



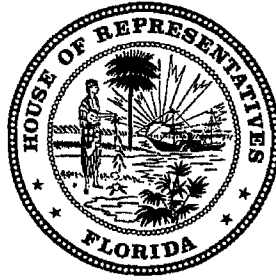
ROADS, BRIDGES & PORTS POLICY COMMITTEE

Meeting Packet

**Wednesday, March 17, 2010
9:00 A.M. – 12:00 P.M.
404 HOB**

LARRY CRETUL
Speaker

GARY AUBUCHON
Chair



The Florida House of Representatives
Roads, Bridges & Ports Policy Committee

Larry Cretul
Speaker

Gary Aubuchon
Chair

AGENDA

March 17, 2010
404 House Office Building
9:00 a.m. – Noon

- I. CALL TO ORDER AND WELCOME REMARKS**
- II. CONSIDERATION OF THE FOLLOWING BILLS:**
 - HB 631 Motor Vehicle Transactions by Burgin**
 - HB 795 Penalties for Violation of Traffic Laws by Jones**
 - HB 875 Traffic Offenses by Evers**
 - HB 1271 Department of Transportation by Horner**
 - HB 1297 Northeast Florida Regional Transportation by Gibson**
 - HB 1331 Public Roadways by Abruzzo, Workman**
 - PCS for HB 221 -- Drowsy Driving Prevention**
 - PCS for HB 971 -- Highway Safety & Motor Vehicles**
- III. Presentation by the Office of Program Policy Analysis & Government Accountability (OPPAGA) on Options to Modify Harbor Pilot Oversight Could Improve Regulation and Rate Setting (Report No. 10-21)**
- IV. ADJOURNMENT**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 631

Motor Vehicle Transactions

SPONSOR(S): Burgin

TIED BILLS:

IDEN./SIM. BILLS: SB 1182

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee		Brown <i>PLB</i>	Miller <i>P.M.</i>
2)	Transportation & Economic Development Appropriations Committee			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

HB 631 amends s. 316.1951, F.S., to revise provisions relating to parking vehicles on public property for the purpose of displaying the vehicles for sale, hire, or rental. It also includes a mandatory fine of \$100 for violations of these provisions.

The bill modifies motor vehicle dealer requirements relating to the sale of motor vehicles by:

- Removing notarization requirements by requiring a perjury statement to appear on certain forms;
- Providing that motor vehicle dealers selling vehicles to persons that reside in other states need not apply for a title certificate;
- Directing the Department of Highway Safety and Motor Vehicles (DHSMV) to place the name of the owner of a motor vehicle on the list of persons who may not be issued a license plate, revalidation sticker, or replacement plate if the name of the owner appears on a list submitted to DHSMV by a licensed motor vehicle dealer for failure to pay for a previous registration of the vehicle;
- Removing "pilot program" language regarding privatized dealer training education;
- Limiting the issuance of a temporary supplemental license for off-premises sales to a dealer to no more than one per calendar month;
- Authorizing motor vehicle dealers to keep certain required records in electronic form if desired; and
- Authorizing DHSMV to suspend, deny, or revoke the license of any licensee based on issues related to non-payment of required fees to DHSMV or a dealer training school.

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Curbstoning/Prohibited Parking

Present Situation

"Curbstoning" is a term used to describe the practice of parking a vehicle in an area upon a public street, highway, a public parking lot, or public or private property where the public has a right to travel by motor vehicle, for the purpose of and intent of displaying the vehicle for sale, hire, or rent. The following are examples of curbstoning:

- Sales of vehicles by licensed motor vehicle dealers at locations other than their licensed location without an off-premises permit.
- Parking and offering for sale one's personal vehicle on the right-of-way of any street or highway or on any private property where the public has the right to travel by motor vehicle, for more than twenty-four hours at a time without expressed permission of the property owner.
- Engaging in business of selling motor vehicles without a motor vehicle dealer license. The department defines this activity as any unlicensed person, firm, business or organization buying, selling, or offering for sale motor vehicles under conditions which require such person, firm, business or organization to be licensed

Section 316.1951, F.S., provides that it is illegal, except in certain circumstances, for any person to park a motor vehicle:

- upon a public street or highway,
- upon a public parking lot, or other public property, or
- upon private property where the public has the right of travel by motor vehicle

for the principal purpose and intent of displaying the motor vehicle thereon for sale, hire, or rental unless the sale, hire, or rental of the motor vehicle is specifically authorized on such property by municipal or county regulation and the person is in compliance with all municipal or county licensing regulations.

This restriction does *not* prohibit a person from parking, for purposes of displaying for sale, their own motor vehicle on any private property which the person owns or leases or on other private property when the person obtains the permission of the owner to park the vehicle there.

In addition, this restriction does not prohibit a licensed motor vehicle dealer from displaying for sale or offering for sale motor vehicles at locations other than the dealer's licensed location if the dealer has been issued a supplemental license for off-premises sales, as provided in s. 320.27(5), F.S. The dealer must also be in compliance with all municipal and county licensing regulations. A vehicle displayed for sale by a licensed dealer at any location other than the dealer's licensed location is subject to immediate removal without warning. These provisions may be enforced by a law enforcement officer, compliance officer, or DHSMV supervisor.

Section 316.1951, F.S., also contains requirements for written notices regarding illegal parking of vehicles for sale. Paragraph (4) requires DHSMV to adopt by rule a uniform written notice to be used to enforce the prohibitions of illegal parking, and paragraph (5) provides for the removal of any motor vehicle parked in one location for more than 24 hours after a written notice has been issued.

Every written notice issued must be affixed in a conspicuous place upon a vehicle by a law enforcement officer or compliance officer or supervisor. Any motor vehicle that has been illegally parked within 30 days after a previous violation and written notice is subject to immediate removal without warning.

Immediate removal without warning is also applicable for

- Violations of s. 316.1951(6), F.S., which provides it is unlawful to offer a vehicle for sale if the vehicle identification number has been destroyed, removed, covered, altered or defaced, as described in s.319.33(1)(d), F.S.
- Violations of s. 316.1951(7), F.S., which provides it is unlawful to knowingly attach to any motor vehicle a registration not assigned or lawfully transferred to the vehicle pursuant to s. 320.261, F.S.
- Violations of s. 316.1951(8), F.S., which provides it is unlawful to display or offer for sale a vehicle that does not have a valid registration as provided in s. 320.02, F.S.
- Violations of s. 316.1951(9), F.S. which provides a vehicle is subject to immediate removal without warning if it bears the telephone number that has been displayed on three or more vehicles offered for sale within a 12-month period.

All violations for illegally parking or selling motor vehicles are non-criminal traffic infractions, punishable as non-moving violations.¹ The penalty for non-moving violations is a \$30 fine, plus court costs which vary by county. Section 316.1951(10), F.S., provides any other provision of law to the contrary notwithstanding, a violation of illegally parking or selling a motor vehicle shall subject the owner of such motor vehicle to towing fees reasonably necessitated by removal and storage of the motor vehicle.

Section 316.1945(3), F.S., authorizes law enforcement officers and parking enforcement specialists to issue a "ticket form as may be used by a political subdivision or municipality," to a driver whose vehicle is illegally parked, or attach the ticket to the vehicle in a conspicuous place. A uniform traffic citation (UTC) may *not* be issued by being attached to an unattended motor vehicle, and may not be issued for violation of a county or municipal parking ordinance.

These prohibitions do not prohibit the governing body of a municipality or county, with respect to streets, highways, or other property under its jurisdiction, from regulating the parking of motor vehicles for any purpose.²

Proposed Changes

HB 631 amends s. 316.1951, F.S., to require DHSMV to adopt a uniform traffic citation to enforce provisions prohibiting parking a motor vehicle on certain property for the purpose of displaying the vehicle for sale, hire, or rental and to remove the requirement that each law enforcement agency provide its own notice for such enforcement. The bill also authorizes a code enforcement officer from

¹ Section 316.1951(12), F.S.

² Section 316.1951(11), F.S.

any local government agency to issue a traffic citation or have an illegally parked motor vehicle removed.

The bill amends s. 318.18, F.S., to require a person cited for unlawfully displaying a motor vehicle for sale, hire, or rental to pay a \$100 fine.

Notarized Signatures on Transfer and Reassignment Forms

Present Situation

Section 319.225, F.S., provides for procedures and regulations regarding the transfer and reassignment of motor vehicle titles. Specifically, s. 319.225(6), F.S., provides if a certificate of title is physically held by a lienholder or is lost or otherwise unavailable, the transferor may give a power of attorney to his or her transferee for the purpose of odometer disclosure. The power of attorney must be on a form issued or authorized by DHSMV. The transferee must sign the power of attorney form, print his or her name, and return a copy of the power of attorney form to the transferor. Upon receipt of a title certificate or duplicate title certificate, the transferee must complete the space for mileage disclosure on the title certificate exactly as the mileage was disclosed by the transferor on the power of attorney form. Currently, DHSMV may require the signatures on title transfer documents be notarized.

Proposed Changes

The bill amends s. 319.225, F.S., to provide that certain motor vehicle title transfer forms do not require notarized signatures; however, in lieu of notarization, the forms must include an affidavit with the following wording: "UNDER PENALTY OF PERJURY,³ I DECLARE THAT I HAVE READ THE FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE TRUE."

Motor Vehicle Titles/Liens

Present Situation

Section 319.23(6), F.S., provides when a motor vehicle or mobile home is sold by a licensed dealer, regardless of the purchaser's state of residence, the dealer must file for the transfer of title with DHSMV within 30 days of the sale of the vehicle or motor home.

