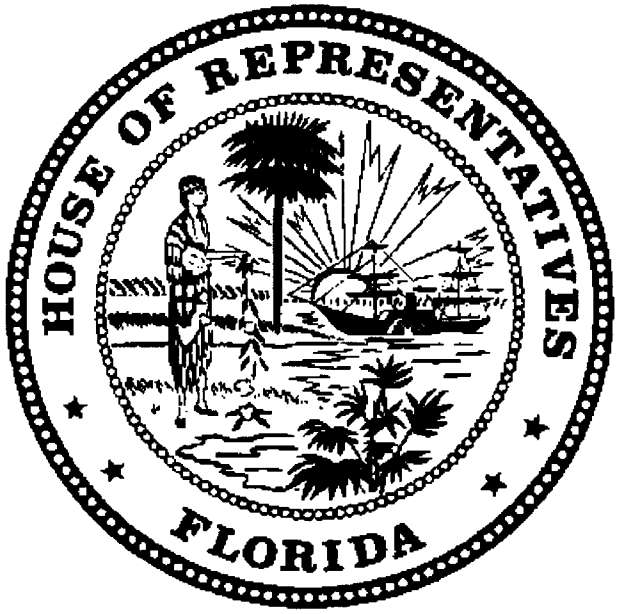

Transportation & Highway Safety Subcommittee

MEETING PACKET

Monday, March 24, 2014
3:00 PM – 5:00 PM
Sumner Hall (404 HOB)

Will Weatherford
Speaker

Daniel Davis
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Transportation & Highway Safety Subcommittee

Start Date and Time: Monday, March 24, 2014 03:00 pm

End Date and Time: Monday, March 24, 2014 05:00 pm

Location: Sumner Hall (404 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 65 Specialty License Plates/Fallen Law Enforcement Officers by Hooper
HB 225 Child Safety Devices in Motor Vehicles by Perry
HB 863 Motor Vehicle Crash Reports by Kerner
HB 865 Pub. Rec./Motor Vehicle Crash Reports by Kerner
HB 1161 The Department of Transportation by Goodson
HB 1193 Off-Highway Vehicles by Hill
HB 1325 Parking Permits for Persons with Mobility Impairment by Zimmermann
HB 1359 Rural Letter Carriers by Stone
HB 1389 Chauffeured Limousines by Grant

Consideration of the following proposed committee substitute(s):

PCS for HB 353 -- Expressway Authorities
PCS for HB 555 -- Pub. Rec./Automated Traffic Law Enforcement System

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Friday, March 21, 2014.

By request of the Chair, all Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Friday, March 21, 2014.

NOTICE FINALIZED on 03/20/2014 16:12 by Manning.Karen

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 65 Specialty License Plates/Fallen Law Enforcement Officers
SPONSOR(S): Hooper and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 132

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

SUMMARY ANALYSIS

The bill creates the Fallen Law Enforcement Officers specialty license plate, establishes the annual use fee for the plate, and provides for the distribution of the annual use fees received from the sale of the plate.

The bill requires the Department of Highway Safety & Motor Vehicles (DHSMV) to develop the plate, notwithstanding the statutory moratorium on the creation of new specialty license plates, provided the sponsoring organization (Police and Kids Foundation, Inc.) meets the requirements established in s. 320.08053, F.S. Specifically, the Police and Kids Foundation, Inc., (Foundation) must submit the proposed art design of the specialty license plate to the DHSMV no later than 60 days after the bill becomes law and record a minimum of 1,000 pre-sale vouchers within 24 months after the pre-sale specialty license plate voucher is established.

The annual use fee for the Fallen Law Enforcement Officers specialty license plate is $25, and will be distributed to the Foundation. A maximum of 10 percent of the use fee proceeds may be used to promote and market the specialty license plate. The remainder of the use fee proceeds received by the Foundation must be invested and reinvested, and the interest earnings are designated for operational purposes of the Foundation.

The bill requires that the word "Florida" appear at the top of the specialty license plate, and the words "A Hero Remembered Never Dies" appear at the bottom.

The bill has an insignificant negative fiscal impact to the DHSMV Information Systems Administration as a result of the non-recurring programming hours needed to implement the provision of the bill.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Specialty License Plates

Currently, specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. Annual use fees ranging from $15 to $25, paid in addition to required license taxes and service fees, are distributed to an organization in support of a particular cause or charity signified in the plate's design and designated in statute. Sales of specialty license plates generated more than $31 million in total gross revenues during the Fiscal Year 2013.[1]

The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization. As of 2013, the Legislature has authorized 122 specialty license plates. A sponsoring organization wishing to receive a specialty license plate is required to comply with the requirements of s. 320.08053, F.S., which include the following processes:

- Section 320.08053(1), F.S., requires the sponsoring organization to:
  - submit a description of the proposed specialty license plate to the DHSMV;
  - pay an application fee, not to exceed $60,000; and
  - submit a marketing strategy outlining short-term and long-term marketing plans and a financial analysis outlining anticipated revenues and expenditures;
- Section 320.08053(2), F.S. requires the sponsoring organization, if the proposed specialty license plate is approved by law, to submit the proposed art design for the specialty license plate to the DHSMV; and
- Section 320.08053(3), F.S. requires the sponsoring organization, prior to the manufacture of the proposed specialty license plate, to record with the DHSMV a minimum of 1,000 voucher sales within 24 months after the pre-sale specialty license plate voucher is established.[2]

In 2009, the constitutionality of s. 320.08053, F.S., was challenged in the U.S. District Court for the Middle District of Florida. The court declared the 2009 version of s. 320.08053, F.S., invalid;[3] however, in 2010 the Legislature made changes to that section of the statute.

Moratorium

Currently, there is a moratorium on the issuance of new specialty license plates. Section 45, Ch. 2008-176, L.O.F., as amended by s. 21, Ch. 2010-223, L.O.F., provides that, except for a specialty license plate proposal which has submitted a letter of intent to the DHSMV prior to May 2, 2008, and which has submitted a valid survey, marketing strategy, and application fee as required by s. 320.08053, F. S., prior to October 1, 2008, or which was included in a bill filed during the 2008 Legislative Session, the DHSMV may not issue any new specialty license plates pursuant to ss. 320.08056 and 320.08058, F.S., between July 1, 2008, and July 1, 2014."

Fallen Law Enforcement Officers

According to the Federal Bureau of Investigation (FBI), 95 law enforcement officers died from injuries incurred in the line of duty in the United States in 2012.[4] On average, one law enforcement officer is

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[1] DHSMV website, Monthly Revenue Collections Report, available at: http://services.flhsmv.gov/specialtyplates/ (last viewed March 20, 2014).

[2] Section 320.08053(3), F.S., provides that if the minimum sales requirement has not been met at the end of the 24-month pre-sale period, the DHSMV will de-authorize the specialty license plate, discontinue development, and discontinue issuance of the pre-sale voucher

[3] Case No. 6:09-cv-134-orl-28krs.

killed in the line of duty somewhere in the United States every 57 hours.[5] Since the first known line-of-duty death in 1791, more than 19,000 U.S. law enforcement officers have made the ultimate sacrifice.[6]

Police and Kids Foundation, Inc.
The Foundation is a non-profit 501(c)(3) charity, set up with two objectives: helping children in need and creating a yearly scholarship for at least one senior student at Pinellas Park High School Criminal Justice Academy.[7]

The Foundation generates funding to assist children in and around the Tampa Bay community. Local police officers provide assistance of food, infant supplies, clothing, and any other measures necessary to stabilize a situation and improve a child's life.

Effect of Proposed Changes

The bill amends ss. 320.08056, F.S. and 320.08058, F.S., to develop the Fallen Law Enforcement Officers specialty license plate, establish the annual use fee for the plate, and provide for the distribution of the annual use fees received from the sale of the plate.

The bill requires the DHSMV to develop the plate, notwithstanding the statutory moratorium on the creation of new specialty license plates, provided the Foundation meets the requirements in s. 320.08053(2) and (3), F.S. Specifically, the Foundation must submit the proposed art design to the DHSMV no later than 60 days after the bill becomes law and record a minimum of 1,000 pre-sale vouchers by the conclusion of the 24-month pre-sale period.

The bill requires that the word "Florida" appear at the top of the specialty license plate, and the words "A Hero Remembered Never Dies" at the bottom.

Drivers can purchase the specialty plate upon payment of the appropriate license taxes and fees and the $25 annual use fee. The annual use fee proceeds will be distributed to the Foundation. A maximum of 10 percent of the use fee proceeds may be used to promote and market the specialty license plate. The remainder of the use fee proceeds received by the Foundation must be invested and reinvested, and the interest earnings are designated for operational purposes of the Foundation.

Effective Date

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

B. SECTION DIRECTORY:

Section 1: Amends s. 320.08056(4), F.S., to provide for the collection of an annual use fee for the Fallen Law Enforcement Officers specialty license plate.

Section 2: Amends s. 320.08058, F.S., to create the Fallen Law Enforcement Officers specialty license plate.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

[4] U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Law Enforcement Officers Killed & Assaulted, 2012 Report, available at: http://www.fbi.gov/about-us/cjis/ucr/leoka/2012 (last viewed March 20, 2014).
[5] National Law Enforcement Officers Memorial Fund, Fats & Figures, available at: http://www.nleomf.org/facts/ (last viewed March 20, 2014).
[6] Id.
[7] Police and Kids Foundation, Inc., available at: http://www.policeandkids.com/about/ (last viewed March 20, 2014)

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DHSMV's Information Systems Administration Office will require approximately 88 hours of non-recurring programming in order to develop, design, manufacture, distribute the specialty license plate, and implement the provisions of this bill.

The DHSMV is not anticipating any additional appropriation to implement the specialty license plate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who purchase the Fallen Law Enforcement Officers specialty license plate will pay the $25 annual use fee, in addition to the appropriate license taxes and fees.

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 expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The moratorium period prohibiting the DHSMV from establishing new specialty license plates is effective "between July 1, 2008, and July 1, 2014". As such, new specialty license plates will be permissible beginning July 1, 2014. The effective date of the bill is October 1, 2014.

According to the bill's language, and as reflected in this analysis, the DHSMV will be required to create the Fallen Law Enforcement Officers specialty license plate if the Foundation meets the requirements of s. 320.08053(2) and (3), F.S. However, the DHSMV's analysis of the bill indicates that s. 320.08053(1) and (2), F.S., were invalidated. As such, it is unclear whether the Foundation will be required to meet the requirements of s. 320.08053(2), F.S., which would require the Foundation to submit the proposed art design for the specialty license plate to the DHSMV.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to specialty license plates; amending ss. 320.08056 and 320.08058, F.S.; creating a Fallen Law Enforcement Officers license plate; establishing an annual use fee for the plate; providing for the distribution of use fees received from the sale of such plates; providing an effective date.

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

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

320.08056 Specialty license plates.—

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

(eeee) Fallen Law Enforcement Officers license plate, $25.

Section 2. Subsection (83) is added to section 320.08058, Florida Statutes, to read:

320.08058 Specialty license plates.—

(83) FALLEN LAW ENFORCEMENT OFFICERS LICENSE PLATES.—

(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida, and s. 320.08053(1), the department shall develop a Fallen Law Enforcement Officers license plate as provided in s. 320.08053(2) and (3) and this section. The plates must bear the colors and design approved by the department. The word "Florida"

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

must appear at the top of the plate, and the words "A Hero Remembered Never Dies" must appear at the bottom of the plate.

(b) The annual use fees shall be distributed to the Police and Kids Foundation, Inc., which may use a maximum of 10 percent of the proceeds to promote and market the plate. The remainder of the proceeds shall be used by the Police and Kids Foundation, Inc., to invest and reinvest, and the interest earnings shall be used for the operation of the Police and Kids Foundation, Inc.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 225 Child Safety Devices in Motor Vehicles
SPONSOR(S): Perry and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 518

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

SUMMARY ANALYSIS

Current law governing the use of child restraint devices (CRDs) requires every motor vehicle operator to properly use a crash-tested, federally approved CRD when transporting a child 5 years of age or younger. However, for children aged 4 through 5 years, a separate carrier, an integrated child seat, or a seat belt may be used. A driver who violates this requirement is subject to a $60 fine, court costs and add-ons, and having 3 points assessed against his or her driver's license. However, the driver may elect, with the court's approval, to participate in a child restraint safety program, completion of which, authorizes the court to waive the penalties and assessment of points.

The bill revises child restraint requirements for children passengers in motor vehicles. The bill increases the current age threshold and establishes a new height requirement for which use of a child restraint device is required, and removes the safety belt authorization for children aged 4 through 7 years. Specifically, an operator of a motor vehicle who is transporting a child who is 7 years of age or younger, when that child is less than 4 feet 9 inches, must provide for the protection of the child by properly using a crash-tested, federally approved child restraint device. Children who are aged 4 through 7 years, and who are less than 4 feet 9 inches, must be transported only in a separate carrier or integrated child seat.

The bill may generate additional fine revenues for state and local governments. However, the number of additional children who will need restraint devices is unknown. The fiscal impacts of the bill are indeterminate.

The bill provides an effective date of January 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

According to the National Center for Disease Control and Prevention (CDC), motor vehicle injuries are the leading cause of death among children in the United States (U.S.). A major risk factor includes the incorrect use of child restraint systems. CDC provides that:

- Use of a Car seat reduces the risk for death to infants (aged less than 1 year) by 71 percent; and to toddlers (aged 1-4 years) by 54 percent in passenger vehicles.
- Use of a Booster seat reduces the risk for serious injury by 45 percent for children aged 4-8 years when compared with seat belt use alone)
- For older children and adults, use of a seat belt reduces the risk for death and serious injury by approximately one-half. [1]

A recent study of five states that increased the age requirement to 7 or 8 years for car seat/booster seat use found that the rate of children using car seats and booster seats increased nearly three times and the rate of children who sustained fatal or incapacitating injuries decreased by 17 percent.[2]

National Guidelines

The CDC recommends making sure children are properly buckled in a seat belt, booster seat, or car seat, whichever is appropriate for their age, height and weight. The following chart depicts the National Highway Traffic Safety Administration's (NHTSAs) latest car seat recommendations for children[3]:

- Birth up to age 2—Rear-facing car seat.
- Age 2 up to at least age 5—Forward-facing car seat. When a child outgrows a rear-facing seat, he or she should be buckled in a forward-facing car seat, in the back seat, until at least age 5 or when they reach the upper weight or height limit of seat.
- Age 5 up until seat belts fit properly—booster seat. Once a child outgrows a forward-facing seat, (by reaching the upper height or weight limit of their seat) he or she should be buckled in a belt positioning booster seat until seat belts fit properly.
- Once seat belts fit properly without a booster seat—Child no longer needs to use a booster seat once seat belts fit them properly. The seat belt fits properly when the lap belt lays across the upper thighs (not the stomach) and the shoulder belt lays across the chest (not the neck). The recommended height for proper seat belt fit is 57 inches tall.[4]

Other States' Child Passenger Safety Laws

Child passenger restraint requirements vary based on age, weight and height. Often, this happens in three stages: infants use rear-facing infant seats; toddlers use forward-facing child safety seats; and older children use booster seats.

- All 50 states, the District of Columbia, Guam, the Northern Mariana Islands and the Virgin Islands require child safety seats for infants and children fitting specific criteria.

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[1] See the CDC Child Passenger Safety: Fact Sheet at: http://www.cdc.gov/Motorvehiclesafety/Child_Passenger_Safety/CPS-Factsheet.html, (Last viewed Dec. 13, 2013).

[2] Id.

[3] Additional information and resources regarding car seats and keeping kids safe is available at the National Highway Traffic Safety Administration Parents Central website, at http://www.safercar.gov/parents/index.htm, (Last viewed 2/18/14).

[4] The CDC car seat recommendations for children are adapted from the National Highway Traffic Safety Administration recommendations. The CDC Guidelines for Parents and Caregivers can be viewed at: http://www.cdc.gov/motorvehiclesafety/images/child_passenger_safety/VS_cps_image_fullsize.jpg, (Last viewed 3/19/14).

- 48 states, the District of Columbia, and Puerto Rico require booster seats or other appropriate devices for children who have outgrown their child safety seats but are still too small to use an adult seat belt safely. Only Florida and South Dakota allow the use of seatbelts (only) for children under the age of 5.
- Five states (California, Florida, Louisiana, New Jersey and New York) have seat belt requirements for school buses. Texas requires them on buses purchased after September 2010.[5]

Present Situation

Currently, s. 316.613, F.S., governing the use of child restraint devices (CRDs)[6] requires every motor vehicle operator to properly use a crash-tested, federally approved CRD when transporting a child five years of age or younger. For children three years of age or younger, the CRD must be a separate carrier or a vehicle manufacturer's integrated child seat. For children aged four through five years, a separate carrier, an integrated child seat, or a seat belt may be used.[7] These requirements apply to motor vehicles operated on the roadways, streets, and highways of this state.[8]

The requirements do not apply to a:

- school bus;
- bus used to transport persons for compensation;
- farm tractor;
- truck of net weight of more than 26,000 pounds;
- motorcycle, moped, or bicycle;[9]
- chauffeur-driven taxi;
- limousine;
- sedan;
- van, bus, motor coach; or
- passenger vehicle if the operator and the motor vehicle are hired and used for the transportation of persons for compensation.[10]

A driver who violates this requirement is subject to a $60 fine,[11] court costs and add-ons, and having three points assessed against his or her driver's license.[12] However, a driver who violates this requirement may elect, with the court's approval, to participate in a child restraint safety program.[13] Upon completing such program the above penalties may be waived at the court's discretion and the assessment of points waived.[14] The child restraint safety program must use a course approved by the

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[5] The Governor's Highway Safety Association website at: http://www.ghsa.org/html/stateinfo/laws/childsafety_laws.html (Last viewed 3/19/14).

[6] The United States Department of Transportation Federal Motor Carrier Safety Standards, Standard No. 213; "Child restraint systems" provides definitions and specifies requirements for various child restraint systems used in motor vehicles and aircraft. The standard defines a "child restraint system" as any device, except Type I or Type II seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children who weigh 30 kilograms (kg) or less. The standard provides various types of child restraint systems, including, but not limited to, "booster seats," "add-on child restraint systems" (portable child restraint system), "rear-facing child restraint systems," and "factory-installed built-in child restraints." The standard also provides requirements, including, but not limited to, system integrity, injury criteria, impact protection, installation, performance, belt restraint, labeling, and test condition and procedures.

[7] s. 316.613(1)(a), F.S.

[8] s. 316.613(2), F.S., provides that the term "motor vehicle" means a motor vehicle as defined in s. 316.003, F.S., that is operated on the roadways, streets, and highways of the state.

[9] s. 316.613(2), F.S.

[10] s. 316.613(6), F.S.

[11] s. 318.18(3)(a), F.S.

[12] See s. 316.613(5), F.S.

[13] Id.

[14] Id.

Department of Highway Safety and Motor Vehicles (DHSMV), and the fee for the course must bear a reasonable relationship to the cost of providing the course.[15]

Proposed Changes

The bill amends s. 316.613, F.S., to increase the current age threshold and establishes a new height requirement for which use of a child restraint device is required, and removes the safety belt authorization for children aged 4 through 7 years.

Specifically, an operator of a motor vehicle who is transporting a child who is 7 years of age or younger when that child is less than 4 feet 9 inches in height, must provide for the protection of the child by properly using a crash-tested, federally approved child restraint device.

The bill also requires children who are aged 4 through 7 years, and who are less than 4 feet 9 inches, to be transported only in a separate carrier or integrated child seat. The bill removes the provision allowing motorists to transport children aged 4 to 7 years with only a safety belt used as protection.

Infractions are a moving violation punishable by a fine of $60 plus court costs and add-ons, and by assessment of 3 points against the driver license.

B. SECTION DIRECTORY:

Section 1. amends s. 316.613, F.S., relating to child restraint requirements.

Section 2. provides an effective date of January 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Motor vehicle operators will be required to use a separate carrier or an integrated child seat to transport children within the new age and height requirements. Seat belts alone will no longer be legal restraints for children ages 4 through 5. This change will impact motorists in the amount it costs to

[15] Id.

acquire necessary restraint devices. As the number of additional children who will need restraint devices is unknown, the amount of this impact is indeterminate. Violation of the law would be a moving violation punishable by a fine of at least $60 and a 3 point assessment on the operator's driver's license.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to child safety devices in motor vehicles; amending s. 316.613, F.S.; revising child restraint requirements for children who are younger than a specified age and less than a specified height; requiring such persons to use a separate carrier or integrated child seat; providing penalties; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.—

(1)(a) Every operator of a motor vehicle as defined in this section, while transporting a child in a motor vehicle operated on the roadways, streets, or highways of this state, shall, if the child is 7 ~~5~~ years of age or younger and less than 4 feet 9 inches in height, provide for protection of the child by properly using a crash-tested, federally approved child restraint device.

1. For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat.

2. For children aged 4 through 7 ~~5~~ years and less than 4 feet 9 inches in height, a separate carrier or~~,~~ an integrated child seat must~~, or a seat belt may~~ be used.

(5) Any person who violates this section commits a moving

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

violation, punishable as provided in chapter 318 and shall have 3 points assessed against his or her driver license as set forth in s. 322.27. In lieu of the penalty specified in s. 318.18 and the assessment of points, a person who violates this section may elect, with the court's approval, to participate in a child restraint safety program approved by the chief judge of the circuit in which the violation occurs, and, upon completing such program, the penalty specified in chapter 318 and associated costs may be waived at the court's discretion and the assessment of points shall be waived. The child restraint safety program must use a course approved by the Department of Highway Safety and Motor Vehicles, and the fee for the course must bear a reasonable relationship to the cost of providing the course.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 225 (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 Perry offered the following:

Amendment (with title amendment)

Remove lines 18-27 and insert:

shall, if the child is 5 years of age or younger, provide for protection of the child by properly using a crash-tested, federally approved child restraint device.

1. For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat.

2. For children aged 4 through 5 years, a separate carrier, an integrated child seat, or a child booster seat ~~belt~~ may be used. However, the requirement to use a child restraint device under this subparagraph does not apply when a safety belt is used as required in s. 316.614(4)(a), and the child:

a. Is being transported gratuitously by an operator who is not a member of the child's immediate family;

b. Is being transported in a medical emergency situation involving the child; or

c. Has a medical condition which necessitates an exception as evidenced by appropriate documentation from a health professional.

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

Remove lines 5-7 and insert:
than a specified age; requiring such persons to use a separate carrier, integrated child seat, or child booster seat; providing exceptions; providing penalties; providing

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 863 Motor Vehicle Crash Reports
SPONSOR(S): Kerner
TIED BILLS: HB 865 **IDEN./SIM. BILLS:** CS/SB 876

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee		Thompson	Miller P.M.
2) Insurance & Banking Subcommittee			
3) Transportation & Economic Development Appropriations Subcommittee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

HB 863 revises motor vehicle crash report access requirements. Currently, crash reports are confidential and exempt from public record disclosure requirements for a period of 60 days after the date they are filed. However, they are available to various entities, including but not limited to, the parties involved in the crash and their legal and insurance representatives, prosecutors, law enforcement, the Department of Transportation (DOT), and legitimate news media such as radio and television stations licensed by the Federal Communications Commission (FCC), qualified newspapers, and free newspapers of general circulation.

A person attempting to access a crash report within the 60 day period is required to:

- Present a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access; and
- File a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party during the time that information remains confidential and exempt.

The bill revises the crash report access requirement relating to filing written sworn statements. The bill requires a written sworn statement for each individual crash report requested within the 60-day confidential and exempt period, and requires the Department of Highway Safety and Motor Vehicles (DHSMV) to deliver a personal injury protection (PIP) solicitation warning notice either in person or by first-class mail to each party involved in a traffic crash for which a report is prepared. The notice must be 8 ½ inches by 11 inches and shall state in uppercase and boldface type, red in color, the following:

> IT IS UNLAWFUL FOR AN ATTORNEY, PHYSICIAN, CHIROPRACTIC PHYSICIAN, MEDICAL FACILITY, OR OTHER PERSON OR ENTITY TO SOLICIT YOU TO SEEK MEDICAL TREATMENT UNDER YOUR PERSONAL INJURY PROECTION POLICY. IF YOU ARE UNLAWFULLY SOLICITED, YOU SHOULD CONTACT YOUR LOCAL POLICE DEPARTMENT OR SHERIFF'S OFFICE.

The bill does not create a new or expand an existing public record exemption; thus, it does not require a two-thirds vote for final passage, nor is it required to meet any other requirements for public record exemptions under Article I, s. 24(a) of the State Constitution.

The bill will have a significant fiscal impact to the state. DHSMV will require a non-recurring programming cost of $7,400 to implement the provisions of the bill. Also, DHMV expects an annual cost of $1,250,792 to mail notices to individuals involved in crashes.

The effective date of the bill is July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Crash Reports

Section 316.066, F.S., requires a Florida Traffic Crash Report, either long or short form to be completed by law enforcement and submitted to DHSMV in the event of a motor vehicle crash.

A long form must be completed and submitted to DHSMV within ten days after law enforcement completes the investigation of a crash that:

- Resulted in death, personal injury or any indication of pain or discomfort of any parties involved in the crash;
- Involved a violation of damage to property pursuant to s. 316.061(1)1 or driving under the influence pursuant to s. 316.1932;
- Rendered a vehicle inoperable to a degree that required a wrecker to remove it from the crash scene; or
- Involved a commercial motor vehicle.[1]

The long form must include the following information:

- Date, time, and location of crash;
- Description of vehicles involved;
- Names and addresses of parties involved, including all drivers and passengers, and the identification of vehicles;
- Names and addresses of witnesses;
- Name, badge number, and law enforcement agency of investigating officer; and
- Respective parties insurance companies.[2]

In any crash for which a long form is not required by this section and which occurs on the public roadways of this state, the law enforcement officer is required to complete a short-form crash report or provide a driver exchange-of-information form, to be completed by all drivers and passengers involved in the crash. Both the short-form crash report and the driver exchange-of-information form require the identification of each vehicle that the drivers and passengers were in.[3]

The short form must include the following information:

- Date, time, and location of crash;
- Description of vehicles involved;
- Names and addresses of parties involved, including all drivers and passengers, and the identification of vehicles;
- Names and addresses of witnesses;
- Name, badge number, and law enforcement agency of investigating officer; and
- Respective parties insurance companies.[4]

Both long and short form crash reports prepared by law enforcement must be submitted to the department and may be maintained by the law enforcement officer's agency.[5]

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[1] s. 316.066(1)(a), F.S.
[2] s. 316.066(1)(b), F.S.
[3] s. 316.066(1)(c), F.S.
[4] Id.
[5] s. 316.066(1)(f), F.S.

Crash Report Public Record Exemption

Section 316.066, (2)(a), F.S., provides a public record exemption for motor vehicle long and short form crash reports that is effective for a period of 60 days after the date the report is filed. Specifically, crash reports that reveal the following information and that are held by any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes, are confidential and exempt[6] from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Identity,
- Home or employment telephone number;
- Home or employment address;
- Other personal information concerning the parties involved in the crash.

Exceptions to the Crash Report Exemption

Section 316.066, (2)(b), F.S., authorizes crash reports held by an agency to be made immediately available to:

- Parties involved in the crash;
- The legal representatives of the parties involved in the crash;
- The licensed insurance agents of the parties involved in the crash;
- The insurers or insurers to which they have applied for coverage of the parties involved in the crash;
- Persons under contract with such insurers to provide claims or underwriting information;
- Prosecutorial authorities;
- Law enforcement agencies;
- DOT;
- County traffic operations;
- Victim services programs;
- Radio and television stations licensed by the Federal Communications Commission;
- Newspapers qualified to publish legal notices under ss. 50.11 and 50.031, F.S.; and
- Free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news.

Section 316.066, (2)(c), F.S., allows any local, state, or federal agency that is authorized to have access to crash reports by any provision of law to be granted such access in the furtherance of the agency's statutory duties.

Crash Report Access Requirements

Section 316.066, (2)(d), F.S., requires a person attempting to access a crash report within the 60 days after the date the report was filed to:

- Present a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access; and
- File a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party during the time that information remains confidential and exempt.

[6] 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).

However, this provision also allows, in lieu of requiring a written sworn statement, an agency to provide crash reports by electronic means to third-party vendors under contract with one or more insurers. Such contracts must state that the information will not be used for commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for such solicitation. This authorization is effective only during the period of time the information remains confidential and exempt. A copy of the contract must be furnished to the agency as proof of the vendor's claimed status.[7]

The primary policy reason for closing access to these crash reports for 60 days to persons or entities not specifically listed appears to be protection for crash victims and their families from illegal PIP solicitation.

PIP Fraud

In a recent statewide Grand Jury report on insurance fraud relating to PIP coverage, the Fifteenth Statewide Grand Jury found the individuals called "runners" would pick up copies of crash reports filed with law enforcement agencies. The reports would then be used to solicit people involved in motor vehicle accidents. The Grand Jury found a strong correlation between illegal solicitations and the commission of a variety of frauds, including insurance fraud. The runners generally work for a attorneys, auto body shops, or health care professionals.[8]

According to the Grand Jury report:

> *Probably the single biggest factor contributing to the high level of illegal solicitations is the ready access to public accident reports in bulk by runners. These reports provide runners, and the lawyers and medical professionals who use them, the ability to contact large numbers of potential clients at little cost and with almost no effort. As a result, virtually anyone involved in a car accident in Florida is fair game to the intrusive and harassing tactics of solicitors. Such conduct can be emotionally, physically, and ultimately, financially destructive.*[9]

According to the report:

> *Some runners attempt to disguise their use of these police reports by claiming they would be used to publish what they called "transportation news" or "accident journals." These periodicals are nothing more than flimsy two or three page copies of a list of the names, addresses and phone numbers of accident victims, which information is summarized from the police reports. These "journals" are then sold at high prices to chiropractors, lawyers, auto body shops and even other solicitors for the specific purpose of soliciting the accident victims. This easy access to these reports so soon after the accident gives unscrupulous individuals an opportunity to directly contact victims of accidents with specific information about their accident.*[10]

Proposed Changes

The bill revises crash report access requirements. The bill requires a written sworn statement for each individual crash report requested within the 60-day confidential and exempt period, and requires DHSMV to deliver a PIP solicitation warning notice either in person or by first-class mail to each party involved in a traffic crash for which a report is prepared.

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[7] s. 316.066(2)(d), F.S.

[8] The Office of the Attorney General, Statewide Grand Jury Report, Second Interim Report of the Fifteenth Statewide Grand Jury, No. 95,746. (Fla. 2000). This document can be viewed at: http://myfloridalegal.com/pages.nsf/4492d797dc0bd92f85256cb80055fb97/9ab243305303a0e085256cca005b8e2e!opendocument (Last viewed 3/16/14).

[9] Id.

[10] Id.

Specifically, the bill amends s. 316.066(d), F.S., requiring that when a person accesses a crash report, within the required 60-day period after the filing of the report, presenting a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access that information, filing a written sworn statement with the state or local agency in possession of the information, such written sworn statement must be completed and sworn to by the requesting party for each individual crash report that is being requested.

The bill further requires DHSMV to design a notice and to deliver the notice in person or by first-class mail to each party involved in a traffic crash where a traffic crash report is filed. The notice shall be 8 ½ inches by 11 inches and shall state in uppercase and boldface type, red in color, the following:

> IT IS UNLAWFUL FOR AN ATTORNEY, PHYSICIAN, CHIROPRACTIC PHYSICIAN, MEDICAL FACILITY, OR OTHER PERSON OR ENTITY TO SOLICIT YOU TO SEEK MEDICAL TREATMENT UNDER YOUR PERSONAL INJURY PROECTION POLICY. IF YOU ARE UNLAWFULLY SOLICITED, YOU SHOULD CONTACT YOUR LOCAL POLICE DEPARTMENT OR SHERIFF'S OFFICE.

B. SECTION DIRECTORY:

Section 1: amends s. 316.066, F.S., relating to written reports of crashes.

Section 2: provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill will have a significant fiscal impact to the state. DHSMV will require a non-recurring programming cost of $7,400 to implement the provisions of the bill. Also, DHMV expects an annual cost of $1,250,792 to mail notices to individuals involved in crashes.[11]

   The above information is based on crash accounts involving two individuals in each crash. The department would be mailing 3,026,794 notices annually. Due to the volume of estimated numbers, the department has based information on mailings and not hand deliveries to crash individuals.[12]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[11] See the Department of Highway Safety and Motor Vehicles agency analysis for HB 863, March 4, 2014. This document is on file with the Transportation and Highway Safety Subcommittee.
[12] Id.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Requiring a written sworn statement for each individual crash report requested within the 60-day confidential and exempt period, and delivery of a PIP solicitation warning notice to those involved in a traffic crash, may help protect crash victims and their families from illegal PIP solicitations. This may have a negative fiscal impact to the entities soliciting crash victims or engaged in a business that profits from the sale of crash victim information.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments
The bill requires a notice to be mailed or hand delivered to "each party" involved in a crash for which a crash report is prepared. The bill does not provide a definition for this term. It is unclear if this means every person or just the drivers involved in the crash.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to motor vehicle crash reports; amending s. 316.066, F.S.; specifying that the required statement must be completed and sworn to for each confidential crash report requested; requiring the Department of Highway Safety and Motor Vehicles to deliver a notice regarding unlawful solicitations to persons involved in certain motor vehicle crashes; providing an effective date.

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

Section 1. Subsection (2) of section 316.066, Florida Statutes, is amended to read:

316.066 Written reports of crashes.—

(2)(a) Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and that are held by any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for a period of 60 days after the date the report is filed.

(b) Crash reports held by an agency under paragraph (a) may be made immediately available to the parties involved in the crash, their legal representatives, their licensed insurance

agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the Department of Transportation, county traffic operations, victim services programs, radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, and free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news. For the purposes of this section, the following products or publications are not newspapers as referred to in this section: those intended primarily for members of a particular profession or occupational group; those with the primary purpose of distributing advertising; and those with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes.

(c) Any local, state, or federal agency that is authorized to have access to crash reports by any provision of law shall be granted such access in the furtherance of the agency's statutory duties.

(d) As a condition precedent to accessing a crash report within 60 days after the date the report is filed, a person must present a valid driver license or other photographic identification, proof of status, or identification that

demonstrates his or her qualifications to access that information~~,~~ and file a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt. Such written sworn statement must be completed and sworn to by the requesting party for each individual crash report that is being requested within 60 days after the report is filed. In lieu of requiring the written sworn statement, an agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers, but only when such contract states that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt, and only when a copy of such contract is furnished to the agency as proof of the vendor's claimed status.

(e) This subsection does not prevent the dissemination or publication of news to the general public by any legitimate media entitled to access confidential and exempt information pursuant to this section.

