the sign owner.

Effective Date

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

B. SECTION DIRECTORY:

Section 1 Amends s. 337.403, F.S., relating to interference cause by relocation of utility; expenses.

Section 2 Amends s. 479.16, F.S., relating to signs for which permits are not required.

Section 3 Amends s. 479.262, F.S., relating to the tourist oriented directional sign program.

Section 4 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DOT may incur some additional expenditure for paying for certain utility work for municipally-owned and county-owned utilities in RACECs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[11] The bill defines "acknowledgement sign" as signs that are intended to inform the traveling public that a public school club, team, or event has been sponsored by a person, firm, or entity.

[12] The bill defines, "sports facility" as an athletic complex, athletic arena, or athletic stadium, including physically connected parking facilities, which is open to the public and has a permanent installed seating capacity of 15,000 or more.

Local governments may establish permit fees for TOD signs sufficient to offset associated costs. The revenues from the permit fees are indeterminate.

2. Expenditures:

Municipally and county owned utilities in RASECs may see a reduction in expenditures due to DOT paying for utility work in certain circumstances.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

In the event DOT bears the cost of utility work for a municipally or county-owned utility removal or relocation and such actions avoid delays of a project on the State Highway System, a positive but indeterminate fiscal impact to business and private individuals may be realized.

The bill expands the list of exemptions from permitting requirements for certain signs. To the extent a sign owner had been paying for permits for these signs in the past, this change will have a positive impact on the private sector. Such signs are also required to be removed at the owner's expense should DOT find the sign must be removed due to federal notification. The net effect of these provisions on a sign owner is indeterminate.

Revisions of the TOD sign program eliminating the restriction of the program to signs at intersections in RACECs provides greater opportunity for business participation in the program. Participants will be subject to permit fees established by local governments.

D. FISCAL COMMENTS:

Failure of the state to maintain control of its outdoor advertising could result in a 10 percent reduction in federal highway funds, which correlates to approximately $160 million annually. However, the bill provides that the outdoor advertising exemptions may not be implemented or continued if the Federal Government notifies DOT that the implementation or continuation will adversely affect the allocation of federal funds to DOT.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill eliminates unnecessary rulemaking authority related to lighting restrictions for certain outdoor advertising signs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to transportation; amending s. 337.403, F.S.; providing an exception for payment of certain utility work necessitated by a project on the State Highway System for municipally owned utilities or county-owned utilities located in rural areas of critical economic concern and authorizing the Department of Transportation to pay for such costs under certain circumstances; amending s. 479.16, F.S.; exempting certain signs from the provisions of ch. 479, F.S.; exempting from permitting certain signs placed by tourist-oriented businesses, certain farm signs placed during harvest seasons, certain acknowledgement signs on publicly funded school premises, and certain displays on specific sports facilities; providing that certain provisions relating to the regulation of signs may not be implemented or continued if such actions will adversely impact the allocation of federal funds to the Department of Transportation; directing the department to notify a sign owner that the sign must be removed if federal funds are adversely impacted; authorizing the department to remove the sign and assess costs to the sign owner under certain circumstances; amending s. 479.262, F.S.; clarifying provisions relating to the tourist-oriented directional sign program; limiting

the placement of such signs to intersections on certain rural roads; prohibiting such signs in urban areas or at interchanges on freeways or expressways; providing an effective date.

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

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

337.403 Interference caused by relocation of utility; expenses.—

(1) If a utility that is placed upon, under, over, or along any public road or publicly owned rail corridor is found by the authority to be unreasonably interfering in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor, the utility owner shall, upon 30 days' written notice to the utility or its agent by the authority, initiate the work necessary to alleviate the interference at its own expense except as provided in paragraphs (a)-(h) ~~(a)-(g)~~. The work must be completed within such reasonable time as stated in the notice or such time as agreed to by the authority and the utility owner.

(a) If the relocation of utility facilities, as referred to in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No. 84-627 ~~627 of the 84th Congress~~, is necessitated by the

construction of a project on the federal-aid interstate system, including extensions thereof within urban areas, and the cost of the project is eligible and approved for reimbursement by the Federal Government to the extent of 90 percent or more under the Federal Aid Highway Act, or any amendment thereof, then in that event the utility owning or operating such facilities shall perform any necessary work upon notice from the department, and the state shall pay the entire expense properly attributable to such work after deducting therefrom any increase in the value of a new facility and any salvage value derived from an old facility.

(b) When a joint agreement between the department and the utility is executed for utility work to be accomplished as part of a contract for construction of a transportation facility, the department may participate in those utility work costs that exceed the department's official estimate of the cost of the work by more than 10 percent. The amount of such participation is ~~shall be~~ limited to the difference between the official estimate of all the work in the joint agreement plus 10 percent and the amount awarded for this work in the construction contract for such work. The department may not participate in any utility work costs that occur as a result of changes or additions during the course of the contract.

(c) When an agreement between the department and utility is executed for utility work to be accomplished in advance of a contract for construction of a transportation facility, the

department may participate in the cost of clearing and grubbing necessary to perform such work.

(d) If the utility facility was initially installed to exclusively serve the authority or its tenants, or both, the authority shall bear the costs of the utility work. However, the authority is not responsible for the cost of utility work related to any subsequent additions to that facility for the purpose of serving others.

(e) If, under an agreement between a utility and the authority entered into after July 1, 2009, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority, without the agreement expressly addressing future responsibility for the cost of necessary utility work, the authority shall bear the cost of removal or relocation. This paragraph does not impair or restrict, and may not be used to interpret, the terms of any such agreement entered into before July 1, 2009.

(f) If the utility is an electric facility being relocated underground in order to enhance vehicular, bicycle, and pedestrian safety and in which ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past 5 years, the department shall incur all costs of the necessary utility work.

(g) An authority may bear the costs of utility work required to eliminate an unreasonable interference when the

utility is not able to establish that it has a compensable property right in the particular property where the utility is located if:

1. The utility was physically located on the particular property before the authority acquired rights in the property;

2. The utility demonstrates that it has a compensable property right in all adjacent properties along the alignment of the utility; and

3. The information available to the authority does not establish the relative priorities of the authority's and the utility's interests in the particular property.