Proposed Changes

HB 631 provides that a motor vehicle dealer is not required to apply for a certificate of title when the general purchaser of the motor vehicle resides in another state or country. The motor vehicle dealer is required to transfer ownership and reassign the certificate of title or manufacturer's certificate of origin to the purchaser, and the purchaser must sign an affidavit, approved by DHSMV, stating that the purchaser will title and register the motor vehicle in another state or country.

License Plate Registration

Present Situation

Every owner of a motor vehicle operated or driven on the roads of this state is required to register the vehicle in this state. The owner or person in charge must apply to DHSMV or its authorized agent for registration on a form prescribed by DHSMV. Section 320.02(16), F.S., authorizes DHSMV to withhold registration or re-registration of a motor vehicle if the name of the owner or co-owner appears on a list submitted by a licensed motor vehicle dealer for failure to pay for a previous registration of that vehicle.

³ Section 837.06, F.S., provides that "knowingly mak[ing] a false statement in writing with the intent to mislead a public servant in the performance of his or her duties" is a second degree misdemeanor.

The motor vehicle dealer must maintain signed evidence the owner or co-owner acknowledged the dealer's authority to submit the list to the department if he or she failed to pay and must note the amount the owner or co-owner would be responsible for the vehicle registration.

Proposed Changes

The bill directs DHSMV to place the name of the owner of a motor vehicle on the list of persons who may not be issued a license plate, revalidation sticker, or replacement plate if the name of the owner appears on a list submitted to the department by a licensed motor vehicle dealer for a previous registration of the vehicle.

Motor Vehicle Dealers; Continuing Education and Training

Present Situation

Section 320.27, F.S., provides for the licensing and certification of motor vehicle dealers. Section 320.27(1)(c), F.S., defines a "motor vehicle dealer" as any person engaged in the business of buying, selling, or dealing in motor vehicles, or offering or displaying motor vehicles for sale at wholesale or retail. Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be presumed *prima facie* to be engaged in such business.

Section 320.27(4), F.S., provides the requirements that must be met in order for a franchised motor vehicle dealer to receive a license certificate, which must be renewed every 2 years. A franchised motor vehicle dealer that has been licensed continuously for 2 years and is in good standing with DHSMV is exempt from the pre-licensing training requirement when seeking a new franchise motor vehicle dealer license. Motor vehicle dealer principals are required to provide certification of completing 8 hours of continuing education prior to filing license renewal forms with the DHSMV; such certification must be filed once every 2 years, beginning in 2006. The continuing education must include 2 hours of legal or legislative issues, 1 hour of department issues, and 5 hours of relevant motor vehicle industry topics.

The continuing education must be provided by a licensed dealer school either in a classroom or by correspondence. Dealer schools must provide completion certificates to both DHSMV and the customer, and the schools are authorized to charge a fee for providing continuing education. The privatized method authorized for training dealer license applicants was considered a pilot project which was to be evaluated by the department after it had been in operation for two years.

Proposed Changes

HB 631 deletes obsolete language and clarifies that an applicant who has held a valid motor vehicle dealer's license continuously within the past two years and who remains in good standing with the department is exempt from the pre-licensing requirements. The bill removes the "pilot" provision for training dealer license applicants, as the pilot program has been deemed successful by DHSMV.

Off-Premises Sales Supplemental License; Maintenance of Records

Present Situation

Section 320.27(5), F.S., requires a licensed motor vehicle dealer to obtain a supplemental license for each permanent additional place or places of business not contiguous to the premises for which the original license is issued, on a form prescribed by DHSMV, and upon a payment of \$50 for each additional location. A supplemental license authorizing off-premises sales shall be issued at no charge to the dealer for a period not to exceed ten consecutive calendar days. To obtain a temporary supplemental license for off-premises sales, the applicant must:

- Be a licensed dealer;

- Notify the applicable local DHSMV office of the specific dates and location for which the license is requested;
- Display a sign at the licensed location clearly identifying the dealer;
- Provide staff to work at the temporary location for the duration of the off-premises sale;
- Meet any local government permitting requirements; and
- Have the permission of the property owner to sell at that location.

Section 320.27(6), F.S., provides that motor vehicle dealers must keep a book or record of the following, for a period of 5 years:

- The purchase, sale, or exchange of any motor vehicle;
- The receipt of any motor vehicle for the purpose of sale;
- The temporary tag issuance date;
- The date of title transfer;
- The name and address of the buyer, seller, and any alleged owners;
- A description of the motor vehicle including any vehicle or component identification number; and
- A statement that any such number has been altered, if that is the case.

Proposed Changes

The bill limits the issuance of a temporary supplemental license for off-premises sales to a dealer to no more than one per calendar month, and allows motor vehicle dealers to keep certain required records in either paper or electronic form. When a licensee chooses to maintain electronic records, the original paper documents may be destroyed under specified circumstances.

Denial, Suspension or Revocation of License

Present Situation

Section 320.27(9), F.S., provides that DHSMV may deny, suspend, or revoke any motor vehicle dealer license upon proof a licensee has committed fraud or willful misrepresentation in applying for or obtaining a license, been convicted of a felony, or failed to honor a bank draft or check given to a motor vehicle dealer for the purchase of a motor vehicle by another motor vehicle dealer within 10 days after notification the bank draft or check has been dishonored.

Proposed Changes

The bill authorizes DHSMV to also deny, suspend, or revoke a motor vehicle dealer license if the licensee has:

- Failed to honor a check given to the department within 10 days after notification the check has been dishonored by the bank due to insufficient funds;
- Stopped payment on a check or issued a check payable to the department from a closed account, or
- Charged back a credit card transaction to the department.

Similarly, DHSMV is authorized to deny, suspend, or revoke a motor vehicle dealer license if the licensee has:

- Failed to honor a check given to a licensed motor vehicle dealer training school for tuition within 10 days after notification the check has been dishonored by the bank due to insufficient funds;
- Stopped payment on a check or issued a check payable to a licensed motor vehicle dealer training school for tuition from a closed account, or
- Charged back a credit card transaction to the school.

If a student commits such acts as listed above, the motor vehicle dealer training school may cancel the training certificate issued to the student and notify the department of the cancellation.

HB 631 provides an effective date of July 1, 2010.

B. SECTION DIRECTORY:

- Section 1 Amending s. 316.1951, F.S.; directing DHSMV to adopt a uniform traffic citation to be used to enforce provisions that prohibit parking a motor vehicle on certain property for the purpose of displaying the motor vehicle as being for sale, hire, or rental; removing a requirement that each law enforcement agency provide its own notice for such enforcement; authorizing a code enforcement officer from any local government agency to enforce such provisions; and providing that the owner of a vehicle parked in violation of such provisions is subject to a fine in addition to towing and storage fees.
- Section 2 Amending s. 318.18, F.S.; specifying a fine for a vehicle that is displayed for sale, hire, or rental in violation of provisions in s. 316.1951, F.S.
- Section 3 Amending s. 319.225, F.S.; prohibiting DHSMV from requiring the signature of the transferor to be notarized on certain motor vehicle title transfer forms relating to mileage of the vehicle; requiring the forms to include an affidavit declaring facts in the document to be true.
- Section 4 Amending s. 319.23, F.S.; providing that under certain circumstances a motor vehicle dealer is not required to apply for a certificate of title for a motor vehicle sold to a general purchaser who resides outside the state.
- Section 5 Amending s. 320.02, F.S.; directing DHSMV to place the name of the owner of a motor vehicle on the list of persons who may not be issued a license plate or revalidation sticker if that person is on a list submitted to DHSMV by a licensed dealer.
- Section 6 Amending s. 320.27, F.S.; clarifying an exemption from certain dealer pre-licensing requirements; removing a requirement for evaluation of privatized applicant training methods; limiting the issuance to a licensed dealer of supplemental off-premises sale licenses; authorizing dealer records to be kept in either paper or electronic form; providing procedures for transfer of documents to electronic form; authorizing DHSMV to deny, suspend, or revoke a dealer's license for certain actions relating to payments made to DHSMV; and authorizing a dealer training school to cancel the training certificate issued to a student for certain actions relating to payments made to the school.
- Section 7 Providing an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill could result in additional fine revenue for state and local governments, depending on the number of violators and the fines collected.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill could result in additional fine revenue for state and local governments, depending on the number of violators and the fines collected.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Violators of the bill's prohibition would be subject to a \$100 fine for a vehicle unlawfully displayed for sale, hire, or rental. Limiting off-premise supplemental licenses to no more than one per month would presumably cause a reduction in the number of off-premises sale supplemental licenses issued to motor vehicle dealers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Uniform Traffic Citations

According to DHSMV, the issuance of a Uniform Traffic Citation (UTC) to enforce provisions prohibiting parking a motor vehicle on certain property for the purpose of displaying the vehicle for sale, hire, or rental would not be appropriate at this time. Currently, an UTC must be delivered to the violator in person or by mail. Officers issuing UTCs for this violation would have to obtain personal information from the DHSMV's driver license and registration databases. DHSMV has expressed concern for the placement of an UTC containing such personal information on the vehicle. The notices currently used do not contain personal information. DHSMV recommends delivering the UTC to the registered owner instead of placement on the vehicle.

Motor Vehicle Dealers

DHSMV has provided the following comments regarding the motor vehicle dealer provisions:

- The bill limits the issuance of a temporary supplemental license for off-premises sales to a dealer to no more than one per calendar month. DHSMV recommends requiring the applicant apply for the off-premises license 30 days prior to the event to allow sufficient time to process the application.
- The bill allows, when a licensee chooses to maintain electronic records, the original paper documents to be destroyed after the licensee successfully transfers title and registration to the purchaser as required by Ch. 319, F.S., for any purchaser who titles and registers the motor vehicle in this state. DHSMV recommends clarifying that the original paper documents may be destroyed upon compliance with all other state and federal required laws and after the issuance of the title and registration to the purchaser.