(f) A notice, the design of which shall be prescribed by the department, must be delivered in person or by first-class mail to each party involved in a traffic crash for which a report is prepared pursuant to this section or when a crash report is not prepared but the law enforcement officer or traffic enforcement officer provides a short-form report to the parties to the crash pursuant to paragraph (1)(c). Such notice shall be 8 1/2 inches by 11 inches and shall state in uppercase and boldface type, red in color, the following:

IT IS UNLAWFUL FOR AN ATTORNEY, PHYSICIAN, CHIROPRACTIC PHYSICIAN, MEDICAL FACILITY, OR OTHER PERSON OR ENTITY TO SOLICIT YOU TO SEEK MEDICAL TREATMENT UNDER YOUR PERSONAL INJURY PROTECTION POLICY. IF YOU ARE UNLAWFULLY SOLICITED, YOU SHOULD CONTACT YOUR LOCAL POLICE DEPARTMENT OR SHERIFF'S OFFICE.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 863 (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 Kerner offered the following:

Amendment (with title amendment)

Remove lines 79-94

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

Remove lines 5-8 and insert:

each confidential crash report requested;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 865 Pub. Rec./Motor Vehicle Crash Reports
SPONSOR(S): Kerner
TIED BILLS: HB 863 **IDEN./SIM. BILLS:** SB 1046

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee		Thompson JHT	Miller P.M.
2) Insurance & Banking Subcommittee			
3) Government Operations Subcommittee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

Currently, crash reports are confidential and exempt from public record disclosure requirements for a period of 60 days after the date they are filed. However, an exception to the exemption allows access by various entities, including, but not limited to, the parties involved in the crash and their legal and insurance representatives, prosecutors, law enforcement, the Department of Transportation (DOT), and legitimate news media such as radio and television stations licensed by the Federal Communications Commission, qualified newspapers, and free newspapers of general circulation.

The bill amends the current public record exemption for motor vehicle crash reports. Specifically, the bill requires radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, F.S., and free newspapers of general circulation published once a week or more often, available and of interest to the public generally for the dissemination of news, which request crash reports before 60 days have elapsed after the report is filed, to request such crash reports on an individual basis.

The bill also prohibits these entities from having access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in the crash.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand 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.

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 exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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[1] 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.[2]

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[3] 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.

Crash Report Public Record Exemption

Section 316.066, (2)(a), F.S., provides a public record exemption for motor vehicle long and short form crash reports that is effective for a period of 60 days after the date the report is filed. Specifically, crash reports that reveal the following information and that are held by any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes, are confidential and exempt[4] from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Identity,
- Home or employment telephone number;
- Home or employment address;
- Other personal information concerning the parties involved in the crash.

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[1] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (see *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

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

[3] See s. 119.15, F.S.

[4] 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).

Exceptions to the Crash Report Exemption

Section 316.066, (2)(b), F.S., authorizes crash reports held by an agency to be made immediately available to:

- Parties involved in the crash;
- The legal representatives of the parties involved in the crash;
- The licensed insurance agents of the parties involved in the crash;
- The insurers or insurers to which they have applied for coverage of the parties involved in the crash;
- Persons under contract with such insurers to provide claims or underwriting information;
- Prosecutorial authorities;
- Law enforcement agencies;
- DOT;
- County traffic operations;
- Victim services programs;
- Radio and television stations licensed by the Federal Communications Commission;
- Newspapers qualified to publish legal notices under ss. 50.11 and 50.031, F.S.; and
- Free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news.

Section 316.066, (2)(c), F.S., allows any local, state, or federal agency that is authorized to have access to crash reports by any provision of law to be granted such access in the furtherance of the agency's statutory duties.

Crash Report Access Requirements

Section 316.066, (2)(d), F.S., requires a person attempting to access a crash report within the 60 days after the date the report was filed to:

- Present a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access; and
- File a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party during the time that information remains confidential and exempt.

However, this provision also allows, in lieu of requiring a written sworn statement, an agency to provide crash reports by electronic means to third-party vendors under contract with one or more insurers. Such contracts must state that the information will not be used for commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for such solicitation. This authorization is effective only during the period of time the information remains confidential and exempt. A copy of the contract must be furnished to the agency as proof of the vendor's claimed status.[5]

The primary policy reason for closing access to these crash reports for 60 days to persons or entities not specifically listed appears to be protection for crash victims and their families from illegal personal injury protection (PIP) solicitation.

[5] s. 316.066(2)(d), F.S.

PIP Fraud

In a recent statewide Grand Jury report on insurance fraud relating to PIP coverage, the Fifteenth Statewide Grand Jury found the individuals called "runners" would pick up copies of crash reports filed with law enforcement agencies. The reports would then be used to solicit people involved in motor vehicle accidents. The Grand Jury found a strong correlation between illegal solicitations and the commission of a variety of frauds, including insurance fraud. These runners generally work for attorneys, auto body shops, or health care professionals.[6]

According to the Grand Jury report:

> *Probably the single biggest factor contributing to the high level of illegal solicitations is the ready access to public accident reports in bulk by runners. These reports provide runners, and the lawyers and medical professionals who use them, the ability to contact large numbers of potential clients at little cost and with almost no effort. As a result, virtually anyone involved in a car accident in Florida is fair game to the intrusive and harassing tactics of solicitors. Such conduct can be emotionally, physically, and ultimately, financially destructive.*[7]

According to the report:

> *Some runners attempt to disguise their use of these police reports by claiming they would be used to publish what they called "transportation news" or "accident journals." These periodicals are nothing more than flimsy two or three page copies of a list of the names, addresses and phone numbers of accident victims, which information is summarized from the police reports. These "journals" are then sold at high prices to chiropractors, lawyers, auto body shops and even other solicitors for the specific purpose of soliciting the accident victims. This easy access to these reports so soon after the accident gives unscrupulous individuals an opportunity to directly contact victims of accidents with specific information about their accident.*[8]

Proposed Changes

The bill amends the current public record exemption for motor vehicle crash reports. The bill revises the exception to the exemption by removing access to crash reports by entities that are currently allowed access, radio and television stations, and legitimate newspapers; and requires records requests for these crash reports to be made for each requested report.

Specifically, the bill requires radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, F.S., and free newspapers of general circulation published once a week or more often, available and of interest to the public generally for the dissemination of news, which request crash reports before 60 days have elapsed after the report is filed to request such crash reports on an individual basis.

The bill prohibits these entities from having access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in the crash.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand 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.

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[6] The Office of the Attorney General, Statewide Grand Jury Report, Second Interim Report of the Fifteenth Statewide Grand Jury, No. 95,746. (Fla. 2000). This document can be viewed at: http://myfloridalegal.com/pages.nsf/4492d797dc0bd92f85256cb80055fb97/9ab243305303a0e085256cca005b8e2e!opendocument (Last viewed 3/16/14).

[7] Id.

[8] Id.

B. SECTION DIRECTORY:

Section 1: amends s. 316.066, F.S., relating to the public record exemption for written reports of crashes.

Section 2: provides a public necessity statement.

Section 3: provides an effective date contingent upon the passage of HB 863 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Prohibiting access to the phone numbers and addresses of crash victims in motor vehicle crash reports may help protect crash victims and their families from illegal PIP solicitations. This may have a negative fiscal impact to the entities soliciting crash victims or engaged in a business that profits from the sale of crash victim information.

The bill could create a minimal fiscal impact on any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes. Staff responsible for complying with public record requests could require training related to the revision of the public record exemption. In addition, such agencies 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 a government.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise

revenue in the aggregate, nor 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 exemption. The bill further restricts access to motor vehicle crash reports and thereby expands a 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 exemption. The bill further restricts access to motor vehicle crash reports and thereby expands a 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 exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill prohibits radio, newspapers, and television stations from having access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in a crash. The revised exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its stated purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

OTHER COMMENTS: Protection of Victims of Crimes or Accidents
Section 119.105, F.S., allows every person to examine nonexempt or nonconfidential police reports. This statute prohibits the use of such reports for any commercial solicitation. Violations of this statute are punishable as a first degree misdemeanor, or a third degree felony for willful and knowing violations.[9]

OTHER COMMENTS: Solicitation
Section 817.234(8), F.S., prohibits anyone from soliciting business for the purpose of filing a motor vehicle tort claim, or claims for PIP benefits. Violations of this statute are a third degree felony.[10]

OTHER COMMENTS: Patient Brokering
Section 817.505, F.S., prohibits anyone from paying, directly or indirectly to induce the referral of patients from a health care provider or facility, or to solicit any kind of payment directly or indirectly in return for referring a patient to a health care provider or facility. Violations of this statute are a third degree felony.[11]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[9] s. 119.10, F.S.
[10] s. 817.234(c), F.S.
[11] s. 817.505(4), F.S.

A bill to be entitled

An act relating to public records; amending s. 316.066, F.S.; providing an exemption from public records requirements for certain personal contact information contained in motor vehicle crash reports; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (g) is added to subsection (2) of section 316.066, Florida Statutes, as amended by HB 863, 2014 Regular Session, to read:

316.066 Written reports of crashes.—

(2)

(g) Radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, and free newspapers of general circulation published once a week or more often, available and of interest to the public generally for the dissemination of news, which request crash reports before 60 days have elapsed after the report is filed must request such crash reports on an individual basis and may not have access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in the

crash. This paragraph 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 the personal contact information contained in a motor vehicle crash report is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 60 days after the report is filed and that it is a public necessity that access to such information during that 60-day period by newspapers and radio and television stations be restricted to combat widespread insurance fraud that occurs when the information is unlawfully used to contact the parties involved in a crash. The exemption prohibits access by newspapers and television and radio stations to the addresses and telephone numbers of the parties involved in a crash to protect the parties from those who would unlawfully solicit the parties to make claims against their personal injury protection insurance policies.

Section 3. This act shall take effect on the same date that HB 863 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

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 Kerner offered the following:

Amendment

Remove lines 31-45 and insert:

Section 2. The Legislature finds that crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and that are held by any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes are confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for a period of 60 days after the date the report is filed. Public access to such information during that 60-day period by radio and television stations licensed by the Federal Communications Commission,

newspapers qualified to publish legal notices under ss. 50.011 and 50.031, and free newspapers of general circulation published once a week or more often, available and of interest to the public generally for the dissemination of news be restricted to combat widespread insurance fraud that occurs when the information is unlawfully or used to contact the parties involved in a crash. The exemption protects the parties involved in a crash from those who would unlawfully solicit personal injury protection insurance claims. Accordingly, the Legislature finds that the harm to parties involved in a crash which could result from the release of such information outweighs any minimal public benefit that would be derived from disclosure of that information to the public. Therefore, it is the finding of the Legislature that such information must be made exempt from public disclosure.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1161 The Department of Transportation
SPONSOR(S): Goodson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1048

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 amends several provisions relating to the Department of Transportation (DOT). The bill authorizes DOT to enter into agreements with investors to purchase the revenue stream from wireless communications leases. The bill revises provisions related to public service warning signs on water management district property. The bill also updates the state's outdoor advertising statutes. Specifically, the bill:

- Revises various definitions.
- Clarifies DOT's duties relating to outdoor advertising.
- Clarifies that outdoor advertising signs may only be permitted on parcels of land that are in commercial or industrial zones; and creates a process for resolving compliance issues.
- Revises DOT's authority to enter private land to remove illegal signs.
- Clarifies that a license is not required of a business that solely constructs signs.
- Clarifies disciplinary action for delinquent accounts, and effects of an outdoor advertising license suspension.
- Clarifies permit requirements to insure compliance with federal regulation.
- Increases the maximum fee for multiple transfers of permits in a single transaction.
- Clarifies that DOT may deny or revoke any permit requested or granted if the application contains false or misleading information.
- Clarifies DOT's authority to remove signs with cancelled permits in addition to those with revoked permits.
- Clarifies the notification and permitting processes for signs currently in violation of permit requirements.
- Clarifies the vegetation management permit process.
- Removes the fine of $75 against an owner who has been assessed the costs of removing a sign.
- Allows permitted signs to be relocated rather than acquired when the relocation results from a transportation project.
- Allows for the clarification and expansion of commerce and local control exemptions unless DOT is notified by the federal government that the exemptions will adversely affect federal funds, and provides for the removal of the signs if the signs are not allowed.
- Clarifies that compensation for signs acquired by DOT includes both conforming and nonconforming signs.
- Clarifies the process for allowing sign heights to be increased when constructing sound walls.
- Allows the logo sign program on all limited access roads.
- Ensures DOT's authority to remove cancelled signs.
- Repeals a 2012 provision allowing DOT to request permission from the Federal Government for a tourist-oriented sign program.

The bill appears to have an indeterminate, likely positive fiscal impact on state revenues related to various outdoor advertising permits and the potential for leasing the revenue stream for wireless communications facilities.

Failure of the state to maintain outdoor advertising control could result in reduced amounts of state highway funds from the Federal government of 10 percent, which correlates to approximately $160 million annually.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Leases for Wireless Communications Facilities (Section 1)

Current Situation

Section 365.172(12)(f), F.S., authorizes the leasing of state property for wireless communication facilities. Throughout the state, many wireless communications facilities are located on DOT right-of-way. DOT currently does not have statutory authority to allow for the factoring of revenues from leases for wireless communications facilities.

Proposed Changes

The bill creates s. 339.041, F.S., relating to factoring of revenues from leases for wireless communication facilities. The bill provides Legislative findings that efforts to increase funds for capital expenditure for the transportation system are necessary to protect the public safety and general welfare and to preserve transportation facilities. The Legislature's intent is to:

- Create a mechanism for factoring future revenues received by DOT from leases of wireless communication facilities on DOT property on a nonrecourse basis;
- Fund fixed capital expenditures for the statewide transportation system from proceeds generated through this mechanism; and
- Maximize revenues from factoring by ensuring that such revenues are exempt from income taxation under federal law in order to increase funds available for capital expenditures.

For the purpose of factoring future revenues, DOT property includes:

- Real property located within DOT's limited access rights-of-way,
- Real property located outside the current operating right-of-way limits which is not needed to support transportation facilities,
- Other property owned by the Board of Trustees Internal Improvement Trust Fund and leased by DOT,
- Space on DOT telecommunications facilities, and
- Space on DOT structures.

DOT may seek investors willing to enter into agreements to purchase the revenue stream from one or more existing DOT leases for wireless communication facilities on property owned or controlled by DOT.

DOT may not pledge the credit, general revenues, or the taxing power of the state or any political subdivision. The obligations of DOT and investors under the agreement do not constitute a general obligation of the state or a pledge of the state's full faith and credit or taxing power. The agreement is payable from and secured solely by payments received from DOT leases for wireless communication facilities on property owned or controlled by DOT, and neither the state nor any of its agencies has any liability beyond such payment.

DOT may make any covenant or representation necessary or desirable in connection with the agreement, including a commitment by DOT to take whatever actions are necessary on behalf of investors to enforce DOT's rights to payments on property leased for wireless communications facilities. DOT may agree to use its best efforts to ensure that anticipated future-year revenues are protected. Any risk that actual revenues received from DOT leases for wireless communications facilities are lower than anticipated shall be borne exclusively by investors.

Subject to annual appropriation, investors will collect the lease payments on a schedule and in a manner established in the agreements entered into by DOT and investors. The agreements may provide for lease payments to be made directly to investors by lessees if the lease agreement and the lessees pursuant to s. 365.172(12)(f), F.S.,[1] allow direct payment.

Proceeds received by DOT from leases for wireless communications facilities shall be deposited in the State Transportation Trust Fund[2] and used for fixed capital expenditures for the statewide transportation system.

According to DOT, it currently has two wireless contracts. One of these contracts is the Florida Turnpike Enterprise's with payment received through in-kind services; therefore, it is unlikely that factoring would be applicable. However, the other contract would be eligible for consideration.[3]

Public Service Warning Signs (Section 2)

Current Situation

SB 1986,[4] passed in 2012, authorizes public information systems located on property owned by water management districts (WMDs), upon terms and conditions approved by the WMD, which must display messages to the general public concerning water management services, activities, events, and sponsors, as well as other public service announcements, including watering restrictions, severe weather reports, amber alerts, and other essential information needed by the public. The law expressly prohibits use of WMD funds to pay the cost to acquire, develop, construct, operate, or manage a public information system and requires that any necessary funds for a public information system be paid for and collected from private sponsors who may display commercial messages.[5]

Section 479.02, F.S., charges DOT with the duty to "administer and enforce provisions of this chapter and the agreement between the state and the United States Department of Transportation (USDOT) relating to the size, lighting, and spacing of signs in accordance with Title 1 of the Highway Beautification Act of 1965 and Title 23 United States Code, and federal regulations in effect as of the effective date of this act." The federal-state agreement and s. 479.07, with limited exception, prohibit a person from erecting, operating, using, or maintaining any sign on the State Highway System outside an urban area or *on any portion of the interstate or federal-aid primary highway system*[6] without first obtaining a permit for the sign and paying an annual fee.

The italicized phrase above is further defined in that section to mean "a sign located within the **controlled area**[7] which is visible from any portion of the main-traveled way[8] of such system."

Certain signs, commonly referred to as "on-premise" signs, are expressly exempted by s. 479.16, F.S., from the requirement to obtain a permit, if the signs comply with the provisions of ss. 479.11(4)-(8), F.S. However, that section expressly specifies that the following types of messages shall not be considered information regarding government services, activities, events, or entertainment:

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[1] Section 365.172(12)(f), F.S., relates to leases for telecommunications facilities on state property.
[2] The State Transportation Trust Fund is created under s. 206.46, F.S.
[3] March 17, 2014, e-mail from DOT to Transportation & Highway Safety Subcommittee Staff. Copy on file with the Transportation & Highway Safety Subcommittee.
[4] Ch. 2012-126, L.O.F.
[5] S. 373.618, F.S.
[6] Also includes the national highway system pursuant to 23 U.S.C. 131(t) and s. 479.01(9), F.S.
[7] Section 479.01(6), F.S., defines "controlled area" as "660 feet or less from the nearest edge of the right-of-way of any portion of the State Highway System, interstate, or federal-aid primary system and beyond 660 feet of the nearest edge of the right-of-way of any portion of the State Highway System, interstate, or federal-aid primary highway system outside of an urban area."
[8] Section 479.01(13), F.S., defines "main traveled way" as "the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways which specifically include on-ramps or off-ramps to the interstate highway system, or parking area."

- Messages which specifically reference any commercial enterprise;
- Messages which reference a commercial sponsor of any event;
- Personal messages; and
- Political campaign messages.

DOT may potentially be subject to an annual loss of 10 percent of federal highway funding if these signs are located within a "controlled area."

Proposed Changes
The bill amends s. 373.618, F.S., removing the provision that local governments review or approval is not required for a public information system on WMD property. The bill also provides that these systems are subject to the requirements of ch. 479, F.S. However, a public information system that is subject to the Highway Beautification Act of 1965 must be approved by USDOT and the Federal Highway Administration (FHWA) if such approval is required by federal law or regulation under the agreement between the state and USDOT and by federal regulations enforced by DOT under s. 479.02(1), F.S.

Outdoor Advertising (Sections 3 through 23)

Current Situation
Since the passage of the Highway Beautification Act (HBA) in 1965,[9] 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 HBA 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[10] 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.
- 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 noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.[11]

Under the provisions of a 1972 agreement[12] between the State of Florida and USDOT incorporating the HBA's required controls, DOT requires commercial signs to meet certain requirements when they are

[9] 23 U.S.C. 131
[10] 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.
[11] 23 U.S.C. 131(b)
[12] A copy of the 1972 agreement is available at http://www.dot.state.fl.us/rightofway/Documents.shtm (Last visited September 26, 2013).

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."

DOT reviewed ch. 479, F.S., the primary statute for the Outdoor Advertising Regulatory Program, and has proposed comprehensive revisions to the chapter. This chapter has undergone a number of "minor fixes" over the years. This rewrite allows for better continuity and clearer understanding of the provisions of law, which is critical to DOT because the 1972 Agreement provides that failure by the State to maintain control shall result in reduced amounts equal to 10 percent of federal funds apportioned to the State until the State provides for effective control. The 10 percent correlates today to approximately $160 million annually.

Commercial and Industrial Areas

Outdoor advertising signs may legally be located in commercial or industrial areas. In conformance with the 1972 agreement, s. 479.01(4), F.S., currently defines "commercial or industrial zone" as a parcel of land designated for commercial or industrial use under both the Future Land Use Map (FLUM) of the local comprehensive plan and the land development regulations adopted pursuant to ch. 163, F.S.[13] This allows DOT to consider both land development regulations and future land use maps in determining commercial and industrial land use areas and issuing permits for sign locations in such areas.

Unzoned Commercial and Industrial Areas

If a parcel is located in an area designated for multiple uses on the FLUM, and the land development regulations do not clearly designate the parcel for a specific use, the area will be considered an unzoned commercial or industrial area and outdoor advertising signs may be permitted there provided three or more separate commercial or industrial activities take place.[14] However, the following criteria must be met:

- One of the commercial or industrial activities must be located within 800 feet of the sign and on the same side of the highway;
- The commercial or industrial activity must be within 660 feet of the right-of-way; and
- The commercial or industrial activities must be within 1,600 feet of each other.

Regardless of whether the criteria above are met, the following activities are specifically excluded from being recognized as commercial or industrial activities and therefore cannot be considered when determining whether a parcel is an unzoned commercial or industrial area:

- Signs.
- Agricultural, forestry, ranching, grazing, farming, and related activities.
- Transient or temporary activities.
- Activities not visible from the main-traveled way.
- Activities conducted more than 660 feet from the right-of-way.
- Activities conducted in a building principally used as a residence.
- Railroad tracks and minor siding,
- Communications towers.[15]

With the exception of communication towers, the exclusion of these activities is specifically required by the 1972 agreement between the state and USDOT.

Entry Upon Privately Owned Lands

[13] Chapter 163, F.S., related to intergovernmental programs.
[14] S. 479.01(26), F.S.
[15] S. 479.01(26), F.S.

For the purposes of ch. 479, F.S., all of the state is deemed as territory under DOT's jurisdiction.[16] DOT's employees, agents, or independent contractors may enter upon any land upon which a sign is displayed, is proposed to be erected, or is being erected to make sign inspections, surveys, and removals. After receiving consent by the landowner, operator, or person in charge, or appropriate inspection warrant issued by a judge that the removal of an illegal outdoor advertising sign is necessary, DOT may enter upon any intervening privately-owned lands in order to remove illegal signs, provided that DOT has determined that no other legal or economically feasible means of entering the sign site are reasonably available. DOT must repair or replace in like manner any physical damage or destruction of the private property.

License to Engage in the Business of Outdoor Advertising
A person is prohibited from engaging in the business of outdoor advertising without first obtaining a license from DOT. A person is not required to obtain the license to erect outdoor advertising signs or structures as an incidental part of a building construction contract.[17]

Denial or Revocation of License
DOT may deny or revoke any outdoor advertising license requested or granted when DOT determines that the license application contains knowingly false or misleading information, or that the licensee has violated any of the provisions of ch. 479, F.S., unless such licensee corrects such false or misleading information or complies with the provisions of ch. 479, F.S., within 30 days after receiving notice from DOT. Any person aggrieved by any DOT action in denying or revoking a license may apply to DOT for an administrative hearing within 30 days from receipt of the notice.[18]

Section 479.07(1), F.S., except as otherwise specified, provides that a person may not erect, operate, use, or maintain, or cause to be erected, operated, used, or maintained, any sign on the State Highway System (SHS) outside an urban area,[19] or on any portion on the interstate or federal-aid primary highway system without first obtaining a permit for the sign from DOT any paying the required annual fee. Section 479.07(2), F.S., prohibits a person from applying for a permit unless a person has first obtained the written permission of the owner or other person in lawful possession or control of the site designated as the location of the sign in the application for the permit. As part of the application, the applicant or authorized representative must certify in a notarized statement that he or she has obtained the written permission of the owner or other person in lawful possession of the site designated as the location of the sign in the permit application.

Outdoor Advertising Annual Permit Fee/Multiple Transfer Fee/Permit Reinstatement Fee
DOT must establish by rule an annual permit fee for each sign facing[20] in an amount sufficient to offset DOT's total program costs, but shall not exceed $100.[21] The current fee is $71 for each sign facing of more than 200 square feet, and $51 for sign facings of 200 square feet or less.[22]

The transfer of valid permits from one sign owner to another is currently authorized upon written acknowledgement from the current permittee and submittal of a transfer fee of $5 for each permit to be transferred. The maximum transfer fee for any multiple transfers between two outdoor advertisers in a single transaction is $100.[23]

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[16] S. 479.03, F.S.
[17] S. 479.04, F.S.
[18] S. 479.05, F.S.
[19] Section 334.03(31), F.S., defines "urban area" as "a geographic region comprising as a minimum the area inside the United States Bureau of the Census boundary of an urban place with a population of 5,000 or more persons, expanded to include adjacent developed areas as provided for by Federal Highway Administration regulations."
[20] A "sign facing" includes all sign faces and automatic changeable faces displayed in the same location or facing the same direction. A "sign face" means the part of the sign, including trim and background, which contains the message or informative contents. (s. 479.01(22) and (23), F.S.).
[21] S. 479.07(3)(c), F.S.
[22] Rule 14-10.0043(2), F.A.C.
[23] S. 479.07(6), F.S.

Current law provides a process for sign removal if a permittee has not submitted all license and permit renewal fees by the expiration date of the license or permit.[24] With respect to sign permits, if at any time before removal of the sign, the permittee demonstrates that a good faith error on the part of the permittee resulted in the cancellation or nonrenewal of the permit, DOT may reinstate the permit if the permit reinstatement fee of up to $300 based on the size of the sign is paid;[25] all other permit renewal and delinquent permit fees due as of the reinstatement date are paid; and the permittee reimburses DOT for all actual costs resulting from the permit cancellation or nonrenewal.

Permit Tags/Replacement Tags

DOT must furnish a permittee a serially numbered permanent metal permit tag, which the permittee is required to securely attach to the sign facing or, if there is no facing, on the pole nearest the highway. Further, effective, July 1, 2012, the tag must be securely attached to the upper 50 percent of the pole nearest the highway and must be attached in such a manner as to be plainly visible from the main traveled way. In addition, the permit becomes void unless the permit tag is properly and permanently displayed at the permitted site within 30 days after the date of permit issuance.[26]

Current law provides for DOT to issue a replacement tag in the event of a permit tag is lost, stolen, or destroyed and, alternatively, authorizes a permittee to provide its own replacement tag pursuant to DOT specifications that DOT shall adopt by rule at the time it establishes the service fees for replacement tags.[27]

Signs Visible from More than One Highway

If a sign is visible from the controlled area of more than one highway subject to DOT jurisdiction, the sign must meet the permitting requirements of, and be permitted to, the highway having the more stringent requirements.[28]

Pilot Program/Reduction of Distance Between Permitted Signs

Current law establishes a pilot program in Orange, Hillsborough, and Osceola Counties, and within the boundaries of the City of Miami, under which the distance between permitted signs on the same side of an interstate highway may be reduced to 1,000 feet under the specified conditions and directs DOT to maintain statistics tracking the use of the provisions of the pilot program based on notifications received by DOT from local governments.[29]

Sign Removal Following Permit Revocation

A sign permittee is currently required to remove a sign within 30 days after the date of revocation of the permit for the sign and, if the permittee fails to do so, DOT must remove the sign without further notice and without incurring any liability.[30] Further, all costs incurred by DOT in connection with the removal of a sign located within a controlled area adjacent to the SHS, interstate highway system, or federal-aid primary highway system following the revocation of the sign permit is assessed to and collected from the permittee.[31]

Notices of Violation/Signs Erected or Maintained Without Required Permit

Any sign located adjacent to the right-of-way on any highway on the SHS outside an incorporated area or adjacent to the right-of-way on any portion of the interstate or federal-aid primary highway system without the required DOT permit must be removed. Prior to removal, DOT is required to prominently

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[24] S. 479.07(8), F.S.

[25] The actual fee is $200 for a sign facing of 200 square feet or less and $300 for a sign facing of greater than 200 square feet. (Rule 14-10.004(9)(d), F.A.C.).

[26] S. 479.07(5), F.S.

[27] Rule 14-10.004(5), F.A.C. The current service fee is $12.

[28] S. 479.07(9)(a), F.S.

[29] S. 479.07(9)(c), F.S.

[30] S. 479.10, F.S.

[31] S. 479.313, F.S.

post on the sign face a notice that the sign is illegal and must be removed within 30 days after the date on which the notice was posted. If the sign bears the name of the licensee or the name and address of the non-licenses sign owner, concurrently with and in addition to posting the notice, DOT must provide a written notice to the owner stating that the sign is illegal and must be permanently removed within the 30-day period; and that the sign owner has a right to request a hearing, which request must be filed with DOT within 30 days after the date of the written notice. If after notice the sign owner does not remove the sign, DOT is required to do so.[32]

Issuance of Permits for Conforming or Nonconforming Signs
If a sign owner demonstrates to DOT that:

- A given sign has been unpermitted, structurally unchanged, and continuously maintained at the same location for seven years or more;
- The sign would have met the criteria established in ch. 479, F.S., for issuance of a permit at any time during the period in which the sign has been erected;
- DOT has not initiated a notice of violation or taken other action to remove the sign during the initial seven-year period; and
- DOT determines that the sign is not located on state right-of-way and is not a safety hazard.

DOT may consider the sign a conforming or nonconforming sign and to issue a permit for the sign upon application any payment of a penalty fee of $300 and all pertinent fees required by ch. 479, F.S., including annual permit renewal fees payable since the date of the erection of the sign.[33]

Vegetation Management and View Zones for Outdoor Advertising
Section 479.106, F.S., addresses vegetation management and establishes "view zones" for lawfully permitted outdoor advertising signs on interstates, expressways, federal-aid primary highways, and the State Highway System, excluding privately or other publicly owned property. This section's intent is to create partnering relationships, which will improve the appearance of Florida's highways and creating a net increase in the vegetative habitat along the roads.[34]

The section requires anyone desiring to remove, cut, or trim trees or vegetation on public right-of-way to improve the visibility of a sign or future sign to obtain written permission from DOT. To receive a permit to remove vegetation, the applicant must provide a plan for the removal and for the management of any vegetation planted as the result of a mitigation plan. Rule 14-10.057, F.A.C., requires mitigation where:

- Cutting, trimming, or damaging vegetation permanently detracts from the appearance or health of trees, shrubs, or herbaceous plants, or where such activity is not done in accordance with published standard practices. This does not apply to invasive exotic and other noxious plants;
- Trees taller than the surrounding shrubs and herbaceous plants are permanently damaged or destroyed;
- Species of trees or shrubs not likely to grow to interfere with visibility are damaged or removed;
- Trees or shrubs that are likely to interfere with visibility are trimmed improperly, permanently damaged, or removed; or
- Herbaceous plants are permanently damaged.

When installing a new sign requires the removal, cutting, or trimming of existing trees or vegetation on public right-of-way, DOT may only grant a permit for the new sign when the sign owner has removed at least two non-conforming signs of comparable size and surrendered those signs' permits for cancellation. For signs originally permitted after July 1, 1996,[35] DOT may not grant any permit where

[32] SS. 479.105(1)(a) and (b), F.S.
[33] S. 479.105(1)(e), F.S.
[34] S. 479.106(8), F.S.
[35] The date of enactment of s. 479.106, F.S.

such trees or vegetation are part of a beautification project implemented before the date of the original sign permit application, as specified.

Vegetation Management Application Fee/Multiple Site Fee/Administrative Penalty
DOT may establish an application fee for vegetation management not to exceed $25 for each individual application to defer the costs of processing such application, and a fee not to exceed $200 to defer the costs of processing an application for multiple sites.[36] Further, any person who violates or benefits from a violation of ch. 479, F.S., is subject to an administrative penalty of up to $1,000 and is required to mitigate for the unauthorized removal, cutting, or trimming of trees or vegetation.[37]

Cost of Sign Removal/Additional Fine for Violations
Section 479.107(5), F.S., requires that the cost of removing a specified sign, whether by the DOT or an independent contractor, shall be assessed against the sign's owner. In addition, DOT is directed to assess a fine of $75 against the sign owner for any sign which violates the requirements of that section.

Relocation or Reconstruction of a Publicly Acquired Sign
When DOT acquires land with a lawful nonconforming sign, the sign may, at the its owners and DOT's election and subject to FHWA approval, be relocated or reconstructed adjacent to the new right-of-way along the roadway within 100 feet of the current location, provided the nonconforming sign is not relocated on a parcel zoned residential, and provided further that such relocation is subject to applicable setback requirements.[38] The relocation must be adjacent to the current site, and the sign's face may not increase in size or height or be structurally modified at the point of relocation in conflict with the building codes of the jurisdiction in which the sign is located.[39]

Permits Not Required for Certain Signs
Section 479.16, F.S., currently identifies a number of signs for which permits are not required, including without limitation:

- On-premise signs (signs on property stating only the name of the owner, lessee, or occupant of the premises) not exceeding 8 square feet in area;
- Signs that are not in excess of 8 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 not in excess of 16 square feet, denoting only the name of, and the distance and direction to, the business. This 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.

Compensation for Removal of Signs
DOT must pay just compensation upon its removal of a lawful nonconforming sign along any portion of the interstate or federal-aid primary highway system.[40]

Noise-Attenuation Barriers Blocking View of Signs
The owner of a lawfully erected sign may increase the height above ground level of such sign at its permitted location if any governmental entity permits or erects a noise-attenuation barrier in such a way

[36] S. 479.106(4), F.S.
[37] S. 479.106(7), F.S.
[38] S. 479.15(13), F.S.
[39] S. 479.15(4), F.S.
[40] S. 479.24, F. S.

as to block visibility of the sign. If construction of a proposed noise-attenuation barrier will screen a lawfully permitted sign, DOT must provide notice to the local government or jurisdiction in which the sign is located before erection of the noise attenuation barrier. If it is determined that the increase in height will violate a local ordinance or land development regulation, the local government or jurisdiction must notify DOT.

When notice has been received from the local government or jurisdiction prior to erection of the noise-attenuation barrier, DOT must conduct a written survey of all property owners identified as impacted by highway noise and who may benefit from the proposed barrier. The written survey must, in addition to stating the date, time, and location of a required public hearing, specifically advise the impacted property owners that:

- Erection of the noise-attenuation barrier may block the visibility of an existing outdoor advertising sign;
- The local government or local jurisdiction may restrict or prohibit increasing the height of the existing outdoor advertising sign to make it visible over the barrier; and
- If a majority of the impacted property owners vote for construction of the noise-attenuation barrier, the local government or local jurisdiction is required to:
    - Allow an increase in the height of the sign in violation of a local ordinance or land development regulation;
    - Allow the sign to be relocated or reconstructed at another location if the sign owner agrees; or
    - Pay the fair market value of the sign and its associated interest in the real property.