(h) If a municipally owned utility or county-owned utility is located in a rural area of critical economic concern, as defined in s. 288.0656(2), and the department determines that the utility is unable, and will not be able within the next 10 years, to pay for the cost of utility work necessitated by a department project on the State Highway System, the department may pay, in whole or in part, the cost of such utility work performed by the department or its contractor.

Section 2. Section 479.16, Florida Statutes, is amended to read:

479.16 Signs for which permits are not required.—Signs placed on benches, transit shelters, modular news racks, street light poles, public pay telephones, and waste receptacles within the right-of-way, as provided under s. 337.408, are exempt from this chapter. The following signs are exempt from the

requirement that a permit ~~for a sign~~ be obtained under ~~the provisions of~~ this chapter but must ~~are required to~~ comply with ~~the provisions of~~ s. 479.11(4)-(8):

(1) Signs erected on the premises of an establishment~~,~~ which ~~signs~~ consist primarily of the name of the establishment or ~~which~~ identify the principal or accessory merchandise, services, activities, or entertainment sold, produced, manufactured, or furnished on the premises of the establishment and which comply with the lighting restrictions imposed under ~~department rule adopted pursuant to~~ s. 479.11(5), or signs owned by a municipality or ~~a~~ county located on the premises of such municipality or ~~such~~ county which display information regarding government services, activities, events, or entertainment. For purposes of this section, the following types of messages shall not be considered information regarding government services, activities, events, or entertainment:

(a) Messages that ~~which~~ specifically reference any commercial enterprise.

(b) Messages that ~~which~~ reference a commercial sponsor of any event.

(c) Personal messages.

(d) Political campaign messages.

If a sign located on the premises of an establishment consists principally of brand name or trade name advertising and the merchandise or service is only incidental to the principal

activity, or if the owner of the establishment receives rental income from the sign, ~~then~~ the sign is not exempt under this subsection.

(2) Signs erected, used, or maintained on a farm by the owner or lessee of such farm and relating solely to farm produce, merchandise, service, or entertainment sold, produced, manufactured, or furnished on such farm.

(3) Signs posted or displayed on real property by the owner or by the authority of the owner, stating that the real property is for sale or rent. However, if the sign contains any message not pertaining to the sale or rental of the ~~that~~ real property, ~~then~~ it is not exempt under this section.

(4) Official notices or advertisements posted or displayed on private property by or under the direction of any public or court officer in the performance of her or his official or directed duties~~,~~ or by trustees under deeds of trust or deeds of assignment or other similar instruments.

(5) Danger or precautionary signs relating to the premises on which they are located; forest fire warning signs erected under the authority of the Florida Forest Service of the Department of Agriculture and Consumer Services; and signs, notices, or symbols erected by the United States Government under the direction of the United States Forestry Service.

(6) Notices of any railroad, bridge, ferry, or other transportation or transmission company necessary for the direction or safety of the public.

(7) Signs, notices, or symbols for the information of aviators as to location, directions, and landings and conditions affecting safety in aviation erected or authorized by the department.

(8) Signs or notices measuring up to 8 square feet in area which are erected or maintained upon property and state ~~stating~~ only the name of the owner, lessee, or occupant of the premises ~~and not exceeding 8 square feet in area~~.

(9) Historical markers erected by ~~duly constituted and~~ authorized public authorities.

(10) Official traffic control signs and markers erected, caused to be erected, or approved by the department.

(11) Signs erected upon property warning the public against hunting and fishing or trespassing ~~thereon~~.

(12) Signs ~~not in excess~~ of up to 8 square feet which ~~that~~ are owned by and relate to the facilities and activities of churches, civic organizations, fraternal organizations, charitable organizations, or units or agencies of government.

~~(13) Except that signs placed on benches, transit shelters, and waste receptacles as provided for in s. 337.408 are exempt from all provisions of this chapter.~~

(13)~~(14)~~ Signs relating exclusively to political campaigns.

(14)~~(15)~~ Signs measuring up to ~~not in excess of~~ 16 square feet placed at a road junction with the State Highway System denoting only the distance or direction of a residence or farm

operation, or, outside an incorporated ~~in a rural~~ area where a hardship is created because a small business is not visible from the road junction with the State Highway System, one sign measuring up to ~~not in excess of~~ 16 square feet, denoting only the name of the business and the distance and direction to the business. ~~The small business sign provision of this subsection does not apply to charter counties and may not be implemented if the Federal Government notifies the department that implementation will adversely affect the allocation of federal funds to the department.~~

(15) Signs placed by a local tourist-oriented business located within a rural area of critical economic concern as defined under s. 288.0656(2) which are:

(a) Not more than 8 square feet in size or more than 4 feet in height;

(b) Located only in rural areas on a facility that does not meet the definition of a limited access facility as defined by department rule;

(c) Located within 2 miles of the business location and at least 500 feet apart;

(d) Located only in two directions leading to the business; and

(e) Not located within the road right-of-way.

A business placing such signs must be at least 4 miles from any other business using this exemption and may not participate in

any other directional signage program by the department.

(16) Signs measuring up to 32 square feet denoting only the distance or direction of a farm operation which are erected at a road junction with the State Highway System, but only during the harvest season of the farm operation for a period not to exceed 4 months.

(17) Acknowledgement signs erected upon publicly funded school premises which relate to a specific public school club, team, or event which are placed at least 1,000 feet from any other acknowledgement sign on the same side of the roadway. The sponsor information on an acknowledgement sign may constitute no more than 100 square feet of the sign. For purposes of this subsection, the term "acknowledgement sign" means a sign that is intended to inform the traveling public that a public school club, team, or event has been sponsored by a person, firm, or other entity.

(18) Displays erected upon a sports facility the content of which is directly related to the facility's activities or where products or services offered on the sports facility property are present. Displays must be mounted flush to the surface of the sports facility and must rely upon the building facade for structural support. For purposes of this subsection, the term "sports facility" means an athletic complex, athletic arena, or athletic stadium, including physically connected parking facilities, which is open to the public and has a permanent installed seating capacity of 15,000 people or more.