DHSMV has also expressed concerns about the effective date of the bill allowing sufficient time for implementation to make necessary programming modifications, and suggests an effective date of October 1, 2010.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to motor vehicle transactions; amending s.
 3 316.1951, F.S.; directing the Department of Highway Safety
 4 and Motor Vehicles to adopt a uniform traffic citation to
 5 be used to enforce provisions that prohibit parking a
 6 motor vehicle on certain property for the purpose of
 7 displaying the motor vehicle as being for sale, hire, or
 8 rental; removing a requirement that each law enforcement
 9 agency provide its own notice for such enforcement;
 10 authorizing a code enforcement officer from any local
 11 government agency to enforce such provisions; providing
 12 that the owner of a vehicle parked in violation of such
 13 provisions is subject to a fine in addition to towing and
 14 storage fees; amending s. 318.18, F.S.; specifying a fine
 15 for a vehicle that is displayed for sale, hire, or rental
 16 in violation of such provisions; amending s. 319.225,
 17 F.S.; prohibiting the department from requiring the
 18 signature of the transferor to be notarized on certain
 19 motor vehicle title transfer forms relating to mileage of
 20 the vehicle; requiring the forms to include an affidavit
 21 declaring facts in the document to be true; amending s.
 22 319.23, F.S.; providing that, under certain circumstances,
 23 a motor vehicle dealer is not required to apply for a
 24 certificate of title for a motor vehicle sold to a general
 25 purchaser who resides outside the state; amending s.
 26 320.02, F.S.; directing the department to place the name
 27 of the owner of a motor vehicle on the list of persons who
 28 may not be issued a license plate or revalidation sticker

HB 631

2010

29 | if that person is on a list submitted to the department by
 30 | a licensed dealer; amending s. 320.27, F.S.; clarifying an
 31 | exemption from certain dealer prelicensing requirements;
 32 | removing a requirement for evaluation of privatized
 33 | applicant training methods; limiting the issuance to a
 34 | licensed dealer of supplemental off-premises sale
 35 | licenses; authorizing dealer records to be kept in either
 36 | paper or electronic form; providing procedures for
 37 | transfer of documents to electronic form; authorizing the
 38 | department to deny, suspend, or revoke a dealer's license
 39 | for certain actions relating to payments made to the
 40 | department; authorizing a dealer training school to cancel
 41 | the training certificate issued to a student for certain
 42 | actions relating to payments made to the school; providing
 43 | an effective date.

44 |

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

46 |

47 | Section 1. Section 316.1951, Florida Statutes, is amended
 48 | to read:

49 | 316.1951 Parking for certain purposes prohibited; sale of
 50 | motor vehicles; prohibited acts.—

51 | (1) It is unlawful for any person to park a motor vehicle,
 52 | as defined in s. 320.01, upon a public street or highway, ~~upon~~
 53 | public parking lot, or other public property, or upon private
 54 | property where the public has the right to travel by motor
 55 | vehicle, for the principal purpose and intent of displaying the
 56 | motor vehicle thereon for sale, hire, or rental unless the sale,

HB 631

2010

57 | hire, or rental of the motor vehicle is specifically authorized
 58 | on such property by municipal or county regulation and the
 59 | person is in compliance with all municipal or county licensing
 60 | regulations.

61 | (2) The provisions of subsection (1) do not prohibit a
 62 | person from parking his or her own motor vehicle or his or her
 63 | other personal property on any private real property which the
 64 | person owns or leases or on private real property which the
 65 | person does not own or lease, but for which he or she obtains
 66 | the permission of the owner, or on the public street immediately
 67 | adjacent thereto, for the principal purpose and intent of sale,
 68 | hire, or rental.

69 | (3) Subsection (1) does not prohibit a licensed motor
 70 | vehicle dealer from displaying for sale or offering for sale
 71 | motor vehicles at locations other than the dealer's licensed
 72 | location if the dealer has been issued a supplemental license
 73 | for off-premises sales, as provided in s. 320.27(5), and has
 74 | complied with the requirements in subsection (1). A vehicle
 75 | displayed for sale by a licensed dealer at any location other
 76 | than the dealer's licensed location is subject to immediate
 77 | removal without warning.

78 | (4) The Department of Highway Safety and Motor Vehicles
 79 | shall adopt by rule a uniform written traffic citation ~~notice~~ to
 80 | be used to enforce this section. ~~Each law enforcement agency in~~
 81 | ~~this state shall provide, at each agency's expense, the notice~~
 82 | ~~forms necessary to enforce this section.~~

83 | (5) A law enforcement officer, compliance officer, code
 84 | enforcement officer from any local government agency, or

85 supervisor of the department may cause to be removed at the
 86 owner's expense any motor vehicle found in violation of
 87 subsection (1) ~~that, which~~ has been parked in one location for
 88 more than 24 hours after a written traffic citation ~~notice~~ has
 89 been issued. Every written traffic citation ~~notice~~ issued
 90 pursuant to this section shall be affixed in a conspicuous place
 91 upon a vehicle by a law enforcement officer, compliance officer,
 92 code enforcement officer, or supervisor of the department. Any
 93 vehicle found in violation of subsection (1) within 30 days
 94 after a previous violation and written traffic citation ~~notice~~
 95 is subject to immediate removal without an additional waiting
 96 period.

97 (6) It is unlawful to offer a vehicle for sale if the
 98 vehicle identification number has been destroyed, removed,
 99 covered, altered, or defaced, as described in s. 319.33(1)(d). A
 100 vehicle found in violation of this subsection is subject to
 101 immediate removal without warning.

102 (7) It is unlawful to knowingly attach to any motor
 103 vehicle a registration that was not assigned or lawfully
 104 transferred to the vehicle pursuant to s. 320.261. A vehicle
 105 found in violation of this subsection is subject to immediate
 106 removal without warning.

107 (8) It is unlawful to display or offer for sale a vehicle
 108 that does not have a valid registration as provided in s.
 109 320.02. A vehicle found in violation of this subsection is
 110 subject to immediate removal without warning. This subsection
 111 does not apply to vehicles and recreational vehicles being
 112 offered for sale through motor vehicle auctions as defined in s.

HB 631

2010

113 320.27(1)(c)4.

114 (9) A vehicle is subject to immediate removal without
 115 warning if it bears a telephone number that has been displayed
 116 on three or more vehicles offered for sale within a 12-month
 117 period.

118 (10) Any other provision of law to the contrary
 119 notwithstanding, a violation of subsection (1) shall subject the
 120 owner of such motor vehicle to towing fees reasonably
 121 necessitated by removal and storage of the motor vehicle and a
 122 fine as required by s. 318.18.

123 (11) This section does not prohibit the governing body of
 124 a municipality or county, with respect to streets, highways, or
 125 other property under its jurisdiction, from regulating the
 126 parking of motor vehicles for any purpose.

127 (12) A violation of this section is a noncriminal traffic
 128 infraction, punishable as a nonmoving violation as provided in
 129 chapter 318, unless otherwise mandated by general law.

130 Section 2. Subsection (21) is added to section 318.18,
 131 Florida Statutes, to read:

132 318.18 Amount of penalties.—The penalties required for a
 133 noncriminal disposition pursuant to s. 318.14 or a criminal
 134 offense listed in s. 318.17 are as follows:

135 (21) One hundred dollars for a violation of s. 316.1951
 136 for a vehicle that is unlawfully displayed for sale, hire, or
 137 rental.

138 Section 3. Paragraphs (a) and (b) of subsection (6) of
 139 section 319.225, Florida Statutes, are amended to read:

140 319.225 Transfer and reassignment forms; odometer

141 disclosure statements.-

142 (6) (a) If the certificate of title is physically held by a
 143 lienholder, the transferor may give a power of attorney to his
 144 or her transferee for the purpose of odometer disclosure. The
 145 power of attorney must be on a form issued or authorized by the
 146 department, which form must be in compliance with 49 C.F.R. ss.
 147 580.4 and 580.13. The department shall not require the signature
 148 of the transferor to be notarized on the form; however, in lieu
 149 of notarization, the form shall include an affidavit with the
 150 following wording: UNDER PENALTY OF PERJURY, I DECLARE THAT I
 151 HAVE READ THE FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT
 152 ARE TRUE. The transferee shall sign the power of attorney form,
 153 print his or her name, and return a copy of the power of
 154 attorney form to the transferor. Upon receipt of a title
 155 certificate, the transferee shall complete the space for mileage
 156 disclosure on the title certificate exactly as the mileage was
 157 disclosed by the transferor on the power of attorney form. If
 158 the transferee is a licensed motor vehicle dealer who is
 159 transferring the vehicle to a retail purchaser, the dealer shall
 160 make application on behalf of the retail purchaser as provided
 161 in s. 319.23(6) and shall submit the original power of attorney
 162 form to the department with the application for title and the
 163 transferor's title certificate; otherwise, a dealer may reassign
 164 the title certificate by using the dealer reassignment form in
 165 the manner prescribed in subsection (3), and, at the time of
 166 physical transfer of the vehicle, the original power of attorney
 167 shall be delivered to the person designated as the transferee of
 168 the dealer on the dealer reassignment form. A copy of the

169 | executed power of attorney shall be submitted to the department
 170 | with a copy of the executed dealer reassignment form within 5
 171 | business days after the certificate of title and dealer
 172 | reassignment form are delivered by the dealer to its transferee.