DOT must hold the public hearing and receive input on the proposed noise-attenuation barrier and its conflict with the local ordinance or land development regulations, and suggest or consider alternatives or modification to the proposed barrier to alleviate or minimize the conflict with the local ordinance or regulation or minimize any costs associated with relocating, reconstructing, or paying for the affected sign. Notice of the hearing, in addition to general provisions, must specifically state the same items specified for inclusion in the written survey above.

DOT may not permit the erection of the noise-attenuation barrier to the extent that the barrier screens or blocks visibility of the sign until after the public hearing and until such time as the survey has been conducted and a majority of the impacted property owners have indicated approval. When approved, DOT must notify the local governments or local jurisdictions, and the local government or jurisdiction must, notwithstanding any conflicting ordinance or regulation:

- Issue a permit by variance or otherwise for the reconstruction of a sign;
- Allow the relocation of a sign, or construction of another sign, at an alternative location that is permittable, if the sign owner agrees to relocate the sign or construct another sign; or
- Refuse to issue the required permits for reconstruction of a sign and pay fair market value of the sign and its associated interest in the real property to the sign owner.[41]

Logo Sign Program

DOT must establish a logo sign program for the rights-of-way of the interstate highway system to provide information to motorists about available gas, food, lodging, camping, attractions, and other services, as approved by the FHWA, at interchanges through the use of business logos and may include additional interchanges under the program.[42] As indicated, the program is limited to the interstate highway system, but under the Manual on Uniform Traffic Control Devices (MUTCD),[43] the program may be extended to other limited-access facilities, thereby expanding opportunities for business participation in the program.

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[41] S. 479.25, F.S.
[42] S. 479.261, F.S.
[43] Adopted by DOT pursuant to s. 316.0745, F.S.

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 counties identified by criteria and population in s. 288.0656, F.S, when approved and permitted by county or local government entities.

Section 288.0656, F.S., defines a "rural area of critical economic concern" as a rural community, or region composed of rural communities, designated by the Governor, that has been adversely impacted by an extraordinary economic event, severe or chronic distress, or an natural disaster or that presents a unique economic development opportunity of regional impact. "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[44] 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.[45] TOD signs installed on the State Highway System must comply with the requirements of the MUTCD and rules established by DOT.

TOD signs may be installed on the SHS only after being permitted by DOT and placement of TOD signs is limited to rural conventional roads, as required by 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.[46]

Proposed Changes

Definitions (Section 3)
The bill amends the definition of "allowable uses" providing that it means those uses that are authorized within a zoning category as a primary use by right, without the requirement to obtain a variance or waiver. The term includes conditional uses and those allowed by special exception if such uses are a present and actual use, but does not include uses that are accessory, incidental to allowable uses, or allowed only on a temporary basis.

The bill amends the definition of "business of outdoor advertising" removing the terms constructing, erecting, and using.

The bill revises the definition of "federal-aid primary highway system" to mean the federal–aid primary highway system in existence on June 1, 1991, and any highway that was not a part of such system as of that date but that is or becomes after June 1, 1991, a part of the National Highway System but are unbuilt or unopened. This is similar to a definition for "federal-aid primary highway system" currently in s. 479.15, F.S., which is being deleted.

The bill revises the definition of "remove" to mean to disassemble all sign materials above ground level and transport them from the site.

The bill amends the definition of "sign face" to include an automatic changeable face.[47]

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[44] Prior to requesting a permit to install a TOD sign on the State Highway System, a local government must first have established by ordinance the criteria provided in part VI of ch. 14-51, F.A.C.
[45] S. 479.262(2), F.S.
[46] Rule 15-51.063, F.A.C. and s. 2K.01 of Chapter 2K of the MUTCD (2009).
[47] Section 479.01(2), F.S., defines "automatic changeable facing" as "a facing that is capable of delivering two or more advertising messages through an automated or remotely controlled process."

The bill revises the definition of 'state highway system" to provide that it has the same meaning as defined in s. 334.03, F.S.[48]

The bill deletes the definitions of "commercial or industrial zone" and "unzoned commercial or industrial area" due to the creation of s. 479.024, F.S., relating to commercial and industrial parcels.

Duties of the Department (Section 4)

The bill amends s. 479.02, F.S., clarifying DOT's duties relating to outdoor advertising are as follows:

- In the duty to administer and enforce ch. 479 F.S., clarifies that it is a 1972 agreement between DOT and USDOT and expressly incorporates provisions of the referenced chapter, agreement, law, and regulations pertaining to the maintenance, continuance, and removal of nonconforming signs.
- In the duty to regulate size, height, lighting, and spacing of permitted signs, revises language to distinguish between commercial and industrial *parcels* and unzoned commercial and industrial *areas*.
- Directs DOT to determine commercial and industrial parcels and unzoned commercial or industrial areas in the manner provided in the newly created s. 479.024, F.S.
- In the duty to adopt rules necessary for proper administration of ch. 479.F.S., including rules that identify activities that may not be recognized as industrial or commercial activities, revises language to distinguish between commercial and industrial *parcels* and unzoned commercial or industrial *areas* and requires the rules to provide for determination of such parcels and areas in the manner provided in the newly created s. 479.024, F.S.
- In the duty to inventory and determine the location of all signs, makes "plain language" revisions and repeals DOT's direction to adopt rules regarding what information is to be collected and preserved in the sign inventory.

Commercial and Industrial Parcels (Section 5)

The bill creates s. 479.024, F.S., relating to commercial and industrial parcels. It provides that signs shall only be permitted by DOT in commercial or industrial zones, as determined by the local government, [49] unless otherwise provided by ch. 479, F.S. Commercial and industrial zones are those areas appropriate for commerce, industry, or trade, regardless of how those areas are labeled. The term "parcel" means the property where the sign is located or is proposed to be located.

The determination as to zoning by the local government for the parcel must meet the following factors:

- The parcel is comprehensively zoned and includes commercial or industrial use as allowable uses.
- The parcel can reasonably accommodate a commercial or industrial use under the future land use map of the comprehensive plan and land use development regulations as follows:
    - Sufficient utilities are available to support commercial development. For purposes of this section "utilities" includes all privately, publically, or cooperatively owned lines, facilities, and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste and storm water not connected with highway drainage, and other similar commodities.
    - The size and configuration, and public access of the parcel is sufficient to accommodate a commercial or industrial use given requirements in the comprehensive plan and land development regulations for vehicular access, on-site circulation, building setbacks, buffering, parking, and other applicable standards, or the parcel consists of railroad

[48] Section 334.03(24), F.S., defines "state highway system" as "the interstate system and all other roads within the state which were under the jurisdiction of the state on June 10, 1995, and roads constructed by an agency of the state for the State Highway System, plus roads transferred to the state's jurisdiction after that date by mutual consent with another governmental entity, but not including roads so transferred from the state's jurisdiction. These facilities shall be facilities to which access is regulated."

[49] This is in conformance with Ch. 163, F.S., relating to intergovernmental programs.

tracks or minor siding abutting commercial or industrial property that meets the factors of this subsection.
- The parcel is not being used exclusively for non-commercial or non-industrial uses.

If a local government has not designated zoning through land development regulations,[50] but has designated the parcel under the future land use map of the comprehensive plan for uses that include commercial or industrial uses, the parcel will be considered an unzoned commercial or industrial area. For a permit to be issued for a sign in an unzoned commercial or industrial area, there must be three or more distinct commercial or industrial activities within 1,600 feet of each other, with at least one of the commercial or industrial activities being located on the same side of the highway as the sign location within 800 feet of the sign location. Multiple commercial or industrial activities enclosed in one building will be considered one use when all uses only have shared building entrances.

For purposes of s. 479.024, F.S., certain uses and activities, including but not limited to the following, may not be independently recognized as commercial or industrial:

- Signs.
- Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.
- Transient or temporary activities.
- Activities not visible from the main-traveled way, unless a DOT transportation facility is the only cause for the activity not being visible.
- Activities conducted more than 660 feet from the nearest edge of the right-of-way.
- Activities conducted in a building principally used as a residence.
- Railroad tracks and minor sidings, unless such use is immediately abutted by commercial or industrial property which meets the factors above.
- Communication towers.
- Public parks, public recreation services, and governmental uses and activities that take place in a structure that serves as the permanent public meeting place for local, state, or federal boards, commissions, or courts.

If the local government has indicated the proposed sign location is on a parcel that is a commercial or industrial zone, but DOT finds that it is not, DOT shall notify the sign applicant in writing.

An applicant whose application for a permit is denied may, within 30 days from the receipt of the notification of intent to deny, request an administrative hearing[51] to determine whether the parcel is located in a commercial or industrial zone. Upon receiving the request, DOT must notify the local government that the applicant has requested an administrative hearing.

If DOT determines in a final order that the parcel does not meet the permitting conditions outlined in this section and a sign exists on the parcel, the applicant is responsible for all sign removal costs and the sign must be removed from the sign location within 30 days of the final order.

If FHWA reduces funds which would be apportioned to DOT due to a local government's failure to comply with s. 479.024, F.S., DOT will reduce the state's apportioned transportation funding within the jurisdiction of the local government entity in an equivalent amount.

Jurisdiction of DOT; Entry upon Privately Owned Lands (Section 6)
The bill amends s. 479.03, F.S., revising DOT's authority to enter upon privately owned lands to remove a sign by striking references to receipt of consent, inserting a specified written notice requirement, and expanding those to whom written notice must be alternatively given to a person in charge of an intervening privately owned land.

[50] These regulations must be in compliance with ch. 163, F.S.
[51] Administrative hearings are pursuant to ch. 120, F.S.

Business of Outdoor Advertising; License Requirement; Renewal; Fees (Section 7)
The bill amends s. 479.04, F.S., relating to the required license to engage in the business of outdoor advertising, clarifying that a person is not required to obtain an outdoor advertising license solely to erect or construct outdoor advertising signs or structures. This conforms the statute to the revised definition of "business of outdoor advertising."

Denial, Suspension, or Revocation of License (Section 8)
The bill amends s. 479.05, F.S., clarifying disciplinary actions for delinquent accounts. The bill authorizes the suspension of any license requested or granted under ch. 479, F.S., in addition to denial or revocation, in any case when DOT determines the application contains false or misleading information of material consequence, that the licensee has failed to pay fees or costs owed to DOT for outdoor advertising purposes, or that the licensee has violated any of the provisions of ch. 479, F.S., unless such licensee, within 30 days after receipt of DOT's notice, corrects such false or misleading information, pays the outstanding amount, or complies with the provisions of ch. 479, F.S. The bill provides that suspensions of a license allows the licensee to maintain existing sign permits, but DOT may not grant a transfer of an existing permit or issue an additional permit to a licensee with a suspended license.

Sign Permits (Section 9)
The bill amends s. 479.07, F.S., clarifying existing language and clarifying permit requirements to ensure compliance with federal regulations on all highways subject to DOT jurisdiction. Specifically the bill:

- Removes the requirement for a notarized permit application, which will allow for future on-line permit processing.
- Removes a prohibition against prorating a fee for a period of less than the remainder of the permit year to accommodate short-term publicity features.
- Clarifies that DOT must act on a permit application within 30 days after receipt of the application by granting, denying, or returning the incomplete application.
- Changes the tag posting placement requirement to the upper 50 percent of the sign structure from the upper 50 percent of the pole nearest the highway to accommodate various sign structure.
- Removes the authorization for a permittee to provide its own replacement tag and related rulemaking authority regarding replacement tags. This will ensure consistency in tags.
- Increases the maximum transfer fee for multiple permit transfers in a single transaction from $100 to $1,000. The transfer fee for each permit remains at $5.[52]
- Revises the permit restatement fee from up to $300 based on the size of the sign to a flat fee of $300. The current fee is $200 for a sign facing of 200 square feet or less and $300 for a sign facing of greater than 200 square feet.[53]
- Clarifies that if a sign is visible to more than one highway and within the controlled area of these highways it shall meet the permitting requirements of all highways.
- Clarifies that the height restriction of a sign is based on the main-traveled way to which the sign is permitted.
- Removes the establishment of a pilot program where signs where the distance between signs in certain areas[54] may be reduced to 1,000 feet if certain requirements are met and makes it statewide.
- Removes pilot program sign placement requirements, which are redundant to the newly created s. 479.024, F.S.
- Removes requirements for maintaining pilot program statistics.

[52] S. 479.07(6), F.S.
[53] S. 14-10.004(9), F.A.C.
[54] The pilot program is in Orange, Hillsborough, and Osceola Counties and within the boundaries of the City of Miami.

- Deletes obsolete language and makes grammatical and editorial changes.

Denial or Revocation of Permit (Section 10)
The bill amends s. 479.08, F.S., revising DOT's authority to deny or revoke any permit when it determines that the application contains false or misleading information of material consequence, eliminating that the information is knowingly false or misleading.

Sign Removal following Permit Revocation or Cancellation (Section 11)
The bill amends s. 479.10, F.S., regarding sign removal, to require a permittee to remove a sign within 30 days of the date of cancellation (in addition to revocation) of the permit for a sign and specifies removal of the sign at the permittee's expense if DOT removes the sign because of the permittee's failure to do so.

Signs Erected or Maintained Without Permit – Removal (Section 12)
The bill amends s. 479.105, F.S., regarding signs erected or maintained without a required permit, to:

- Revise provisions for placement of DOT's notice of violation on a sign;
- Require DOT to concurrently with and in addition to posting the notice, provide a written notice to the owner of the sign, the advertiser displayed on the sign, or the owner of the property;
- Provides that a notice of violation includes notification that a sign is illegal and that it must be removed within 30 days;
- Provide that written notice state that a hearing may be requested as specified;
- Provides that if a sign is not removed within the 30 day period, DOT is required to immediately remove the sign; and
- Relocate and clarify existing provisions for DOT issuance of permits for conforming and nonconforming signs erected or maintained without the required permit

Vegetation Management (Section 13)
The bill amends s. 479.106, F.S., relating to vegetation management and sign visibility to:

- Require signs originally permitted after July 1, 1996, the first application or application for change of view zone, for the removal, cutting, or trimming of trees or vegetation must require, in addition to mitigation or contribution to a plan of mitigation , the removal of two nonconforming signs; and
- Provide that the administrative penalty for engaging in removal, cutting, or trimming in violation of s.479.106, F.S. or benefitting from such action is up to $1,000 per sign facing. DOT currently assesses a fee of $1,000 per incident, per sign facing.[55]

Signs on Highway Rights-of-Way; Removal (Section 14)
The bill amends s. 479.107(5), F.S., removing the fine of $75 against a sign owner who has been assessed the cost of removal for a sign which is in violation of the law. DOT advises that it often costs more than $75 to collect the fine, if it can be collected at all. Therefore, DOT does not even pursue the fine.[56]

Specified Signs Allowed within Controlled Portions of the Interstate and Federal-Aid Primary Highway System (Section 15)
The bill amends s. 479.111(2), F.S., clarifying that this section refers to the 1972 agreement between the state and USDOT.

Harmony of Regulations (Section 16)
The bill amends s. 479.15, F.S., providing for harmony of state and local regulations, to:

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[55].S. 14-10.057(4), F.A.C.
[56] October 21, 2013, e-mail from DOT to staff of the Transportation & Highway Safety Subcommittee. Copy on file with subcommittee staff.

- Strike the definition of "federal-aid primary highway system," which is now defined in s 479.01, F.S.
- Provide that subject to FHWA approval and whenever public acquisition of land which as a lawful permitted (rather than nonconforming) sign occurs, the sign may, at the election of its owner and DOT, be relocated or reconstructed adjacent to the new ROW and in close proximity to the current site (rather than along the roadway within 100 feet to the current location), provided that the sign is not relocated in an area inconsistent with s. 479.024, F.S., (rather than on a parcel zoned residential) and provided further that such relocation shall be subject to the requirements (rather than applicable setback requirements) in the 1972 agreement between the state and the USDOT.
- Provides the face of a nonconforming sign may not be increased in size or height or structurally modified at the point of relocation as specified; and
- Provide a neighboring sign that is already permitted and that is within the spacing requirements of ch. 479.07(9)(a), F.S., is not cause to become nonconforming.

Wall Murals[57] (Section 17)
The bill amends s. 479.156, F.S., relating to wall murals, to replace references to the "Highway Beautification Act" with references to its statutory placement in federal law, 23 U.S.C. s. 131, and to correct cross-references.

Signs for which Permits are not Required (Section 18)
The bill amends s. 479.16, F.S., relating to signs where permits are not required. The bill also provides that signs on modular news racks, street light poles, and public pay telephones within the right-of-way are exempt from ch. 479, F.S.

The bill clarifies an already existing exemption of signs for rural business directional signs to make the provision applicable to signs located outside an incorporated area. The bill also removes the rural business exemption exception for 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 Rural Area of Critical Economic Concern 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 along non-limited access highways;
    - 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.

  Businesses placing such signs must be at least 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 jurisdiction with the SHS 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

[57] Section 479.01(30), F.S., defines "wall mural" as "a sign that is a painting or an artistic work composed of photographs or arrangements of color that displays a commercial or noncommercial message, relies solely on the side of the building for rigid structural support, and is painted on the building or depicted in vinyl, fabric, or other similarly flexible material that is held in place flush or flat against the surface of the building. The term excludes a painting or work placed on a structure that is erected for the sole or primary purpose of signage."

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.[58]

- 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.[59]

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 must notify the sign owner that the sign must be removed within 30 days. If the sign is not removed within 30 days, DOT may remove the sign and all costs associated with sign removal are to be assessed against and collected from the sign owner.

Compensation for signs; Eminent Domain, Exceptions (Section 19)
The bill amends s. 479.24, F.S., requiring DOT pay just compensation for its acquisition (rather than removal) of a lawful *conforming or* nonconforming signs.

Erection of Noise-attenuation Barrier Blocking View of Sign (Section 20)
The bill amends. s. 479.25, F.S., relating to the erection of noise-attenuation barriers blocking the view of a sign, to:

- Make "plain language" and conforming changes;
- Require, upon determination that in increase in height as allowed will violate a provision contained in an ordinance or land development regulation, *prior to construction*, the local government or jurisdiction shall provide a variance or waiver to allow an increase in the height of the sign; and
- Remove a DOT requirement to conduct a written survey of all property owners impacted by noise and who may benefit from the barrier.

Logo Sign Program (Section 21)
The bill amends s. 479.261, F.S., expanding the logo sign program to the entire limited-access highway system, rather than just to the interstate highway system, as is already authorized by the MUTCD, thereby increasing opportunities for business participation.

Tourist Oriented Directional Sign Program (Section 22)
The bill amends s. 479.262(1), F.S., continuing the authorization of the tourist-oriented directional sign program at intersections on rural and conventional state, county, or municipal roads, but removing the restriction for participation in the program to such roads in rural counties,[60] and to expressly state, consistent with rule 14-51.063, F.A.C., and the MUTCD, and that a tourist-oriented directional sign may not be used on roads in urban areas or at interchanges of freeways or expressways.

Permit Revocation and Cancellation; Cost of Removal (Section 23)
The bill amends s. 479.313, F.S., relating to sign removal, to include *cancellation*, along with revocation, in the direction that all costs incurred by DOT in connection with the removal of a sign be assessed and collected from the permitee.

Tourist-Oriented Commerce Sign/Permit Exemption (Section 24)

Current Situation

[58] 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.
[59] 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.
[60] Rural counties are identified by criteria and population in s. 288.0656, F.S.

In an effort to increase visibility and facilitate economic development for small businesses in rural areas of critical economic concern HB 599[61] was passed in 2012, authorizing DOT to seek approval from FHWA for a tourist-oriented commerce sign pilot program and to submit the pilot program for legislative approval in the next regular legislative session.

In continued discussions with the FHWA, DOT has been advised that approval of the pilot program is not expected. According to DOT, it was advised by FHWA to proceed by obtaining permission to replace authorization to seek pilot program approval with an exemption from permitting requirements, as well as language identical to that under current s. 479.16(15), F.S., relating to an exemption for permitting rural hardship signs, that would protect against any adverse impact upon the allocation of federal funds to DOT.

Proposed Changes
The bill repeals s. 76 of ch. 2012-174, L.O.F., which was a pilot program for tourist-oriented commerce outdoor advertising signs in rural areas of critical economic concern, which is replaced by authority to erect such signs without a permit under certain conditions.

Effective Date (Section 25)
The bill has an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1	Creates s. 339.041, F.S., relating to factoring of revenues from leases for wireless communication facilities.
Section 2	Amends s. 373.618, F.S., relating to public service warnings, alerts, and announcements.
Section 3	Amends s. 479.01, F.S., relating to definitions relating to outdoor advertising.
Section 4	Amends s. 479.02, F.S., relating to duties of the Department of Transportation.
Section 5	Creates s. 479.024, F.S., relating to commercial and industrial parcels.
Section 6	Amends s. 479.03, F.S., relating to the jurisdiction of the department; entry upon privately owned lands.
Section 7	Amends s. 479.04, F.S., relating to the business of outdoor advertising; license requirement; renewal; fees.
Section 8	Amends s. 479.05, F.S., relating to the denial, suspension, or revocation of license.
Section 9	Amends s. 479.07, F.S., relating to sign permits.
Section 10	Amends s. 479.08, F.S., relating to denial or revocation of permit.
Section 11	Amend s. 479.10, F.S., relating to sign removal following permit revocation or cancellation.
Section 12	Amends s. 479.105, F.S., relating to signs erected or maintained without required permit; removal.
Section 13	Amends s. 479.106, F.S., relating to vegetation management.

[61] s. 76, ch. 2012-174, L.O.F.

Section 14 Amends s. 479.107, F.S., relating to signs on highway rights-of-way; removal.

Section 15 Amends s. 479.111, F.S., relating to specified signs allowed within controlled portions of the interstate and federal-aid primary highway system.

Section 16 Amends s. 479.15, F.S., relating to harmony of regulation.

Section 17 Amends s. 479.156, F.S., relating to wall murals.

Section 18 Amends s. 479.16, F.S., relating to signs for which permits are not required.

Section 19 Amends s. 479.24, F.S., relating to compensation for signs, eminent domain; exceptions.

Section 20 Amends s. 479.25, F.S., relating to erection of noise-attenuation barrier blocking view of sign; procedures; application.

Section 21 Amends s. 479.261, F.S., relating to the logo sign program.

Section 22 Amends s. 479.262, F.S., relating to the tourist oriented directional sign program.

Section 23 Amends s. 479.313, F.S., relating to permit revocation and cancellation; cost of removal.

Section 24 Repeals s. 76 of ch. 2012-174, L.O.F., relating to a permit exemption for tourist oriented commerce signs.

Section 25 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DOT may see some additional up-front revenues from agreements with investors willing to purchase the revenue stream from one or more existing DOT leases of wireless communication facilities under section 1 of the bill. To the extent that such agreements are executed, there would be a reduction in future revenues to DOT from the lease payments purchased by the investors. The amount of these revenue impacts would be dependent of the terms of various agreements and cannot be determined at this time. DOT advises that it has one contract that would be eligible for consideration. While its estimated revenue is very subjective, it estimates that the Net Present Value at a discount rate of five percent is approximately $56 million, and firms that would purchase the revenue stream would discount that amount by 25 to 45 percent.

Section 9 of the bill provides for an increase of the maximum fee for multiple permit transfers fee from $100 to $1000; and changes the permit reinstatement flat fee of $300 instead of the current $200 or $300. The impact of these fees has not been determined at this time, but are intended to cover DOT's cost of administering the program.

Allowing logo signs on all limited access highways under section 21 of the bill has the potential to increase the state's revenue from the logo sign program, but this cannot be quantified and has an indeterminate positive impact on the State Transportation Trust Fund.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Section 20 of the bill may require local governments to provide a variance or waiver of local ordinances and land development regulations under certain circumstances. The cost to the local governments to provide the variances or waivers is indeterminate, but is expected to be insignificant due to limited number of signs that would be impacted. These costs would be absorbed as part of the normal land use administrative responsibilities of a local government.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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.

Placing logo signs on additional limited access facilities could potentially increase revenue at those establishments that advertise on the logo signs. Any possible impact to the private sector is indeterminate.

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.

If FHWA reduces funds which would be apportioned to DOT due to a local government's failure to comply with land use determination requirements, DOT will reduce the state's apportioned transportation funding within the jurisdiction of the local government entity in an equivalent amount. To the extent this situation arises, there would be an impact on a local government, but such impact is indeterminate at this time.

The bill removes the existing $75 fine against a sign owner who has been assessed the cost of sign removal for a sign found in violation of the law. According to DOT, it has not been pursuing the fine, since it costs more than $75 to collect.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18 of the Florida Constitution may apply because this bill may require local governments to spend money granting variances or waivers of local ordinances and land development regulations under certain circumstances. However, an exemption may apply because there is expected to be an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DOT will have to revise its rules relating to outdoor advertising to conform to the changes made in the bill.[62]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[62] Ch. 14-10, F.A.C.

A bill to be entitled

An act relating to the Department of Transportation; creating s. 339.041, F.S.; providing legislative findings and intent; authorizing the department to seek certain investors for certain leases; prohibiting the department from pledging the credit, general revenues, or taxing power of the state or any political subdivision of the state; specifying the collection and deposit of lease payments by agreement with the department; amending s. 373.618, F.S.; removing a provision exempting certain public information systems from local government review or approval; providing that a public information system is subject to the requirements of ch. 479, F.S.; requiring that certain public information systems be approved by the United States Department of Transportation and the Federal Highway Administration under certain circumstances; amending s. 479.01, F.S., relating to outdoor advertising signs; revising and deleting definitions; amending s. 479.02, F.S.; revising duties of the Department of Transportation relating to signs; deleting a requirement that the department adopt certain rules; creating s. 479.024, F.S.; limiting the placement of signs to commercial or industrial zones; defining the terms "parcel" and "utilities"; requiring a local government to use

specified criteria to determine zoning for commercial or industrial parcels; providing that certain parcels are considered unzoned commercial or industrial areas; authorizing a permit for a sign in an unzoned commercial or industrial area in certain circumstances; prohibiting specified uses and activities from being independently recognized as commercial or industrial; providing an appeal process for an applicant whose permit is denied; requiring an applicant whose application is denied to remove an existing sign pertaining to the application; requiring the department to reduce certain transportation funding in certain circumstances; amending s. 479.03, F.S.; requiring notice to owners of intervening privately owned lands before the department enters upon such lands to remove an illegal sign; amending s. 479.04, F.S.; providing that an outdoor advertising license is not required solely to erect or construct outdoor signs or structures; amending s. 479.05, F.S.; authorizing the department to suspend a license for certain offenses and specifying activities that the licensee may engage in during the suspension; prohibiting the department from granting a transfer of an existing permit or issuing an additional permit during the suspension; amending s. 479.07, F.S.; revising requirements for obtaining sign permits;

conforming and clarifying provisions; revising permit tag placement requirements for signs; deleting a provision that allows a permittee to provide its own replacement tag; increasing the permit transfer fee for any multiple transfers between two outdoor advertisers in a single transaction; revising the permit reinstatement fee; revising requirements for permitting certain signs visible to more than one highway; deleting provisions limiting a pilot program to specified locations; deleting redundant provisions relating to certain new or replacement signs; deleting provisions requiring maintenance of statistics on the pilot program; amending s. 479.08, F.S.; revising provisions relating to the denial or revocation of a permit because of false or misleading information in the permit application; amending s. 479.10, F.S.; authorizing the cancellation of a permit; amending s. 479.105, F.S.; revising notice requirements to owners and advertisers relating to signs erected or maintained without a permit; revising procedures for the department to issue a permit as a conforming or nonconforming sign to the owner of an unpermitted sign; providing a penalty; amending s. 479.106, F.S.; revising provisions relating to the removal, cutting, or trimming of trees or vegetation to increase sign face visibility; providing that a specified penalty is

applied per sign facing; amending s. 479.107, F.S.; deleting a fine for specified violations; amending s. 479.11, F.S.; prohibiting signs on specified portions of the interstate highway system; amending s. 479.111, F.S.; clarifying a reference to a certain agreement; amending s. 479.15, F.S.; deleting a definition; revising provisions relating to relocation of certain signs on property subject to public acquisition; amending s. 479.156, F.S.; clarifying provisions relating to the regulation of wall murals; amending s. 479.16, F.S.; exempting certain signs from ch. 479, F.S.; exempting from permitting certain signs placed by tourist-oriented businesses, certain farm signs placed during harvest seasons, certain acknowledgment signs on publicly funded school premises, and certain displays on specific sports facilities; prohibiting certain permit exemptions from being implemented or continued if the implementations or continuations 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. 479.24, F.S.; clarifying provisions relating to compensation paid for the

department's acquisition of lawful signs; amending s. 479.25, F.S.; revising provisions relating to local government action with respect to erection of noise-attenuation barriers that block views of lawfully erected signs; deleting provisions to conform to changes made by the act; amending s. 479.261, F.S.; expanding the logo program to the limited access highway system; conforming provisions related to a logo sign program on the limited access highway system; 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; amending s. 479.313, F.S.; requiring a permittee to pay the cost of removing certain signs following the cancellation of the permit for the sign; repealing s. 76 of chapter 2012-174, Laws of Florida, relating to authorizing the department to seek Federal Highway Administration approval of a tourist-oriented commerce sign pilot program and directing the department to submit the approved pilot program for legislative approval; providing an effective date.

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

Section 1. Section 339.041, Florida Statutes, is created to read:

339.041 Factoring of revenues from leases for wireless communication facilities.—

(1) The Legislature finds that efforts to increase funding for capital expenditures for the transportation system are necessary for the protection of the public safety and general welfare and for the preservation of transportation facilities in this state. Therefore, it is the intent of the Legislature to:

(a) Create a mechanism for factoring future revenues received by the department from leases for wireless communication facilities on department property on a nonrecourse basis;

(b) Fund fixed capital expenditures for the statewide transportation system from proceeds generated through this mechanism; and

(c) Maximize revenues from factoring by ensuring that such revenues are exempt from income taxation under federal law in order to increase funds available for capital expenditures.

(2) For the purposes of factoring future revenues under this section, department property includes real property located within the department's limited access rights-of-way, real property located outside the current operating right-of-way limits which is not needed to support current transportation facilities, other property owned by the Board of Trustees of the

Internal Improvement Trust Fund and leased by the department, space on department telecommunications facilities, and space on department structures.

(3) The department may seek investors willing to enter into agreements to purchase the revenue stream from one or more existing department leases for wireless communication facilities on property owned or controlled by the department.

(4) The department may not pledge the credit, the general revenues, or the taxing power of the state or of any political subdivision of the state. The obligations of the department and investors under the agreement do not constitute a general obligation of the state or a pledge of the full faith and credit or taxing power of the state. The agreement is payable from and secured solely by payments received from department leases for wireless communication facilities on property owned or controlled by the department, and neither the state nor any of its agencies has any liability beyond such payments.

(5) The department may make any covenant or representation necessary or desirable in connection with the agreement, including a commitment by the department to take whatever actions are necessary on behalf of investors to enforce the department's rights to payments on property leased for wireless communications facilities. However, the department may not guarantee that actual revenues received in a future year will be those anticipated in its leases for wireless communication facilities. The department may agree to use its best efforts to

ensure that anticipated future-year revenues are protected. Any risk that actual revenues received from department leases for wireless communications facilities are lower than anticipated shall be borne exclusively by investors.

(6) Subject to annual appropriation, investors shall collect the lease payments on a schedule and in a manner established in the agreements entered into by the department and investors pursuant to this section. The agreements may provide for lease payments to be made directly to investors by lessees if the lease agreements entered into by the department and the lessees pursuant to s. 365.172(12)(f) allow direct payment.

(7) Proceeds received by the department from leases for wireless communication facilities shall be deposited in the State Transportation Trust Fund created under s. 206.46 and used for fixed capital expenditures for the statewide transportation system.

Section 2. Section 373.618, Florida Statutes, is amended to read:

373.618 Public service warnings, alerts, and announcements.—The Legislature believes it is in the public interest that all water management districts created pursuant to s. 373.069 own, acquire, develop, construct, operate, and manage public information systems. Public information systems may be located on property owned by the water management district, upon terms and conditions approved by the water management district, and must display messages to the general public concerning water

management services, activities, events, and sponsors, as well as other public service announcements, including watering restrictions, severe weather reports, amber alerts, and other essential information needed by the public. ~~Local government review or approval is not required for a public information system owned or hereafter acquired, developed, or constructed by the water management district on its own property.~~ A public information system is subject to ~~exempt from~~ the requirements of chapter 479. However, a public information system that is subject to the Highway Beautification Act of 1965 must be approved by the United States Department of Transportation and the Federal Highway Administration if such approval is required by federal law and federal regulation under the agreement between the state and the United States Department of Transportation and by federal regulations enforced by the Department of Transportation under s. 479.02(1). Water management district funds may not be used to pay the cost to acquire, develop, construct, operate, or manage a public information system. Any necessary funds for a public information system shall be paid for and collected from private sponsors who may display commercial messages.

Section 3. Section 479.01, Florida Statutes, is amended to read:

479.01 Definitions.—As used in this chapter, the term:

(1) "Allowable uses" means the intended uses identified in a local government's land development regulations which ~~those~~

~~uses that~~ are authorized within a zoning category as a use by right, without the requirement to obtain a variance or waiver. The term includes conditional uses and those allowed by special exception if such uses are a present and actual use, but does not include uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis.

(2) "Automatic changeable facing" means a facing that is capable of delivering two or more advertising messages through an automated or remotely controlled process.

(3) "Business of outdoor advertising" means the business of ~~constructing, erecting,~~ operating, ~~using,~~ maintaining, leasing, or selling outdoor advertising structures, outdoor advertising signs, or outdoor advertisements.

~~(4) "Commercial or industrial zone" means a parcel of land designated for commercial or industrial uses under both the future land use map of the comprehensive plan and the land use development regulations adopted pursuant to chapter 163. If a parcel is located in an area designated for multiple uses on the future land use map of a comprehensive plan and the zoning category of the land development regulations does not clearly designate that parcel for a specific use, the area will be considered an unzoned commercial or industrial area if it meets the criteria of subsection (26).~~

(4)~~(5)~~ "Commercial use" means activities associated with the sale, rental, or distribution of products or the performance of services. The term includes, but is not limited to ~~without~~

~~limitation~~, such uses or activities as retail sales; wholesale sales; rentals of equipment, goods, or products; offices; restaurants; food service vendors; sports arenas; theaters; and tourist attractions.

(5)~~(6)~~ "Controlled area" means 660 feet or less from the nearest edge of the right-of-way of any portion of the State Highway System, interstate, or federal-aid primary highway system and beyond 660 feet of the nearest edge of the right-of-way of any portion of the State Highway System, interstate highway system, or federal-aid primary system outside an urban area.

(6)~~(7)~~ "Department" means the Department of Transportation.

(7)~~(8)~~ "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish. The term~~; but it~~ does not include such ~~any of the foregoing~~ activities when performed as an incident to the change of advertising message or customary maintenance or repair of a sign.