The exemptions in subsections (14)-(18) may not be implemented or continued if the Federal Government notifies the department that implementation or continuation will adversely impact the allocation of federal funds to the department. If the exemptions in subsections (14)-(18) are not implemented or continued due to notification from the Federal Government that the allocation of federal funds to the department will be adversely impacted, the department shall provide notice to the sign owner that the sign must be removed within 30 days. If the sign is not removed within 30 days after receipt of the notice by the sign owner, the department may remove the sign, and the costs incurred in connection with the sign removal shall be assessed against and collected from the sign owner.

Section 3. Section 479.262, Florida Statutes, is amended to read:

479.262 Tourist-oriented directional sign program.—

(1) A tourist-oriented directional sign program to provide directions to rural tourist-oriented businesses, services, and activities may be established for intersections on rural and conventional state, county, or municipal roads only ~~in rural counties identified by criteria and population in s. 288.0656~~ when approved and permitted by county or local government entities within their respective jurisdictional areas ~~at intersections on rural and conventional state, county, or municipal roads~~. A county or local government that ~~which~~ issues

permits for a tourist-oriented directional sign program is ~~shall be~~ responsible for sign construction, maintenance, and program operation in compliance with subsection (3) for roads on the state highway system and may establish permit fees sufficient to offset associated costs. A tourist-oriented directional sign may not be used on roads in urban areas or at interchanges on freeways or expressways.

(2) This section does not create a proprietary or compensable interest in any tourist-oriented directional sign site or location for any permittee on any rural and conventional state, county, or municipal road ~~roads~~. The department or the permitting entity may terminate permits or change locations of tourist-oriented directional sign sites as determined necessary for construction or improvement of transportation facilities or for improved traffic control or safety.

(3) Tourist-oriented directional signs installed on the state highway system must ~~shall~~ comply with the requirements of the federal Manual on Uniform Traffic Control Devices and rules established by the department. The department may adopt rules to establish requirements for participant qualification, construction standards, location of sign sites, and other criteria necessary to implement this program.

Section 4. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 599 Pub. Rec./Automated License Plate Recognition Systems
SPONSOR(S): Hutson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 226

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee		Thompson	Miller
2) Government Operations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Automated license plate recognition (ALPR) is a mass surveillance method that uses optical character recognition of images to read vehicle license plates. ALPRs are used by law enforcement as a method of cataloging the movements of traffic or individuals. The unique capabilities of an ALPR system allow for sensitive location data regarding an individual to be researched. This location information is stored in law enforcement databases and checked against so-called "hot lists" of tags associated with criminal activity. In addition to criminal data, ALPRs also collect data for motorists not suspected of a crime.

In Florida, ALPR technology has been utilized by local and state law enforcement for the last several years. Florida law currently does not provide a public record exemption for ALPR data. As a result, an individual's ALPR data that is held by law enforcement agencies can be disclosed to anyone.

The bill creates a new public record exemption for images obtained through the use of an automated license plate recognition system and personal identifying information of an individual in data generated or resulting from images obtained through the use of an automated license plate recognition system, held by an agency. Specifically, the bill provides that such information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The bill provides two exceptions to the exemption, authorizing the disclosure of the information:

- by or to a criminal justice agency, as defined in s. 119.011(4), in the performance of a criminal justice agency's official duties; or
- to an individual to whom the license plate is registered, unless such information constitutes active criminal intelligence information or active criminal investigative information, as defined in s. 119.011(3).

The exemption is retroactive, applying to automated license plate recognition system information held by an agency before, on, or after the effective date.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Automated License Plate Recognition

Background

Automated license plate recognition (ALPR) is a mass surveillance method that uses optical character recognition on images to read vehicle license plates. ALPRs are used by law enforcement as a method of cataloging the movements of traffic or individuals. ALPR cameras can be set up at fixed locations or mounted on police cars. They can capture over 3,000 plate images per minute[3] and make a record of the license plate, which includes the date, time, and location of the image. ALPR images can be captured clearly, day and night, no matter how fast the car is going.[4] The records are stored in law enforcement databases and checked against so-called hot lists, contained within electronic clearinghouses such as the National Crime Information Center database,[5] for tags associated with

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[1] Section 24(c), Art. I of the State Constitution.

[2] *See* s. 119.15, F.S.

[3] New York State Division of Criminal Justice Services, Suggested Guidelines: Operation of License Plate Reader Technology 2011, http://criminaljustice.state.ny.us/ofpa/pdfdocs/finallprguidelines01272011a.pdf, page 11. (Last viewed 1/16/2014).

[4] Id, at pages 5-7.

[5] According to the Federal Bureau of Investigation, the National Crime Information Center, or NCIC, is an electronic clearinghouse of crime data that can be tapped into by virtually every criminal justice agency nationwide, 24 hours a day, 365 days a year. By the end of Fiscal Year (FY) 2011, NCIC contained 11.7 million active records in 19 files. During FY 2011, NCIC averaged 7.9 million transactions per day. The NCIC database currently consists of 21 files. There are seven property files containing records of stolen articles, boats, guns, license plates, parts, securities, and vehicles. There are 14 persons files, including: Supervised Release; National Sex Offender Registry; Foreign Fugitive; Immigration Violator; Missing Person; Protection Order; Unidentified Person; U.S. Secret Service Protective; Gang; Known or Appropriately Suspected Terrorist; Wanted Person; Identity Theft; Violent Person; and National Instant Criminal Background Check System (NICS) Denied Transaction. The system also contains images that can be associated with NCIC records to help agencies identify people and property items. The Interstate Identification Index, which contains automated criminal history record information, is accessible through the same network as NCIC. More information on the NCIC can be found at http://www.fbi.gov/about-us/cjis/ncic. (Last viewed 1/16/2014).

criminal activity. In addition to the criminal data that ALPRs collect, ALPR data is also collected for motorists not suspected of a crime.