173 | (b) If the certificate of title is lost or otherwise
 174 | unavailable, the transferor may give a power of attorney to his
 175 | or her transferee for the purpose of odometer disclosure. The
 176 | power of attorney must be on a form issued or authorized by the
 177 | department, which form must be in compliance with 49 C.F.R. ss.
 178 | 580.4 and 580.13. The department shall not require the signature
 179 | of the transferor to be notarized on the form; however, in lieu
 180 | of notarization, the form shall include an affidavit with the
 181 | following wording: UNDER PENALTY OF PERJURY, I DECLARE THAT I
 182 | HAVE READ THE FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT
 183 | ARE TRUE. The transferee shall sign the power of attorney form,
 184 | print his or her name, and return a copy of the power of
 185 | attorney form to the transferor. Upon receipt of the title
 186 | certificate or a duplicate title certificate, the transferee
 187 | shall complete the space for mileage disclosure on the title
 188 | certificate exactly as the mileage was disclosed by the
 189 | transferor on the power of attorney form. If the transferee is a
 190 | licensed motor vehicle dealer who is transferring the vehicle to
 191 | a retail purchaser, the dealer shall make application on behalf
 192 | of the retail purchaser as provided in s. 319.23(6) and shall
 193 | submit the original power of attorney form to the department
 194 | with the application for title and the transferor's title
 195 | certificate or duplicate title certificate; otherwise, a dealer
 196 | may reassign the title certificate by using the dealer

HB 631

2010

197 reassignment form in the manner prescribed in subsection (3),
 198 and, at the time of physical transfer of the vehicle, the
 199 original power of attorney shall be delivered to the person
 200 designated as the transferee of the dealer on the dealer
 201 reassignment form. A copy of the executed power of attorney
 202 shall be submitted to the department with a copy of the executed
 203 dealer reassignment form within 5 business days after the
 204 duplicate certificate of title and dealer reassignment form are
 205 delivered by the dealer to its transferee.

206 Section 4. Subsection (6) of section 319.23, Florida
 207 Statutes, is amended to read:

208 319.23 Application for, and issuance of, certificate of
 209 title.—

210 (6) (a) In the case of the sale of a motor vehicle or
 211 mobile home by a licensed dealer to a general purchaser, the
 212 certificate of title must be obtained in the name of the
 213 purchaser by the dealer upon application signed by the
 214 purchaser, and in each other case such certificate must be
 215 obtained by the purchaser. In each case of transfer of a motor
 216 vehicle or mobile home, the application for a certificate of
 217 title, a ~~ex~~ corrected certificate, or an assignment or
 218 reassignment, must be filed within 30 days after ~~from~~ the
 219 delivery of the motor vehicle or mobile home to the purchaser.
 220 An applicant must pay a fee of \$20, in addition to all other
 221 fees and penalties required by law, for failing to file such
 222 application within the specified time. In the case of the sale
 223 of a motor vehicle by a licensed motor vehicle dealer to a
 224 general purchaser who resides in another state or country, the

HB 631

2010

225 dealer is not required to apply for a certificate of title for
 226 the motor vehicle; however, the dealer must transfer ownership
 227 and reassign the certificate of title or manufacturer's
 228 certificate of origin to the purchaser, and the purchaser must
 229 sign an affidavit, as approved by the department, that the
 230 purchaser will title and register the motor vehicle in another
 231 state or country.

232 (b) If a licensed dealer acquires a motor vehicle or
 233 mobile home as a trade-in, the dealer must file with the
 234 department, within 30 days, a notice of sale signed by the
 235 seller. The department shall update its database for that title
 236 record to indicate "sold." A licensed dealer need not apply for
 237 a certificate of title for any motor vehicle or mobile home in
 238 stock acquired for stock purposes except as provided in s.
 239 319.225.

240 Section 5. Subsection (16) of section 320.02, Florida
 241 Statutes, is amended to read:

242 320.02 Registration required; application for
 243 registration; forms.—

244 (16) The department is authorized to withhold registration
 245 or re-registration of a motor vehicle if the name of the owner
 246 or of a coowner appears on a list submitted to the department by
 247 a licensed motor vehicle dealer for a previous registration of
 248 that vehicle. The department shall place the name of the
 249 registered owner of that vehicle on the list of those persons
 250 who may not be issued a license plate, revalidation sticker, or
 251 replacement plate for the vehicle purchased from the licensed
 252 motor vehicle dealer. The motor vehicle dealer must maintain

253 signed evidence that the owner or coowner acknowledged the
 254 dealer's authority to submit the list to the department if he or
 255 she failed to pay and must note the amount for which the owner
 256 or coowner would be responsible for the vehicle registration.
 257 The dealer must maintain the necessary documentation required in
 258 this subsection or face penalties as provided in s. 320.27. This
 259 subsection does not affect the issuance of a title to a motor
 260 vehicle.

261 (a) The motor vehicle owner or coowner may dispute the
 262 claim that money is owed to a dealer for registration fees by
 263 submitting a form to the department if the motor vehicle owner
 264 or coowner has documentary proof that the registration fees have
 265 been paid to the dealer for the disputed amount. Without clear
 266 evidence of the amounts owed for the vehicle registration and
 267 repayment, the department will assume initial payments are
 268 applied to government-assessed fees first.

269 (b) If the registered owner's dispute complies with
 270 paragraph (a), the department shall immediately remove the motor
 271 vehicle owner or coowner's name from the list, thereby allowing
 272 the issuance of a license plate or revalidation sticker.

273 Section 6. Subsections (4), (5), and (6) and paragraph (a)
 274 of subsection (9) of section 320.27, Florida Statutes, are
 275 amended to read:

276 320.27 Motor vehicle dealers.—

277 (4) LICENSE CERTIFICATE.—

278 (a) A license certificate shall be issued by the
 279 department in accordance with such application when the
 280 application is regular in form and in compliance with the

281 provisions of this section. The license certificate may be in
 282 the form of a document or a computerized card as determined by
 283 the department. The actual cost of each original, additional, or
 284 replacement computerized card shall be borne by the licensee and
 285 is in addition to the fee for licensure. Such license, when so
 286 issued, entitles the licensee to carry on and conduct the
 287 business of a motor vehicle dealer. Each license issued to a
 288 franchise motor vehicle dealer expires annually on December 31
 289 unless revoked or suspended prior to that date. Each license
 290 issued to an independent or wholesale dealer or auction expires
 291 annually on April 30 unless revoked or suspended prior to that
 292 date. Not less than 60 days prior to the license expiration
 293 date, the department shall deliver or mail to each licensee the
 294 necessary renewal forms. Each independent dealer shall certify
 295 that the dealer (owner, partner, officer, or director of the
 296 licensee, or a full-time employee of the licensee that holds a
 297 responsible management-level position) has completed 8 hours of
 298 continuing education prior to filing the renewal forms with the
 299 department. Such certification shall be filed once every 2 years
 300 ~~commencing with the 2006 renewal period.~~ The continuing
 301 education shall include at least 2 hours of legal or legislative
 302 issues, 1 hour of department issues, and 5 hours of relevant
 303 motor vehicle industry topics. Continuing education shall be
 304 provided by dealer schools licensed under paragraph (b) either
 305 in a classroom setting or by correspondence. Such schools shall
 306 provide certificates of completion to the department and the
 307 customer which shall be filed with the license renewal form, and
 308 such schools may charge a fee for providing continuing

309 education. Any licensee who does not file his or her application
 310 and fees and any other requisite documents, as required by law,
 311 with the department at least 30 days prior to the license
 312 expiration date shall cease to engage in business as a motor
 313 vehicle dealer on the license expiration date. A renewal filed
 314 with the department within 45 days after the expiration date
 315 shall be accompanied by a delinquent fee of \$100. Thereafter, a
 316 new application is required, accompanied by the initial license
 317 fee. A license certificate duly issued by the department may be
 318 modified by endorsement to show a change in the name of the
 319 licensee, provided, as shown by affidavit of the licensee, the
 320 majority ownership interest of the licensee has not changed or
 321 the name of the person appearing as franchisee on the sales and
 322 service agreement has not changed. Modification of a license
 323 certificate to show any name change as herein provided shall not
 324 require initial licensure or reissuance of dealer tags; however,
 325 any dealer obtaining a name change shall transact all business
 326 in and be properly identified by that name. All documents
 327 relative to licensure shall reflect the new name. In the case of
 328 a franchise dealer, the name change shall be approved by the
 329 manufacturer, distributor, or importer. A licensee applying for
 330 a name change endorsement shall pay a fee of \$25 which fee shall
 331 apply to the change in the name of a main location and all
 332 additional locations licensed under the provisions of subsection
 333 (5). Each initial license application received by the department
 334 shall be accompanied by verification that, within the preceding
 335 6 months, the applicant, or one or more of his or her designated
 336 employees, has attended a training and information seminar

337 | conducted by a licensed motor vehicle dealer training school.
 338 | Any applicant for a new franchised motor vehicle dealer license
 339 | who has held a valid franchised motor vehicle dealer license
 340 | continuously for the past 2 years and who remains in good
 341 | standing with the department is exempt from the prelicensing
 342 | training requirement. Such seminar shall include, but is not
 343 | limited to, statutory dealer requirements, which requirements
 344 | include required bookkeeping and recordkeeping procedures,
 345 | requirements for the collection of sales and use taxes, and such
 346 | other information that in the opinion of the department will
 347 | promote good business practices. No seminar may exceed 8 hours
 348 | in length.