(8)~~(9)~~ "Federal-aid primary highway system" means the federal-aid primary highway system in existence on June 1, 1991, and any highway that was not a part of such system as of that date but that is, or became after June 1, 1991, a part of the National Highway System, including portions that have been accepted as part of the National Highway System but are unbuilt or unopened ~~existing, unbuilt, or unopened system of highways or~~

~~portions thereof, which shall include the National Highway System, designated as the federal-aid primary highway system by the department~~.

(9)~~(10)~~ "Highway" means any road, street, or other way open or intended to be opened to the public for travel by motor vehicles.

(10)~~(11)~~ "Industrial use" means activities associated with the manufacture, assembly, processing, or storage of products or the performance of related services ~~relating thereto~~. The term includes, but is not limited to ~~without limitation~~, such uses or activities as automobile manufacturing or repair, boat manufacturing or repair, junk yards, meat packing facilities, citrus processing and packing facilities, produce processing and packing facilities, electrical generating plants, water treatment plants, sewage treatment plants, and solid waste disposal sites.

(11)~~(12)~~ "Interstate highway system" means the existing, unbuilt, or unopened system of highways or portions thereof designated as the national system of interstate and defense highways by the department.

(12)~~(13)~~ "Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. The term ~~It~~ does not include such facilities as frontage roads, turning roadways which specifically include on-ramps or

off-ramps to the interstate highway system, or parking areas.

(13) ~~(14)~~ "Maintain" means to allow to exist.

(14) ~~(15)~~ "Motorist services directional signs" means signs providing directional information about goods and services in the interest of the traveling public where such signs were lawfully erected and in existence on or before May 6, 1976, and continue to provide directional information to goods and services in a defined area.

(15) ~~(16)~~ "New highway" means the construction of any road, paved or unpaved, where no road previously existed or the act of paving any previously unpaved road.

(16) ~~(17)~~ "Nonconforming sign" means a sign which was lawfully erected but which does not comply with the land use, setback, size, spacing, and lighting provisions of state or local law, rule, regulation, or ordinance passed at a later date or a sign which was lawfully erected but which later fails to comply with state or local law, rule, regulation, or ordinance due to changed conditions.

(17) ~~(18)~~ "Premises" means all the land areas under ownership or lease arrangement to the sign owner which are contiguous to the business conducted on the land except for instances where such land is a narrow strip contiguous to the advertised activity or is connected by such narrow strip, the only viable use of such land is to erect or maintain an advertising sign. If ~~When~~ the sign owner is a municipality or county, the term means ~~"premises" shall mean~~ all lands owned or

leased by the ~~such~~ municipality or county within its jurisdictional boundaries ~~as set forth by law~~.

(18)~~(19)~~ "Remove" means to disassemble all sign materials above ground level and~~,~~ transport such materials from the site~~, and dispose of sign materials by sale or destruction~~.

(19)~~(20)~~ "Sign" means any combination of structure and message in the form of an outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, advertising structure, advertisement, logo, symbol, or other form, whether placed individually or on a V-type, back-to-back, side-to-side, stacked, or double-faced display or automatic changeable facing, designed, intended, or used to advertise or inform, any part of the advertising message or informative contents of which is visible from any place on the main-traveled way. The term does not include an official traffic control sign, official marker, or specific information panel erected, caused to be erected, or approved by the department.

(20)~~(21)~~ "Sign direction" means the ~~that~~ direction from which the message or informative contents are most visible to oncoming traffic on the main-traveled way.

(21)~~(22)~~ "Sign face" means the part of a ~~the~~ sign, including trim and background, which contains the message or informative contents, including an automatic changeable face.

(22)~~(23)~~ "Sign facing" includes all sign faces and automatic changeable faces displayed at the same location and facing the same direction.

(23) ~~(24)~~ "Sign structure" means all the interrelated parts and material, such as beams, poles, and stringers, which are constructed for the purpose of supporting or displaying a message or informative contents.

(24) ~~(25)~~ "State Highway System" has the same meaning as in s. 334.03 ~~means the existing, unbuilt, or unopened system of highways or portions thereof designated as the State Highway System by the department~~.

~~(26) "Unzoned commercial or industrial area" means a parcel of land designated by the future land use map of the comprehensive plan for multiple uses that include commercial or industrial uses but are not specifically designated for commercial or industrial uses under the land development regulations, in which three or more separate and distinct conforming industrial or commercial activities are located.~~

~~(a) These activities must satisfy the following criteria:~~

~~1. At least one of the commercial or industrial activities must be located on the same side of the highway and within 800 feet of the sign location;~~

~~2. The commercial or industrial activities must be within 660 feet from the nearest edge of the right-of-way; and~~

~~3. The commercial industrial activities must be within 1,600 feet of each other.~~

~~Distances specified in this paragraph must be measured from the nearest outer edge of the primary building or primary building~~

~~complex when the individual units of the complex are connected by covered walkways.~~

~~(b) Certain activities, including, but not limited to, the following, may not be so recognized as commercial or industrial activities:~~

~~1. Signs.~~

~~2. Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.~~

~~3. Transient or temporary activities.~~

~~4. Activities not visible from the main-traveled way.~~

~~5. Activities conducted more than 660 feet from the nearest edge of the right-of-way.~~

~~6. Activities conducted in a building principally used as a residence.~~

~~7. Railroad tracks and minor sidings.~~

~~8. Communication towers.~~

(25) ~~(27)~~ "Urban area" has the same meaning as ~~defined~~ in s. 334.03~~(31)~~.

(26) ~~(28)~~ "Visible commercial or industrial activity" means a commercial or industrial activity that is capable of being seen without visual aid by a person of normal visual acuity from the main-traveled way and that is generally recognizable as commercial or industrial.

(27) ~~(29)~~ "Visible sign" means that the advertising message or informative contents of a sign, whether or not legible, can

be ~~is capable of being~~ seen without visual aid by a person of normal visual acuity.

(28) ~~(30)~~ "Wall mural" means a sign that is a painting or an artistic work composed of photographs or arrangements of color and that displays a commercial or noncommercial message, relies solely on the side of the building for rigid structural support, and is painted on the building or depicted on vinyl, fabric, or other similarly flexible material that is held in place flush or flat against the surface of the building. The term excludes a painting or work placed on a structure that is erected for the sole or primary purpose of signage.

(29) ~~(31)~~ "Zoning category" means the designation under the land development regulations or other similar ordinance enacted to regulate the use of land as provided in s. 163.3202(2)(b), which designation sets forth the allowable uses, restrictions, and limitations on use applicable to properties within the category.

Section 4. Section 479.02, Florida Statutes, is amended to read:

479.02 Duties of the department. ~~It shall be the duty of~~ The department shall ~~to~~:

(1) Administer and enforce ~~the provisions of~~ this chapter, ~~and~~ the 1972 agreement between the state and the United States Department of Transportation ~~relating to the size~~, ~~lighting, and spacing of signs in accordance with Title I of the Highway Beautification Act of 1965 and~~ Title 23 of the~~,~~ United States

Code, and federal regulations, including, but not limited to, those pertaining to the maintenance, continuance, and removal of nonconforming signs ~~in effect as of the effective date of this act~~.

(2) Regulate size, height, lighting, and spacing of signs permitted on commercial and industrial parcels and in unzoned commercial or industrial areas ~~in zoned and unzoned commercial areas and zoned and unzoned industrial areas~~ on the interstate highway system and the federal-aid primary highway system.

(3) Determine ~~unzoned~~ commercial and industrial parcels and unzoned commercial or ~~areas and unzoned~~ industrial areas in the manner provided in s. 479.024.

(4) Implement a specific information panel program on the limited access ~~interstate~~ highway system to promote tourist-oriented businesses by providing directional information safely and aesthetically.

(5) Implement a rest area information panel or devices program at rest areas along the interstate highway system and the federal-aid primary highway system to promote tourist-oriented businesses.

(6) Test and, if economically feasible, implement alternative methods of providing information in the specific interest of the traveling public which allow the traveling public freedom of choice, conserve natural beauty, and present information safely and aesthetically.

(7) Adopt such rules as the department ~~it~~ deems necessary

or proper for the administration of this chapter, including rules that ~~which~~ identify activities that may not be recognized as industrial or commercial activities for purposes of determination of a ~~an area as an unzoned~~ commercial or industrial parcel or an unzoned commercial or industrial area in the manner provided in s. 479.024.

(8) ~~Prior to July 1, 1998,~~ Inventory and determine the location of all signs on the state highway system, interstate highway system, and federal-aid primary highway system to be used as ~~systems. Upon completion of the inventory, it shall become~~ the database and permit information for all permitted signs ~~permitted at the time of completion, and the previous records of the department shall be amended accordingly~~. The inventory shall be updated at least ~~no less than~~ every 2 years. ~~The department shall adopt rules regarding what information is to be collected and preserved to implement the purposes of this chapter.~~ The department may perform the inventory using department staff~~,~~ or may contract with a private firm to perform the work, whichever is more cost efficient. The department shall maintain a database of sign inventory information such as sign location, size, height, and structure type, the permittee's ~~permitholder's~~ name, and any other information the department finds necessary to administer the program.

Section 5. Section 479.024, Florida Statutes, is created to read:

479.024 Commercial and industrial parcels.—Signs shall be

permitted by the department only in commercial or industrial zones, as determined by the local government, in compliance with chapter 163, unless otherwise provided in this chapter. Commercial and industrial zones are those areas appropriate for commerce, industry, or trade, regardless of how those areas are labeled.

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

(a) "Parcel" means the property where the sign is located or is proposed to be located.

(b) "Utilities" includes all privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and stormwater not connected with the highway drainage, and other similar commodities.

(2) The determination as to zoning by the local government for the parcel must meet all of the following criteria:

(a) The parcel is comprehensively zoned and includes commercial or industrial uses as allowable uses.

(b) The parcel can reasonably accommodate a commercial or industrial use under the future land use map of the comprehensive plan and land use development regulations, as follows:

1. Sufficient utilities are available to support commercial or industrial development; and

2. The size, configuration, and public access of the

parcel are sufficient to accommodate a commercial or industrial use, given the requirements in the comprehensive plan and land development regulations for vehicular access, on-site circulation, building setbacks, buffering, parking, and other applicable standards or the parcel consists of railroad tracks or minor sidings abutting commercial or industrial property that meets the criteria of this subsection.

(c) The parcel is not being used exclusively for noncommercial or nonindustrial uses.

(3) If a local government has not designated zoning through land development regulations in compliance with chapter 163 but has designated the parcel under the future land use map of the comprehensive plan for uses that include commercial or industrial uses, the parcel shall be considered an unzoned commercial or industrial area. For a permit to be issued for a sign in an unzoned commercial or industrial area, there must be three or more distinct commercial or industrial activities within 1,600 feet of each other, with at least one of the commercial or industrial activities located on the same side of the highway as, and within 800 feet of, the sign location. Multiple commercial or industrial activities enclosed in one building shall be considered one use if all activities have only shared building entrances.

(4) For purposes of this section, certain uses and activities may not be independently recognized as commercial or industrial, including, but not limited to:

(a) Signs.

(b) Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.

(c) Transient or temporary activities.

(d) Activities not visible from the main-traveled way, unless a department transportation facility is the only cause for the activity not being visible.

(e) Activities conducted more than 660 feet from the nearest edge of the right-of-way.

(f) Activities conducted in a building principally used as a residence.

(g) Railroad tracks and minor sidings, unless the tracks and sidings are abutted by a commercial or industrial property that meets the criteria in subsection (2).

(h) Communication towers.

(i) Public parks, public recreation services, and governmental uses and activities that take place in a structure that serves as the permanent public meeting place for local, state, or federal boards, commissions, or courts.

(5) If the local government has indicated that the proposed sign location is on a parcel that is in a commercial or industrial zone but the department finds that it is not, the department shall notify the sign applicant in writing of its determination.

(6) An applicant whose application for a permit is denied

may request, within 30 days after the receipt of the notification of intent to deny, an administrative hearing pursuant to chapter 120 for a determination of whether the parcel is located in a commercial or industrial zone. Upon receipt of such request, the department shall notify the local government that the applicant has requested an administrative hearing pursuant to chapter 120.

(7) If the department determines in a final order that the parcel does not meet the permitting conditions in this section and a sign exists on the parcel, the applicant shall remove the sign within 30 days after the date of the order. The applicant is responsible for all sign removal costs.

(8) If the Federal Highway Administration reduces funds that would otherwise be apportioned to the department due to a local government's failure to comply with this section, the department shall reduce transportation funding apportioned to the local government by an equivalent amount.

Section 6. Section 479.03, Florida Statutes, is amended to read:

479.03 Jurisdiction of the Department of Transportation; entry upon privately owned lands.—The territory under the jurisdiction of the department for the purpose of this chapter includes ~~shall include~~ all the state. Employees, agents, or independent contractors working for the department, in the performance of their functions and duties under the provisions of this chapter, may enter into and upon any land upon which a

sign is displayed, is proposed to be erected, or is being erected and make such inspections, surveys, and removals as may be relevant. Upon written notice to ~~After receiving consent by~~ the landowner, operator, or person in charge of an intervening privately owned land that ~~or appropriate inspection warrant issued by a judge of any county court or circuit court of this state which has jurisdiction of the place or thing to be removed, that~~ the removal of an illegal outdoor advertising sign is necessary and has been authorized by a final order or results from an uncontested notice to the sign owner, the department may ~~shall be authorized to~~ enter upon any intervening privately owned lands for the purposes of effectuating removal of illegal signs.~~, provided that~~ The department may enter intervening privately owned lands ~~shall~~ only ~~do so~~ in circumstances where it has determined that ~~no~~ other legal or economically feasible means of entry to the sign site are not reasonably available. Except as otherwise provided by this chapter, the department is ~~shall be~~ responsible for the repair or replacement in a like manner for any physical damage or destruction of private property, other than the sign, incidental to the department's entry upon such intervening privately owned lands.

Section 7. Section 479.04, Florida Statutes, is amended to read:

479.04 Business of outdoor advertising; license requirement; renewal; fees.—

(1) A ~~No~~ person may not ~~shall~~ engage in the business of

outdoor advertising in this state without first obtaining a license ~~therefor~~ from the department. Such license shall be renewed annually. The fee for such license, and for each annual renewal, is $300. License renewal fees are ~~shall be~~ payable as provided for in s. 479.07.

(2) A ~~No~~ person is not ~~shall be~~ required to obtain the license provided for in this section solely to erect or construct outdoor advertising signs or structures ~~as an incidental part of a building construction contract~~.

Section 8. Section 479.05, Florida Statutes, is amended to read:

479.05 Denial, suspension, or revocation of license.—The department may ~~has authority to~~ deny, suspend, or revoke a ~~any~~ license requested or granted under this chapter in any case in which it determines that the application for the license contains ~~knowingly~~ false or misleading information of material consequence, that the licensee has failed to pay fees or costs owed to the department for outdoor advertising purposes, or that the licensee has violated any of the provisions of this chapter, unless such licensee, within 30 days after the receipt of notice by the department, corrects such false or misleading information, pays the outstanding amounts, or complies with ~~the provisions of~~ this chapter. Suspension of a license allows the licensee to maintain existing sign permits, but the department may not grant a transfer of an existing permit or issue an additional permit to a licensee with a suspended license. A ~~Any~~

person aggrieved by an ~~any~~ action of the department which denies, suspends, or revokes ~~in denying or revoking~~ a license under this chapter may, within 30 days after ~~from~~ the receipt of the notice, apply to the department for an administrative hearing pursuant to chapter 120.

Section 9. Section 479.07, Florida Statutes, is amended to read:

479.07 Sign permits.—

(1) Except as provided in ss. 479.105(1)~~(c)~~ and 479.16, a person may not erect, operate, use, or maintain, or cause to be erected, operated, used, or maintained, any sign on the State Highway System outside an urban area, ~~as defined in s. 334.03(31),~~ or on any portion of the interstate or federal-aid primary highway system without first obtaining a permit for the sign from the department and paying the annual fee as provided in this section. As used in this section, the term "on any portion of the State Highway System, interstate highway system, or federal-aid primary system" means a sign located within the controlled area which is visible from any portion of the main-traveled way of such system.

(2) ~~A person may not apply for a permit unless he or she has first obtained the~~ Written permission of the owner or other person in lawful possession or control of the site designated as the location of the sign is required for issuance of a ~~in the application for the~~ permit.

(3)(a) An application for a sign permit must be made on a

form prescribed by the department, and a separate application must be submitted for each permit requested. A permit is required for each sign facing.

(b) As part of the application, the applicant or his or her authorized representative must certify ~~in a notarized signed statement~~ that all information provided in the application is true and correct ~~and that, pursuant to subsection (2), he or she has obtained the written permission of the owner or other person in lawful possession of the site designated as the location of the sign in the permit application~~. Each ~~Every~~ permit application must be accompanied by the appropriate permit fee; a signed statement by the owner or other person in lawful control of the site on which the sign is located or will be erected, authorizing the placement of the sign on that site; ~~and, where local governmental regulation of signs exists,~~ a statement from the appropriate local governmental official indicating that the sign complies with all local government ~~governmental~~ requirements; and, if a local government permit is required for a sign, a statement that the agency or unit of local government will issue a permit to that applicant upon approval of the state permit application by the department.

(c) The annual permit fee for each sign facing shall be established by the department by rule in an amount sufficient to offset the total cost to the department for the program, but may ~~shall~~ not be greater than ~~exceed~~ $100. The ~~A fee may not be prorated for a period less than the remainder of the permit year~~

~~to accommodate short-term publicity features; however, a~~ first-year fee may be prorated by payment of an amount equal to one-fourth of the annual fee for each remaining whole quarter or partial quarter of the permit year. Applications received after the end of the third quarter of the permit year must include fees for the last quarter of the current year and fees for the succeeding year.

(4) An application for a permit shall be acted on by granting, denying, or returning the incomplete application ~~the department~~ within 30 days after receipt of the application by the department.

(5)(a) For each permit issued, the department shall furnish to the applicant a serially numbered permanent metal permit tag. The permittee is responsible for maintaining a valid permit tag on each permitted sign facing at all times. The tag shall be securely attached to the upper 50 percent of the sign structure, and ~~sign facing or, if there is no facing, on the pole nearest the highway; and it shall be~~ attached in such a manner as to be plainly visible from the main-traveled way. ~~Effective July 1, 2012, the tag must be securely attached to the upper 50 percent of the pole nearest the highway and must be attached in such a manner as to be plainly visible from the main-traveled way.~~ The permit ~~becomes void unless the permit~~ tag must be ~~is~~ properly and permanently displayed at the permitted site within 30 days after the date of permit issuance. If the permittee fails to erect a completed sign on the permitted site

within 270 days after the date on which the permit was issued, the permit will be void, and the department may not issue a new permit to that permittee for the same location for 270 days after the date on which the permit becomes ~~became~~ void.

(b) If a permit tag is lost, stolen, or destroyed, the permittee to whom the tag was issued must apply to the department for a replacement tag. The department shall adopt a rule establishing a service fee for replacement tags in an amount that will recover the actual cost of providing the replacement tag. Upon receipt of the application accompanied by the service fee, the department shall issue a replacement permit tag. ~~Alternatively, the permittee may provide its own replacement tag pursuant to department specifications that the department shall adopt by rule at the time it establishes the service fee for replacement tags.~~

(6) A permit is valid only for the location specified in the permit. Valid permits may be transferred from one sign owner to another upon written acknowledgment from the current permittee and submittal of a transfer fee of $5 for each permit to be transferred. However, the maximum transfer fee for any multiple transfer between two outdoor advertisers in a single transaction is $1,000 ~~$100~~.

(7) A permittee shall at all times maintain the permission of the owner or other person in lawful control of the sign site in order to have and maintain a sign at such site.

(8)(a) In order to reduce peak workloads, the department

may adopt rules providing for staggered expiration dates for licenses and permits. Unless otherwise provided for by rule, all licenses and permits expire annually on January 15. All license and permit renewal fees are required to be submitted to the department by no later than the expiration date. At least 105 days before ~~prior to~~ the expiration date of licenses and permits, the department shall send to each permittee a notice of fees due for all licenses and permits that ~~which~~ were issued to him or her before ~~prior to~~ the date of the notice. Such notice must ~~shall~~ list the permits and the permit fees due for each sign facing. The permittee shall, no later than 45 days before ~~prior to~~ the expiration date, advise the department of any additions, deletions, or errors contained in the notice. Permit tags that ~~which~~ are not renewed shall be returned to the department for cancellation by the expiration date. Permits that ~~which~~ are not renewed or are canceled shall be certified in writing at that time as canceled or not renewed by the permittee, and permit tags for such permits shall be returned to the department or shall be accounted for by the permittee in writing, which writing shall be submitted with the renewal fee payment or the cancellation certification. However, failure of a permittee to submit a permit cancellation does ~~shall~~ not affect the nonrenewal of a permit. Before ~~Prior to~~ cancellation of a permit, the permittee shall provide written notice to all persons or entities having a right to advertise on the sign that the permittee intends to cancel the permit.

(b) If a permittee has not submitted his or her fee payment by the expiration date of the licenses or permits, the department shall send a notice of violation to the permittee within 45 days after the expiration date, requiring the payment of the permit fee within 30 days after the date of the notice and payment of a delinquency fee equal to 10 percent of the original amount due or, in the alternative to these payments, requiring the filing of a request for an administrative hearing to show cause why the ~~his or her~~ sign should not be subject to immediate removal due to expiration of his or her license or permit. If the permittee submits payment as required by the violation notice, the ~~his or her~~ license or permit shall ~~will~~ be automatically reinstated and such reinstatement is ~~will be~~ retroactive to the original expiration date. If the permittee does not respond to the notice of violation within the 30-day period, the department shall, within 30 days, issue a final notice of sign removal and may, following 90 days after the date of the department's final notice of sign removal, remove the sign without incurring any liability as a result of such removal. However, if at any time before removal of the sign, the permittee demonstrates that a good faith error on the part of the permittee resulted in cancellation or nonrenewal of the permit, the department may reinstate the permit if:

1. The permit reinstatement fee of ~~up to~~ $300 ~~based on the size of the sign~~ is paid;

2. All other permit renewal and delinquent permit fees due

as of the reinstatement date are paid; and

3. The permittee reimburses the department for all actual costs resulting from the permit cancellation or nonrenewal.

(c) Conflicting applications filed by other persons for the same or competing sites covered by a permit subject to paragraph (b) may not be approved until after the sign subject to the expired permit has been removed.

(d) The cost for removing a sign~~, whether~~ by the department or an independent contractor~~,~~ shall be assessed by the department against the permittee.

(9)(a) A permit may ~~shall~~ not be granted for any sign for which a permit had not been granted by the effective date of this act unless such sign is located at least:

1. One thousand five hundred feet from any other permitted sign on the same side of the highway, if on an interstate highway.

2. One thousand feet from any other permitted sign on the same side of the highway, if on a federal-aid primary highway.

The minimum spacing provided in this paragraph does not preclude the permitting of V-type, back-to-back, side-to-side, stacked, or double-faced signs at the permitted sign site. If a sign is visible to more than one highway subject to the jurisdiction of the department and within the controlled area of the highways ~~from the controlled area of more than one highway subject to the jurisdiction of the department~~, the sign must ~~shall~~ meet the

permitting requirements of all highways~~,~~ and~~, if the sign meets the applicable permitting requirements,~~ be permitted to~~,~~ the highway having the more stringent permitting requirements.

(b) A permit may ~~shall~~ not be granted for a sign pursuant to this chapter to locate such sign on any portion of the interstate or federal-aid primary highway system, which sign:

1. Exceeds 50 feet in sign structure height above the crown of the main-traveled way to which the sign is permitted, if outside an incorporated area;

2. Exceeds 65 feet in sign structure height above the crown of the main-traveled way to which the sign is permitted, if inside an incorporated area; or

3. Exceeds 950 square feet of sign facing including all embellishments.

(c) Notwithstanding subparagraph (a)1., ~~there is established a pilot program in Orange, Hillsborough, and Osceola Counties, and within the boundaries of the City of Miami, under which~~ the distance between permitted signs on the same side of an interstate highway may be reduced to 1,000 feet if all other requirements of this chapter are met and if:

1. The local government has adopted a plan, program, resolution, ordinance, or other policy encouraging the voluntary removal of signs in a downtown, historic, redevelopment, infill, or other designated area which also provides for a new or replacement sign to be erected on an interstate highway within that jurisdiction if a sign in the designated area is removed;

2. The sign owner and the local government mutually agree to the terms of the removal and replacement; and

3. The local government notifies the department of its intention to allow such removal and replacement as agreed upon pursuant to subparagraph 2.

~~4. The new or replacement sign to be erected on an interstate highway within that jurisdiction is to be located on a parcel of land specifically designated for commercial or industrial use under both the future land use map of the comprehensive plan and the land use development regulations adopted pursuant to chapter 163, and such parcel shall not be subject to an evaluation in accordance with the criteria set forth in s. 479.01(26) to determine if the parcel can be considered an unzoned commercial or industrial area.~~

~~The department shall maintain statistics tracking the use of the provisions of this pilot program based on the notifications received by the department from local governments under this paragraph.~~

(d) This subsection does not cause a sign that was conforming on October 1, 1984, to become nonconforming.

(10) Commercial or industrial zoning that ~~which~~ is not comprehensively enacted or that ~~which~~ is enacted primarily to permit signs may ~~shall~~ not be recognized as commercial or industrial zoning for purposes of this provision, and permits may ~~shall~~ not be issued for signs in such areas. The department

shall adopt rules that ~~within 180 days after this act takes effect which shall~~ provide criteria to determine whether such zoning is comprehensively enacted or enacted primarily to permit signs.

Section 10. Section 479.08, Florida Statutes, is amended to read:

479.08 Denial or revocation of permit.—The department may deny or revoke a ~~any~~ permit requested or granted under this chapter in any case in which it determines that the application for the permit contains ~~knowingly~~ false or misleading information of material consequence. The department may revoke a ~~any~~ permit granted under this chapter in any case in which the permittee has violated ~~any of the provisions of~~ this chapter, unless such permittee, within 30 days after the receipt of notice by the department, complies with ~~the provisions of~~ this chapter. For the purpose of this section, the notice of violation issued by the department must describe in detail the alleged violation. A ~~Any~~ person aggrieved by any action of the department in denying or revoking a permit under this chapter may, within 30 days after receipt of the notice, apply to the department for an administrative hearing pursuant to chapter 120. If a timely request for hearing has been filed and the department issues a final order revoking a permit, such revocation shall be effective 30 days after the date of rendition. Except for department action pursuant to s. 479.107(1), the filing of a timely and proper notice of appeal

shall operate to stay the revocation until the department's action is upheld.

Section 11. Section 479.10, Florida Statutes, is amended to read:

479.10 Sign removal following permit revocation or cancellation.—A sign shall be removed by the permittee within 30 days after the date of revocation or cancellation of the permit for the sign. If the permittee fails to remove the sign within the 30-day period, the department shall remove the sign at the permittee's expense with or without further notice and without incurring any liability as a result of such removal.

Section 12. Section 479.105, Florida Statutes, is amended to read:

479.105 Signs erected or maintained without required permit; removal.—

(1) A ~~Any~~ sign that ~~which~~ is located adjacent to the right-of-way of any highway on the State Highway System outside an incorporated area or adjacent to the right-of-way on any portion of the interstate or federal-aid primary highway system, which sign was erected, operated, or maintained without the permit required by s. 479.07(1) having been issued by the department, is declared to be a public nuisance and a private nuisance and shall be removed as provided in this section.

(a) Upon a determination by the department that a sign is in violation of s. 479.07(1), the department shall prominently post on the sign, or as close to the sign as possible for a

location in which the sign is not easily accessible, ~~face~~ a notice stating that the sign is illegal and must be removed within 30 days after the date on which the notice was posted. ~~However, if the sign bears the name of the licensee or the name and address of the nonlicensed sign owner,~~ The department shall, concurrently with and in addition to posting the notice on the sign, provide a written notice to the owner of the sign, the advertiser displayed on the sign, or the owner of the property, stating that the sign is illegal and must be permanently removed within the 30-day period specified on the posted notice. The written notice shall further state that ~~the sign owner has a right to request~~ a hearing may be requested and that the~~, which~~ request must be filed with the department within 30 days after receipt ~~the date~~ of the written notice. However, the filing of a request for a hearing will not stay the removal of the sign.

(b) If, pursuant to the notice provided, the sign is not removed by the ~~sign~~ owner of the sign, the advertiser displayed on the sign, or the owner of the property within the prescribed period, the department shall immediately remove the sign without further notice; and, for that purpose, the employees, agents, or independent contractors of the department may enter upon private property without incurring any liability for so entering.

(c) However, the department may issue a permit for a sign, as a conforming or nonconforming sign, if the sign owner demonstrates to the department one of the following:

1. If the sign meets the current requirements of this

chapter for a sign permit, the sign owner may submit the required application package and receive a permit as a conforming sign, upon payment of all applicable fees.

2. If the sign does not meet the current requirements of this chapter for a sign permit and has never been exempt from the requirement that a permit be obtained, the sign owner may receive a permit as a nonconforming sign if the department determines that the sign is not located on state right-of-way and is not a safety hazard, and if the sign owner pays a penalty fee of $300 and all pertinent fees required by this chapter, including annual permit renewal fees payable since the date of the erection of the sign, and attaches to the permit application package documentation that demonstrates that:

a. The sign has been unpermitted, structurally unchanged, and continuously maintained at the same location for 7 years or more;

b. During the initial 7 years in which the sign has been subject to the jurisdiction of the department, the sign would have met the criteria established in this chapter which were in effect at that time for issuance of a permit; and

c. The department has not initiated a notice of violation or taken other action to remove the sign during the initial 7-year period in which the sign has been subject to the jurisdiction of the department.

(d) This subsection does not cause a neighboring sign that is permitted and that is within the spacing requirements under

s. 479.07(9)(a) to become nonconforming.

(e) ~~(c)~~ For purposes of this subsection, a notice to the sign owner, when required, constitutes sufficient notice. ~~; and~~ Notice is not required to be provided to the lessee, advertiser, or the owner of the real property on which the sign is located.

(f) ~~(d)~~ If, after a hearing, it is determined that a sign has been wrongfully or erroneously removed pursuant to this subsection, the department, at the sign owner's discretion, shall either pay just compensation to the owner of the sign or reerect the sign in kind at the expense of the department.

~~(e) However, if the sign owner demonstrates to the department that:~~

~~1. The sign has been unpermitted, structurally unchanged, and continuously maintained at the same location for a period of 7 years or more;~~

~~2. At any time during the period in which the sign has been erected, the sign would have met the criteria established in this chapter for issuance of a permit;~~

~~3. The department has not initiated a notice of violation or taken other action to remove the sign during the initial 7-year period described in subparagraph 1.; and~~

~~4. The department determines that the sign is not located on state right-of-way and is not a safety hazard,~~

~~the sign may be considered a conforming or nonconforming sign and may be issued a permit by the department upon application in~~

~~accordance with this chapter and payment of a penalty fee of $300 and all pertinent fees required by this chapter, including annual permit renewal fees payable since the date of the erection of the sign.~~

(2)(a) If a sign is under construction and the department determines that a permit has not been issued for the sign as required under ~~the provisions of~~ this chapter, the department may ~~is authorized to~~ require that all work on the sign cease until the sign owner shows that the sign does not violate ~~the provisions of~~ this chapter. The order to cease work shall be prominently posted on the sign structure, and ~~no~~ further notice is not required ~~to be given~~. The failure of a sign owner or her or his agents to immediately comply with the order subjects ~~shall subject~~ the sign to prompt removal by the department.

(b) For the purposes of this subsection only, a sign is under construction when it is in any phase of initial construction before ~~prior to~~ the attachment and display of the advertising message in final position for viewing by the traveling public. A sign that is undergoing routine maintenance or change of the advertising message only is not considered to be under construction for the purposes of this subsection.

(3) The cost of removing a sign~~, whether~~ by the department or an independent contractor~~,~~ shall be assessed against the owner of the sign by the department.

Section 13. Subsections (5) and (7) of section 479.106, Florida Statutes, are amended to read:

479.106 Vegetation management.—

(5) The department may only grant a permit pursuant to s. 479.07 for a new sign that ~~which~~ requires the removal, cutting, or trimming of existing trees or vegetation on public right-of-way for the sign face to be visible from the highway the sign will be permitted to when the sign owner has removed at least two nonconforming signs of approximate comparable size and surrendered the permits for the nonconforming signs to the department for cancellation. For signs originally permitted after July 1, 1996, the first application, or application for a change of view zone, ~~no permit~~ for the removal, cutting, or trimming of trees or vegetation along the highway the sign is permitted to shall require the removal of two nonconforming signs, in addition to mitigation or contribution to a plan of mitigation. The department may not grant a permit for the removal, cutting, or trimming of trees for a sign permitted after July 1, 1996, if the ~~shall be granted where such~~ trees are or the vegetation is ~~are~~ part of a beautification project implemented before ~~prior to~~ the date of the original sign permit application and if~~, when~~ the beautification project is specifically identified in the department's construction plans, permitted landscape projects, or agreements.

(7) Any person engaging in removal, cutting, or trimming of trees or vegetation in violation of this section or benefiting from such actions shall be subject to an administrative penalty of up to $1,000 per sign facing and

required to mitigate for the unauthorized removal, cutting, or trimming in such manner and in such amount as may be required under the rules of the department.

Section 14. Subsection (5) of section 479.107, Florida Statutes, is amended to read:

479.107 Signs on highway rights-of-way; removal.—

(5) The cost of removing a sign~~, whether~~ by the department or an independent contractor~~,~~ shall be assessed by the department against the owner of the sign. ~~Furthermore, the department shall assess a fine of $75 against the sign owner for any sign which violates the requirements of this section.~~

Section 15. Section 479.111, Florida Statutes, is amended to read:

479.111 Specified signs allowed within controlled portions of the interstate and federal-aid primary highway system.—Only the following signs shall be allowed within controlled portions of the interstate highway system and the federal-aid primary highway system as set forth in s. 479.11(1) and (2):

(1) Directional or other official signs and notices that ~~which~~ conform to 23 C.F.R. ss. 750.151-750.155.

(2) Signs in commercial-zoned and industrial-zoned areas or commercial-unzoned and industrial-unzoned areas and within 660 feet of the nearest edge of the right-of-way, subject to the requirements set forth in the 1972 agreement between the state and the United States Department of Transportation.

(3) Signs for which permits are not required under s.

479.16.

Section 16. Section 479.15, Florida Statutes, is amended to read:

479.15 Harmony of regulations.—

(1) A ~~No~~ zoning board or commission or other public officer or agency may not ~~shall~~ issue a permit to erect a ~~any~~ sign that ~~which~~ is prohibited under ~~the provisions of~~ this chapter or the rules of the department, and ~~nor shall~~ the department may not issue a permit for a ~~any~~ sign that ~~which~~ is prohibited by any other public board, officer, or agency in the lawful exercise of its powers.