A 2011 national survey found that nearly three-quarters (71 percent) of the 70 responding agencies reported using ALPRs and 85 percent plan to acquire or increase their use of the technology over the next five years.[6] As ALPR usage is increasing, concerns regarding ALPRs have also increased. Such concerns include, but are not limited to, privacy fears regarding the safety of ALPR data once it is collected. Although a license plate image in itself, is not information that can personally identify someone, and thus, has traditionally not been classified as private, the advanced surveillance capabilities and algorithms of the ALPR system that allow for location cataloguing and tracking, may challenge established concepts of what is public, and what is private. Under Florida's public records law, this sensitive data, created through the unique capabilities of an ALPR system, may be disclosed to anyone.

ALPR Data

License plate images and data associated with these images are the primary forms of information collected by ALPR systems. ALPR data may be stored in an individual ALPR unit until it is either transferred to another server or discarded. Data files compiled in ALPR systems typically contain:

- Black and white plate image;
- Contextual color image;
- Electronically readable format of plate alphanumeric characters (optical character recognition of plate numbers);
- Location and GPS coordinates;
- Time and date of image capture; and
- Camera identification.[7]

The contextual image, sometimes referred to as an overview image, may capture additional identifying features of the vehicle such as make, model, color, bumper sticker, or damage. Also, it may capture the vehicle in context, including the surrounding area.[8] In Florida, registration license plates contain a graphic symbol including the alphanumeric system of identification. With each license plate, a validation sticker is issued showing the owner's birth month, license plate number, and the year of expiration or the appropriate renewal period if the owner is not a natural person. The validation sticker is placed on the upper right corner of the license plate.[9]

Privacy Concerns

In 1974, Congress found that the right to privacy is a personal and fundamental right protected by the Constitution of the United States.[10] Additionally, the State Constitution guarantees every natural person the right to be let alone and free from governmental intrusion.[11] As jurisdictions expand their deployment of fixed and mobile ALPR systems, and build regional and statewide ALPR data sharing networks, they can rapidly amass a significant volume of data. Such expansive deployment and sharing of ALPR data retained for extended periods of time may enable agencies to systematically track the movement of vehicles throughout a jurisdiction and beyond. Although there may be no reasonable expectation of privacy in any particular sighting of a vehicle traveling on a public roadway, the

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[6] Police Executive Research Forum, Critical Issues in Policing Series; How Are Innovations in Technology Transforming Policing? (January 2012), at http://policeforum.org/library/critical-issues-in-policing-series/Technology_web.pdf, page two. (Last viewed 11/20/13).

[7] International Association of Chiefs of Police, Automated License Plate Recognition Systems; Policy and Operational Guidance for Law Enforcement, at http://www.theiacp.org/Portals/0/pdfs/IACP_ALPR_Policy_Operational_Guidance.pdf, page 13. (Last viewed 11/20/2013).

[8] Id.

[9] s. 320.06, F.S.

[10] Public Law 93-579 s. 2.

[11] Section 23, Art. I of the State Constitution.

systematic capture, storage, and retrieval of ALPR data may nevertheless raise important privacy concerns.[12]

The U.S. Supreme Court has recognized the difference between public records that might be found after a diligent search of scattered files, and a computerized summary located in a centralized clearinghouse of information. The Court found that automation overwhelms the "practical obscurity" associated with manually collecting individual records associated with a particular person into a comprehensive, longitudinal criminal history record.[13] Generally, longitudinal research methods allow researchers to study patterns and changes over time. As a result, ALPR data may be implicated when law enforcement agencies systematically capture and record license plate data and assemble the data into systems that allow for longitudinal research.[14]

Personal Identifiable Information
One key issue associated with ALPR data is whether or not it is considered "personal identifiable information." According to the United States (U.S.) Government Accountability Office (GAO) "personal identifiable information" refers to any information about an individual maintained by an agency, including:

1. any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and
2. any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

Linked information is information about or related to an individual that is logically associated with other information about the individual. For example, if two databases contain different personal identifiable information elements, then someone with access to both databases may be able to link the information from the two databases and identify individuals, as well as access additional information about or relating to the individuals.[15] However, ALPR data cannot be associated with an identifiable person unless a separate distinct inquiry is conducted. Consequently, ALPR data independently, cannot identify a person. However, when ALPR systems systematically collect, retain, and research data using other databases, an individual's location and identity become more readily available, thereby creating the opportunity for misuses such as abusive tracking, institutional abuse, and discriminatory targeting.[16]

Florida
In Florida, ALPR data collection restrictions for law enforcement do not exist. License plate data can be gathered through the use of an ALPR actively or passively. In July 2012, the ACLU submitted public records requests to nine cities and counties in Florida to obtain information on how these agencies use license plate readers.[17] They found that ALPRs capture information including the license plate number, date, time, and location of every scan. The information is collected and pooled into regional sharing systems (databases). The Florida Department of Law Enforcement (FDLE) currently has agreements with 111 police departments and sheriff's offices for access to ALPR download data.[18] Florida has a

[12] International Association of Chiefs of Police, Automated License Plate Recognition Systems; Policy and Operational Guidance for Law Enforcement, at http://www.theiacp.org/Portals/0/pdfs/IACP_ALPR_Policy_Operational_Guidance.pdf, page 31. (Last viewed 10/27/2013).
[13] *See* 489 U.S. 749 (1989).
[14] For additional information on longitudinal research, see http://psychology.about.com/od/lindex/g/longitudinal.htm. (Last viewed, 11/20/2013).
[15] United States Department of Commerce, National Institute of Standards and Technology; Guide to Protecting the Confidentiality of Personally Identifiable Information, http://csrc.nist.gov/publications/nistpubs/800-122/sp800-122.pdf. (Last viewed, 11/20/2013).
[16] American Civil Liberties Union, *You Are Being Tracked: How License Plate Readers Are Being Used To Record Americans' Movements*, July 2013, at pages 8 and 9. On file with the Transportation and Highway Safety Subcommittee.
[17] American Civil Liberties Union Automatic License Plate Reader Documents: Interactive Map - https://www.aclu.org/maps/automatic-license-plate-reader-documents-interactive-map. (Last viewed 11/20/2013).
[18] Email received from FDLE on 10/28/13. On file with the Transportation and Highway Safety Subcommittee.

very broad public records law. As a result, questions regarding the privacy of the information have surfaced.