349 | (b) Each initial license application received by the
 350 | department for licensure under subparagraph (1)(c)2. shall ~~must~~
 351 | be accompanied by verification that, within the preceding 6
 352 | months, the applicant (owner, partner, officer, or director of
 353 | the applicant, or a full-time employee of the applicant that
 354 | holds a responsible management-level position) has successfully
 355 | completed training conducted by a licensed motor vehicle dealer
 356 | training school. Such training must include training in titling
 357 | and registration of motor vehicles, laws relating to unfair and
 358 | deceptive trade practices, laws relating to financing with
 359 | regard to buy-here, pay-here operations, and such other
 360 | information that in the opinion of the department will promote
 361 | good business practices. Successful completion of this training
 362 | shall be determined by examination administered at the end of
 363 | the course and attendance of no less than 90 percent of the
 364 | total hours required by such school. Any applicant who had held

365 | a valid motor vehicle dealer's license continuously within the
 366 | past 2 years and who remains in good standing with the
 367 | department is exempt from the prelicensing requirements of this
 368 | section ~~paragraph~~. The department shall have the authority to
 369 | adopt any rule necessary for establishing the training
 370 | curriculum; length of training, which shall not exceed 8 hours
 371 | for required department topics and shall not exceed an
 372 | additional 24 hours for topics related to other regulatory
 373 | agencies' instructor qualifications; and any other requirements
 374 | under this section. The curriculum for other subjects shall be
 375 | approved by any and all other regulatory agencies having
 376 | jurisdiction over specific subject matters; however, the overall
 377 | administration of the licensing of these dealer schools and
 378 | their instructors shall remain with the department. Such schools
 379 | are authorized to charge a fee. ~~This privatized method for~~
 380 | ~~training applicants for dealer licensing pursuant to~~
 381 | ~~subparagraph (1)(c)2. is a pilot program that shall be evaluated~~
 382 | ~~by the department after it has been in operation for a period of~~
 383 | ~~2 years.~~

384 | (5) SUPPLEMENTAL LICENSE.—Any person licensed hereunder
 385 | shall obtain a supplemental license for each permanent
 386 | additional place or places of business not contiguous to the
 387 | premises for which the original license is issued, on a form to
 388 | be furnished by the department, and upon payment of a fee of \$50
 389 | for each such additional location. Upon making renewal
 390 | applications for such supplemental licenses, such applicant
 391 | shall pay \$50 for each additional location. A supplemental
 392 | license authorizing off-premises sales shall be issued, at no

393 charge to the dealer, for a period not to exceed 10 consecutive
 394 calendar days at the authorized location; however, an off-
 395 premises sale supplemental license under this subsection shall
 396 not be issued more often than once in any calendar month. To
 397 obtain such a temporary supplemental license for off-premises
 398 sales, the applicant must be a licensed dealer; must notify the
 399 applicable local department office of the specific dates and
 400 location for which such license is requested, display a sign at
 401 the licensed location clearly identifying the dealer, and
 402 provide staff to work at the temporary location for the duration
 403 of the off-premises sale; must meet any local government
 404 permitting requirements; and must have permission of the
 405 property owner to sell at that location. In the case of an off-
 406 premises sale by a motor vehicle dealer licensed under
 407 subparagraph (1)(c)1. for the sale of new motor vehicles, the
 408 applicant must also include documentation notifying the
 409 applicable licensee licensed under s. 320.61 of the intent to
 410 engage in an off-premises sale 5 working days prior to the date
 411 of the off-premises sale. The licensee shall either approve or
 412 disapprove of the off-premises sale within 2 working days after
 413 receiving notice; otherwise, it will be deemed approved. This
 414 section does not apply to a nonselling motor vehicle show or
 415 public display of new motor vehicles.

416 (6) RECORDS TO BE KEPT BY LICENSEE.—Every licensee shall
 417 keep a book or record in either paper or electronic ~~such~~ form as
 418 ~~shall be~~ prescribed or approved by the department for a period
 419 of 5 years, in which the licensee shall keep a record of the
 420 purchase, sale, or exchange, or receipt for the purpose of sale,

421 of any motor vehicle, the date upon which any temporary tag was
 422 issued, the date of title transfer, and a description of such
 423 motor vehicle together with the name and address of the seller,
 424 the purchaser, and the alleged owner or other person from whom
 425 such motor vehicle was purchased or received or to whom it was
 426 sold or delivered, as the case may be. Such description shall
 427 include the identification or engine number, maker's number, if
 428 any, chassis number, if any, and such other numbers or
 429 identification marks as may be thereon and shall also include a
 430 statement that a number has been obliterated, defaced, or
 431 changed, if such is the fact. When a licensee chooses to
 432 maintain electronic records, the original paper documents may be
 433 destroyed after the licensee successfully transfers title and
 434 registration to the purchaser as required by chapter 319 for any
 435 purchaser who titles and registers the motor vehicle in this
 436 state. In the case of a sale to a purchaser who will title and
 437 register the motor vehicle in another state or country, the
 438 licensee may destroy the original paper documents after
 439 successfully delivering a lawfully reassigned title or
 440 manufacturer's certificate or statement of origin to the
 441 purchaser and after producing electronic images of all documents
 442 related to the sale.

443 (9) DENIAL, SUSPENSION, OR REVOCATION.—

444 (a) The department may deny, suspend, or revoke any
 445 license issued hereunder or under the provisions of s. 320.77 or
 446 s. 320.771, upon proof that an applicant or a licensee has
 447 ~~committed any of the following activities:~~

- 448 1. Committed ~~Commission of~~ fraud or willful

449 misrepresentation in application for or in obtaining a license.

450 2. Been convicted ~~Conviction~~ of a felony.

451 3. Failed ~~Failure~~ to honor a bank draft or check given to
 452 a motor vehicle dealer for the purchase of a motor vehicle by
 453 another motor vehicle dealer within 10 days after notification
 454 that the bank draft or check has been dishonored. If the
 455 transaction is disputed, the maker of the bank draft or check
 456 shall post a bond in accordance with the provisions of s.
 457 559.917, and no proceeding for revocation or suspension shall be
 458 commenced until the dispute is resolved.

459 4.a. Failed to provide payment within 10 business days to
 460 the department for a check payable to the department that was
 461 dishonored due to insufficient funds in the amount due plus any
 462 statutorily authorized fee for uttering a worthless check. The
 463 department shall notify an applicant or licensee when the
 464 applicant or licensee makes payment to the department by a check
 465 that is subsequently dishonored by the bank due to insufficient
 466 funds. The applicant or licensee shall, within 10 business days
 467 after receiving the notice, provide payment to the department in
 468 the form of cash in the amount due plus any statutorily
 469 authorized fee. If the applicant or licensee fails to make such
 470 payment within 10 business days, the department may deny,
 471 suspend, or revoke the applicant's or licensee's motor vehicle
 472 dealer license.

473 b. Stopped payment on a check payable to the department,
 474 issued a check payable to the department from an account that
 475 has been closed, or charged back a credit card transaction to
 476 the department. If an applicant or licensee commits any such

HB 631

2010

477 act, the department may deny, suspend, or revoke the applicant's
 478 or licensee's motor vehicle dealer license.

479 5.a. Failed to provide payment in the amount of tuition
 480 due plus any statutorily authorized fee within 10 business days
 481 to a licensed motor vehicle dealer training school for a check
 482 payable to the school that was dishonored due to insufficient
 483 funds in the amount of tuition due plus any statutorily
 484 authorized fee for uttering a worthless check. A licensed motor
 485 vehicle dealer training school shall notify a student when the
 486 student makes payment to the school by a check that is
 487 subsequently dishonored by the bank due to insufficient funds.
 488 The student shall, within 10 business days after receiving the
 489 notice, provide payment to the school in a manner designated by
 490 the school in the amount of tuition due plus any statutorily
 491 authorized fee. If the student fails to make such payment within
 492 10 business days, the motor vehicle dealer training school may
 493 cancel the training certificate issued to the student and notify
 494 the department of the cancellation of the training certificate.

495 b. Stopped payment on a check payable to a licensed motor
 496 vehicle dealer training school, issued a check payable to a
 497 licensed motor vehicle dealer training school from an account
 498 that has been closed, or charged back a credit card transaction
 499 to a licensed motor vehicle dealer training school. If a student
 500 commits any such act, the motor vehicle dealer training school
 501 may cancel the training certificate issued to the student and
 502 notify the department of the cancellation of the training
 503 certificate.

504 Section 7. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 795 Penalties for Violation of Traffic Laws

SPONSOR(S): Jones and others

TIED BILLS: IDEN./SIM. BILLS: SB 1604

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee		Brown <i>RLB</i>	Miller <i>P.M.</i>
2)	Full Appropriations Council on Education & Economic Development			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

HB 795 creates a new "payment plan" system allowing non-criminal traffic fines to be paid in installments. The bill allows clerks of court to implement these plans, and requires clerks to amend such plans based on the offender's ability to pay. The bill also provides that when a court withholds adjudication on any offender's violation of Ch. 322, Florida Statutes, such withholding shall not be considered a "conviction."

The economic impact of HB 795 is indeterminate, as additional revenue could be generated by an increase in payments from traffic offenders, but the number of offenders willing or able to comply with the provisions of the bill cannot be readily ascertained.

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 318.14, F.S., permits traffic offenders to timely pay traffic fines by mail or in person. In doing so, the offender is deemed to have committed the infraction and waives his or her right to a hearing.

Section 28.246, F.S., authorizes clerks of court to implement payment plans for offenders deemed "indigent for costs."

Section 318.14, F.S., does not expressly permit traffic offenders to use the payment plan mechanism authorized in s. 28.246, F.S., and there appears to be an inconsistency between county traffic courts as to whether the payment plan mechanism is available for non-criminal traffic fines owed pursuant to s. 318.14, F.S.