(2) A municipality, county, local zoning authority, or other local governmental entity may not remove, or cause to be removed, a ~~any~~ lawfully erected sign along any portion of the interstate or federal-aid primary highway system without first paying just compensation for such removal. A local governmental entity may not cause in any way the alteration of a ~~any~~ lawfully erected sign located along any portion of the interstate or federal-aid primary highway system without payment of just compensation if such alteration constitutes a taking under state law. The municipality, county, local zoning authority, or other local governmental ~~government~~ entity that adopts requirements for such alteration shall pay just compensation to the sign owner if such alteration constitutes a taking under state law. This subsection applies only to a lawfully erected sign the subject matter of which relates to premises other than the

premises on which it is located or to merchandise, services, activities, or entertainment not sold, produced, manufactured, or furnished on the premises on which the sign is located. ~~As used in this subsection, the term "federal-aid primary highway system" means the federal-aid primary highway system in existence on June 1, 1991, and any highway that was not a part of such system as of that date but that is or becomes after June 1, 1991, a part of the National Highway System.~~ This subsection may ~~shall~~ not be interpreted as explicit or implicit legislative recognition that alterations do or do not constitute a taking under state law.

(3) It is the express intent of the Legislature to limit the state right-of-way acquisition costs on state and federal roads in eminent domain proceedings, ~~the provisions of~~ ss. 479.07 and 479.155 notwithstanding. Subject to approval by the Federal Highway Administration, if ~~whenever~~ public acquisition of land upon which is situated a lawful permitted ~~nonconforming~~ sign occurs~~,~~ as provided in this chapter, the sign may, at the election of its owner and the department, be relocated or reconstructed adjacent to the new right-of-way and in close proximity to the current site if ~~along~~ the ~~roadway within 100 feet of the current location, provided the nonconforming~~ sign is not relocated in an area inconsistent with s. 479.024. ~~on a parcel zoned residential, and provided further that~~ Such relocation is ~~shall be~~ subject to the ~~applicable setback~~ requirements in the 1972 agreement between the state and the

United States Department of Transportation. The sign owner shall pay all costs associated with relocating or reconstructing a ~~any~~ sign under this subsection, and ~~neither~~ the state or ~~nor~~ any local government may not ~~shall~~ reimburse the sign owner for such costs, unless part of such relocation costs is ~~are~~ required by federal law. If ~~no~~ adjacent property is not available for the relocation, the department is ~~shall be~~ responsible for paying the owner of the sign just compensation for its removal.

(4) For a nonconforming sign, ~~Such relocation shall be adjacent to the current site and~~ the face of the sign may ~~shall~~ not be increased in size or height or structurally modified at the point of relocation in a manner inconsistent with the current building codes of the jurisdiction in which the sign is located.

(5) If ~~In the event that~~ relocation can be accomplished but is inconsistent with the ordinances of the municipality or county within whose jurisdiction the sign is located, the ordinances of the local government shall prevail if~~, provided that~~ the local government assumes ~~shall assume~~ the responsibility to provide the owner of the sign just compensation for its removal.~~, but in no event shall~~ Compensation paid by the local government may not be greater than ~~exceed~~ the compensation required under state or federal law. ~~Further, the provisions of~~ This section does ~~shall~~ not impair any agreement or future agreements between a municipality or county and the owner of a sign or signs within the

jurisdiction of the municipality or county. ~~Nothing in this section shall be deemed to cause a nonconforming sign to become conforming solely as a result of the relocation allowed in this section.~~

(6) ~~The provisions of~~ Subsections (3), (4), and (5) do ~~of this section shall~~ not apply within the jurisdiction of a ~~any~~ municipality that ~~which~~ is engaged in ~~any~~ litigation concerning its sign ordinance on April 23, 1999, and the subsections do not ~~nor shall such provisions~~ apply to a ~~any~~ municipality whose boundaries are identical to the county within which the ~~said~~ municipality is located.

(7) This section does not cause a neighboring sign that is already permitted and that is within the spacing requirements established in s. 479.07(9)(a) to become nonconforming.

Section 17. Section 479.156, Florida Statutes, is amended to read:

479.156 Wall murals.—Notwithstanding any other provision of this chapter, a municipality or county may permit and regulate wall murals within areas designated by such government. If a municipality or county permits wall murals, a wall mural that displays a commercial message and is within 660 feet of the nearest edge of the right-of-way within an area adjacent to the interstate highway system or the federal-aid primary highway system shall be located only in an area that is zoned for industrial or commercial use pursuant to s. 479.024. ~~and~~ The municipality or county shall establish and enforce rules

~~regulations~~ for such areas which ~~that~~, at a minimum, set forth criteria governing the size, lighting, and spacing of wall murals consistent with the intent of 23 U.S.C. s. 131 ~~the Highway Beautification Act of 1965~~ and with customary use. If ~~Whenever~~ a municipality or county exercises such control and makes a determination of customary use pursuant to 23 U.S.C. s. 131(d), such determination shall be accepted in lieu of controls in the agreement between the state and the United States Department of Transportation, and the department shall notify the Federal Highway Administration pursuant to the agreement, 23 U.S.C. s. 131(d), and 23 C.F.R. s. 750.706(c). A wall mural that is subject to municipal or county regulation and 23 U.S.C. s. 131 ~~the Highway Beautification Act of 1965~~ must be approved by the Department of Transportation and the Federal Highway Administration when required by federal law and federal regulation under the agreement between the state and the United States Department of Transportation and federal regulations enforced by the Department of Transportation under s. 479.02(1). The existence of a wall mural as defined in s. 479.01~~(30)~~ must ~~shall~~ not be considered in determining whether a sign as defined in s. 479.01~~(20)~~, ~~either~~ existing or new, is in compliance with s. 479.07(9)(a).

Section 18. Section 479.16, Florida Statutes, is amended to read:

479.16 Signs for which permits are not required.—The following signs are exempt from the requirement that a permit

for a sign be obtained under ~~the provisions of~~ this chapter but are required to comply with ~~the provisions of~~ s. 479.11(4)-(8), and the provisions of subsections (15)-(19) may not be implemented or continued if the Federal Government notifies the department that implementation or continuation will adversely affect the allocation of federal funds to the department:

(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 governmental ~~government~~ services, activities, events, or entertainment. For purposes of this section, the following types of messages are ~~shall~~ not ~~be~~ considered information regarding governmental ~~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 Forest ~~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 which 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, modular news racks, street light poles, public pay telephones, and waste receptacles, within the right-of-way, as

provided for in s. 337.408 are exempt from ~~all provisions of~~ this chapter.

(14) Signs relating exclusively to political campaigns.

(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.~~

(16) Signs placed by a local tourist-oriented business located within a rural area of critical economic concern as defined in 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 in s. 334.03;

(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.

(17) 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 up to 4 months.

(18) Acknowledgment signs erected upon publicly funded school premises which relate to a specific public school club, team, or event and which are placed at least 1,000 feet from any other acknowledgment sign on the same side of the roadway. The sponsor information on an acknowledgment sign may constitute no more than 100 square feet of the sign. As used in this subsection, the term "acknowledgment 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.

(19) Displays erected upon a sports facility, the content of which is directly related to the facility's activities or to the facility's products or services. Displays must be mounted flush to the surface of the sports facility and must rely upon

the building facade for structural support. As used in 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 seating capacity of 15,000 or more permanently installed seats.

If the exemptions in subsections (15)-(19) 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 after receipt of the notice. 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 19. Section 479.24, Florida Statutes, is amended to read:

479.24 Compensation for ~~removal of~~ signs; eminent domain; exceptions.—

(1) Just compensation shall be paid by the department upon the department's acquisition ~~removal~~ of a lawful conforming or nonconforming sign along any portion of the interstate or federal-aid primary highway system. This section does not apply to a sign that ~~which~~ is illegal at the time of its removal. A

sign loses ~~will lose~~ its nonconforming status and becomes ~~become~~ illegal at such time as it fails to be permitted or maintained in accordance with all applicable laws, rules, ordinances, or regulations other than the provision that ~~which~~ makes it nonconforming. A legal nonconforming sign under state law or rule does ~~will~~ not lose its nonconforming status solely because it additionally becomes nonconforming under an ordinance or regulation of a local governmental entity passed at a later date. The department shall make every reasonable effort to negotiate the purchase of the signs to avoid litigation and congestion in the courts.

(2) The department is not required to remove any sign under this section if the federal share of the just compensation to be paid upon removal of the sign is not available to make such payment, unless an appropriation by the Legislature for such purpose is made to the department.

(3)(a) The department may ~~is authorized to~~ use the power of eminent domain when necessary to carry out ~~the provisions of~~ this chapter.

(b) If eminent domain procedures are instituted, just compensation shall be made pursuant to the state's eminent domain procedures, chapters 73 and 74.

Section 20. Section 479.25, Florida Statutes, is amended to read:

479.25 Erection of noise-attenuation barrier blocking view of sign; procedures; application.—

(1) The owner of a lawfully erected sign that is governed by and conforms to state and federal requirements for land use, size, height, and spacing may increase the height above ground level of such sign at its permitted location if a noise-attenuation barrier is permitted by or erected by any governmental entity in such a way as to screen or block visibility of the sign. Any increase in height permitted under this section may only be the increase in height which is required to achieve the same degree of visibility from the right-of-way which the sign had before ~~prior to~~ the construction of the noise-attenuation barrier, notwithstanding the restrictions contained in s. 479.07(9)(b). A sign reconstructed under this section must ~~shall~~ comply with the building standards and wind load requirements provided ~~set forth~~ in the Florida Building Code. If construction of a proposed noise-attenuation barrier will screen a sign lawfully permitted under this chapter, the department shall provide notice to the local government or local jurisdiction within which the sign is located before construction ~~prior to erection of the noise-attenuation barrier~~. Upon a determination that an increase in the height of a sign as permitted under this section will violate ~~a provision contained in~~ an ordinance or a land development regulation of the local government or local jurisdiction, the local government or local jurisdiction shall, before construction ~~so notify the department. When notice has been received from the local government or local jurisdiction~~

~~prior to erection of the noise-attenuation barrier, the department shall~~:

(a) Provide a variance or waiver to the local ordinance or land development regulations to ~~Conduct a written survey of all property owners identified as impacted by highway noise and who may benefit from the proposed noise-attenuation barrier. The written survey shall inform the property owners of the location, date, and time of the public hearing described in paragraph (b) and shall specifically advise the impacted property owners that:~~

~~1. Erection of the noise-attenuation barrier may block the visibility of an existing outdoor advertising sign;~~

~~2. The local government or local jurisdiction may restrict or prohibit increasing the height of the existing outdoor advertising sign to make it visible over the barrier; and~~

~~3. If a majority of the impacted property owners vote for construction of the noise-attenuation barrier, the local government or local jurisdiction will be required to:~~

~~a.~~ allow an increase in the height of the sign ~~in violation of a local ordinance or land development regulation~~;

(b)~~b.~~ Allow the sign to be relocated or reconstructed at another location if the sign owner agrees; or

(c)~~c.~~ Pay the fair market value of the sign and its associated interest in the real property.

(2)~~(b)~~ The department shall hold a public hearing within the boundaries of the affected local governments or local jurisdictions to receive input on the proposed noise-attenuation

barrier and its conflict with the local ordinance or land development regulation and to suggest or consider alternatives or modifications ~~to the proposed noise-attenuation barrier~~ to alleviate or minimize the conflict with the local ordinance or land development regulation or minimize any costs that may be associated with relocating, reconstructing, or paying for the affected sign. The public hearing may be held concurrently with other public hearings scheduled for the project. The department shall provide a written notification to the local government or local jurisdiction of the date and time of the public hearing and shall provide general notice of the public hearing in accordance with the notice provisions of s. 335.02(1). The notice may ~~shall~~ not be placed in that portion of a newspaper in which legal notices or classified advertisements appear. The notice must ~~shall~~ specifically state that:

(a)~~1.~~ Erection of the proposed noise-attenuation barrier may block the visibility of an existing outdoor advertising sign;

(b)~~2.~~ The local government or local jurisdiction may restrict or prohibit increasing the height of the existing outdoor advertising sign ~~to make it visible over the barrier~~; and

(c)~~3.~~ Upon ~~If a majority of the impacted property owners vote for~~ construction of the noise-attenuation barrier, the local government or local jurisdiction shall ~~will be required to~~:

1. ~~a.~~ Allow an increase in the height of the sign through a waiver or variance to ~~in violation of~~ a local ordinance or land development regulation;

2. ~~b.~~ Allow the sign to be relocated or reconstructed at another location if the sign owner agrees; or

3. ~~c.~~ Pay the fair market value of the sign and its associated interest in the real property.

(3) ~~(2)~~ The department may ~~shall~~ not permit erection of the noise-attenuation barrier to the extent the barrier screens or blocks visibility of the sign until after the public hearing is held ~~and until such time as the survey has been conducted and a majority of the impacted property owners have indicated approval to erect the noise-attenuation barrier~~. ~~When the impacted property owners approve of the noise-attenuation barrier construction, the department shall notify the local governments or local jurisdictions. The local government or local jurisdiction shall, notwithstanding the provisions of a conflicting ordinance or land development regulation:~~

~~(a) Issue a permit by variance or otherwise for the reconstruction of a sign under this section;~~

~~(b) Allow the relocation of a sign, or construction of another sign, at an alternative location that is permittable under the provisions of this chapter, if the sign owner agrees to relocate the sign or construct another sign; or~~

~~(c) Refuse to issue the required permits for reconstruction of a sign under this section and pay fair market~~

~~value of the sign and its associated interest in the real property to the owner of the sign.~~

(4)~~(3)~~ This section does ~~shall~~ not apply to ~~the provisions of~~ any existing written agreement executed before July 1, 2006, between any local government and the owner of an outdoor advertising sign.

Section 21. Subsection (1) of section 479.261, Florida Statutes, is amended to read:

479.261 Logo sign program.—

(1) The department shall establish a logo sign program for the rights-of-way of the limited access ~~interstate~~ highway system to provide information to motorists about available gas, food, lodging, camping, attractions, and other services, as approved by the Federal Highway Administration, at interchanges through the use of business logos and may include additional interchanges under the program.

(a) As used in this chapter, the term "attraction" means an establishment, site, facility, or landmark that is open a minimum of 5 days a week for 52 weeks a year; that has as its principal focus family-oriented entertainment, cultural, educational, recreational, scientific, or historical activities; and that is publicly recognized as a bona fide tourist attraction.

(b) The department shall incorporate the use of RV-friendly markers on specific information logo signs for establishments that cater to the needs of persons driving

recreational vehicles. Establishments that qualify for participation in the specific information logo program and that also qualify as "RV-friendly" may request the RV-friendly marker on their specific information logo sign. An RV-friendly marker must consist of a design approved by the Federal Highway Administration. The department shall adopt rules ~~in accordance with chapter 120~~ to administer this paragraph. Such rules must establish minimum requirements for parking spaces, entrances and exits, and overhead clearance which must be met by~~, including rules setting forth the minimum requirements that~~ establishments that wish ~~must meet in order~~ to qualify as RV-friendly. ~~These requirements shall include large parking spaces, entrances, and exits that can easily accommodate recreational vehicles and facilities having appropriate overhead clearances, if applicable.~~

Section 22. Subsection (1) of 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 at 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 governmental ~~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.

Section 23. Section 479.313, Florida Statutes, is amended to read:

479.313 Permit revocation and cancellation; cost of removal.—All costs incurred by the department in connection with the removal of a sign located within a controlled area adjacent to the State Highway System, interstate highway system, or federal-aid primary highway system following the revocation or cancellation of the permit for such sign shall be assessed against and collected from the permittee.

Section 24. Section 76 of chapter 2012-174, Laws of Florida, is repealed.

Section 25. This act shall take effect July 1, 2014.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1161 (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 Goodson offered the following:

Amendment (with title amendment)

Remove lines 199-229 and insert:

Section 1. Section 373.618, Florida Statutes, is amended to read:

373.618 Public service warnings, alerts, and announcements.—The Legislature believes it is in the public interest that all water management districts created pursuant to s. 373.069 own, acquire, develop, construct, operate, and manage public information systems. Public information systems may be located on property owned by the water management district, upon terms and conditions approved by the water management district, and must display messages to the general public concerning water management services, activities, events, and sponsors, as well

as other public service announcements, including watering restrictions, severe weather reports, amber alerts, and other essential information needed by the public. Local government review or approval is not required for a public information system owned or hereafter acquired, developed, or constructed by the water management district on its own property. A public information system is subject to ~~exempt from~~ the requirements of ~~chapter 479.~~ the Highway Beautification Act of 1965 and all Federal Laws and agreements when applicable. Water management district funds may not be used to pay the cost to acquire, develop, construct, operate, or manage a public information system. Any necessary funds for a public information system shall be paid for and collected from private sponsors who may display commercial messages.

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

Remove lines 11-18 and insert:

revising provisions related to public service warning signs; amending s. 479.01, F.S.,

Amendment No. 2.

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 Goodson offered the following:

Amendment (with title amendment)

Remove line 750 and insert:

transaction is $100.

Remove lines 804-805 and insert:

1. The permit reinstatement fee of up to $300 based on the size of the sign is paid;

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

Remove lines 56-59 and insert:

replacement tag; revising requirements for

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1161 (2014)

Amendment No. 3.

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 Goodson offered the following:

Amendment

Remove lines 1196-1197 and insert:

municipality or county shall establish and enforce regulations for such areas which ~~that~~, at a minimum, set forth

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1193 Off-Highway Vehicles
SPONSOR(S): Hill
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1024

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

SUMMARY ANALYSIS

Current law defines several types of off-highway vehicles (OHVs). Included in this definition are all-terrain vehicles (ATVs), and off-highway vehicles (ROVs). ATVs, ROVs may not be operated on public roads in the state, except as permitted by the managing local, state, or federal agency. The law requires all OHVs operated on public lands in this state to be titled and issued a certificate of title for easy determination of ownership.

The bill expands the definitions for ATVs and ROVs to:

- Remove any reference to the type of seating (straddle vs. nonstraddle) and steering control (handle bars vs. steering wheel);
- Remove the limitation that an ATV is designed for use by a single operator with no passenger,; and
- Increase the width requirement of ROVs in the definitions from 64 to 65 inches.

These revisions may result in an increased number of ROVs being titled as ATVs and qualifying for operation on certain roads and trails currently restricted to ATV operation. In addition, the increased ROV width may result in more ROVs being titled in Florida.

The fiscal impact to the state and local governments is positive indeterminate but expected to be insignificant. OHV titling fees are deposited into the Incidental Trust Fund (ITF) of the Florida Forest Service of the Department of Agriculture and Consumer Services, and the Highway Safety Operating Trust Fund (HSOTF). Tax collectors may charge an additional branch fee for each title and decal it issues. However, it is unknown how many additional vehicles will be titled.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The use of OHVs for recreational purposes is a growing trend. OHV use in national parks, including ATVs, snowmobiles, personal watercraft, and others, along with recreational activities such as mountain biking, snow biking, heli-skiing, and aircraft tours, have evolved and gained in popularity.[1] As a result, United States (U.S.) consumers spend over $66 billion annually on offroading activities (on federal and nonfederal lands combined), and businesses serving off-road recreationists support over 680,000 jobs.[2]

According to the Congressional Research Service:

> OHV supporters contend that the vehicles allow greater access to hard-to-reach natural areas, bring economic benefits to communities serving riders, provide outdoor recreation opportunities for the disabled, senior citizens, and others with mobility limitations; and, with snowmobiles, allow increased access to sites during winter. They assert that technological advances will continue to limit noise and pollution. By contrast, opponents of OHVs in the National Park System assert that these vehicles damage the environment and cultural artifacts, pose safety concerns, and conflict with other forms of recreation.[3]

Not all off-road vehicles are the same. Often, the ATV is confused with the ROV. But there are actually some very significant differences between the two, even if both types of off-roaders may be four-wheeled and used for similar types of recreation.[4]

The most noticeable differences include the fact that ROVs have a steering wheel, acceleration foot pedal and a brake foot pedal, and they are "driven." ATVs have a handlebar for steering, a throttle controlled by pushing a thumb lever next to the handgrip, and hand lever(s) for front and/or rear brake(s) and a foot pedal for the rear brake. And unlike ROVs, ATVs are "ridden."[5]

Use of Off-Highway Vehicles on Federal Lands

In 2005, the United State Department of Agriculture Forest Service announced a new regulation governing OHVs.[6] An OHV is defined in the rule to mean "any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain." Known as the "Travel Management Rule," its highlights are as follows:

- Each national forest or ranger district must designate those roads, trails, and areas open to motor vehicles.

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[1] The Congressional Research Service report on Motorized Recreation on National Park Service Lands, February 8, 2013, p. 1, is available at: http://www.fas.org/sgp/crs/misc/R42955.pdf. (Last viewed 3/15/14).
[2] The Outdoor Recreation Economy, 2012, p. 17, is available at: http://atfiles.org/files/pdf/Outdoor-Recreation-Economy-OIA2012.pdf. (Last viewed 3/15/14).
[3] The Congressional Research Service report on Motorized Recreation on National Park Service Lands, February 8, 2013, p. 1, is available at: http://www.fas.org/sgp/crs/misc/R42955.pdf. (Last viewed 3/15/14).
[4] The Recreational Off-Highway Vehicle Association website is available at: http://www.rohva.org/ROVvsATV.aspx. (Last viewed 3/15/14).
[5] Id.
[6] 36 C.F.R. 212, Subpart B, Designation of Roads, Trails and Areas for Motor Vehicle Use, is available at: http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=70f3f185b0287443f1d197a51ebf13ce&rgn=div6&view=text&node=36:2.0.1.1.3.2&idno=36. (Last viewed 3/15/14).

- The designation must include the class of vehicle and, if appropriate, time of year for motor vehicle use. A given route, for example, could be designated for use by motorcycles, all-terrain vehicles (ATVs), or street-legal vehicles.
- Once designation is complete, the rule prohibits motor vehicle use off the designated system or inconsistent with the designation.
- Designation decisions are to be made locally, with public input and in coordination with state, local, and tribal governments.
- Designations will be shown on a motor vehicle use map.[7]

With respect to vehicle class, the Motor Vehicle Use Maps for 2014 for the Apalachicola National Forest, the Ocala National Forest, and the Osceola National Forest reflect the following categories with respect to off-highway vehicle roads and trails:

- *Roads Open to Highway Legal Vehicles Only*: These roads are open only to motor vehicles licensed under state law for general operation on all public roads within the state.
- *Roads Open to All Vehicles*: These roads are open to all motor vehicles, including smaller off-highway vehicles that may not be licensed for highway use (but not to oversize or overweight vehicles under state traffic law).
- *Trails Open to Wheeled Vehicles 50 inches or Less in Width*: These trails are open only to wheeled, motor vehicles less than 50 inches in width at the widest point on the vehicle.
- *Trails Open to Motorcycles Only*: These trails are open only to motorcycles. Sidecars are not permitted.
- *Special Vehicle Designation*: This symbol indicates the road or trail is open to classes of vehicles other than those listed above.
- *Seasonal Designation*: This symbol, used in conjunction with one of the other road or trail symbols, indicates that the road or trial is open only during certain portions of the year.[8]

Operation of any OHV on National Forest System lands other than in accordance with the designations as reflected on the maps is prohibited.[9] It is the identified vehicle class for designated roads and trails on given federal lands that determines which OHVs are authorized.

Use of Off-Highway Vehicles on State Lands

The 2002 Legislature enacted the T. Mark Schmidt Off-Highway Vehicle Safety and Recreation Act[10] to provide a set of guidelines for the development and maintenance of public lands within the state for OHV use. The act finds that OHVs are becoming increasingly popular in this state and the use of these vehicles should be controlled and managed to minimize negative effects on the environment, wildlife habitats, native wildlife, and native flora and fauna. Also, the act declares that effectively managed areas and adequate facilities for the use of OHVs are compatible with this state's overall recreation plan and the underlying goal of multiple use.[11]

Section 261.03(5), F.S., defines an OHV as any ATV, two-rider ATV[12], ROV, or off-highway motorcycle (OHM) that is not registered and licensed for highway use under chapter 320, F.S.

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[7] The U.S. Forest Service website is available at: http://www.fs.fed.us/recreation/programs/ohv/. The full text of the final rule, an interactive travel map, and additional information may also be accessed at this site. (Last viewed 3/15/14).
[8] U.S. Forest Service Maps & Publications website: http://www.fs.usda.gov/main/florida/maps-pubs. (Last viewed 3/15/14).
[9] 36 C.F.R. 261.13, Subpart A, General Prohibitions, Parks, Forests, and Public Property is available at: http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=128231f343e42d49667e99a3452004cd&ty=HTML&h=L&n=36y2.0.1.1.20&r=PART#36:2.0.1.1.20.1.33.16. (Last viewed 3/15/14).
[10] s. 1, chapter 2002-295, Laws of Florida; codified in chapter 261, F.S.
[11] s. 261.02(1) and (2), F.S.
[12] s. 261.03(11), F.S., defines "Two-rider ATV" as any ATV that is specifically designed by the manufacturer for a single operator and one passenger.

Section 261.03(2), F.S., defines ATV to mean any motorized off-highway or all-terrain vehicle that:

- Is 50 inches or less in width,
- Has a dry weight of 1,200 pounds or less,
- Is designed to travel on three or more nonhighway tires,
- Has a seat designed to be straddled by the operator and handlebars for steering control, and
- Intended for use by a single operator with no passenger.

Section 261.03(8), F.S., defines ROV to mean any motorized recreational off-highway vehicle that:

- Is 64 inches or less in width,
- Has a dry weight of 2,000 pounds or less,
- Is designed to travel on four or more nonhighway tires,
- Has nonstraddle seating and a steering wheel, and
- Is manufactured for recreational use by one or more persons.[13]

ATVs, ROVs, (and OHMs) are the only unlicensed motor vehicles allowed in designated OHV areas.[14] No OHV may be operated on public roads in the state, except as permitted by the managing local, state, or federal agency.[15]

As is the case on federal lands, use of OHVs on state lands may be restricted given the location. For example, the Croom Motorcycle Area at Withlacoochee State forest permits operation of ATVs and OHMs, but ROVs are not currently authorized.[16] ATVs, ROVs, and OHMs are authorized on the OHV Trail System at Tate's Hell State Forest.[17]

Section 261.20, F.S., provides certain requirements for the operation of OHVs on public lands, including the following:

- A person under 16 must be supervised by an adult while operating an OHV and must have proof of completion of a DACS-approved safety course in this state or another jurisdiction.
- The OHV must be equipped with an operating spark arrester and sound emission limiter.
- OHVs operated at night, where allowed, or when visibility is low, must display a taillight and a headlight, with certain exceptions.

Violations of these requirements include:

- Carrying a passenger on an OHV, unless it is specifically designed to carry an operator and a single person;
- Operating an OHV under the influence of alcohol, a controlled substance, or any prescription or over-the-counter drug that impairs vision or motor function;
- Operation of an OHV by a person under 16 without wearing eye protection, over-the-ankle boots, and a safety helmet; and
- Operating an OHV in a careless or reckless manner that endangers or causes injury or damage to another person or property.[18]

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[13] Golf carts as defined in ss. 320.01 and 316.003, F.S., or low-speed vehicles as defined in s. 320.01, F.S., are not included in the definition of ROV.

[14] See DACS' website at: http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Recreation/Off-Highway-Vehicle-Recreation-on-State-Forests-in-Florida#rules. (Last viewed 3/15/14).

[15] s. 261.11, F.S.

[16] See DACS' Croom Motorcycle Area at Withlacoochee website at: http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/State-Forests/Withlacoochee-State-Forest/Croom-Motorcycle-Area-at-Withlacoochee-State-Forest. (Last viewed 3/15/14).

[17] See DACS' Off-Highway Vehicle Trail System at Tate's Hell State Forest website: http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/State-Forests/Off-Highway-Vehicle-Trail-System-at-Tate-s-Hell-State-Forest#contact. (Last viewed 3/15/14).

[18] s. 261.20(5), F.S.

A person who violates the requirements commits a noncriminal infraction subject to a fine of at least $100 and may have the privilege of operating an ATV on public lands revoked. If the person acts with intent to defraud or commits a second or subsequent violation, the fine increases to at least $500.[19]

Authorized Use of ATVs by Police Officers

Section 316.2074, F.S., also prohibits operation of an ATV on public roads in this state, except as permitted by the managing state or federal agency. However, a four-wheeled ATV may be used by police officers to enforce traffic laws on public beaches designated as public roadways and to travel on public roads within public lands while performing their duties.[20]

For purposes of s. 316.2074, F.S., an ATV is defined almost identically to the definition in s. 261.03(2), F.S., to mean any:

- Motorized OHV 50 inches or less in width,
- Having a dry weight of 1,200 pounds or less,
- Designed to travel on three or more nonhighway tires,
- Having a seat designed to be straddled by the operator and handlebars for steering control, and
- Intended for use by a single operator with no passenger.[21]

A violation of s. 316.2074, F.S., is a nonmoving, noncriminal traffic infraction, punishable by a $30 penalty.

Authorized Use of ATVs on Certain Roadways

Section 316.2123, F.S., also prohibits operation of an ATV[22] on public roads in this state, except that an ATV may be operated during the daytime on an unpaved roadway where the posted speed limit is less than 35 mph. A county may exempt itself from this authorization, after a public hearing, by majority vote of the governing body of the county.[23] Alternatively, by majority vote after a public hearing, the county may designate unpaved roadways where an ATV may be operated during the daytime as long as each such designated roadway has a posted speed limit of less than 35 mph and is appropriately marked to indicate permissible ATV use.[24] The ATV operator must be a licensed driver or a minor under the direct supervision of a licensed driver.[25]

Off-Highway Vehicle Titling

Chapter 317, F.S., requires all OHVs operated on public lands in this state to be titled and issued a certificate of title for easy determination of ownership. An owner of an OHV that is required to be titled must apply to the county tax collector for OHV title transactions.[26] An OHV title fee is $29. DHSMV is required to deposit $27 into the Incidental Trust Fund (ITF) of the Florida Forest Service of the Department of Agriculture and Consumer Services, and $2 into the Highway Safety Operating Trust Fund HSOTF). The definitions of ATV and ROV pursuant to ch. 317, F.S., are identical to the respective definitions in s. 261.03(2) and (8), F.S.

[19] s. 261.20(6), F.S.
[20] s. 316.2074(6), F.S.
[21] This section also includes two-rider ATVs specifically designed for a single operator and one passenger.
[22] ATV is defined as in s. 317.0003, F.S., which is identical to the definition in s. 261.03(2), F.S.
[23] s. 316.2123(2), F.S.
[24] Id.
[25] s. 316.2123(3), F.S.
[26] s. 317.0006(4)(c), F.S.

Proposed Changes

The bill amends ss. 261.03(2) and (8), and 317.0003, F.S., to:

- Remove from the definitions of ATV and ROV any reference to the type of seating (straddle vs. nonstraddle) and steering control (handle bars vs. steering wheel);
- Remove from the definition of ATV that the vehicle is intended for use by a single operator with no passenger and replace the phrase with "and manufactured for recreational use by one or more persons"; and
- Increase the width of ROVs in the definitions from 64 to 65 inches.

These revisions leave the definitions of ATV and ROV distinguished by width, weight, and the number of nonhighway tires. Both definitions include that the vehicle is manufactured for recreational use by one or more persons. The type of seating and the steering mechanism no longer distinguish ATVs and ROVs.

The revisions potentially authorize an OHV currently defined as an ROV to meet the definition of an ATV; that is, if the vehicle is 50 inches or less in width and 1,200 pounds or less in dry weight, designed to travel on three or more nonhighway tires, and manufactured for recreational use by one or more persons, a vehicle previously defined as an ROV because of nonstraddle seating and a steering wheel now meets the definition of an ATV because reference to straddled seating and handle bars is removed, as is the requirement that the vehicle is intended for use by a single operator with no passenger. Such models do exist, such as the Polaris RZR[27] and the Arctic Cat Wildcat Trail XT,[28] for example. These revisions may result in such models being authorized for titling as an ATV and may result in authorized operation on certain federal and state lands, depending upon the given location's restrictions.

The increase in width from 64 to 65 inches in the definition of ROV may result in more ROVs being titled in Florida. Authorized operation of ROVs will continue to be governed by OHV restrictions at a given location.

B. SECTION DIRECTORY:

Section 1: amends s. 261.03, F.S., revising definitions for ATV and ROV.

Section 2: amends s. 317.0003, F.S., revising definitions for ATV and ROV.

Section 3: provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   None.

[27] See the Polaris website at: http://www.polaris.com/en-us/rzr-side-by-side/rzr-570-eps-trail-le-blue-fire/specs. (Last viewed 3/15/14).
[28] See the Arctic Cat website at: http://www.arcticcat.com/sidexside/model/wildcattrailxt#lime. (Last viewed 3/15/14).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In fiscal year 2012-2013, DHSMV issued 12,554 OHV (ATV and ROV) titles statewide.[29]

An owner of an OHV that is required to be titled must apply to the county tax collector for OHV title transactions.[30] An OHV title fee is $29. DHSMV is required to deposit $27 into the ITF of the Florida Forest Service of the Department of Agriculture and Consumer Services, and $2 into the HSOTF. Tax collectors may charge an additional branch fee of $0.50 for each title it issues and each decal it issues.[31]

Expanding the definitions of ATV and ROV could result in an increase in the number OHVs that would be titled. This would have a positive impact on state funds (ITF and HSOTF) and tax collectors. DHMV is unable to quantify how many vehicles may become eligible but believes the amount to be nominal.[32] Therefore, the fiscal impact to the state and local governments is insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

[29] See the DHSMV agency bill analysis for SB 1024 (the Senate companion to HB 1193). This document is on file with the Transportation and Highway Safety Subcommittee.
[30] s. 317.0006(4)(c), F.S.
[31] s. 317.0007(1), F.S.
[32] Id.

Section 261.20, F.S., provides requirements for the operation of OHVs on public lands. The section prohibits carrying a passenger on an OHV unless the machine is specifically designed by the manufacturer to carry an operator and a single passenger. However, ATVs are currently manufactured for recreational use by one or more (multiple) persons. The purpose of the bill is to revise the definition of ATVs to reflect current OHV manufacturer designs that in part, allow multiple passengers. The violation specified in s. 261.20(5), F.S., may need to be revised to conform to the changes in the bill, and thus, reflect current OHV manufacturer designs.

Additionally, the penalty provision in s. 261.20(6), F.S., references only ATVs. However, s. 261.20, F.S., applies to the operation of OHVs, including ATVs, ROVs, and OHMs. The references to ATVs may therefore need changing to references to OHVs.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to off-highway vehicles; amending ss. 261.03 and 317.0003, F.S.; revising the definitions of the terms "ATV" and "ROV" for purposes of provisions relating to registration and use of off-highway vehicles; providing an effective date.