Proposed Changes

The bill defines an "automated license plate recognition system" as a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.

The bill creates a new public record exemption for images obtained through the use of an automated license plate recognition system and personal identifying information of an individual in data generated or resulting from images obtained through the use of an automated license plate recognition system, held by an agency. Specifically, the bill provides that such information is confidential and exempt[19] from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The bill provides two exceptions to the exemption, authorizing the disclosure of the information:

- by or to a criminal justice agency, as defined in s. 119.011(4), in the performance of a criminal justice agency's official duties; or
- to an individual to whom the license plate is registered, unless such information constitutes active criminal intelligence information or active criminal investigative information, as defined in s. 119.011(3).

The exemption is retroactive, applying to automated license plate recognition system information held by an agency before, on, or after the effective date.

The bill provides that the public record exemption created by the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1. Creates s. 316.0777, F.S., related to the use of automated license plate recognition systems.

Section 2. Provides a statement of public necessity.

Section 3. Provides that the bill is effective July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[19] There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute. Florida Attorney General Opinion 85-62. If instead, the record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), review denied, 589 So.2d 289 (Fla. 1991).
Section 24(c), Art. I of the State Constitution.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on state and local agencies that collect ALPR data. Staff responsible for complying with public records requests could require training related to the creation of the public record exemption. In addition, an agency could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates the public record exemption to protect from public disclosure images and personal identifying information, held by a public agency and obtained through the use of an automated license plate recognition system. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Retroactive Application

The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.[20] The bill contains a provision requiring retroactive application. Automated license plate readers have been utilized by state[21] and local[22] law enforcement in Florida for the past several years.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[20] *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

[21] According to the Florida Highway Patrol (FHP), in 2009, it tested and evaluated an ALPR system in three patrol vehicles. FHP purchased seven ALPR systems in 2011 to use in patrol vehicles in several areas of the state. The FHP guidelines for the issuance, training, and use of Division owned ALPRs issue date is 10/14/2011.

[22] According to recent reports, ALPRs have been used by numerous local law enforcement agencies in Florida. Boca Raton law enforcement has used ALPR technology since 2010. *See* http://articles.sun-sentinel.com/2013-08-03/news/fl-palm-license-plate-cameras-20130803_1_plate-data-license-plate-cameras. (Last viewed 11/20/2013).

A bill to be entitled

An act relating to public records; creating s. 316.0777, F.S.; providing definitions; creating a public records exemption for images obtained through the use of an automated license plate recognition system and personal identifying information of an individual in data generated from such images; providing conditions for disclosure of such images and information; providing for retroactive application of the public records exemption; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 316.0777, Florida Statutes, is created to read:

316.0777 Automated license plate recognition systems; public records exemption.—

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

(a) "Agency" has the same meaning as in s. 119.011.

(b) "Automated license plate recognition system" means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license

plates into computer-readable data.

(2) The following information held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Images obtained through the use of an automated license plate recognition system.

(b) Personal identifying information of an individual in data generated or resulting from images obtained through the use of an automated license plate recognition system.

(3) Such information may be disclosed as follows:

(a) Any such information may be disclosed by or to a criminal justice agency, as defined in s. 119.011(4), in the performance of a criminal justice agency's official duties.

(b) Any such information relating to a license plate registered to an individual may be disclosed to the individual, unless such information constitutes active criminal intelligence information or active criminal investigative information, as defined in s. 119.011(3).

(4) This exemption applies to such information held by an agency before, on, or after the effective date of this exemption.

(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public

necessity that images obtained through the use of an automated license plate recognition system held by an agency and personal identifying information in data generated from such images be confidential and exempt from public records requirements. The release of such images and data gathered through automated license plate recognition systems could enable a third party to track a person's movements and compile a history on where a person has driven. This exemption is necessary because the public disclosure of such information constitutes an unwarranted invasion into the personal life and privacy of a person. The harm from disclosing such information outweighs any public benefit that can be derived from widespread and unregulated public access to such information.

Section 3. This act shall take effect July 1, 2014.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 599 (2014)

Amendment No. 1

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

Committee/Subcommittee hearing bill: Transportation & Highway Safety Subcommittee

Representative Hutson offered the following:

Amendment (with title amendment)

Remove lines 31-53 and insert:

(a) Images and data obtained through the use of an automated license plate recognition system.

(b) Personal identifying information of an individual in data generated or resulting from images obtained through the use of an automated license plate recognition system.

(3) Such information may be disclosed as follows:

(a) Any such information may be disclosed by or to a criminal justice agency, as defined in s. 119.011(4), in the performance of a criminal justice agency's official duties.

(b) Any such information relating to a license plate registered to an individual may be disclosed to the individual,

unless such information constitutes active criminal intelligence information or active criminal investigative information, as defined in s. 119.011(3).

(4) This exemption applies to such information held by an agency before, on, or after the effective date of this exemption.

(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that images and data obtained through the use of an automated

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

Remove line 4 and insert:

public records exemption for images and data obtained through

OPPAGA Presentation

Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons

Presentation to the House Transportation and Highway Safety Subcommittee

Claire K. Mazur

February 4, 2014

Project Scope

- How many driver licenses are suspended or revoked for non-driving-related reasons?
- How many driver licenses are reinstated after suspension or revocation and how long does it take for the licenses to be reinstated?
- What alternatives could the Legislature consider to suspending or revoking driver licenses for non-driving-related reasons?