Section 318.15, F.S., currently provides that if a traffic offender fails to timely pay a traffic fine, fails to appear at a subsequent hearing, or fails to attend a driver improvement school when required, the person shall have his or her driver's license administratively suspended by DHSMV.¹ After being suspended under this section, the offender must comply with all traffic-related obligations and penalties imposed before re-applying to the court for license re-instatement.

Section 322.245(5), F.S., provides requirements nearly identical to s. 318.15, F.S., regarding license suspension for failure to pay any previous fines outstanding by an offender for non-criminal traffic violations.

According to DHSMV, these license suspensions create a 'snowball' effect for repeat offenders unable to fully-pay a non-criminal traffic fine. A driver who is unable to pay (in full) a traffic fine, but needs to operate his or her vehicle in order to remain employed, may be subsequently cited for driving with a suspended license, thereby incurring an additional fine.

If a third violation occurs, the offender has his or her license administratively suspended for 5 years, pursuant to s. 322.264(1)(d), F.S. This statute determines that anyone driving on a suspended license three or more times in a 5-year period is a "habitual traffic offender," and is automatically subject to a 5 year license suspension.

¹ Section 318.15, F.S., provides that the clerk of court must notify DHSMV of the failure within 10 days, and DHSMV must suspend the license on the 20th day following the order to suspend.

Because convictions are dated from the date the citation is *paid*, drivers who are unable to make full payment for a non-criminal traffic citation face an open-ended period of time, not an actual 5-year period, during which they run the risk of receiving additional citations and being labeled a habitual traffic offender. DHSMV states that “[t]his process continues to put these drivers further behind and they are unable to ‘dig out’ from under the mountain of debt that arises.”²

A traffic court may withhold adjudication on a traffic offense of driving with a suspended license (s. 322.34, F.S.), but pursuant to the Supreme Court’s opinion in Raulerson v. State, 763 So.2d 285 (Fla. 2000), a withhold of adjudication is considered a conviction for purposes of the habitual traffic offender statute in Chapter 322, Florida Statutes.³

As mentioned above, s. 28.246, F.S., authorizes clerks to implement payment plans for offenders deemed “indigent for costs.” Under this statute a monthly payment amount, based on all fees and costs, is presumed to correspond to the person’s ability to pay if the amount does not exceed 2 percent of the person’s annual net income, divided by 12. The court is authorized to review the reasonableness of any such plan. To offset the costs of the payment plan, clerks are authorized to impose per-month or one-time “administrative processing service charges.”

If a person fails to make payments as required by s. 28.246, F.S., the clerk of courts is authorized to pursue the collection, including attorney’s fees and costs, by referring the account to any member of the Florida Bar or a collection agent registered in good standing pursuant to Chapter 559, Florida Statutes. These attorneys and collection agencies are entitled to collect up to an additional 40 percent of the amount owed at the time the account was referred.

Proposed Changes

HB 795 creates a new subsection (14) in s. 318.14, F.S., requiring the clerks to establish a “system for accepting periodic payments,” and provides that the plans should provide for adjustment of payments without penalty, “due to changes in the ability of the payer.” The bill also amends s. 318.15, F.S., to add an offender’s failure to enter into or make timely payments on a payment plan to the existing list of actions which result in DHSMV suspending the offender’s license. Payments are deemed untimely if the clerk has not received a payment in the preceding 8 weeks.

The bill amends s. 322.01, F.S., providing that, with regard to driver’s license offenses, a judicial determination to withhold adjudication for violations is not a “conviction,” unless a given prohibition in Ch 322, Florida Statutes, expressly states that withholding adjudication is a conviction, for purposes of that prohibition.

B. SECTION DIRECTORY:

Section 1 Amends s. 318.14, F.S.; providing for a person charged with a noncriminal traffic infraction to make periodic payments to pay civil penalties and fees; directing the clerks of court to establish a system to accept such periodic payments; requiring the system to provide for adjustment of payments under certain circumstances; providing that the designated official hearing the case of a traffic law violation may withhold adjudication and that such action is not a conviction.

Section 2 Amends s. 318.15, F.S.; providing for suspension of a driver's license for failure to enter into or make payments under a penalty payment plan; providing for reinstatement of the suspended license.

² *Department of Highway Safety and Motor Vehicles Bill Analysis, HB 971*, on file with the Roads, Bridges, and Ports Policy Committee.

³ The Raulerson court noted that pursuant to s. 318.14(11), F.S., withholding adjudication for violations of s. 318.14, F.S., “shall not constitute convictions.”

Section 3 Amends s. 322.01, F.S.; providing that a judicial determination to withhold adjudication for a violation of specified provisions for driver licenses and identification cards is not a conviction.

Section 4 Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments, below.

2. Expenditures:

See Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments, below.

2. Expenditures:

See Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

While not necessarily a measurable or "direct" impact, if the ultimate result of the bill is a decrease in the number of drivers who operate motor vehicles on a suspended license (and by definition, also without insurance), the public at large may see a positive economic impact.

D. FISCAL COMMENTS:

The bill could potentially result in additional revenue collected by state and local governments from traffic offenders considered "indigent" who would be willing to pay fines on a periodic basis, where they currently fail to pay at all. The number of drivers in this category cannot be readily ascertained.

In the event that a large number of traffic offenders choose to pay fines via a payment plan, the clerks of court may see an additional workload. However, the requirement of s. 28.246, F.S., that the court find offenders "indigent" may limit the number of offenders permitted to pay via payment plan.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates a new subsection (14), in s. 318.14, F.S., requiring the clerks to establish a “system for accepting periodic payments,” and provides that the plans should provide for adjustment of payments without penalty, “due to changes in the ability of the payor.” In light of the existing payment plans created by the clerks pursuant to s. 28.246, F.S., it may be advisable to amend the bill to reference the existing statutory system rather than create a second system with less legislative guidance.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to penalties for violation of traffic
 3 laws; amending s. 318.14, F.S.; providing for a person
 4 charged with a noncriminal traffic infraction to make
 5 periodic payments to pay civil penalties and fees;
 6 directing the clerks of court to establish a system to
 7 accept such periodic payments; requiring the system to
 8 provide for adjustment of payments under certain
 9 circumstances; providing that the designated official
 10 hearing the case of a traffic law violation may withhold
 11 adjudication and that such action is not a conviction;
 12 amending s. 318.15, F.S.; providing for suspension of a
 13 driver's license for failure to enter into or make
 14 payments under a penalty payment plan; providing for
 15 reinstatement of the suspended license; amending s.
 16 322.01, F.S.; providing that a judicial determination to
 17 withhold adjudication for a violation of specified
 18 provisions for driver licenses and identification cards is
 19 not a conviction; providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Section 318.14, Florida Statutes, is amended to
 24 read:

25 318.14 Noncriminal traffic infractions; exception;
 26 procedures.—

27 (1) Except as provided in ss. 318.17 and 320.07(3)(c), any
 28 person cited for a violation of chapter 316, s. 320.0605, s.

29 | 320.07(3)(a) or (b), s. 322.065, s. 322.15(1), s. 322.16(2) or
 30 | (3), s. 322.161(5), s. 322.19, or s. 1006.66(3) is charged with
 31 | a noncriminal infraction and must be cited for such an
 32 | infraction and cited to appear before an official. If another
 33 | person dies as a result of the noncriminal infraction, the
 34 | person cited may be required to perform 120 community service
 35 | hours under s. 316.027(4), in addition to any other penalties.

36 | (2) Except as provided in s. 316.1001(2), any person cited
 37 | for an infraction under this section must sign and accept a
 38 | citation indicating a promise to appear. The officer may
 39 | indicate on the traffic citation the time and location of the
 40 | scheduled hearing and must indicate the applicable civil penalty
 41 | established in s. 318.18.

42 | (3) Any person who willfully refuses to accept and sign a
 43 | summons is guilty of a misdemeanor of the second degree.

44 | (4) (a) Except as provided in subsection (12), any person
 45 | charged with a noncriminal infraction under this section who
 46 | does not elect to appear shall, within 30 days after the date of
 47 | issuance of the citation:

- 48 | 1. Pay the civil penalty and delinquent fee, if
- 49 | applicable, either by mail or in person; or
- 50 | 2. Enter into a payment plan with the clerk of the court
- 51 | to pay the civil penalty and delinquent fee, if applicable,
- 52 | ~~within 30 days after the date of issuance of the citation.~~

53 | (b) If the person cited follows the procedures in
 54 | paragraph (a) above procedure, he or she shall be deemed to have
 55 | admitted the infraction and to have waived his or her right to a
 56 | hearing on the issue of commission of the infraction. Such

57 admission shall not be used as evidence in any other
 58 proceedings. Any person who is cited for a violation of s.
 59 320.0605 or s. 322.15(1), or subject to a penalty under s.
 60 320.07(3)(a) or (b) or s. 322.065, and who makes an election
 61 under this subsection shall submit proof of compliance with the
 62 applicable section to the clerk of the court. For the purposes
 63 of this subsection, proof of compliance consists of a valid
 64 driver's license or a valid registration certificate.