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

Section 1. Subsections (2) and (8) of section 261.03, Florida Statutes, are amended to read:

261.03 Definitions.—As used in this chapter, the term:

(2) "ATV" means any motorized off-highway or all-terrain vehicle 50 inches or less in width, which has ~~having~~ a dry weight of 1,200 pounds or less, is designed to travel on three or more nonhighway tires, and is manufactured for recreational use by one or more persons ~~having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single operator with no passenger~~.

(8) "ROV" means any motorized recreational off-highway vehicle 65 ~~64~~ inches or less in width, which has ~~having~~ a dry weight of 2,000 pounds or less, is designed to travel on four or more nonhighway tires~~, having nonstraddle seating and a steering wheel,~~ and is manufactured for recreational use by one or more persons. The term "ROV" does not include a golf cart as defined in ss. 320.01 and 316.003(68) or a low-speed vehicle as defined

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

in s. 320.01.

Section 2. Subsections (1) and (9) of section 317.0003, Florida Statutes, are amended to read:

317.0003 Definitions.—As used in this chapter, the term:

(1) "ATV" means any motorized off-highway or all-terrain vehicle 50 inches or less in width, which has ~~having~~ a dry weight of 1,200 pounds or less, is designed to travel on three or more nonhighway tires, and is manufactured for recreational use by one or more persons ~~having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single operator and with no passenger~~.

(9) "ROV" means any motorized recreational off-highway vehicle 65 ~~64~~ inches or less in width, which has ~~having~~ a dry weight of 2,000 pounds or less, is designed to travel on four or more nonhighway tires, ~~having nonstraddle seating and a steering wheel,~~ and is manufactured for recreational use by one or more persons. The term "ROV" does not include a golf cart as defined in ss. 320.01 and 316.003(68) or a low-speed vehicle as defined in s. 320.01.

Section 3. This act shall take effect July 1, 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 Hill offered the following:

Amendment (with title amendment)

Between lines 27 and 28, insert:

Section 1. Subsections (5) and (6) of section 261.20, Florida Statutes, are amended to read:

261.20 Operations of off-highway vehicles on public lands; restrictions; safety courses; required equipment; prohibited acts; penalties.—

(5) It is a violation of this section:

(a) To carry more passengers ~~a passenger~~ on an off-highway vehicle than~~, unless~~ the machine is specifically designed by the manufacturer to carry ~~an operator and a single passenger~~.

(b) To operate an off-highway vehicle while under the influence of alcohol, a controlled substance, or any

prescription or over-the-counter drug that impairs vision or motor condition.

(c) For a person who has not attained 16 years of age, to operate an off-highway vehicle without wearing eye protection, over-the-ankle boots, and a safety helmet that is approved by the United States Department of Transportation or Snell Memorial Foundation.

(d) To operate an off-highway vehicle in a careless or reckless manner that endangers or causes injury or damage to another person or property.

(6) Any person who violates this section commits a noncriminal infraction and is subject to a fine of not less than $100 and may have his or her privilege to operate an off highway vehicle ~~ATV~~ on public lands revoked. However, a person who commits such acts with intent to defraud, or who commits a second or subsequent violation, is subject to a fine of not less than $500 and may have his or her privilege to operate an off highway vehicle ~~ATV~~ on public lands revoked.

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

Remove line 6 and insert:

vehicles; amending s. 261.20, F.S.; conforming an off-highway vehicle violation for carrying an operator and more than a

single passenger to prohibit carrying more passengers than the vehicle is designed to carry; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1325 Parking Permits for Persons with Mobility Impairment
SPONSOR(S): Zimmermann and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1558

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

SUMMARY ANALYSIS

Currently, individuals who are deemed to have long-term mobility impairment qualify to receive a disabled parking permit for a period of up to 4 years by the Department of Highway Safety and Motor Vehicles (DHSMV).

Individuals with long-term mobility impairment may have a disabled parking permit placard that can be placed in a motor vehicle so as to be visible from the front and rear of the vehicle. Each side of the placard must have the international symbol of accessibility in a contrasting color in the center so as to be visible. One side of the placard must display the applicant's driver's license number or state identification card number along with a warning that the applicant must have such identification at all times while using the parking permit.

The bill provides that a disabled parking permit may be a sticker, which may be affixed to a registration license plate, including special and specialty license plates, issued under chapter 320, F.S.

The bill further provides that DHSMV must design a sticker displaying the international symbol of accessibility which may be affixed to the upper left hand corner of a registration license plate issued under this chapter. The sticker may be issued in lieu of the placard currently provided for to persons with long-term mobility problems and shall be valid for the same parking and other privileges as a placard, which is currently provided for by law.

The bill is expected to have an insignificant fiscal impact of $16,200. The impact is expected to be absorbed within existing DHSMV resources.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Currently, the DHSMV or its authorized agents shall, upon application, issue a disabled parking permit for a period of up to 4 years to any person who has long-term mobility impairment, or a temporary disabled parking permit not to exceed 6 months to any person who has a temporary mobility impairment.[1] A lost or disabled parking permit may be replaced after submission of an application and a $1 replacement fee to DHSMV. A stolen permit may be replaced without the $1 replacement fee with submission of a police report documenting the theft.

Current law provides that individuals with long-term mobility impairment may have a disabled parking permit placard that can be placed in a motor vehicle so as to be visible from the front and rear of the vehicle. Each side of the placard must have the international symbol of accessibility (wheelchair outline) in a contrasting color in the center so as to be visible. One side of the placard must display the applicant's driver's license number or state identification card number along with a warning that the applicant must have such identification at all times while using the parking permit.[2]

In those cases where the severity of the disability prevents a disabled person from physically visiting or being transported to a driver license or tax collector office to obtain a driver's license or identification card, a certifying physician may sign the exemption section of the department's parking permit application to exempt the disabled person from being issued a driver's license or identification card for the number to be displayed on the parking permit. A validation sticker must also be issued with each disabled parking permit, showing the month and year of expiration on each side of the placard. Validation stickers must be of the size specified by the DHSMV and must be affixed to the disabled parking permits. The disabled parking permits must use the same colors as license plate validations.[3]

The department may not issue an additional disabled parking permit unless the applicant states that he or she is a frequent traveler or a quadriplegic. Generally, the department may not issue to any one eligible applicant more than two disabled parking permits.[4]

If an applicant who is a disabled veteran, is a resident of this state, has been honorably discharged, and either has been determined by the Department of Defense or the United States Department of Veterans Affairs or its predecessor to have a service-connected disability rating for compensation of 50 percent or greater or has been determined to have a service-connected disability rating of 50 percent or greater and is in receipt of both disability retirement pay from the United States Department of Veterans Affairs. An applicant must still provide a signed physician's statement of qualification for the disabled parking permits.[5]

A person who qualifies for a disabled parking permit under this section may be issued an international wheelchair user symbol license plate under s. 320.0843, F.S., in lieu of the disabled parking permit; or, if the person qualifies for a disabled veteran license plate under s. 320.084, F.S., such a license plate may be issued to him or her in lieu of a disabled parking permit.[6]

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[1] Section 320.0848(1)(a), F.S.
[2] Section 320.0848(2)(a), F.S.
[3] *Id.*
[4] Section 320.0848(2)(c), F.S.
[5] Section 320.0848(2)(d)
[6] Section 320.0848(1)(f), F.S.

However, under current law, an individual may not have both an international wheelchair user symbol license plate or a disabled veteran license plate and another specialty license plate such as a Purple Heart medal specialty license plate under s. 320.089, F.S.

Effect of the Proposed Changes

The bill amends s. 320.0848, F.S., to provide that a disabled parking permit may be a sticker, which may be affixed to a registration license plate, including special and specialty license plates, issued under chapter 320, F.S.

The bill provides that DHSMV must design a sticker displaying the international symbol of accessibility which may be affixed to the upper left hand corner of a registration license plate issued under this chapter. The sticker may be issued in lieu of the placard currently provided for to persons with long-term mobility problems and shall be valid for the same parking and other privileges as a placard, which is currently provided for by law.

B. SECTION DIRECTORY:

Section 1: amends s. 320.048, F.S., to provide that a disabled parking permit may be a sticker placed on the vehicle's license plate; requires DHSMV to design a disabled parking permit sticker.

Section 2: provides that the act will take effect July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Additional programming would be required to issue a decal in a lieu of a parking permit as well as programming to issue a replacement parking permit decal. DHSMV estimates that such programming will take approximately 330 hours and will cost $16,200. The impact is expected to be absorbed within existing resources.[7]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will provide more flexibility for individuals with long-term mobility problems in how they choose to display their disabled parking permit.

[7] DHSMV Agency Analysis of HB1325. Information received 3/20/14 and on file with the Transportation and Highway Safety Subcommittee.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DHSMV, language may be needed to clarify that a replacement parking permit decal may be replaced at the reduced replacement parking permit price. In addition, language may be needed to require that the decal be fixed in the upper left corner of the license plate to prevent the decal from being placed elsewhere.[8]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[8] *Id.*

A bill to be entitled

An act relating to parking permits for persons with mobility impairment; amending s. 320.0848, F.S.; directing the Department of Highway Safety and Motor Vehicles to design and issue a sticker for use as a parking permit in lieu of a placard; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 320.0848, Florida Statutes, is amended to read:

320.0848 Persons who have disabilities; ~~issuance of disabled~~ parking permits~~; temporary permits; permits for certain providers of transportation services to persons who have disabilities~~.—

(2) DISABLED PARKING PERMIT; PERSONS WITH LONG-TERM MOBILITY PROBLEMS.—

(a) The disabled parking permit is a placard that can be placed in a motor vehicle so as to be visible from the front and rear of the vehicle or a sticker that can be affixed to a registration license plate, including special and specialty license plates, issued under this chapter.

1. Each side of the placard must have the international symbol of accessibility in a contrasting color in the center so as to be visible. One side of the placard must display the

applicant's driver's license number or state identification card number along with a warning that the applicant must have such identification at all times while using the parking permit. In those cases where the severity of the disability prevents a disabled person from physically visiting or being transported to a driver license or tax collector office to obtain a driver's license or identification card, a certifying physician may sign the exemption section of the department's parking permit application to exempt the disabled person from being issued a driver's license or identification card for the number to be displayed on the parking permit. A validation sticker must also be issued with each disabled parking permit, showing the month and year of expiration on each side of the placard. Validation stickers must be of the size specified by the Department of Highway Safety and Motor Vehicles and must be affixed to the disabled parking permits. The disabled parking permits must use the same colors as license plate validations.

2. The department shall design a sticker displaying the international symbol of accessibility which may be affixed to the upper left corner of a registration license plate issued under this chapter. The sticker may be issued in lieu of the placard under subparagraph 1. to persons with long-term mobility problems and shall be valid for the same parking and other privileges as a placard issued under this section.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1325 (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 Zimmermann offered the following:

Amendment

Remove line 45 and insert:

international symbol of accessibility shall be affixed to

Remove line 51 and insert:

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1325 (2014)

Amendment No. 2

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 Zimmermann offered the following:

Amendment

Between lines 50 and 51, insert:

Section 2. Paragraph (e) of subsection (2) of section 320.0848, Florida Statutes, is amended to read:

320.0848 Persons who have disabilities; issuance of disabled parking permits; temporary permits; permits for certain providers of transportation services to persons who have disabilities.—

(2) DISABLED PARKING PERMIT; PERSONS WITH LONG-TERM MOBILITY PROBLEMS.—

(e) To obtain a replacement for a disabled parking permit or parking permit decal that has been lost or stolen, a person must submit an application on a form prescribed by the

department, provide a certificate of disability issued within the last 12 months pursuant to subsection (1), and pay a replacement fee in the amount of $1, to be retained by the issuing agency. If the person submits with the application a police report documenting that the permit was stolen, there is no replacement fee.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1359 Rural Letter Carriers
SPONSOR(S): Stone
TIED BILLS: **IDEN./SIM. BILLS:** SB 1178

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

SUMMARY ANALYSIS

Current law requires a motor vehicle operator, front seat passengers, and all passengers less than 18 years of age to wear safety belts. The law is enforced as a primary offense. The penalty for failure to wear a safety belt is $30, plus administrative fees and court costs.

The bill exempts rural letter carriers from mandatory seat belt usage while delivering the mail. Specifically, a rural carrier of the USPS is not required to be restrained by a safety belt while in the course of employment serving a designated postal route.

The bill is not expected to have a fiscal impact. According to the Department of Highway Safety and Motor Vehicles (DHSMV), there were 205,633 safety belt violations in 2012. It is unknown how many rural carriers of the USPS will avoid a seat belt violation as a result of the bill but the number would likely be minimal.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Safety Belt Law

In 1986, the Legislature enacted the "Florida Safety Belt Law"[1] (seat belt law). Section 316.614, F.S., requires a motor vehicle operator, front seat passengers, and all passengers less than 18 years of age to wear safety belts. The law is enforced as a primary offense.[2] The penalty for failure to wear a safety belt is $30, plus administrative fees and court costs.[3]

The fees and court costs vary from county to county, but the total paid for each citation could be up to $118. Revenues collected from citations issued for safety belt violations are distributed like other traffic citation revenues, pursuant to s. 318.21, F.S., except that $5 of each citation paid is directed to the Epilepsy Services Trust Fund.[4]

According to the Uniform Traffic Citation Statistics compiled by DHSMV, there were 205,633 safety belt violations during the 2012 calendar year.[5]

Exemptions

Section 316.614(3)(a), F.S., provides the following vehicles are not considered a "motor vehicle"[6] and thus are not subject to the requirements of the seat belt law:

- A school bus;
- A bus used for the transportation of persons for compensation;
- A farm tractor or implement of husbandry;
- A truck having a gross vehicle weight rating of more than 26,000 pounds; and
- A motorcycle, moped, or bicycle.

Section 316.614(6)(a), F.S., exempts the following from the seat belt law:

- Persons certified by a physician as having a medical condition that would cause the use of a safety belt to be inappropriate or dangerous;
- Employees of a newspaper home delivery service delivering newspapers on home delivery routes;
- Employees of a solid waste or recyclable collection service on designated routes during the course of their employment;
- The living quarters of a recreational vehicle;
- The space within the body of a truck used for the storage of merchandise; and
- Motor vehicles not required to be equipped with a safety belt under federal law.

Unlike 45 other states, Florida law does not provide a specific exemption from seat belt requirements for United States Postal Service (USPS) carriers.[7]

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[1] s. 2, chapter 86-49, Laws of Florida; codified as s. 316.614, F.S.
[2] In 2009, the Legislature enacted SB 344 (Ch. 2009-32, Laws of Fla.) to allow for primary enforcement of the law.
[3] s. 318.18(2), F.S.
[4] s. 316.21(6), F.S.
[5] Seat Belt Violation Data Collection 316.614(9), F.S. Annual Report, Department of Highway Safety and Motor Vehicles. This document can be accessed at: http://www.flhsmv.gov/html/pdf/SBV2012.pdf. (Last viewed 3/16/14).
[6] For purposes of the seat belt law, s. 316.614(3)(b), F.S., defines a motor vehicle as a motor vehicle as defined in s. 316.003 which is operated on the roadways, streets, and highways of this state.
[7] Summary of Vehicle Occupant Protection and Motorcycle Laws, Eleventh Edition. (DOT HS 811 768) National Highway Safety Administration, November 2013.

USPS Seat Belt Rules

Under USPS rule, a safety belt must be worn by rural letter carriers at all times when operating:

- A USPS-owned or –leased vehicle;
- A privately-owned right-hand-drive (RHD) vehicle; or
- A privately-owned dual control vehicle.[8]

When operating a privately-owned left-hand-drive (LHD) vehicle or partially equipped with dual control, the rule requires carriers to wear safety belts when traveling to and from the designated delivery route. The rule advises the use of a safety belt, but allows rural carriers operating a private LHD vehicle to do so without wearing a safety belt provided the carrier determines it is safe to do so considering:

- Distance between stops;
- Traffic density and weather conditions;
- Road design characteristics; and
- Other factors affecting safety.

Proposed Changes

The bill exempts rural letter carriers from mandatory seat belt usage while delivering the mail. Specifically, a rural carrier of the USPS is not required to be restrained by a safety belt while in the course of employment serving a designated postal route.

B. SECTION DIRECTORY:

Section 1: amends s. 316.614, F.S., relating to safety belt usage.

Section 2: provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

[8] The Revised Rural Carrier Duties and Responsibilities, Handbook PO-603, are available at: https://about.usps.com/postal-bulletin/2005/html/pb22167/postoffice.html. (Last viewed 3/16/14).

D. FISCAL COMMENTS:

The bill is not expected to have a fiscal impact.

The penalty for failure to wear a safety belt is $30, plus administrative fees and court costs. The fees and court costs vary from county to county, but the total paid for each citation could be up to $118. Revenues collected from citations issued for safety belt violations are distributed like other traffic citation revenues, pursuant to s. 318.21, F.S., except that $5 of each citation paid is directed to the Epilepsy Services Trust Fund.

According to the Uniform Traffic Citation Statistics compiled by DHSMV, there were 205,633 safety belt violations during the 2012 calendar year. It is unknown how many rural carrier of the USPS will avoid a seat belt violation as a result of the bill but the number would likely be minimal.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to rural letter carriers; amending s. 316.614, F.S.; exempting rural carriers of the United States Postal Service from requirements to be restrained by a safety belt while performing their duties; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (6) of section 316.614, Florida Statutes, to read:

316.614 Safety belt usage.—

(6)

(e) A rural carrier of the United States Postal Service is not required to be restrained by a safety belt while in the course of employment serving a designated postal route.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1389 Chauffeured Limousines
SPONSOR(S): Grant and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1618

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

SUMMARY ANALYSIS

Currently, taxi and limousine regulation is governed by local governments in the state.

The bill provides that the licensure and regulation of chauffeured limousines, chauffeured limousine services, and drivers of chauffeured limousines, is specifically preempted to the state to be regulated by the Department of Highway Safety and Motor Vehicles (DHSMV).

The bill creates a new category of public transit that provides service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and provider of the service. This new form of transportation, known as chauffeured limousine service, is defined as a chauffeured, non-metered motor vehicle with four or more doors, designed to carry fewer than nine passengers excluding the chauffeur, and operated for hire pursuant to an advance reservation, the fare for which is calculated on the basis of time and distance, except for trips to airports or other point-to-point trips based on well-traveled routes or for event-related trips such as sporting events, which may be charged on a flat-fee basis. The term does not include taxicabs, vehicles used for not-for-profit, tax-exempt operations, or a vehicle used for transportation of persons between home and work locations or of persons having a common work-related trip when ridesharing is incidental to another purpose of the driver.

The bill creates sections 319.90-316.907, F.S., as the "Chauffeured Limousines and Services Safety Act". Generally the act provides the following for chauffeured limousine services:

- definitions;
- legislative intent;
- rules of operation;
- vehicle standards;
- requirements for drivers;
- penalties;
- a process for appeal of penalties; and
- authorizing DHSMV to adopt rules to implement.

In addition, the bill revises proof of insurance requirements for owners or operators of chauffeured limousines and chauffeured limousine services.

The bill is expected to increase DHSMV's expenditures relating to the regulation of chauffeured limousine services and increase fee revenues to the Florida Department of Law Enforcement of performing background checks of drivers. Local governments may have a decrease in revenues and expenditures due to the bill's preemption of local regulations. See fiscal comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

"Paratransit" means those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and provider of the service. Paratransit service is provided by taxis, limousines, "dial-a-ride," buses, and other demand-responsive operations that are characterized by their nonscheduled, non-fixed route nature.[1]

Currently, the majority of taxi regulation in the State of Florida is controlled by local governments. Florida law currently provides the following relating to limousines and taxis to:

- require that taxis and limousines must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, up to $250,000 per incident for bodily injury, and $50,000 for property damage;[2]
- qualify an owner or lessee who is required to maintain insurance under s. 324.021(9)(b), F.S., and who operates at least 300 taxicabs, limousines, jitneyes, or any other for-hire passenger vehicles to fulfill the requirement through self-insurance as provided by s. 324.171, F.S.;[3]
- define that with respect to workers' compensation an "employee" is not a taxicab, limousine, or other passenger vehicle-for-hire driver who operates said vehicles pursuant to a written agreement with a company which provides any dispatch, marketing, insurance, communications, or other services under which the driver and any fees or charges paid by the driver to the company for such services are not conditioned upon, or expressed as a proportion of, fare revenues;[4]
- provide that the child restraint requirements imposed by s. 316.613, F.S., do not apply to a chauffeur-driven taxi, limousine, sedan, van, bus, motor coach, or other passenger vehicle if the operator and the motor vehicle are hired and used for the transportation of persons for compensation;
- provide that, to the extent not inconsistent with general or special law, the legislative and governing body of a county must have the power to carry on county government, including, but not restricted to, the power to license and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county; except that any constitutional charter county as defined in s. 125.011(1), F.S.,[5] must on July 1, 1988, have been authorized to have issued a number of permits to operate taxis which is no less than the ratio of one permit for each 1,000 residents of said county, and any such new permits issued after June 4, 1988, must be issued by lottery among individuals with such experience as a taxi driver as the county may determine.[6]

Effect of Proposed Changes

The bill provides that notwithstanding any provision of s. 125.01, F.S., the legislative and governing body of a county does not have the power to license or regulate chauffeured limousines, chauffeured

[1] Section 427.011(9), F.S.
[2] Section 324.032(1) , F.S.
[3] Section 324.032(2) , F.S.
[4] Section 440.02, F.S.
[5] "County" means any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions must include "board of county commissioners" of such county.
[6] Section 125.01 (1)(n), F.S.

limousine services, and drivers of chauffeured limousines, as defined in s. 316.901, F.S., and the licensure and regulation thereof is specifically preempted to the state.

The Chauffeured Limousines and Services Safety Act

The bill creates sections 319.90-316.907, F.S., as the "Chauffeured Limousines and Services Safety Act". Generally the act provides the following for chauffeured limousine services:

- definitions;
- legislative intent;
- rules of operation;
- vehicle standards;
- requirements for drivers;
- penalties;
- a process for appeal of penalties; and
- authorizing DHSMV to adopt rules to implement.

In addition, the bill revises proof of insurance requirements for owners or operators of chauffeured limousines and chauffeured limousine services.

Definitions

The bill creates s. 316.901, F.S., to provide the following definitions:

- "Advance reservation" means a reservation made in advance by a person requesting the use of a chauffeured limousine for transportation of a passenger or passengers for a specified period of time, or from and to a specific location.
- "Chauffeured limousine" means a chauffeured, non-metered motor vehicle with four or more doors, designed to carry fewer than nine passengers excluding the chauffeur, and operated for hire pursuant to an advance reservation, the fare for which is calculated on the basis of time and distance, except for trips to airports or other point-to-point trips based on well-traveled routes or for event-related trips such as sporting events, which may be charged on a flat-fee basis. The term does not include a taxicab, a vehicle used for not-for-profit, tax-exempt operations, or a vehicle used for transportation of persons between home and work locations or of persons having a common work-related trip when ridesharing is incidental to another purpose of the driver.
- "Chauffeured limousine service" means any business that provides chauffeured limousines by advance reservation.
- "Department" means DHSMV.

Legislative Intent

The bill creates s. 316.902, F.S., to declare that the emerging field of transportation technology is a statewide concern. The Legislature intends to provide a uniform statewide level of regulation of emerging transportation technology to provide stability and predictability to businesses seeking to implement such technology, to provide convenience and safety to the traveling public, and to enhance personal mobility. Accordingly, the regulation of chauffeured limousines, chauffeured limousine services, and drivers of chauffeured limousines is preempted to the state. Further regulation thereof by a county, a municipality, or any other political subdivision of the state is void.

Rules of Operation

Before engaging in business in this state as a chauffeured limousine service, and at all times thereafter while so actively engaged, a chauffeured limousine service must establish and maintain the following:

- A publicly listed telephone number identifying the business name and actual physical address for the purpose of receiving telephone calls related to the chauffeured limousine service.
- A website that provides:
    - The telephone number and actual physical address of the business.
    - Specific information regarding the method of fare calculation and the rates and fees charged by the chauffeured limousine service.

    - A mechanism for passengers of the chauffeured limousine service to file complaints regarding the service through the website.
- A zero-tolerance intoxicating substance policy for drivers of chauffeured limousines.
- A central records repository located in this state for the maintenance of records required by the department. A chauffeured limousine service must make such records available for inspection to the department for the purpose of establishing compliance with this act.

In addition, such services must only employ drivers that meet the requirements of the act. In addition to obtaining sufficient proof that a driver meets the requirements of s. 316.905, F.S., prior to a driver's employment the chauffeured limousine service must also obtain at least 1 year of the driver's driving history and must check the driver's record quarterly thereafter to ensure that disqualifying violations specified in s. 316.905(1)(c)1., F.S., have not occurred. Ensure that valid background-screening certificates of the driver and the insurer certificates of the chauffeured limousine are displayed inside the chauffeured limousine so the certificates are plainly visible to the passengers. A chauffeured limousine service may not unlawfully discriminate against passengers or potential passengers based upon the geographic beginning point or end point of the ride.

If, in the interim between background screenings of a driver or between issuance and renewal of insurance as required under s. 316.905, F.S., an event occurs that renders the driver or the chauffeured limousine out of compliance with the standards in this act, the driver or the vehicle, or both, as appropriate, shall be disqualified from providing chauffeured limousine services. The chauffeured limousine service is prohibited from using the driver or the vehicle until such time as compliance is reestablished in accordance with this act.

A chauffeured limousine service must immediately suspend any driver who receives a disqualifying violation on his or her driving record until such time as the driver's compliance is reestablished, or any driver that is reported by a person who reasonably suspects the driver was under the influence of alcohol or drugs during the course of a passenger's trip pending an investigation of the report.

A chauffeured limousine service must provide to the driver a waybill for each ride that includes the driver's name, motor vehicle license plate number, and the time and date of the advance reservation. Such a service must also provide each customer a paper or electronic receipt that lists the origination and destination of the trip, the total distance and time of the trip, and a breakdown of the total fare paid, including fees and gratuity, if any.

A chauffeured limousine service must annually provide a report to the department that includes:
- the number of rides requested and accepted by drivers within each zip code where the service operates in the state;
- the number of driver violations and suspensions, including a list of complaints of driver alcohol or drug intoxication and the outcome of investigations into those complaints; and
- a listing of each accident or other incident that involved a chauffeured limousine service's driver, including the date, time, and cause of the incident, and the amounts paid, if any, by the driver's insurance and the service's insurance.

Vehicle Standards

The bill creates s. 316.904, F.S., to provide that a chauffeured limousine may not be older than 5 model years of age when initially placed into service by a chauffeured limousine service and must be taken out of service at 10 model years of age. If a chauffeured limousine is taken out of service for more than 30 calendar days after its initial placement into service, the chauffeured limousine is no longer a previously in-service vehicle.

Chauffeured Limousine Drivers

The bill creates s. 316.905, F.S., to provide standards and requirements for chauffeured limousine service drivers.

A driver for a chauffeured limousine service must:

- Possess a valid driver license issued in this state or any other state which has been active for at least 5 years.
- Hold a motor vehicle liability policy in accordance with ss. 324.031 or s. 324.032, F.S., if the driver owns or leases the chauffeured limousine, or be in possession of such proof provided by the owner or lessee of the chauffeured limousine.
- Successfully complete a Level 1 background screening under s. 435.03, F.S., conducted by the Department of Law Enforcement (FDLE).
    - The screening must include a statewide criminal correspondence check through FDLE, a check of the Dru Sjodin National Sex Offender Public Website, a local criminal records check through local law enforcement agencies, and a check of the driver's driving record to ensure the driver has no conviction or an arrest awaiting final disposition for driving under the influence of alcohol, chemical substances, or controlled substances in violation of chapter 316, F.S., in addition to any offense prohibited under s. 435.04(2), F.S., or similar law of another jurisdiction.
    - The driver must be rescreened annually following the date of his or her most recent background screening.
    - Upon receipt of payment of the appropriate fee, FDLE must conduct the screenings required by this paragraph. The department must issue a certificate or renewed certificate, as applicable, to any driver found to be in compliance with the screening standards specified in this paragraph. Each certificate is valid for 14 months and must contain a unique identification number associated with the driver.
- Ensure that the valid background-screening certificates and insurer certificates are displayed inside the chauffeured limousine and are plainly visible to the passengers.
- Ensure that all chauffeured limousine passenger trips are arranged only through advance registration. The driver of a chauffeured limousine may not accept or solicit street hails.

At all times while operating a chauffeured limousine, the driver must have in his or her possession:
- a valid driver license;
- proof of insurance that meets the requirements of ss. 324.031 or 324.032, F.S.;
- a valid background screening certificate issued under s. 316.905, F.S., of the act;
- a valid certificate issued by the motor vehicle insurer attesting to the vehicle's compliance with the safety equipment standards of chapter 316, F.S., and any other applicable requirements on the date of issuance or renewal of the motor vehicle liability policy; and
- a waybill for each ride which includes the driver's name, vehicle license plate number, and the time and date of the advance reservation.

The driver must produce the waybill for any law enforcement officer upon request.

The driver of chauffeured limousine may not unlawfully discriminate against passengers or potential passengers based upon the geographic beginning point or end point of the ride. The driver of a chauffeured limousine must monthly provide an affidavit attesting to continued compliance with the act's driver requirements and standards to the chauffeured limousine service. If, in the interim between background screenings or between issuance and renewal of insurance as required by this section, an event occurs that renders the driver noncompliant with the standards in the act, the driver must report the event to the chauffeured limousine service, and the driver is prohibited from operating any chauffeured limousine until such time as the driver meets the requirements of the act. A driver that meets the requirements of the act may not operate a chauffeured limousine for passenger trips of the chauffeured limousine service which does not meet the standards under s. 316.904, F.S., of the act, until such time as the limousine's compliance is reestablished.

Compliance Inspections and Noncompliance Penalties

The bill creates s. 316.906, F.S., to provide that the department may conduct reviews and inspections of chauffeured limousine services for the purpose of determining compliance with this act. Further, the

department may impose the penalties for violations of this act as provided in chapters 316, 318, 319, 320, 322, and 324, F.S., and violations of this act are punishable as provided in s. 316.655, F.S.

All civil penalties imposed and collected under this subsection must be paid to the Chief Financial Officer, who must credit the total amount collected to the State Transportation Disadvantaged Trust Fund for use as provided in s. 427.0159, F.S. The civil penalties are as follows:

- a civil penalty of $1,000 for violations identified in an initial compliance review or inspection;
- a civil penalty of $2,500 for violations found in a follow up compliance review or inspection conducted within 6 months after a previous compliance review or inspection where violations were identified; and
- a civil penalty of $5,000 for violations found in a follow up compliance review or inspection conducted within 12 months after a previous compliance review or inspection where violations were identified.

A chauffeured limousine service aggrieved by the imposition of a civil penalty under this section may apply to the Commercial Motor Vehicle Review Board for a modification, cancellation, or revocation of the penalty. Such appeal proceedings must be conducted in accordance with chapter 120, F.S.

Financial Responsibility

The bill creates s. 324.031(2), F.S., to provide that the owner or operator of a chauffeured limousine, as defined in s. 316.901, F.S., may prove financial responsibility by furnishing satisfactory evidence of holding a motor vehicle liability policy, with minimum limits of $500,000 per person for bodily injury, up to $1,000,000 per incident for bodily injury, and $50,000 for property damage. A chauffeured limousine service, as defined in s. 316.901, F.S., may prove financial responsibility by furnishing satisfactory evidence of holding a non-owned motor vehicle liability policy with minimum limits of $500,000 combined single limits.

The bill further creates ss. 324.032(1)(c-d), F.S., to provide that a person who is the owner or a lessee required to maintain insurance under s. 324.021(9)(b), F.S., and who operates a chauffeured limousine, as defined in s. 316.901, may prove financial responsibility by furnishing satisfactory evidence of holding a motor vehicle liability policy, but with minimum in excess of limits of $500,000 per person for bodily injury, up to $1,000,000 per incident for bodily injury, and $50,000 for property damage.

A chauffeured limousine service, as defined in s. 316.901, F.S., may prove financial responsibility by furnishing satisfactory evidence of holding a non-owned motor vehicle liability policy with minimum limits of $500,000 combined single limits.

DHSMV Rulemaking

The bill creates s. 316.907, F.S., to provide that DHSMV may adopt or revise rules to implement and administer the Chauffeured Limousines and Services Safety Act.

B. SECTION DIRECTORY:

Section 1: amends s. 125.01, F.S., preempting the licensing and regulation of chauffeured limousines, chauffeured limousine services, and drivers of chauffeured limousines to the state.

Section 2: creates s. 316.90, F.S., providing a short title.

Section 3: creates s. 316.901, F.S., providing definitions.

Section 4: creates s. 316.902, F.S., providing legislative findings and intent.

Section 5: creates s. 316.903, F.S., providing rules of operation for a chauffeured limousine service.

Section 6: creates s. 316.904, F.S., providing chauffeured limousine vehicle standards.

Section 7: creates s. 316.905, F.S., providing requirements for chauffeured limousine drivers.

Section 8: creates s. 316.906, F.S., providing penalties and for appeal of penalties.

Section 9: creates s. 316.907, F.S., authorizing the DHSMV to adopt rules.

Section 10: amends s. 324.031, F.S., revising proof of insurance requirements for owners or operators of chauffeured limousines and chauffeured limousine services.

Section 11: amends s. 324.032, F.S., revising proof of insurance requirements for owners or operators of chauffeured limousines and chauffeured limousine services.

Section 12: amends s. 324.023, F.S., conforming cross-references.

Section 13: amends s. 324.151, F.S., conforming cross-references.

Section 14: amends s. 627.733, F.S., conforming cross-references.

Section 15: provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See fiscal comments.

2. Expenditures:

   See fiscal comments..

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See fiscal comments.

2. Expenditures:

   See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will provide a uniform statewide level of regulation of emerging transportation technology, specifically chauffeured limousines, to provide stability and predictability to businesses seeking to implement such technology, to provide convenience and safety to the traveling public, and to enhance personal mobility.

D. FISCAL COMMENTS:

DHSMV has not yet released its fiscal projections of implementation costs. However, the bill is likely to result in an increase in state expenditures associated with regulating chauffeured limousines. The amount of this increase in expenditures is dependent upon the number of business entities and drivers regulated.

The employer or the employee is responsible for payment of the required level 1 background screening under s. 435.03, F.S. Payment must be submitted to FDLE (FDLE) with the request for screening. DHSMV is responsible for collecting and paying any fee related to fingerprints retained on its behalf to FDLE for costs resulting from the fingerprint information retention services. The amount of the annual fee and procedures for the submission and retention of fingerprint information and for the dissemination of search results is established by rule of FDLE. The current cost for a state record check is $24.[7]

To the extent that individuals apply to become drivers for chauffeured limousine services, FDLE will see an increase in fee revenues associated with performing the required level 1 background screening. In addition, driver's certificate declaring them to be in compliance with the screening standards must be renewed every 14 months to remain eligible to operate any chauffeured limousine.