Driver License Suspensions and Revocations Take Away Driving Privileges

- Laws require driver license suspension or revocation as a sanction, often in addition to other penalties, such as levying fines and fees, probation, or incarceration
- Suspensions and revocations can occur for both driving-related and non-driving-related reasons

There Are Several Non-Driving-Related Offenses Sanctioned by Driver License Suspension or Revocation

- Primary reasons for non-driving-related suspensions and revocations
  - Failure to pay child support
  - Conviction of drug-related offense
  - Failure to pay court financial obligations
  - Failure to appear - worthless check
  - Conviction of theft offense
  - Non-compliance with school attendance

State and Local Entities Play a Role in Driver License Suspension and Revocation

- The Department of Highway Safety and Motor Vehicles (DHSMV) suspends and revokes driver licenses
  - Other state agencies
    - Department of Revenue
    - Department of Education
  - Clerks of court

Failure to Pay Court Financial Obligations or Child Support Were Common Reasons for Non-Driving-Related Driver License Suspensions

Fiscal Year 2012-13 Non-Driving-Related Suspension or Revocations	Number[1]
Failure to Pay Court Financial Obligations	70,216
Failure to Pay Child Support	68,223
Conviction of Drug-Related Offense	19,024
Non-Compliance with School Attendance	4,020
Failure to Appear–Worthless Check	1,829
Conviction of Theft Offense	462
Other Non-Driving Suspensions or Revocations[2]	3,493
Total	**167,267**

[1] Numbers represent the total number of licenses suspended or revoked for non-driving-related reasons. An individual can have more than one suspension or revocation in a category or across categories.

[2] Other non-driving-related suspensions and revocations include age-related violations such as possession of tobacco or alcohol by a minor, placing graffiti on any public property or private property by a minor, possession of a firearm by a minor, and providing alcohol to a minor. Also included are court-ordered suspensions (for adults and juveniles) and fraudulent insurance claim offenses.

Source: Department of Highway Safety and Motor Vehicles.

Some Drivers with Non-Driving Suspensions and Revocations Are Eligible for Limited Driving Privileges

- Some drivers with licenses suspended or revoked for non-driving-related reasons can seek “hardship licenses”
  - **Not Eligible:** Failure to pay court financial obligations and conviction of theft offenses

Driving Privileges Can Be Reinstated

- People can have their driving privileges reinstated when they fulfill certain requirements
- Requirements vary by infraction that resulted in suspension or revocation
  - Fulfillment of legal and financial obligations
  - Reinstatement fees
  - Minimum time periods

Approximately Half of Reinstatements in Fiscal Year 2012-13 Were for Failure to Make Child Support Payments

Non-Driving-Related Suspensions or Revocations	Reinstatements
Failure to Pay Child Support	51,642
Failure to Pay Court Financial Obligations	26,420
Conviction of Drug-Related Offense	11,318
Non-Compliance with School Attendance	4,345
Failure to Appear–Worthless Check	1,993
Conviction of Theft Offense	240
Other Non-Driving Suspensions and Revocations[1]	2,507
Total Non-Driving-Related	**98,465**

[1]Individuals with more than one suspension or revocation must meet reinstatement requirements for each suspension ore revocation.

[2]Other non-driving-related suspensions and revocations include age-related violations such as possession of tobacco or alcohol by a minor, placing graffiti on any public property or private property by a minor, possession of a firearm by a minor, and providing alcohol to a minor. Also included are court-ordered suspensions (for adults and juveniles) and fraudulent insurance claim offenses.

Source: Department of Highway Safety and Motor Vehicles.

Length of Time Prior to Reinstatement Varied Depending on the Type of Suspension or Revocation

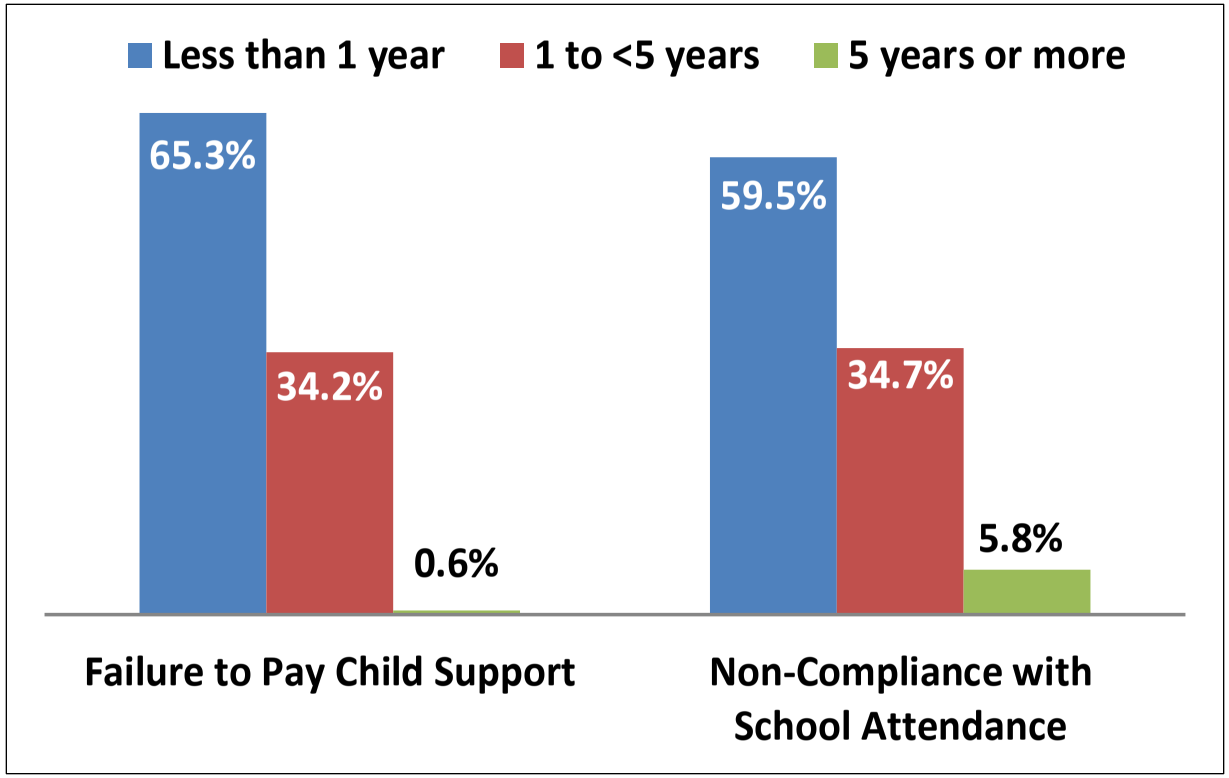
Type of Suspension or Revocation	<6 months	6 months to <1 year	1 year to <2 years	2 years to <5 years	5 years or more	Total Reinstatements Fiscal Year 2012-13
Failure to Pay Child Support	25,936	7,776	8,609	9,034	287	51,642
Failure to Pay Court Financial Obligations	6,727	3,073	4,955	8,951	2,714	26,420
Non-Compliance with School Attendance	1,726	860	839	667	253	4,345
Failure to Appear–Worthless Check	363	178	157	441	854	1,993
Suspensions or Revocations with Minimum Statutory Time Periods						
Conviction of Drug-Related Offense[1]	59	709	685	5,976	3,889	11,318
Conviction of Theft Offense[2]	21	55	43	68	53	240

[1] For drug-related convictions, licenses are initially revoked for two years, but can be reinstated after six months if the offender meets certain conditions. In addition, some business purpose-only hardship waivers allow for licenses to be reinstated in less than six months.