65 (5) Any person electing to appear before the designated
 66 official or who is required so to appear shall be deemed to have
 67 waived his or her right to the civil penalty provisions of s.
 68 318.18. The official, after a hearing, shall make a
 69 determination as to whether an infraction has been committed. If
 70 the commission of an infraction has been proven, the official
 71 may impose a civil penalty not to exceed \$500, except that in
 72 cases involving unlawful speed in a school zone or involving
 73 unlawful speed in a construction zone, the civil penalty may not
 74 exceed \$1,000; or require attendance at a driver improvement
 75 school, or both. If the person is required to appear before the
 76 designated official pursuant to s. 318.19(1) and is found to
 77 have committed the infraction, the designated official shall
 78 impose a civil penalty of \$1,000 in addition to any other
 79 penalties and the person's driver's license shall be suspended
 80 for 6 months. If the person is required to appear before the
 81 designated official pursuant to s. 318.19(2) and is found to
 82 have committed the infraction, the designated official shall
 83 impose a civil penalty of \$500 in addition to any other
 84 penalties and the person's driver's license shall be suspended

85 | for 3 months. After a hearing under this subsection, the
 86 | designated official may withhold adjudication and such action is
 87 | not a conviction. If the official determines that no infraction
 88 | has been committed, no costs or penalties shall be imposed and
 89 | any costs or penalties that have been paid shall be returned.
 90 | Moneys received from the mandatory civil penalties imposed
 91 | pursuant to this subsection upon persons required to appear
 92 | before a designated official pursuant to s. 318.19(1) or (2)
 93 | shall be remitted to the Department of Revenue and deposited
 94 | into the Department of Health Administrative Trust Fund to
 95 | provide financial support to certified trauma centers to assure
 96 | the availability and accessibility of trauma services throughout
 97 | the state. Funds deposited into the Administrative Trust Fund
 98 | under this section shall be allocated as follows:

99 | (a) Fifty percent shall be allocated equally among all
 100 | Level I, Level II, and pediatric trauma centers in recognition
 101 | of readiness costs for maintaining trauma services.

102 | (b) Fifty percent shall be allocated among Level I, Level
 103 | II, and pediatric trauma centers based on each center's relative
 104 | volume of trauma cases as reported in the Department of Health
 105 | Trauma Registry.

106 | (6) The commission of a charged infraction at a hearing
 107 | under this chapter must be proved beyond a reasonable doubt.

108 | (7)(a) The official having jurisdiction over the
 109 | infraction shall certify to the department within 10 days after
 110 | payment of the civil penalty that the defendant has admitted to
 111 | the infraction. If the charge results in a hearing, the official
 112 | having jurisdiction shall certify to the department the final

113 disposition within 10 days after the hearing. All dispositions
 114 returned to the county requiring a correction shall be
 115 resubmitted to the department within 10 days after the
 116 notification of the error.

117 (b) If the official having jurisdiction over the traffic
 118 infraction submits the final disposition to the department more
 119 than 180 days after the final hearing or after payment of the
 120 civil penalty, the department may modify any resulting
 121 suspension or revocation action to begin as if the citation were
 122 reported in a timely manner.

123 (8) When a report of a determination or admission of an
 124 infraction is received by the department, it shall proceed to
 125 enter the proper number of points on the licensee's driving
 126 record in accordance with s. 322.27.

127 (9) Any person who does not hold a commercial driver's
 128 license and who is cited for an infraction under this section
 129 other than a violation of s. 316.183(2), s. 316.187, or s.
 130 316.189 when the driver exceeds the posted limit by 30 miles per
 131 hour or more, s. 320.0605, s. 320.07(3)(a) or (b), s. 322.065,
 132 s. 322.15(1), s. 322.61, or s. 322.62 may, in lieu of a court
 133 appearance, elect to attend in the location of his or her choice
 134 within this state a basic driver improvement course approved by
 135 the Department of Highway Safety and Motor Vehicles. In such a
 136 case, adjudication must be withheld and points, as provided by
 137 s. 322.27, may not be assessed. However, a person may not make
 138 an election under this subsection if the person has made an
 139 election under this subsection in the preceding 12 months. A
 140 person may make no more than five elections within 10 years

141 | under this subsection. The requirement for community service
 142 | under s. 318.18(8) is not waived by a plea of nolo contendere or
 143 | by the withholding of adjudication of guilt by a court. If a
 144 | person makes an election to attend a basic driver improvement
 145 | course under this subsection, 18 percent of the civil penalty
 146 | imposed under s. 318.18(3) shall be deposited in the State
 147 | Courts Revenue Trust Fund; however, that portion is not revenue
 148 | for purposes of s. 28.36 and may not be used in establishing the
 149 | budget of the clerk of the court under that section or s. 28.35.

150 | (10)(a) Any person who does not hold a commercial driver's
 151 | license and who is cited for an offense listed under this
 152 | subsection may, in lieu of payment of fine or court appearance,
 153 | elect to enter a plea of nolo contendere and provide proof of
 154 | compliance to the clerk of the court or authorized operator of a
 155 | traffic violations bureau. In such case, adjudication shall be
 156 | withheld; however, no election shall be made under this
 157 | subsection if such person has made an election under this
 158 | subsection in the 12 months preceding election hereunder. No
 159 | person may make more than three elections under this subsection.
 160 | This subsection applies to the following offenses:

161 | 1. Operating a motor vehicle without a valid driver's
 162 | license in violation of the provisions of s. 322.03, s. 322.065,
 163 | or s. 322.15(1), or operating a motor vehicle with a license
 164 | which has been suspended for failure to appear, failure to pay
 165 | civil penalty, or failure to attend a driver improvement course
 166 | pursuant to s. 322.291.

167 | 2. Operating a motor vehicle without a valid registration
 168 | in violation of s. 320.0605, s. 320.07, or s. 320.131.

169 3. Operating a motor vehicle in violation of s. 316.646.
 170 (b) Any person cited for an offense listed in this
 171 subsection shall present proof of compliance prior to the
 172 scheduled court appearance date. For the purposes of this
 173 subsection, proof of compliance shall consist of a valid,
 174 renewed, or reinstated driver's license or registration
 175 certificate and proper proof of maintenance of security as
 176 required by s. 316.646. Notwithstanding waiver of fine, any
 177 person establishing proof of compliance shall be assessed court
 178 costs of \$25, except that a person charged with violation of s.
 179 316.646(1)-(3) may be assessed court costs of \$8. One dollar of
 180 such costs shall be remitted to the Department of Revenue for
 181 deposit into the Child Welfare Training Trust Fund of the
 182 Department of Children and Family Services. One dollar of such
 183 costs shall be distributed to the Department of Juvenile Justice
 184 for deposit into the Juvenile Justice Training Trust Fund.
 185 Fourteen dollars of such costs shall be distributed to the
 186 municipality and \$9 shall be deposited by the clerk of the court
 187 into the fine and forfeiture fund established pursuant to s.
 188 142.01, if the offense was committed within the municipality. If
 189 the offense was committed in an unincorporated area of a county
 190 or if the citation was for a violation of s. 316.646(1)-(3), the
 191 entire amount shall be deposited by the clerk of the court into
 192 the fine and forfeiture fund established pursuant to s. 142.01,
 193 except for the moneys to be deposited into the Child Welfare
 194 Training Trust Fund and the Juvenile Justice Training Trust
 195 Fund. This subsection shall not be construed to authorize the
 196 operation of a vehicle without a valid driver's license, without

197 | a valid vehicle tag and registration, or without the maintenance
 198 | of required security.

199 | (11) If adjudication is withheld for any person charged or
 200 | cited under this section, such action is not a conviction.

201 | (12) Any person cited for a violation of s. 316.1001 may,
 202 | in lieu of making an election as set forth in subsection (4) or
 203 | s. 318.18(7), elect to pay a fine of \$25, or such other amount
 204 | as imposed by the governmental entity owning the applicable toll
 205 | facility, plus the amount of the unpaid toll that is shown on
 206 | the traffic citation directly to the governmental entity that
 207 | issued the citation, or on whose behalf the citation was issued,
 208 | within 30 days after the date of issuance of the citation. Any
 209 | person cited for a violation of s. 316.1001 who does not elect
 210 | to pay the fine imposed by the governmental entity owning the
 211 | applicable toll facility plus the amount of the unpaid toll that
 212 | is shown on the traffic citation directly to the governmental
 213 | entity that issued the citation, or on whose behalf the citation
 214 | was issued, as described in this subsection shall have an
 215 | additional 45 days after the date of the issuance of the
 216 | citation in which to request a court hearing or to pay the civil
 217 | penalty and delinquent fee, if applicable, as provided in s.
 218 | 318.18(7), either by mail or in person, in accordance with
 219 | subsection (4).

220 | (13)(a) A person cited for a violation of s. 316.1926
 221 | shall, in addition to any other requirements provided in this
 222 | section, pay a fine of \$1,000. This fine is in lieu of the fine
 223 | required under s. 318.18(3)(b), if the person was cited for
 224 | violation of s. 316.1926(2).

225 (b) A person cited for a second violation of s. 316.1926
 226 shall, in addition to any other requirements provided in this
 227 section, pay a fine of \$2,500. This fine is in lieu of the fine
 228 required under s. 318.18(3)(b), if the person was cited for
 229 violation of s. 316.1926(2). In addition, the court shall revoke
 230 the person's authorization and privilege to operate a motor
 231 vehicle for a period of 1 year and order the person to surrender
 232 his or her driver's license.

233 (c) A person cited for a third violation of s. 316.1926
 234 commits a felony of the third degree, punishable as provided in
 235 s. 775.082, s. 775.083, or s. 775.084. Upon conviction, the
 236 court shall impose a fine of \$5,000, revoke the person's
 237 authorization and privilege to operate a motor vehicle for a
 238 period of 10 years, and order the person to surrender his or her
 239 driver's license.

240 (14) The clerks of the court shall establish a system for
 241 accepting periodic payments of civil penalties and applicable
 242 fees and charges associated with the disposition of traffic
 243 infraction citations. The payment plan shall provide for the
 244 adjustment of payments, without penalty, due to changes in the
 245 ability of the payor to make the payments.