To the extent that individuals are charged with civil penalties for non-compliance with the act, the Transportation Disadvantaged Trust Fund will see an increase in revenues.

To the extent that individuals are aggrieved by the imposition of civil penalties and apply to the Commercial Motor Vehicle Review Board (CMVRB) for a modification, the Department of Transportation may see an increase in expenditures related to the administration of the CMVRB and review of cases.

Fee revenue related to regulation of chauffeured limousine services and drivers provided by municipal and county codes is likely to decrease as a result of the bill. Likewise the bill would result in a corresponding decrease in local government expenditures relating to the regulation of chauffeured limousine services and drivers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Fee revenue related to regulation of chauffeured limousine services and drivers provided by municipal and county codes is likely to decrease as a result of the bill. Likewise the bill would result in a corresponding decrease in local government expenditures relating to the regulation of chauffeured limousine services and drivers. The net result of the bill is an insignificant fiscal impact to local governments therefore the bill appears to be exempt from the mandates provisions.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill creates s. 316.907, F.S., to provide that DHSMV may adopt or revise rules to implement and administer the Chauffeured Limousines and Services Safety Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[7] FDLE Agency Analysis for HB 1389. Information received 3/20/14 and on file with the Transportation & Highway Safety Subcommittee.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to chauffeured limousines; amending s. 125.01, F.S.; preempting the licensing and regulation of chauffeured limousines, chauffeured limousine services, and drivers of chauffeured limousines to the state; creating s. 316.90, F.S.; providing a short title; creating s. 316.901, F.S.; providing definitions; creating s. 316.902, F.S.; providing legislative findings and intent; creating s. 316.903, F.S.; providing rules of operation for a chauffeured limousine service; creating s. 316.904, F.S.; providing chauffeured limousine vehicle standards; creating s. 316.905, F.S.; providing requirements for chauffeured limousine drivers; creating s. 316.906, F.S.; providing penalties; providing for appeal of penalties; creating s. 316.907, F.S.; authorizing the Department of Highway Safety and Motor Vehicles to adopt rules; amending ss. 324.031 and 324.032, F.S.; revising proof of insurance requirements for owners or operators of chauffeured limousines and chauffeured limousine services; amending ss. 324.023, 324.151, and 627.733, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (n) of subsection (1) of section 125.01, Florida Statutes, is amended to read:

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

(n) License and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county; except that any constitutional charter county as defined in s. 125.011(1) shall on July 1, 1988, have been authorized to have issued a number of permits to operate taxis which is no less than the ratio of one permit for each 1,000 residents of said county, and any such new permits issued after June 4, 1988, shall be issued by lottery among individuals with such experience as a taxi driver as the county may determine. Notwithstanding any provision of this paragraph, the legislative and governing body of a county does not have the power to license or regulate chauffeured limousines, chauffeured limousine services, and drivers of chauffeured limousines, as defined in s. 316.901, and the licensure and regulation thereof is specifically preempted to the state.

Section 2. Section 316.90, Florida Statutes, is created to read:

316.90 Chauffeured Limousines and Services Safety Act;

short title.—Sections 316.90-316.907 may be cited as the "Chauffeured Limousines and Services Safety Act."

Section 3. Section 316.901, Florida Statutes, is created to read:

316.901 Chauffeured limousines and services; definitions.—As used in ss. 316.90-316.907, the term:

(1) "Advance reservation" means a reservation made in advance by a person requesting the use of a chauffeured limousine for transportation of a passenger or passengers for a specified period of time, or from and to a specific location.

(2) "Chauffeured limousine" means a chauffeured, nonmetered motor vehicle with four or more doors, designed to carry fewer than nine passengers excluding the chauffeur, and operated for hire pursuant to an advance reservation, the fare for which is calculated on the basis of time and distance, except for trips to airports or other point-to-point trips based on well-traveled routes or for event-related trips such as sporting events, which may be charged on a flat-fee basis. The term does not include a taxicab; a vehicle used for not-for-profit, tax-exempt operations; or a vehicle used for transportation of persons between home and work locations or of persons having a common work-related trip when ridesharing is incidental to another purpose of the driver.

(3) "Chauffeured limousine service" means any business that provides chauffeured limousines by advance reservation.

(4) "Department" means the Department of Highway Safety

and Motor Vehicles.

Section 4. Section 316.902, Florida Statutes, is created to read:

316.902 Chauffeured limousines and services; legislative findings and intent; preemption.—The Legislature finds that the emerging field of transportation technology is a statewide concern. The Legislature intends to provide a uniform statewide level of regulation of emerging transportation technology to provide stability and predictability to businesses seeking to implement such technology, to provide convenience and safety to the traveling public, and to enhance personal mobility. Accordingly, the regulation of chauffeured limousines, chauffeured limousine services, and drivers of chauffeured limousines is hereby preempted to the state. Further regulation thereof by a county, a municipality, or any other political subdivision of the state is void.

Section 5. Section 316.903, Florida Statutes, is created to read:

316.903 Chauffeured limousine services; rules of operation.—

(1) Before engaging in business in this state as a chauffeured limousine service, and at all times thereafter while so actively engaged, a chauffeured limousine service shall:

(a) Establish and maintain:

1. A publicly listed telephone number identifying the business name and actual physical address for the purpose of

receiving telephone calls related to the chauffeured limousine service.

2. A website that provides:

a. The telephone number and actual physical address of the business as required under subparagraph 1.

b. Specific information regarding the method of fare calculation and the rates and fees charged by the chauffeured limousine service.

c. A mechanism for passengers of the chauffeured limousine service to file complaints regarding the service through the website.

3. A zero-tolerance intoxicating substance policy for drivers of chauffeured limousines.

4. A central records repository located in this state for the maintenance of records required by the department. A chauffeured limousine service shall make such records available for inspection to the department for the purpose of establishing compliance with this act.

(b) Employ only drivers that meet the requirements of s. 316.905.

1. In addition to obtaining sufficient proof that a driver meets the requirements of s. 316.905, prior to a driver's employment the chauffeured limousine service must also obtain at least 1 year of the driver's driving history and shall check the driver's record quarterly thereafter to ensure that disqualifying violations specified in s. 316.905(1)(c)1. have

not occurred.

2. A chauffeured limousine service shall immediately suspend any driver:

a. Who receives a disqualifying violation on his or her driving record until such time as the driver's compliance is reestablished.

b. That is reported by a person who reasonably suspects the driver was under the influence of alcohol or drugs during the course of a passenger's trip pending an investigation of the report.

(c) Ensure that valid background-screening certificates of the driver and the insurer certificates of the chauffeured limousine are displayed inside the chauffeured limousine so the certificates are plainly visible to the passengers.

(2) A chauffeured limousine service may not unlawfully discriminate against passengers or potential passengers based upon the geographic beginning point or end point of the ride.

(3) A chauffeured limousine service shall provide to the driver a waybill for each ride which includes the driver's name, motor vehicle license plate number, and the time and date of the advance reservation.

(4) A chauffeured limousine service shall provide each customer a paper or electronic receipt that lists the origination and destination of the trip, the total distance and time of the trip, and a breakdown of the total fare paid, including fees and gratuity, if any.

(5) If, in the interim between background screenings of a driver or between issuance and renewal of insurance as required under s. 316.905, an event occurs that renders the driver or the chauffeured limousine out of compliance with the standards in this act, the driver or the vehicle, or both, as appropriate, shall be disqualified from providing chauffeured limousine services. The chauffeured limousine service is prohibited from using the driver or the vehicle until such time as compliance is reestablished in accordance with this act.

(6) A chauffeured limousine service shall annually provide a report to the department which includes the number of rides requested and accepted by drivers within each zip code where the service operates in the state; the number of driver violations and suspensions, including a list of complaints of driver alcohol or drug intoxication and the outcome of investigations into those complaints; and a listing of each accident or other incident that involved a chauffeured limousine service's driver, including the date, time, and cause of the incident, and the amounts paid, if any, by the driver's insurance and the service's insurance.

Section 6. Section 316.904, Florida Statutes, is created to read:

316.904 Chauffeured limousine vehicle standards.—A chauffeured limousine may not be older than 5 model years of age when initially placed into service by a chauffeured limousine service and must be taken out of service at 10 model years of

age. If a chauffeured limousine is taken out of service for more than 30 calendar days after its initial placement into service, the chauffeured limousine is no longer a previously in-service vehicle.

Section 7. Section 316.905, Florida Statutes, is created to read:

316.905 Chauffeured limousine drivers.—

(1) A driver for a chauffeured limousine service must:

(a) Possess a valid driver license issued in this state or any other state which has been active for at least 5 years.

(b) Hold a motor vehicle liability policy in accordance with s. 324.031 or s. 324.032, if the driver owns or leases the chauffeured limousine, or be in possession of such proof provided by the owner or lessee of the chauffeured limousine.

(c) Successfully complete a Level 1 background screening under s. 435.03 conducted by the Department of Law Enforcement.

1. Such background screening shall include a statewide criminal correspondence check through the Department of Law Enforcement; a check of the Dru Sjodin National Sex Offender Public Website; a local criminal records check through local law enforcement agencies; and a check of the driver's driving record to ensure the driver has no conviction or an arrest awaiting final disposition for driving under the influence of alcohol, chemical substances, or controlled substances in violation of chapter 316, in addition to any offense prohibited under s. 435.04(2) or similar law of another jurisdiction.

2. The driver must be rescreened annually following the date of his or her most recent background screening.

3. Upon receipt of payment of the appropriate fee, the Department of Law Enforcement shall conduct the screenings required by this paragraph. The department shall issue a certificate or renewed certificate, as applicable, to any driver found to be in compliance with the screening standards specified in this paragraph. Each certificate is valid for 14 months and must contain a unique identification number associated with the driver.

(2) At all times while operating a chauffeured limousine, the driver shall:

(a) Have in his or her possession:

1. A valid driver license that meets the requirements of paragraph (1)(a);

2. Proof of insurance that meets the requirements of s. 324.031 or s. 324.032;

3. A valid background screening certificate issued under paragraph (1)(c);

4. A valid certificate issued by the motor vehicle insurer attesting to the vehicle's compliance with the safety equipment standards of chapter 316 and any other applicable requirements on the date of issuance or renewal of the motor vehicle liability policy; and

5. A waybill for each ride which includes the driver's name, vehicle license plate number, and the time and date of the

advance reservation. The driver shall produce the waybill for any law enforcement officer upon request.

(b) Ensure that the valid background-screening certificates and insurer certificates are displayed inside the chauffeured limousine so that they are plainly visible to the passengers.

(c) Ensure that all chauffeured limousine passenger trips are arranged only through advance registration. The driver of a chauffeured limousine may not accept or solicit street hails.

(4) The driver of chauffeured limousine may not unlawfully discriminate against passengers or potential passengers based upon the geographic beginning point or end point of the ride.

(5) The driver of a chauffeured limousine shall provide monthly to the chauffeured limousine service an affidavit attesting to continued compliance with this section. If, in the interim between background screenings or between issuance and renewal of insurance as required by this section, an event occurs that renders the driver noncompliant with the standards in this section, the driver shall report the event to the chauffeured limousine service, and the driver is prohibited from operating any chauffeured limousine until such time as the driver meets the requirements of this section.

(6) A driver that meets the requirements of this section may not operate a chauffeured limousine for passenger trips of the chauffeured limousine service which does not meet the standards under s. 316.904 until such time as the limousine's

compliance is reestablished.

Section 8. Section 316.906, Florida Statutes, is created to read:

316.906 Chauffeured limousines and services; review and inspection for compliance; penalties.—

(1) The department may conduct reviews and inspections of chauffeured limousine services for the purpose of determining compliance with this act.

(2) The department may impose the following penalties for violations of this act:

(a) In addition to penalties provided in this chapter and chapters 318, 319, 320, 322, and 324, violations of this act are punishable as provided in s. 316.655.

(b) Civil penalties are as follows:

1. A civil penalty of $1,000 for violations identified in an initial compliance review or inspection.

2. A civil penalty of $2,500 for violations found in a follow up compliance review or inspection conducted within 6 months after a previous compliance review or inspection where violations were identified.

3. A civil penalty of $5,000 for violations found in a follow up compliance review or inspection conducted within 12 months after a previous compliance review or inspection where violations were identified.

(c) All civil penalties imposed and collected under this subsection shall be paid to the Chief Financial Officer, who

shall credit the total amount collected to the State Transportation Disadvantaged Trust Fund for use as provided in s. 427.0159.

(d) A chauffeured limousine service aggrieved by the imposition of a civil penalty under this section may apply to the Commercial Motor Vehicle Review Board for a modification, cancellation, or revocation of the penalty. Such appeal proceedings must be conducted in accordance with chapter 120.

Section 9. Section 316.907, Florida Statutes, is created to read:

316.907 Chauffeured limousines and services; rulemaking authority.—The department may adopt or revise rules to implement and administer ss. 316.90-316.907.

Section 10. Section 324.031, Florida Statutes, is amended to read:

324.031 Manner of proving financial responsibility.—

(1) The owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.021(8) or s. 324.151, which policy is issued by an insurance carrier which is a member of the Florida Insurance Guaranty Association. Except as provided in subsection (2), the operator or owner of any other vehicle may prove his or her financial responsibility by:

(a) ~~(1)~~ Furnishing satisfactory evidence of holding a motor

vehicle liability policy as defined in ss. 324.021(8) and 324.151;

(b) ~~(2)~~ Furnishing a certificate of self-insurance showing a deposit of cash in accordance with s. 324.161; or

(c) ~~(3)~~ Furnishing a certificate of self-insurance issued by the department in accordance with s. 324.171.

Any person, including any firm, partnership, association, corporation, or other person, other than a natural person, electing to use the method of proof specified in paragraph (1)(b) ~~subsection (2)~~ shall furnish a certificate of deposit equal to the number of vehicles owned times $30,000, to a maximum of $120,000; in addition, any such person, other than a natural person, shall maintain insurance providing coverage in excess of limits of $10,000/20,000/10,000 or $30,000 combined single limits, and such excess insurance shall provide minimum limits of $125,000/250,000/50,000 or $300,000 combined single limits. These increased limits shall not affect the requirements for proving financial responsibility under s. 324.032(1).

(2) The owner or operator of a chauffeured limousine, as defined in s. 316.901, may prove financial responsibility by furnishing satisfactory evidence of holding a motor vehicle liability policy, with minimum limits of $500,000/1,000,000/50,000.

(3) A chauffeured limousine service, as defined in s. 316.901, may prove financial responsibility by furnishing

satisfactory evidence of holding a nonowned motor vehicle liability policy with minimum limits of $500,000 combined single limits.

Section 11. Section 324.032, Florida Statutes, is amended to read:

324.032 Manner of proving financial responsibility; for-hire passenger transportation vehicles.—Notwithstanding the provisions of s. 324.031:

(1)(a) A person who is either the owner or a lessee required to maintain insurance under s. 627.733(1)(b) and who operates one or more taxicabs, limousines, jitneys, or any other for-hire passenger transportation vehicles may prove financial responsibility by furnishing satisfactory evidence of holding a motor vehicle liability policy, but with minimum limits of $125,000/250,000/50,000.

(b) A person who is either the owner or a lessee required to maintain insurance under s. 324.021(9)(b) and who operates limousines, jitneys, or any other for-hire passenger vehicles, other than taxicabs, may prove financial responsibility by furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.031.

(c) A person who is the owner or a lessee required to maintain insurance under s. 324.021(9)(b) and who operates a chauffeured limousine, as defined in s. 316.901, may prove financial responsibility by furnishing satisfactory evidence of holding a motor vehicle liability policy, but with minimum in

excess of limits of $500,000/1,000,000/50,000.

(d) A chauffeured limousine service, as defined in s. 316.901, may prove financial responsibility by furnishing satisfactory evidence of holding a non-owned motor vehicle liability policy with minimum limits of $500,000 combined single limits.

(2) An owner or a lessee who is required to maintain insurance under s. 324.021(9)(b) and who operates at least 300 taxicabs, limousines, jitneys, or any other for-hire passenger transportation vehicles may provide financial responsibility by complying with the provisions of s. 324.171, such compliance to be demonstrated by maintaining at its principal place of business an audited financial statement, prepared in accordance with generally accepted accounting principles, and providing to the department a certification issued by a certified public accountant that the applicant's net worth is at least equal to the requirements of s. 324.171 as determined by the Office of Insurance Regulation of the Financial Services Commission, including claims liabilities in an amount certified as adequate by a Fellow of the Casualty Actuarial Society.

Upon request by the department, the applicant must provide the department at the applicant's principal place of business in this state access to the applicant's underlying financial information and financial statements that provide the basis of the certified public accountant's certification. The applicant

shall reimburse the requesting department for all reasonable costs incurred by it in reviewing the supporting information. The maximum amount of self-insurance permissible under this subsection is $300,000 and must be stated on a per-occurrence basis, and the applicant shall maintain adequate excess insurance issued by an authorized or eligible insurer licensed or approved by the Office of Insurance Regulation. All risks self-insured shall remain with the owner or lessee providing it, and the risks are not transferable to any other person, unless a policy complying with subsection (1) is obtained.

Section 12. Section 324.023, Florida Statutes, is amended to read:

324.023 Financial responsibility for bodily injury or death.—In addition to any other financial responsibility required by law, every owner or operator of a motor vehicle that is required to be registered in this state, or that is located within this state, and who, regardless of adjudication of guilt, has been found guilty of or entered a plea of guilty or nolo contendere to a charge of driving under the influence under s. 316.193 after October 1, 2007, shall, by one of the methods established in s. 324.031(1)(a) or (1)(b) ~~s. 324.031(1) or (2)~~, establish and maintain the ability to respond in damages for liability on account of accidents arising out of the use of a motor vehicle in the amount of $100,000 because of bodily injury to, or death of, one person in any one crash and, subject to such limits for one person, in the amount of $300,000 because of

bodily injury to, or death of, two or more persons in any one crash and in the amount of $50,000 because of property damage in any one crash. If the owner or operator chooses to establish and maintain such ability by furnishing a certificate of deposit pursuant to s. 324.031(1)(b) ~~s. 324.031(2)~~, such certificate of deposit must be at least $350,000. Such higher limits must be carried for a minimum period of 3 years. If the owner or operator has not been convicted of driving under the influence or a felony traffic offense for a period of 3 years from the date of reinstatement of driving privileges for a violation of s. 316.193, the owner or operator shall be exempt from this section.

Section 13. Subsection (1) of section 324.151, Florida Statutes, is amended to read:

324.151 Motor vehicle liability policies; required provisions.—

(1) A motor vehicle liability policy to be proof of financial responsibility under s. 324.031(1)(a) ~~s. 324.031(1)~~, shall be issued to owners or operators under the following provisions:

(a) An owner's liability insurance policy shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby granted and shall insure the owner named therein and any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner against loss from

the liability imposed by law for damage arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles within the United States or the Dominion of Canada, subject to limits, exclusive of interest and costs with respect to each such motor vehicle as is provided for under s. 324.021(7). Insurers may make available, with respect to property damage liability coverage, a deductible amount not to exceed $500. In the event of a property damage loss covered by a policy containing a property damage deductible provision, the insurer shall pay to the third-party claimant the amount of any property damage liability settlement or judgment, subject to policy limits, as if no deductible existed.

(b) An operator's motor vehicle liability policy of insurance shall insure the person named therein against loss from the liability imposed upon him or her by law for damages arising out of the use by the person of any motor vehicle not owned by him or her, with the same territorial limits and subject to the same limits of liability as referred to above with respect to an owner's policy of liability insurance.

(c) All such motor vehicle liability policies shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, the limits of liability, and shall contain an agreement or be endorsed that insurance is provided in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage or both and is subject to all

provisions of this chapter. Said policies shall also contain a provision that the satisfaction by an insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage, and shall also contain a provision that bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the insurance carrier of any of its obligations under said policy.

Section 14. Subsection (3) of section 627.733, Florida Statutes, is amended to read:

627.733 Required security.—

(3) Such security shall be provided:

(a) By an insurance policy delivered or issued for delivery in this state by an authorized or eligible motor vehicle liability insurer which provides the benefits and exemptions contained in ss. 627.730-627.7405. Any policy of insurance represented or sold as providing the security required hereunder shall be deemed to provide insurance for the payment of the required benefits; or

(b) By any other method authorized by s. 324.031(1)(b) or (1)(c) ~~324.031(2) or (3)~~ and approved by the Department of Highway Safety and Motor Vehicles as affording security equivalent to that afforded by a policy of insurance or by self-insuring as authorized by s. 768.28(16). The person filing such security shall have all of the obligations and rights of an insurer under ss. 627.730-627.7405.

Section 15. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 353 Expressway Authorities
SPONSOR(S): Transportation & Highway Safety Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Transportation & Highway Safety Subcommittee		Johnson	Miller P.M.

SUMMARY ANALYSIS

The bill revises several provisions of ch. 348, F.S., relating to expressway authorities.

The bill changes the number of members of the Miami-Dade County Expressway Authority (MDX) from 13 to nine. The bill also provides that subject to certain exceptions, MDX's toll cannot be increased without a supermajority vote of the Miami-Dade County Board of County Commissioners.

The bill makes the following changes to provisions governing MDX, Tampa-Hillsborough County Expressway Authority (THEA), Orlando-Orange County Expressway Authority (OOCEA) and Osceola County Expressway Authority (OCX):

- Prohibits members from serving on another transportation related organization.
- Prohibits lobbyists from serving as members of the authority.
- Provides post-employment restrictions for members of the authority or the executive director.
- Provides that the authority's general counsel serves as the authority's ethics officer.
- Requires for certain conflict of interest disclosures and a review of the disclosure forms.
- Requires the authority's Code of Ethics to outline the conflict of interest policy.
- Prohibits authority employees and consultants from serving on the governing board.
- Requires the code of ethics policy to be reviewed and updated and presented to the board at least once every two years.
- Requires employees to be adequately informed and trained in the code of ethics and continually participate in ongoing ethics education.

The bill also updates provisions for some of the authorities related to the removal of members from office and not being eligible for compensation.

The Miami-Dade County Board of County Commissioners may incur minimal expenditures in approving toll rate increases for MDX.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Miami-Dade County Expressway Authority

The Florida Expressway Authority Act (Act), codified in part I of Ch. 348, F.S.,[1] authorizes any county or two or more contiguous counties with in a single Department of Transportation (DOT) district to by resolution adopted by the board of county commissioners, form an expressway authority which shall be an agency of the state.[2] The Miami-Dade County Expressway Authority (MDX) is the only expressway authority created under the Act.[3]

MDX is an agency of the state created pursuant to the Act. It was created by the Miami-Dade County Commission, in 1994, pursuant to Chapter 2 Article XVIII of the Miami-Dade County Code of Ordinances.[4]

MDX's system consists of the following roadways in Miami-Dade County:

- Airport Expressway (SR 112);
- Dolphin Expressway (SR 836);
- Don Shula Expressway (SR 874);
- Snapper Creek Expressway (SR 878); and
- Gratigny Parkway (SR 924).

MDX's board consists of 13 members, seven of whom are appointed by the Miami-Dade County Commission and five of whom are appointed by the Governor. The 13th member is DOT's district six secretary, who is an ex-officio voting member.[5]

Tampa-Hillsborough County Expressway Authority

The Tampa Hillsborough County Expressway Authority (THEA) is created in part II of ch. 348, F.S.,[6] and has the purposes of and has the power to construct, reconstruct, improve, extend, repair, maintain, and operate an expressway system in Hillsborough County.[7] THEA owns and operates the Lee-Roy Selmon Expressway, a 15-mile, four-lane limited-access road in Hillsborough County.

Orlando Orange County Expressway Authority

The Orlando Orange County Expressway Authority (OOCEA), created in part III of ch. 348, F.S.,[8] currently serves Orange County and is authorized to construct, operate, and maintain roads, bridges, avenues of access, thoroughfares, and boulevards in the county, as well as outside the jurisdictional boundaries of Orange County with the consent of the county within whose jurisdiction the activities occur.[9]

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[1] Part I of ch. 348, F.S., consists of ss. 348.0001 through 348.0012, F.S.

[2] S. 348.0003(1), F.S.

[3] While MDX is the only authority created pursuant to the Act, Part V of ch. 348, F.S., creating the Osceola County Expressway Authority contains numerous references to the Act.

[4] A copy of the ordinance is available at http://mdxway.com/about/history (Last visited December 2, 2013).

[5] S. 348.0003(2)(d), F.S.

[6] Part II of ch. 348, F.S., consists of ss. 348.50 through 348.70, F.S.

[7] S. 348.53, F.S.

[8] Part III of ch. 348, F.S., consists of ss. 348.751 through 348.765, F.S.

[9] S. 348.754(2)(n), F.S.

The OOCEA currently owns and operates 105 centerline miles of roadway in Orange County, which includes:

- 22 miles of the Spessard L. Holland East-West Expressway (SR 408);
- 23 miles of the Martin Andersen Beachline Expressway (SR 528);
- 33 miles of the Central Florida GreeneWay (SR 417);
- 22 miles of the Daniel Webster Western Beltway (SR 429); and
- 5 miles of the John Land Apopka Expressway (SR 414).

Osceola County Expressway Authority
Created in 2010, as part V of ch. 348, F.S.,[10] the Osceola County Expressway Authority (OCX) currently serves Osceola County and has the purposes and powers identified in the Florida Expressway Authority Act,[11] including the power to acquire, hold, construct, improve, maintain, operate, and own an expressway system.[12] OCX is not currently operating any facility and has no funding or staffing. However, it has recently begun construction of the Poinciana Parkway.

Proposed Changes

Miami-Dade County Expressway Authority (Sections 1 and 2)
The bill amends s. 348.0003(d), F.S., revising the membership of MDX. The number of board members is reduced from 13 to nine. Four members are appointed by the governing body of the county. Four members are appointed by the Governor. The ninth member is DOT's district six secretary.

The bill amends s. 348.0004(2)(e)., F.S., providing that notwithstanding any other provision of law, but subject to any contractual requirements contained in documents securing any indebtedness outstanding on July 1 ,2014, that is payable from tolls, in Miami-Dade County, any authority toll increase must first be approved by resolution adopted by a supermajority vote, consisting of one vote greater that the majority, of the governing board of the county.

Expressway Authorities (Sections 1, 3, 4, and 5)
The bill amends the following sections to make changes related to membership and to ethics and accountability requirements for expressway authorities:

- s. 348.0003, F.S., relating to expressway authority; formation; membership;
- s. 348.52, F.S., relating to THEA;
- s. 348.753, F.S., relating to OOCEA; and
- s. 348.9952, F.S. relating to OCX.

Membership
The bill provides that members of the authorities appointed by the governing board of the county or appointed by the Governor may not serve as a member of any other transportation-related board, commission, or organization while serving as a member of an authority.

The bill provides that a lobbyist[13] may not be appointed or serve as a member of the authority.

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[10] Part V of ch. 348, F.S., consists of ss. 348.9950 through 348.9961, F.S.
[11] Part I of ch. 348, F.S.
[12] S. 348.0004, F.S.
[13] Section 112.3215(1)(h), F.S., defines "lobbyist" as "a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. "Lobbyist" does not include a person who is:
1. An attorney, or any person, who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to chapter 120 or any other formal hearing before an agency, board, commission, or authority of this state.
2. An employee of an agency or of a legislative or judicial branch entity acting in the normal course of his or her duties.

The bill also updates provisions in these sections of statute regarding removal of members from office and that members of the authority do not receive compensation, but are entitled to the reimbursement of necessary expenses.[14]

Ethics and Accountability

The bill prohibits a member or executive director of an authority from doing the following:

- Personally representing another person or entity for compensation for two years following vacation of his or her position.
- Within two years of vacation of his or her position, having an employment or contractual relationship with a business entity other than an agency[15] that was doing business with the authority at any time during the person's membership or employment by the authority.
- After vacating his or her position, have an employment or contractural relationship with a business entity other than an agency in connection with a contract in which the member or executive director personally and substantially participated through decision, approval, disapproval, recommendation, rendering of advice, or investigation while he or she was a member of the authority.
- A violation of the subsection is punishable in accordance with s. 112.317, F.S.[16]

Each authority's general council serves as its ethics officer.

Each authority's board members, employees, and consultants who hold positions that may influence authority decisions are required to refrain from engaging in any relationship that may adversely affect their judgment in carrying out authority business. The bill requires the following disclosures to be made annually on a disclosure form to prevent conflicts of interest and to preserve the integrity and transparency of the authority to the public:

- Any relationship a board member, employee, or consultant has which affords a current or future financial benefit to such board member, employee, or consultant, or to a relative or business associate of such board member, employee, or consultant, and which a reasonable person would conclude has the potential to create a prohibited conflict of interest.
- Whether a relative of such board member, employee, or consultant is a registered lobbyist, and if so, the names of such lobbyist's clients. Such names shall be provided in writing to the ethics officer.
- Any and all interests in real property that such board member, employee, or consultant has, or that a relative, principal, client, or business associate of such board member, employee, or consultant has whenever such real property is located within or within a one-half mile radius of, any actual or prospective authority roadway project. The executive director is required to provide a corridor map and a property ownership list reflecting the ownership of all real property within the disclosure area, or an alignment map with a list of associated owners to all board members, employees, and consultants.

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3. A confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes.

4. A person who lobbies to procure a contract pursuant to chapter 287 which contract is less than the threshold for CATEGORY ONE as provided in s. 287.017."

[14] The reimbursement of expenses is provided in s. 112.061, F.S.

[15] Section 112.312(2), F.S., defines "agency" as "any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university."

[16] Section 112.317, F.S., contains penalties for violations of part III of ch. 112, F.S., relating to the code of ethics for public officers and employees. The possible penalties range from impeachment or removal from office, suspension or dismissal from employment, and loss of some portion of salary, to public censure and reprimand, a $10,000 civil penalty, and restitution of any benefits received because of a violation.

The required disclosure forms must be reviewed by the ethics officer, or if a form is filed by the general counsel, by the executive director.

The bill requires each authority's code of ethics to outline the conflict of interest policy.

The bill prohibits authority employees and consultants from serving on the governing body of the authority while employed by or under contract with the authority.

The bill requires the code of ethics policy to be reviewed an updated by the ethics officer and presented for board approval at a minimum once every two years.

The bill requires that employees be adequately informed and trained on the code of ethics and continually participate in ongoing ethics education.

Effective Date (Section 6)
The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1 Amends s. 348.0003, F.S., relating to expressway authority; formation; membership.

Section 2 Amends s. 348.0004, F.S., relating to purposes and powers.

Section 3 Amends s. 348.52, F.S., relating to the Tampa-Hillsborough County Expressway Authority.

Section 4 Amends s. 348.753, F.S., relating to the Orlando-Orange County Expressway Authority.

Section 5 Amends s. 348.9952, F.S., relating to the Osceola County Expressway Authority.

Section 6 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Miami-Dade County may incur some expenditures in passing resolutions authorizing MDX toll increases. These costs should be minimal because of the limited number of times that there are proposals to increase MDX tolls. The approval process could be included as part of the normal commission meeting process of the county.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires Miami-Dade County to approve toll increases for MDX by a supermajority vote of the Board of County Commissioners. However, an exemption may apply because an insignificant fiscal impact is expected for the cost of the approval process.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to expressway authorities; amending s. 348.0003, F.S.; revising provisions for membership of an expressway authority in specified counties; requiring members of each expressway authority, transportation authority, bridge authority, or toll authority to comply with specified financial disclosure requirements; prohibiting certain activities by authority board members and executive directors during and after membership or employment; providing for violations; providing for an ethics officer; requiring disclosure of certain relationships and interest; prohibiting employees and consultants from membership on a board; providing for a code of ethics policy; amending s. 348.0004, F.S.; requiring approval by the governing board of the county for a toll increase by an expressway authority in specified counties; amending ss. 348.52, 348.753, and 348.9952, F.S., relating to the Tampa-Hillsborough County Expressway Authority, the Orlando-Orange County Expressway Authority and the Osceola County Expressway Authority, respectively; prohibiting certain activities by authority board members and executive directors during and after membership or employment; providing for violations; providing for an ethics officer; requiring disclosure of certain relationships

and interest; prohibiting employees and consultants from membership on a board; providing for a code of ethics policy; providing an effective date.

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

Section 1. Section 348.0003, Florida Statutes, is amended to read:

348.0003 Expressway authority; formation; membership.—

(1) Any county, or two or more contiguous counties located within a single district of the department, may, by resolution adopted by the board of county commissioners, form an expressway authority, which shall be an agency of the state, pursuant to the Florida Expressway Authority Act.

(2) The governing body of an authority shall consist of not fewer than five nor more than nine voting members. The district secretary of the affected department district shall serve as a nonvoting member of the governing body of each authority located within the district. Each member of the governing body must at all times during his or her term of office be a permanent resident of the county which he or she is appointed to represent.

(a) Two members of the authority shall be appointed for terms of 4 years by the Governor, subject to confirmation by the Senate. Such persons may not hold elective office during their terms of office.

(b) For a single-county authority, the remaining members shall be appointed by the board of county commissioners for terms of 3 years.

(c) For a multicounty authority, the remaining members shall be apportioned, based on the population of such counties, among the counties within the authority. Each such member shall be appointed by the applicable board of county commissioners for a term of 3 years.

(d) Notwithstanding any provision of ~~to the contrary in~~ this subsection, in any county as defined in s. 125.011(1), the governing body of an authority shall consist of nine ~~up to 13~~ members, and the ~~following~~ provisions of this paragraph shall apply specifically to such authority. Except for the district secretary of the department, the members must be residents of the county. Four ~~Seven~~ voting members shall be appointed by the governing body of the county. At the discretion of the governing body of the county, up to two of the members appointed by the governing body of the county may be elected officials residing in the county. Four ~~Five~~ voting members of the authority shall be appointed by the Governor. One member shall be the district secretary of the department serving in the district that contains such county. This member shall be an ex officio voting member of the authority. If the governing board of an authority includes any member originally appointed by the governing body of the county as a nonvoting member, when the term of such member expires, that member shall be replaced by a member

appointed by the Governor until the governing body of the authority is composed of four ~~seven~~ members appointed by the governing body of the county and four ~~five~~ members appointed by the Governor. The qualifications, terms of office, and obligations and rights of members of the authority shall be determined by resolution or ordinance of the governing body of the county in a manner that is consistent with this paragraph, paragraphs (e)-(i), and subsections (3)-(12) ~~(3) and (4)~~.

(e) A member of an authority appointed by the governing board of the county or appointed by the Governor may not serve as a member of any other transportation-related board, commission, or organization while serving as a member of the authority.