[2] For theft offense convictions, the first suspension imposed by the court can be for a period of up to six months; subsequent suspensions are mandatory for one year.

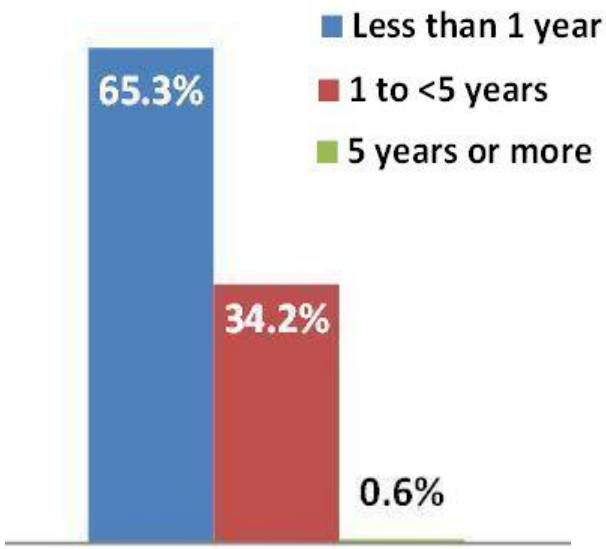
Source: Department of Highway Safety and Motor Vehicles.

Most Suspensions for Delinquent Child Support and Truancy Were Reinstated Fairly Quickly in Fiscal Year 2012-13



Source: OPPAGA analysis of data from the Department of Highway Safety and Motor Vehicles.

Driver License Suspension Appears to Be Effective Compliance Tool for Child Support



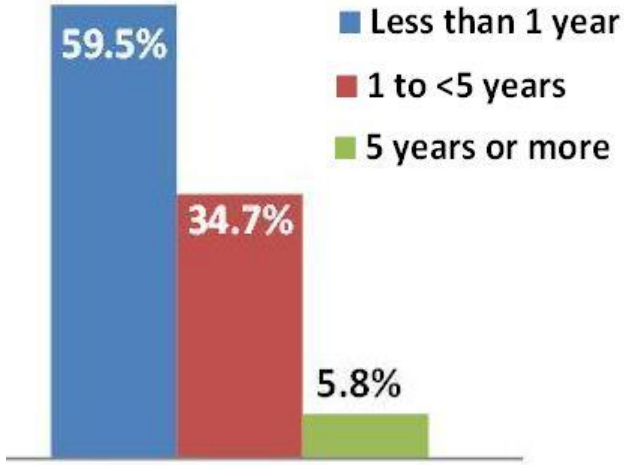
Child Support

- Many parents comply after threat of suspension
- Even after suspension occurs, almost 2/3 of reinstatements were made in less than one year

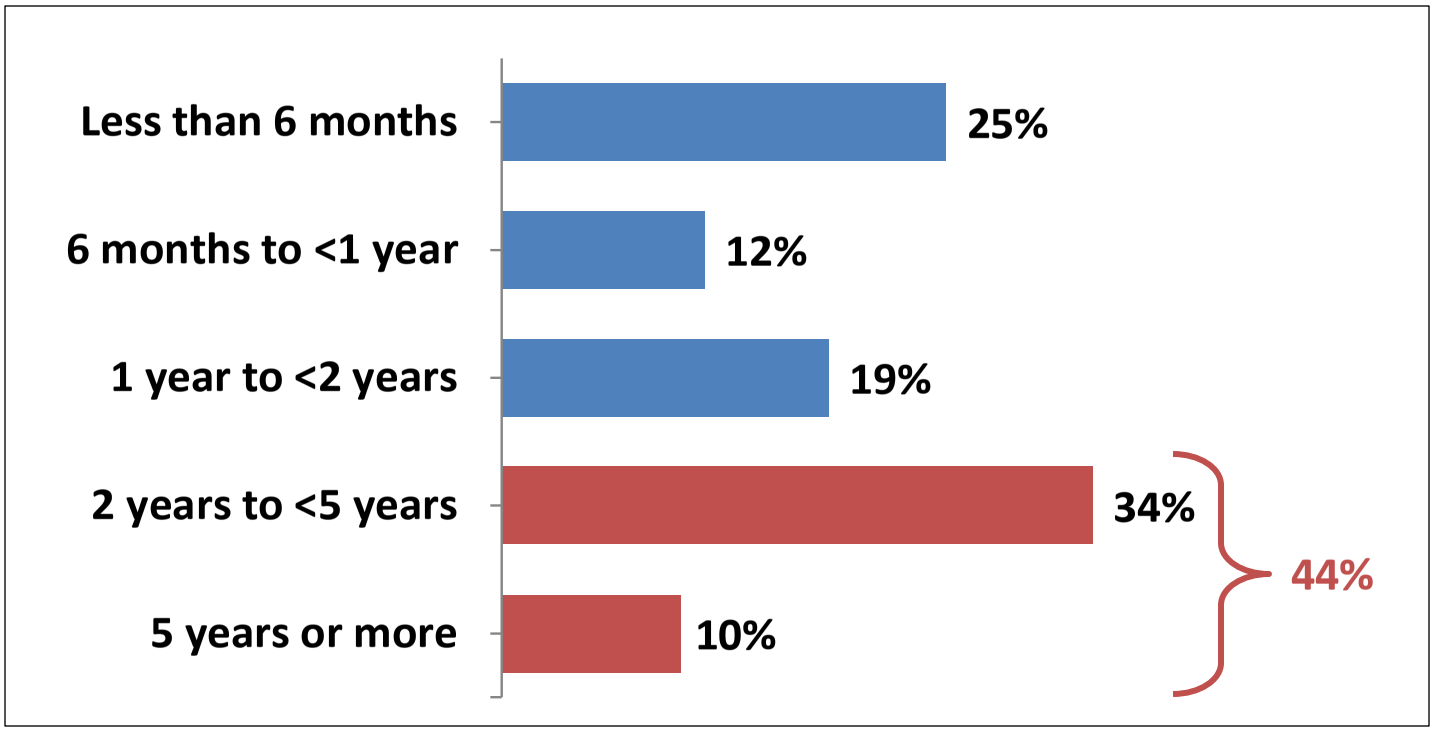
More Information is Needed to Determine Effectiveness Related to School Truancy

Truancy

- Minors can reinstate their license by complying with educational requirements or reaching age 18
- 64% of the reinstatements were for individuals age 18 or older
- More information is needed on reasons for reinstatement



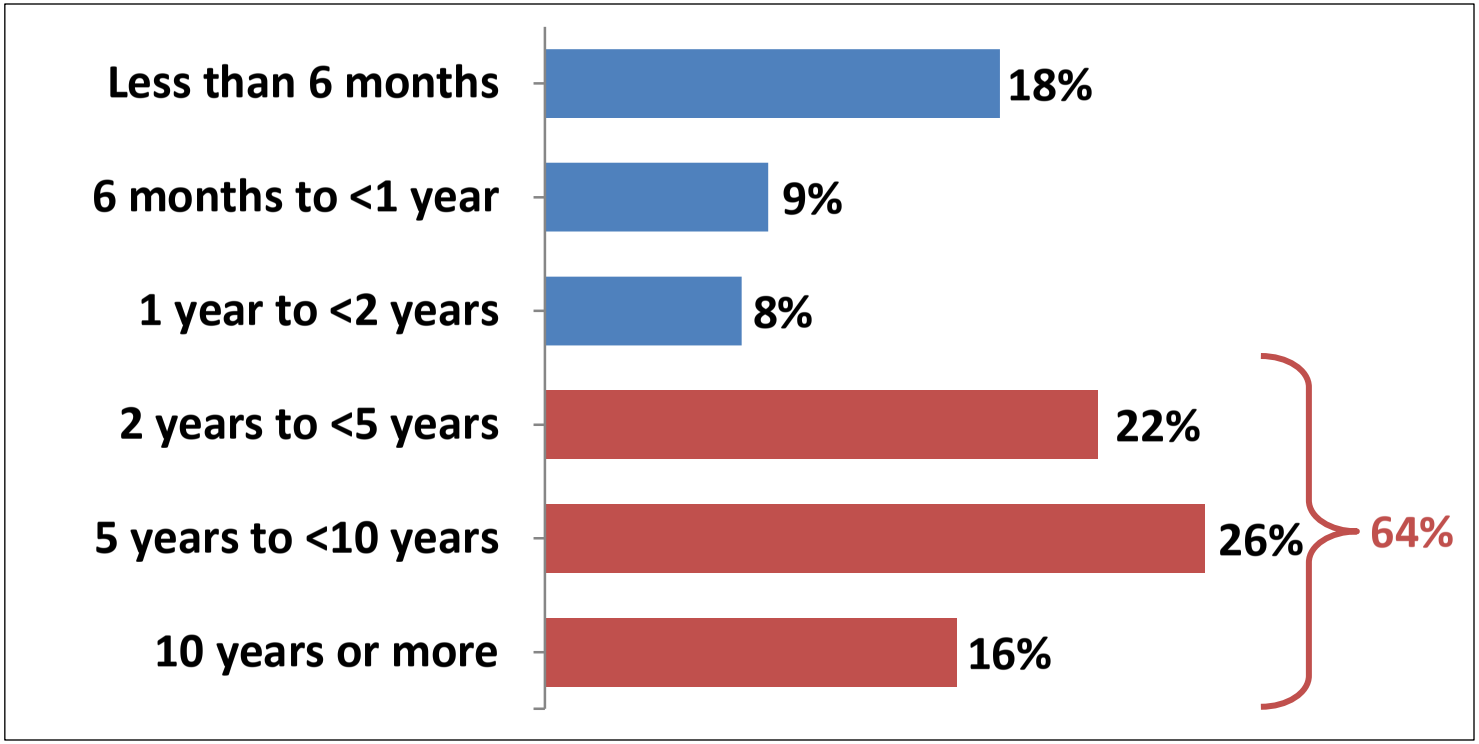
For Failure to Pay Court Financial Obligations, Many of the Licenses Reinstated in Fiscal Year 2012-13 Had Been Suspended for Two Years or More



Note: Driver licenses were not suspended for failure to pay court financial obligations until the passage of Ch. 2004-265, *Laws of Florida*, so no suspensions for this reason have been in force for more than 10 years.

Source: Department of Highway Safety and Motor Vehicles.

For Failure to Appear on Worthless Check Charges, Most of the Licenses Reinstated in Fiscal Year 2012-13 Had Been Suspended for Two Years or More



Source: Department of Highway Safety and Motor Vehicles.

Statutorily Required Timeframes Can Also Lengthen the Amount of Time to License Reinstatement

- Conviction of a drug-related offense requires a two-year driver license revocation
  - 87% of reinstatements for revocations were over 2 years old
    - 34% over 5 years old
- Theft offenses require up to six months for the first suspension and a mandatory one year period for the second suspension
  - 49% of reinstatements for suspensions were over 2 years old

Alternatives to Suspending or Revoking Driver Licenses for Non-Driving-Related Reasons

- Modify statutory requirements for driver license suspensions or revocations as a sanction for some non-driving-related reasons
- Explore modifying or opting out of Florida's implementation of the federal mandate requiring driver license suspension for drug convictions
- Codify current Department of Revenue practices regarding the use of driver license suspensions for child support enforcement
- Evaluate the effectiveness of driver license suspension for school truancy

Questions?