(f) A lobbyist, as defined in s. 112.3215, may not be appointed or serve as a member of an authority.

(g) A member of an authority may be removed from office by the Governor for misconduct, malfeasance, misfeasance, or nonfeasance in office.

(h) Members of an authority may receive reimbursement from the authority for travel and other necessary expenses incurred in connection with the business of the authority as provided in s. 112.061, but may not draw salaries or other compensation.

(i) Members of each expressway authority, transportation authority, bridge authority, or toll authority created pursuant to this chapter, chapter 343, or any other general law shall comply with the applicable financial disclosure requirements of

s. 8, Art. II of the State Constitution. This paragraph does not subject any statutorily created authority, other than an expressway authority created under this part, to any requirement of this part except this paragraph.

(3)(a) The governing body of each authority shall elect one of its members as its chair and shall elect a secretary and a treasurer who need not be members of the authority. The chair, secretary, and treasurer shall hold their offices at the will of the authority. A simple majority of the governing body of the authority constitutes a quorum, and the vote of a majority of those members present is necessary for the governing body to take any action. A vacancy on an authority shall not impair the right of a quorum of the authority to exercise all of the rights and perform all of the duties of the authority.

(b) Upon the effective date of his or her appointment, or as soon thereafter as practicable, each appointed member of an authority shall enter upon his or her duties.

(4)~~(a)~~ An authority may employ an executive secretary, an executive director, its own counsel and legal staff, technical experts, and such engineers and employees, permanent or temporary, as it may require and shall determine the qualifications and fix the compensation of such persons, firms, or corporations. An authority may employ a fiscal agent or agents; however, the authority must solicit sealed proposals from at least three persons, firms, or corporations for the performance of any services as fiscal agents. An authority may

delegate to one or more of its agents or employees such of its power as it deems necessary to carry out the purposes of the Florida Expressway Authority Act, subject always to the supervision and control of the authority. ~~Members of an authority may be removed from office by the Governor for misconduct, malfeasance, misfeasance, or nonfeasance in office.~~

~~(b) Members of an authority are entitled to receive from the authority their travel and other necessary expenses incurred in connection with the business of the authority as provided in s. 112.061, but they may not draw salaries or other compensation.~~

~~(c) Members of each expressway authority, transportation authority, bridge authority, or toll authority, created pursuant to this chapter, chapter 343, or any other general law, shall comply with the applicable financial disclosure requirements of s. 8, Art. II of the State Constitution. This paragraph does not subject any statutorily created authority, other than an expressway authority created under this part, to any other requirement of this part except the requirement of this paragraph.~~

(5)(a) A member or the executive director of an authority may not:

1. Within 2 years after vacating his or her position as a board member or the executive director, personally represent another person or entity for compensation before the authority;

2. Within 2 years after vacating his or her position as a board member or the executive director, have an employment or contractual relationship with a business entity other than an agency, as defined in s. 112.312, that was doing business with the authority at any time during the person's membership on or employment by the authority; or

3. After vacating his or her position as a board member or the executive director, have an employment or contractual relationship with a business entity other than an agency, as defined in s. 112.312, in connection with a contract in which the member or executive director personally and substantially participated through decision, approval, disapproval, recommendation, rendering of advice, or investigation while he or she was a member or employee of the authority.

(b) A violation of this subsection is punishable in accordance with s. 112.317.

(6) An authority's general counsel shall serve as the authority's ethics officer.

(7) An authority board member, employee, or consultant who holds a position that may influence authority decisions may not engage in any relationship that may adversely affect his or her judgment in carrying out authority business. The following disclosures must be made annually on a disclosure form to prevent such conflicts of interest and preserve the integrity and transparency of the authority to the public:

(a) Any relationship that a board member, employee, or consultant has which affords a current or future financial benefit to such board member, employee, or consultant, or to a relative or business associate of such board member, employee, or consultant, and which a reasonable person would conclude has the potential to create a prohibited conflict of interest.

(b) Whether a relative of such board member, employee, or consultant is a registered lobbyist and, if so, the names of such lobbyist's clients. Such names shall be provided in writing to the ethics officer.

(c) All interests in real property that such board member, employee, or consultant has, or that a relative, principal, client, or business associate of such board member, employee, or consultant has whenever such real property is located within, or within a 1/2-mile radius of, any actual or prospective authority roadway project. The executive director shall provide a corridor map and a property ownership list reflecting the ownership of all real property within the disclosure area, or an alignment map with a list of associated owners, to all board members, employees, and consultants.

(8) The disclosure forms filed as required under subsection (7) must be reviewed by the ethics officer or, if a form is filed by the general counsel, by the executive director.

(9) The conflict of interest process shall be outlined in the authority's code of ethics.

(10) Authority employees and consultants may not serve on the governing body of the authority while employed by or under contract with the authority.

(11) The code of ethics policy shall be reviewed and updated by the ethics officer and presented for board approval at least once every 2 years.

(12) Employees shall be adequately informed and trained on the code of ethics and shall continually participate in ongoing ethics education.

Section 2. Paragraph (e) of subsection (2) of section 348.0004, Florida Statutes, is amended to read:

348.0004 Purposes and powers.—

(2) Each authority may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of its purposes, including, but not limited to, the following rights and powers:

(e) To fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the services and facilities system, which tolls, rates, fees, rentals, and other charges must always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to the Florida Expressway Authority Act. However, such right and power may be assigned or delegated by the authority to the department. Notwithstanding any other provision of law, but subject to any contractual requirements contained in documents securing any indebtedness outstanding on July 1, 2014, that is payable from

tolls, in any county as defined in s. 125.011(1), any authority toll increase must first be approved by resolution adopted by a supermajority vote, consisting of one vote greater than a majority, of the governing board of the county. Notwithstanding s. 338.165 or any other provision of law to the contrary, in any county as defined in s. 125.011(1), to the extent surplus revenues exist, they may be used for purposes enumerated in subsection (7), provided the expenditures are consistent with the metropolitan planning organization's adopted long-range plan. Notwithstanding any other provision of law to the contrary, but subject to any contractual requirements contained in documents securing any outstanding indebtedness payable from tolls, in any county as defined in s. 125.011(1), the board of county commissioners may, by ordinance adopted on or before September 30, 1999, alter or abolish existing tolls and currently approved increases thereto if the board provides a local source of funding to the county expressway system for transportation in an amount sufficient to replace revenues necessary to meet bond obligations secured by such tolls and increases.

Section 3. Section 348.52, Florida Statutes, is amended to read:

348.52 Tampa-Hillsborough County Expressway Authority.—

(1) There is hereby created and established a body politic and corporate, an agency of the state, to be known as the "Tampa-Hillsborough County Expressway Authority."

(2) The governing body of the authority shall consist of a board of seven members.

(a) Four of the members shall be appointed by the Governor subject to confirmation by the Senate at the next regular session of the Legislature. Refusal or failure of the Senate to confirm an appointment shall create a vacancy.

1. Each such member's term of office shall be for 4 years or until his or her successor shall have been appointed and qualified.

2. Vacancies occurring in the governing body for any such members prior to the expiration of the affected term shall be filled for the unexpired term.

~~3. The Governor shall have the authority to remove from office any such member of the governing body in the manner and for cause defined by the laws of this state.~~

3.~~4.~~ Each such member, before entering upon his or her official duties, shall take and subscribe to an oath before some official authorized by law to administer oaths that he or she will honestly, faithfully, and impartially perform the duties devolving upon him or her in office as a member of the governing body of the authority and that he or she will not neglect any duties imposed upon him or her by this part.

(b) One member shall be the mayor, or the mayor's designate, who shall be the chair of the city council of the city in Hillsborough County having the largest population, according to the latest decennial census, who shall serve as a

member ex officio.

(c) One member shall be a member of the Board of County Commissioners of Hillsborough County, selected by such board, who shall serve as a member ex officio.

(d) One member shall be the district secretary of the Department of Transportation serving in the district that contains Hillsborough County, who shall serve ex officio.

(e) A member of the authority appointed by the governing board of the county or appointed by the Governor may not serve as a member of any other transportation-related board, commission, or organization while serving as a member of the authority.

(f) A lobbyist, as defined in s. 112.3215, may not be appointed or serve as a member of the authority.

(g) A member of the authority may be removed from office by the Governor for misconduct, malfeasance, misfeasance, or nonfeasance in office.

(h) Members of the authority may receive reimbursement from the authority for travel and other necessary expenses incurred in connection with the business of the authority as provided in s. 112.061, but may not draw salaries or other compensation.

(3) The authority shall designate one of its members as chair. ~~The members of the authority shall not be entitled to compensation but shall be entitled to receive their travel and other necessary expenses as provided in s. 112.061.~~ A majority

of the members of the authority shall constitute a quorum, and resolutions enacted or adopted by a vote of a majority of the members present and voting at any meeting shall become effective without publication or posting or any further action of the authority.

(4) The authority may employ a secretary and executive director, its own counsel and legal staff, and such legal, financial, and other professional consultants, technical experts, engineers, and employees, permanent or temporary, as it may require and may determine the qualifications and fix the compensation of such persons, firms, or corporations. The authority may contract with the Division of Bond Finance of the State Board of Administration for any financial services authorized herein.

(5) The authority may delegate to one or more of its officers or employees such of its powers as it shall deem necessary to carry out the purposes of this part, subject always to the supervision and control of the authority. ~~Members of the authority may be removed from their office by the Governor for misconduct, malfeasance, misfeasance, and nonfeasance in office.~~

(6)(a) A member or the executive director of the authority may not:

1. Within 2 years after vacating his or her position as a board member or the executive director, personally represent another person or entity for compensation before the authority;

2. Within 2 years after vacating his or her position as a board member or the executive director, have an employment or contractual relationship with a business entity other than an agency, as defined in s. 112.312, that was doing business with the authority at any time during the person's membership on or employment by the authority; or

3. After vacating his or her position as a board member or the executive director, have an employment or contractual relationship with a business entity other than an agency, as defined in s. 112.312, in connection with a contract in which the member or executive director personally and substantially participated through decision, approval, disapproval, recommendation, rendering of advice, or investigation while he or she was a member or employee of the authority.

(b) A violation of this subsection is punishable in accordance with s. 112.317.

(7) The authority's general counsel shall serve as the authority's ethics officer.

(8) An authority board member, employee, or consultant who holds a position that may influence authority decisions may not engage in any relationship that may adversely affect his or her judgment in carrying out authority business. The following disclosures must be made annually on a disclosure form to prevent such conflicts of interest and preserve the integrity and transparency of the authority to the public:

(a) Any relationship a board member, employee, or consultant has which affords a current or future financial benefit to such board member, employee, or consultant, or to a relative or business associate of such board member, employee, or consultant, and which a reasonable person would conclude has the potential to create a prohibited conflict of interest.

(b) Whether a relative of such board member, employee, or consultant is a registered lobbyist and, if so, the names of such lobbyist's clients. Such names shall be provided in writing to the ethics officer.

(c) All interests in real property that such board member, employee, or consultant has, or that a relative, principal, client, or business associate of such board member, employee, or consultant has whenever such real property is located within, or within a 1/2-mile radius of, any actual or prospective authority roadway project. The executive director shall provide a corridor map and a property ownership list reflecting the ownership of all real property within the disclosure area, or an alignment map with a list of associated owners, to all board members, employees, and consultants.

(9) The disclosure forms filed as required under subsection (8) must be reviewed by the ethics officer or, if a form is filed by the general counsel, by the executive director.

(10) The conflict of interest process shall be outlined in the authority's code of ethics.

(11) Authority employees and consultants may not serve on the governing body of the authority while employed by or under contract with the authority.

(12) The code of ethics policy shall be reviewed and updated by the ethics officer and presented for board approval at least once every 2 years.

(13) Employees shall be adequately informed and trained on the code of ethics and shall continually participate in ongoing ethics education.

Section 4. Section 348.753, Florida Statutes, is amended to read:

348.753 Orlando-Orange County Expressway Authority.—

(1) There is hereby created and established a body politic and corporate, an agency of the state, to be known as the Orlando-Orange County Expressway Authority, hereinafter referred to as "authority."

(2)(a) The governing body of the authority shall consist of five members. Three members shall be citizens of Orange County, who shall be appointed by the Governor. The fourth member shall be, ex officio, the chair of the County Commissioners of Orange County, and the fifth member shall be, ex officio, the district secretary of the Department of Transportation serving in the district that contains Orange County. The term of each appointed member shall be for 4 years. Each appointed member shall hold office until his or her successor has been appointed and has qualified. A vacancy

occurring during a term shall be filled only for the balance of the unexpired term. Each appointed member of the authority shall be a person of outstanding reputation for integrity, responsibility, and business ability, but no person who is an officer or employee of any city or of Orange County in any other capacity shall be an appointed member of the authority. Any member of the authority shall be eligible for reappointment.

(b) A member of the authority appointed by the Governor may not serve as a member of any other transportation-related board, commission, or organization while serving as a member of the authority.

(c) A lobbyist, as defined in s. 112.3215, may not be appointed or serve as a member of the authority.

(d) A member of the authority may be removed from office by the Governor for misconduct, malfeasance, misfeasance, or nonfeasance in office.

(e) Members of the authority may receive reimbursement from the authority for travel and other necessary expenses incurred in connection with the business of the authority as provided in s. 112.061, but may not draw salaries or other compensation.

(3)(a) The authority shall elect one of its members as chair of the authority. The authority shall also elect a secretary and a treasurer who may or may not be members of the authority. The chair, secretary, and treasurer shall hold such offices at the will of the authority. Three members of the

authority shall constitute a quorum, and the vote of three members shall be necessary for any action taken by the authority. No vacancy in the authority shall impair the right of a quorum of the authority to exercise all of the rights and perform all of the duties of the authority.

(b) Upon the effective date of his or her appointment, or as soon thereafter as practicable, each appointed member of the authority shall enter upon his or her duties.

(4) ~~(a)~~ The authority may employ an executive secretary, an executive director, its own counsel and legal staff, technical experts, such engineers, and such employees, permanent or temporary, as it may require and may determine the qualifications and fix the compensation of such persons, firms, or corporations and may employ a fiscal agent or agents, provided, however, that the authority shall solicit sealed proposals from at least three persons, firms, or corporations for the performance of any services as fiscal agents. The authority may delegate to one or more of its agents or employees such of its power as it shall deem necessary to carry out the purposes of this part, subject always to the supervision and control of the authority. ~~Members of the authority may be removed from their office by the Governor for misconduct, malfeasance, misfeasance, or nonfeasance in office.~~

~~(b) Members of the authority shall be entitled to receive from the authority their travel and other necessary expenses incurred in connection with the business of the authority as~~

~~provided in s. 112.061, but they shall draw no salaries or other compensation.~~

(5)(a) A member or the executive director of the authority may not:

1. Within 2 years after vacating his or her position as a board member or the executive director, personally represent another person or entity for compensation before the authority;

2. Within 2 years after vacating his or her position as a board member or the executive director, have an employment or contractual relationship with a business entity other than an agency, as defined in s. 112.312, that was doing business with the authority at any time during the person's membership on or employment by the authority; or

3. After vacating his or her position as a board member or the executive director, have an employment or contractual relationship with a business entity other than an agency, as defined in s. 112.312, in connection with a contract in which the member or executive director personally and substantially participated through decision, approval, disapproval, recommendation, rendering of advice, or investigation while he or she was a member or employee of the authority.

(b) A violation of this subsection is punishable in accordance with s. 112.317.

(6) The authority's general counsel shall serve as the authority's ethics officer.

(7) An authority board member, employee, or consultant who holds a position that may influence authority decisions may not engage in any relationship that may adversely affect his or her judgment in carrying out authority business. The following disclosures must be made annually on a disclosure form to prevent such conflicts of interest and preserve the integrity and transparency of the authority to the public:

(a) Any relationship a board member, employee, or consultant has which affords a current or future financial benefit to such board member, employee, or consultant, or to a relative or business associate of such board member, employee, or consultant, and which a reasonable person would conclude has the potential to create a prohibited conflict of interest.

(b) Whether a relative of such board member, employee, or consultant is a registered lobbyist and, if so, the names of such lobbyist's clients. Such names shall be provided in writing to the ethics officer.

(c) All interests in real property that such board member, employee, or consultant has, or that a relative, principal, client, or business associate of such board member, employee, or consultant has whenever such real property is located within, or within a 1/2-mile radius of, any actual or prospective authority roadway project. The executive director shall provide a corridor map and a property ownership list reflecting the ownership of all real property within the disclosure area, or an alignment

map with a list of associated owners, to all board member, employees, and consultants.

(8) The disclosure forms filed as required under subsection (7) must be reviewed by the ethics officer or, if a form is filed by the general counsel, by the executive director.

(9) The conflict of interest process shall be outlined in the authority's code of ethics.

(10) Authority employees and consultants may not serve on the governing body of the authority while employed by or under contract with the authority.

(11) The code of ethics policy shall be reviewed and updated by the ethics officer and presented for board approval at least once every 2 years.

(12) Employees shall be adequately informed and trained on the code of ethics and shall continually participate in ongoing ethics education.

Section 5. Section 348.9952, Florida Statutes, is amended to read:

348.9952 Osceola County Expressway Authority.—

(1) There is created a body politic and corporate, an agency of the state, to be known as the Osceola County Expressway Authority.

(2)(a) The governing body of the authority shall consist of six members. Five members, at least one of whom must be a member of a racial or ethnic minority group, must be residents of Osceola County, three of whom shall be appointed by the

governing body of the county and two of whom shall be appointed by the Governor. The sixth member shall be the district secretary of the department serving in the district that includes Osceola County, who shall serve as an ex officio, nonvoting member. The term of each appointed member shall be for 4 years, except that the first term of the initial members appointed by the Governor shall be 2 years each. Each appointed member shall hold office until his or her successor has been appointed and has qualified. A vacancy occurring during a term shall be filled only for the balance of the unexpired term. Each appointed member of the authority shall be a person of outstanding reputation for integrity, responsibility, and business ability, but a person who is an officer or employee of any municipality or of Osceola County in any other capacity may not be an appointed member of the authority. A member of the authority is eligible for reappointment.

(b) A member of the authority appointed by the governing board of the county or appointed by the Governor may not serve as a member of any other transportation-related board, commission, or organization while serving as a member of the authority.

(c) A lobbyist, as defined in s. 112.3215, may not be appointed or serve as a member of the authority.

(d) ~~(b)~~ Members of the authority may be removed from office by the Governor for misconduct, malfeasance, misfeasance, or nonfeasance in office.

(e) Members of the authority may receive reimbursement from the authority for travel and other necessary expenses incurred in connection with the business of the authority as provided in s. 112.061, but may not draw salaries or other compensation.

(3)(a) The authority shall elect one of its members as chair. The authority shall also elect a secretary and a treasurer, who may be members of the authority. The chair, secretary, and treasurer shall hold such offices at the will of the authority.

(b) Three members of the authority constitute a quorum, and the vote of three members is necessary for any action taken by the authority. A vacancy in the authority does not impair the right of a quorum of the authority to exercise all of the rights and perform all of the duties of the authority.

(4)(a) The authority may employ an executive secretary, an executive director, its own counsel and legal staff, technical experts, engineers, and other employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation of such persons, firms, or corporations. Additionally, the authority may employ a fiscal agent or agents. However, the authority shall solicit sealed proposals from at least three persons, firms, or corporations for the performance of any services as fiscal agents. The authority may delegate to one or more of its agents or employees such of its power as it deems necessary to carry out the purposes of this part, subject

always to the supervision and control of the authority.

~~(b) Members of the authority are entitled to receive from the authority their travel and other necessary expenses incurred in connection with the business of the authority as provided in s. 112.061, but members shall not draw salaries or other compensation.~~

(b) ~~(c)~~ The department is not required to grant funds for startup costs to the authority. However, the governing body of the county may provide funds for such startup costs.

(c) ~~(d)~~ The authority shall cooperate with and participate in any efforts to establish a regional expressway authority.

(d) ~~(e)~~ Notwithstanding any other provision of law, including s. 339.175(3), the authority is not entitled to voting membership in a metropolitan planning organization in which Osceola County, or any of the municipalities therein, are also voting members.

(5)(a) A member or the executive director of the authority may not:

1. Within 2 years after vacating his or her position as a board member or the executive director, personally represent another person or entity for compensation before the authority;

2. Within 2 years after vacating his or her position as a board member or the executive director, have an employment or contractual relationship with a business entity other than an agency, as defined in s. 112.312, that was doing business with

the authority at any time during the person's membership on or employment by the authority; or

3. After vacating his or her position as a board member or the executive director, have an employment or contractual relationship with a business entity other than an agency, as defined in s. 112.312, in connection with a contract in which the member or executive director personally and substantially participated through decision, approval, disapproval, recommendation, rendering of advice, or investigation while he or she was a member or employee of the authority.

(b) A violation of this subsection is punishable in accordance with s. 112.317.

(6) The authority's general counsel shall serve as the authority's ethics officer.

(7) An authority board member, employee, or consultant who holds a position that may influence authority decisions may not engage in any relationship that may adversely affect his or her judgment in carrying out authority business. The following disclosures must be made annually on a disclosure form to prevent such conflicts of interest and preserve the integrity and transparency of the authority to the public:

(a) Any relationship a board member, employee, or consultant has which affords a current or future financial benefit to such board member, employee, or consultant, or to a relative or business associate of such board member, employee,

or consultant, and which a reasonable person would conclude has the potential to create a prohibited conflict of interest.

(b) Whether a relative of such board member, employee, or consultant is a registered lobbyist and, if so, the names of such lobbyist's clients. Such names shall be provided in writing to the ethics officer.

(c) Any and all interests in real property that such board member, employee, or consultant has, or that a relative, principal, client, or business associate of such board member, employee, or consultant has whenever such real property is located within, or within a 1/2-mile radius of, any actual or prospective authority roadway project. The executive director shall provide a corridor map and a property ownership list reflecting the ownership of all real property within the disclosure area, or an alignment map with a list of associated owners, to all board member, employees, and consultants.

(8) The disclosure forms filed as required under subsection (7) must be reviewed by the ethics officer or, if a form is filed by the general counsel, by the executive director.

(9) The conflict of interest process shall be outlined in the authority's code of ethics.

(10) Authority employees and consultants may not serve on the governing body of the authority while employed by or under contract with the authority.

(11) The code of ethics policy shall be reviewed and updated by the ethics officer and presented for board approval at least once every 2 years.

(12) Employees shall be adequately informed and trained on the code of ethics and shall continually participate in ongoing ethics education.

Section 6. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 555 Pub. Rec./Automated Traffic Law Enforcement System
SPONSOR(S): Transportation & Highway Safety Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Transportation & Highway Safety Subcommittee		Thompson JAT	Miller P.M.

SUMMARY ANALYSIS

Current law authorizes the Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities to employ "traffic infraction detector" (red light camera) programs. Red light cameras are used by local law enforcement as a method of enforcement of potential red light violations at selected intersections. In Florida, red light camera technology has been utilized by local and state law enforcement for the last several years.

The bill creates a public record exemption for recorded images obtained through the use of a red light camera. Specifically, recorded images obtained through the use of a red light camera and held by an agency are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

Such recorded images may be disclosed for the following reasons:

- By or to a "criminal justice agency" in the performance of the criminal justice agency's official duties.
- A recorded image evidencing a red light camera infraction may be admissible in a proceeding resulting from the issuance of a "notice of violation" or a "uniform traffic citation" pursuant to s. 316.0083.
- To a person to whom the license plate is registered, unless such information constitutes "active," "criminal intelligence information," or active, "criminal investigative information."
- To any person authorized by DHSMV who is engaged in the use of such records or information for bona fide research and statistical purposes. The individual or entity must enter into a privacy and security agreement with DHSMV and comply with all laws and rules governing the use of such records and information for research and statistical purposes. Information identifying the subjects of such recorded images must be treated as confidential by the researcher and not released in any form.

The bill provides for retroactive application of the public record exemption. It 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.

The bill will not have a fiscal impact to the state, local governments, or the private sector.

The bill provides an effective date that is contingent on the passage of HB 7005 or similar legislation.

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:

Background

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.

Red Light Cameras in Florida

In 2010, the Florida Legislature expressly preempted[3] to the state regulation of the use of cameras for enforcing the provisions of the "Florida Uniform Traffic Control Law."[4] The law also authorized the Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities to employ red light camera programs.[5]

Traffic infraction detectors,[6] otherwise known as red light cameras, must meet requirements established by the Department of Transportation (DOT) and be tested at regular intervals according to procedures prescribed by DOT.[7] If DHSMV, a county, or a municipality installs a red light camera at an intersection, the respective governmental entity must notify the public that a camera is in use at that intersection, including specific notification of enforcement of right-on-red violations.[8] Such signage must meet specifications adopted by DOT pursuant to s. 316.0745, F.S.[9]

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[1] Section 24(c), Art. I of the State Constitution.
[2] *See* s. 119.15, F.S.
[3] chapter 2010-80, Laws of Florida; codified in s. 316.0076, F.S.
[4] chapter 316, F.S.
[5] Section 316.0083, F.S.
[6] Section 316.003(87), F.S., defines "traffic infraction detector" as "[a] vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light. Any notification under s. 316.0083(1)(b) or traffic citation issued by the use of a traffic infraction detector must include a photograph or other recorded image showing both the license tag of the offending vehicle and the traffic control device being violated."
[7] Section 316.0776, F.S.
[8] Section 316.0776(2), F.S.
[9] Id.

In FY 2012 – 2013, there were 77 jurisdictions operating red light camera programs throughout the state.[10]

The Violation Process

When a red light violation occurs there is a process that the violation follows. The process may vary slightly depending on the jurisdiction; however, the process typically begins with a still photograph and sometimes a video clip being captured and sent to the red light camera vendor.[11] The vendor then queries the State of Florida database of registered vehicles and obtains the needed data relevant to the vehicle (i.e., make and model of the vehicle, registered owner, and owner's address). Then the vendor reviews the photographic evidence and makes a determination as to whether the evidence supports the issuance of a notice of violation.[12]

Once the vendor has reviewed the evidence, potential violations are forwarded to the law enforcement agency for review and verification. In the review process, the officer verifies whether or not a violation occurred based on the photographic and video evidence, and the vehicle and owner information are correct and complete. If the officer ascertains that a violation did not occur, or if vehicle and owner information cannot be obtained or corrected, the notice of violation may not be issued. A large majority of photographs are not referred to law enforcement for further consideration as a potential violation.[13]

Red Light Camera Data

License plate images and data associated with these images are the primary forms of information collected by red light cameras. The images show the driver and the vehicle's license plate. They also show the vehicle just prior to entering the intersection while the light is red and the vehicle within the intersection while the light is red. Data files compiled by red light camera systems may contain the:

- Intersection (and intersection code) where the violation occurred;
- Date and time the violation occurred;
- Age and gender of the violator;
- Car (i.e., vehicle make) driven by the violator;
- Model year of the vehicle driven by the violator;
- Vehicle speed (i.e., measured speed) at the time of the violation; and
- Elapsed time from the onset of red signal until the time of the violation.[14]

Currently, the Florida Department of State's record retention schedule for state and local agencies requires surveillance recordings to be retained for at least 30 days.[15] After 30 days, recordings that are

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[10] The Department of Revenue makes its most-recent data available online at http://dor.myflorida.com/dor/taxes/distributions.html (Last visited on November 25, 2013).

[11] American Traffic Solutions, Inc., provides recorded video of multiple red light running incidents on its Media Center website. These videos can be accessed at: http://www.atsol.com/media-center/videos/. (Last viewed 3/18/14).

[12] City of Tallahassee, Office of the City Auditor, Red Light Camera Program report to the City Commission and City management, Audit Report #1220. This document is on file with the Transportation and Highway Safety Subcommittee.

[13] According to the City of Tallahassee Red Light Camera Program Audit Report #1220, out of 251,863 total camera actuations (photographs), 201,367 were not forwarded to the Tallahassee Police Department (TPD) and 50,929 were forwarded to TPD. The reasons for not forwarding include, but are not limited to, there was no red light violation (for example, the traffic light was green or yellow, there was a funeral procession, or an emergency vehicle with lights flashing); the violation could not be attributed to a specific vehicle for reasons that were outside the controls of the vendor (for example, the photo was not sufficient quality because of the glare on the license plate or camera, there was no license plate on the vehicle, or the license plate was damaged and unreadable); for reasons the vendor could potentially have controlled (for example, the photo was not of sufficient quality to read the license plate, or a malfunction of the equipment).

[14] The National Highway Traffic Safety Administration (NHTSA), Analysis of Red Light Violation Data Collected from Intersections Equipped with Red Light Photo Enforcement Cameras, March 2006, at p. 11. This document is on file with the Transportation and Highway Safety Subcommittee.

[15] According to the State of Florida General Records Schedule GS1-SL for State and Local Government Agencies, October 1, 2013, at page 37 Item #302, surveillance recordings are only required to be maintained for 30 days. This document can be viewed at http://dlis.dos.state.fl.us/barm/genschedules/GS1-SL-2013_Final.pdf. (Last viewed 3/17/14).

not under active criminal investigation[16] can be deleted or written over, or stored for longer periods of time. This includes red light camera recordings.[17]

Relevant Definitions in Current Law

Section 119.071(2)(c)1., F.S., exempts active, criminal intelligence information, and active, criminal investigative information from public inspection. To be exempt, the information must be both active and constitute either criminal investigative or intelligence information.[18] Recorded images obtained by the use of a red light camera that are not considered active and constitute either criminal investigative or intelligence information are open to public records disclosure requirements.

Section 119.011(3)(a), F.S., defines criminal intelligence information as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

Section 119.011(3)(b), F.S., defines criminal investigative information as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

Section 119.011(3)(c), F.S., provides that criminal intelligence and investigative information do not include information such as:

- The time, date, location, and nature of a reported crime;
- The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h);
- The time, date, and location of the incident and of the arrest;
- The crime charged; and
- Documents given or required by law or agency rule to be given to the person arrested.

Section 119.011(3)(d), F.S., considers criminal intelligence information to be active as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities; and criminal investigative information is considered active as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

Section 119.011(3)(a), F.S., defines an agency as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

Section 119.011(4), F.S., defines a criminal justice agency as any law enforcement agency, court, or prosecutor; any other agency charged by law with criminal law enforcement duties; any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal

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[16] s. 119.071(2)(c)1., F.S., exempts "active criminal intelligence information" and "active criminal investigative information" from public inspection.

[17] According to Xerox' Red Light Camera System (RLCS) Intersection Safety Solutions, the red light camera software can independently program and set up the enforcement system settings to eight lanes and four different signal phases per controller, simultaneously with the single system. High-definition (HD) video is used to record video clips of the violation and for 60-day video storage. This document can be viewed at: http://www.acs-inc.com/transportation/ov_red_light_rlcs.pdf. (Last viewed 3/17/14).

[18] See *Woolling v. Lamar*, 764 so. 2d 765, 768 (Fla. 5th DCa 2000), review denied, 786 so. 2d 1186 (Fla. 2001).

investigative information pursuant to their criminal law enforcement duties; or the Department of Corrections.

Proposed Changes

The bill defines traffic infraction detectors, to have the same meaning as provided in s. 316.003, F.S.; active, criminal intelligence information, and criminal investigative information, to have the same meanings as provided in s. 119.011(3), F.S.; agency, to have the same meaning as provided in s. 119.011, F.S.; and criminal justice agency, to have the same meaning as provided in s. 119.011, F.S.

The bill creates a public record exemption for recorded images obtained through the use of a traffic infraction detector. Specifically, recorded images obtained through the use of a traffic infraction detector and held by an agency are confidential and exempt[19] from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Such recorded images may be disclosed for the following reasons:

- A recorded image may be made available by or to a criminal justice agency in the performance of the criminal justice agency's official duties.
- A recorded image evidencing a red light camera infraction may be admissible in a proceeding resulting from the issuance of a notice of violation or a uniform traffic citation pursuant to s. 316.0083.
- To the individual whom a license plate is registered, unless such information constitutes active criminal intelligence information or active criminal investigative information.
- To any person authorized by DHSMV who is engaged in the use of such records or information for bona fide research and statistical purposes. The individual or entity must enter into a privacy and security agreement with DHSMV and comply with all laws and rules governing the use of such records and information for research and statistical purposes. Information identifying the subjects of such recorded images must be treated as confidential by the researcher and not released in any form.

The bill provides for retroactive application[20] of the public record exemption.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand 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., to create a public record exemption for recorded images obtained through the use of traffic infraction detectors.

Section 2: provides a public necessity statement.

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[19] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62 (August 1, 1985).

[20] 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. Access to public records is a substantive right. Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. *See Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

Section 3: provides an effective date contingent upon the passage of HB 7005 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 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 recorded images obtained through the use of a traffic infraction detector.

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.[21] The bill contains a provision requiring retroactive application. Red light cameras have been utilized by local law enforcement in Florida for the past several years.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

A bill to be entitled

An act relating to public records; creating s. 316.0777, F.S.; providing a public records exemption for images obtained through the use of a traffic infraction detector; providing conditions for disclosure of such images; providing definitions; providing for retroactive applicability of the exemption; providing for future legislative review and repeal of the exemption; 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 Traffic infraction detectors; public records exemption.—

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

(a) "Active," "criminal intelligence information," and "criminal investigative information" have the same meanings as provided in s. 119.011(3).

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

(c) "Criminal justice agency" has the same meaning as provided in s. 119.011.

(d) "Traffic infraction detector" has the same meaning as

provided in s. 316.003.

(2) Recorded images obtained through the use of a traffic infraction detector and held by an agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) Such recorded images may be disclosed as follows:

(a) A recorded image may be made available by or to a criminal justice agency in the performance of the criminal justice agency's official duties.

(b) A recorded image evidencing a red light camera infraction may be admissible in a proceeding resulting from the issuance of a notice of violation or a uniform traffic citation pursuant to s. 316.0083.

(c) A recorded image relating to a license plate registered to an individual may be made available to the individual, unless such image constitutes active criminal intelligence information or active criminal investigative information.

(d) A recorded image may be made available to a person authorized by the department who is engaged in the use of such records for bona fide research and statistical purposes. Such individual or entity shall enter into a privacy and security agreement with the department and shall comply with all laws and rules governing the use of such records for research and statistical purposes. Information identifying the subjects of such recorded images shall be treated as confidential by the

researcher and shall not be released in any form.

(4) This exemption applies to such recorded images 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 recorded images obtained through the use of traffic infraction detectors be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The release of such recorded images, including the personal identifying information contained in the recorded images, by an agency, including a private traffic infraction detector vendor, could enable a third party to track a person's movements, compile a history of where the person has driven, or to gain access to resources or obtain credit and other benefits in the person's name. 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 the public benefit that can be derived from widespread and unregulated public access to such information.

Section 3. This act shall take effect on the same date that HB 7005 or similar legislation takes effect, if such

legislation is adopted in the same legislative session or an extension thereof and becomes law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

V