246 Section 2. Section 318.15, Florida Statutes, is amended to
 247 read:

248 318.15 Failure to comply with civil penalty or to appear;
 249 penalty.—

250 (1)(a) If a person fails to comply with the civil
 251 penalties provided in s. 318.18 within the time period specified
 252 in s. 318.14(4), fails to enter into a penalty payment plan with

253 the clerk of the court or fails to make payments for 8
 254 consecutive weeks under that plan, fails to attend driver
 255 improvement school, or fails to appear at a scheduled hearing,
 256 the clerk of the court shall notify the Division of Driver
 257 Licenses of the Department of Highway Safety and Motor Vehicles
 258 of such failure within 10 days after such failure. Upon receipt
 259 of such notice, the department shall immediately issue an order
 260 suspending the driver's license and privilege to drive of such
 261 person effective 20 days after the date the order of suspension
 262 is mailed in accordance with s. 322.251(1), (2), and (6). Any
 263 such suspension of the driving privilege which has not been
 264 reinstated, including a similar suspension imposed outside
 265 Florida, shall remain on the records of the department for a
 266 period of 7 years from the date imposed and shall be removed
 267 from the records after the expiration of 7 years from the date
 268 it is imposed.

269 (b) However, a person who elects to attend driver
 270 improvement school and has paid the civil penalty as provided in
 271 s. 318.14(9), but who subsequently fails to attend the driver
 272 improvement school within the time specified by the court shall
 273 be deemed to have admitted the infraction and shall be
 274 adjudicated guilty. In such a case in which there was an 18-
 275 percent reduction pursuant to s. 318.14(9) as it existed before
 276 February 1, 2009, the person must pay the clerk of the court
 277 that amount and a processing fee of up to \$18, after which no
 278 additional penalties, court costs, or surcharges shall be
 279 imposed for the violation. In all other such cases, the person
 280 must pay the clerk a processing fee of up to \$18, after which no

281 additional penalties, court costs, or surcharges shall be
 282 imposed for the violation. The clerk of the court shall notify
 283 the department of the person's failure to attend driver
 284 improvement school and points shall be assessed pursuant to s.
 285 322.27.

286 (2) After the suspension of a person's driver's license
 287 and privilege to drive under subsection (1), the license and
 288 privilege may not be reinstated until the person complies with
 289 the terms of a periodic payment plan or a revised payment plan
 290 with the clerk of the court pursuant to s. 318.14 or with all
 291 obligations and penalties imposed under s. 318.18 and presents
 292 to a driver license office a certificate of compliance issued by
 293 the court, together with a nonrefundable service charge of \$60
 294 imposed under s. 322.29, or presents a certificate of compliance
 295 and pays the service charge to the clerk of the court or a
 296 driver licensing agent authorized under s. 322.135 clearing such
 297 suspension. Of the charge collected, \$22.50 shall be remitted to
 298 the Department of Revenue to be deposited into the Highway
 299 Safety Operating Trust Fund. Such person must also be in
 300 compliance with requirements of chapter 322 before
 301 reinstatement.

302 Section 3. Subsection (11) of section 322.01, Florida
 303 Statutes, is amended to read:

304 322.01 Definitions.—As used in this chapter:

305 (11)(a) "Conviction" means a conviction of an offense
 306 relating to the operation of motor vehicles on highways which is
 307 a violation of this chapter or any other such law of this state
 308 or any other state, including an admission or determination of a

HB 795

2010

309 noncriminal traffic infraction pursuant to s. 318.14, or a
 310 judicial disposition of an offense committed under any federal
 311 law substantially conforming to the aforesaid state statutory
 312 provisions.

313 (b) Notwithstanding any other provisions of this chapter,
 314 the definition of "conviction" provided in 49 C.F.R. part 383.5
 315 applies to offenses committed in a commercial motor vehicle or
 316 by a person holding a commercial driver's license.

317 (c) Except as otherwise specifically provided in this
 318 chapter, a judicial determination to withhold adjudication for a
 319 violation under this chapter is not a conviction.

320 Section 4. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 875

Traffic Offenses

SPONSOR(S): Evers

TIED BILLS:

IDEN./SIM. BILLS: SB 1918

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee		Brown <i>RB</i>	Miller <i>P.M.</i>
2)	Public Safety & Domestic Security Policy Committee			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Currently, any person who commits a noncriminal moving violation that causes the death or serious bodily injury of another must appear in front of the court to dispose of the infraction. For a civil traffic infraction, the court may order a person to attend driver improvement school and to complete up to 120 hours of community service.

HB 875 criminalizes moving violations that result in serious bodily injury or death of any person riding in or on a motor vehicle or motorcycle.

A person who commits a moving violation that results in the serious bodily injury of a person riding in or on a motor vehicle or motorcycle is guilty of a second degree misdemeanor. In such cases, the bill requires the offender to pay a minimum of \$500, serve a minimum of 30 days in jail, attend a driver improvement course, and have his or her driver's license suspended for a minimum of 30 days.

A person who commits a moving violation that results in the death of a person riding in or on a motor vehicle or motorcycle is guilty of a first degree misdemeanor. The bill requires these offenders to pay a minimum of \$1,000, serve a minimum of 90 days in jail, attend an advanced driver improvement course, and have his or her driver's license suspended for a minimum of 1 year.

The Department of Corrections has not yet reviewed the bill's impact on the Florida prison population.

The bill has an effective date of October 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Moving Violations, Generally

Under Chapters 316 and 318, all moving violations are considered non-criminal infractions and are generally punishable by a fine as provided by s. 318.18, F.S. Moving violations include such offenses as speeding, failure to stop at a stop sign or traffic control device, and improper lane change.¹ This section provides a baseline fine of \$60 for all moving violations,² although county-by-county fees and surcharges raise the total amount paid. The section also provides tiered fines from \$25 to \$250 for moving violations involving excessive speed.³

Moving violations also typically result in points assessed against an operator's driver's license pursuant to s. 322.27(3)(d), F.S.

Penalties for Causing Death or Injury

Non-Criminal Violations

A mandatory hearing before the court is required for any infraction or criminal violation of Chapter 316 that causes serious bodily injury or death.⁴ Any person committing a traffic infraction causing death may be directed by a judge to perform 120 community service hours in a trauma center, pursuant to s. 316.027(4), F.S.⁵

¹ See generally Ch. 316, F.S.

² Sec. 318.18(3)(a), F.S.

³ Sec. 318.18(3)(b), F.S.

⁴ Sec. 318.19(1)-(2), F.S.

⁵ The permissive 120 hours of community service are referenced twice in Chapter 318:

318.14(1), F.S.: "If another person dies as a result of the noncriminal infraction, the person cited may be required to perform 120 community service hours under s. 316.027(4), in addition to any other penalties."

318.18(8)(c), F.S.: "If the noncriminal infraction has caused or resulted in the death of another, the person who committed the infraction may perform 120 community service hours under s. 316.027(4), in addition to any other penalties."

For any traffic infraction or criminal offense causing death, injury, or property damage, the Department of Highway Safety and Motor Vehicles (DHSMV) may require re-examination of the offender's ability to drive. DHSMV may subsequently suspend the offender's license.⁶ DHSMV may suspend an offender's license if the person refuses to submit to a re-examination. Refusal to submit to retesting is grounds to suspend the offender's license.⁷ The court may suspend the driver's license for any criminal violation.⁸

Criminal Violations

For any criminal traffic offense causing death or an injury sufficient to require medical transport, the department shall mandate a driver-improvement course (in addition to any other applicable penalties). Failure to attend a driver improvement course results in cancellation of the offender's license until the course is completed.⁹ If the criminal offense is murder, manslaughter, or a second DUI manslaughter conviction, the DHSMV shall revoke the offender's license.¹⁰ License suspension for a manslaughter conviction may not be lifted unless the offender has completed a driver improvement or substance abuse program.¹¹

A person who commits the offense of reckless driving causing injury or death commits a third-degree felony, punishable separately from fines related to reckless driving.¹² If the court reasonably believes alcohol was involved, the court shall order the offender to attend a substance abuse program.¹³

An impaired driver who causes an accident involving injury or death commits a third-degree felony, punishable separately from the potential fine and/or incarceration related to the DUI.¹⁴

A person driving without a valid license who negligently causes an accident involving death or serious bodily injury is guilty of a third-degree felony.¹⁵

Proposed Changes

HB 875 creates a new s. 318.195, F.S., providing for enhanced criminal penalties for certain moving violations.

The bill provides that a person who commits a moving violation that results in the serious bodily injury of a person riding in or on a motor vehicle or motorcycle is guilty of a second degree misdemeanor. In such cases, the bill requires the offender to pay a minimum of \$500, serve a minimum of 30 days in jail, attend a driver improvement course, and have his or her driver's license suspended for a minimum of 30 days.

The bill further provides that a person who commits a moving violation that results in the death of a person riding in or on a motor vehicle or motorcycle is guilty of a first degree misdemeanor. The bill requires these offenders to pay a minimum of \$1,000, serve a minimum of 90 days in jail, attend an advanced driver improvement course, and have his or her driver's license suspended for a minimum of 1 year.

HB 875 expressly provides that the new s. 318.195, F.S., does not prohibit a person from being charged with, convicted of, or punished for any other violation of law.

⁶ Sec. 322.221(2)(a), F.S.

⁷ Sec. 322.221(3), F.S.

⁸ Sec. 316.655(2), F.S.

⁹ Sec. 322.0261(2), F.S.

¹⁰ Sec. 322.26, F.S.(1)(a)-(b), F.S.

¹¹ Sec. 322.291(1)(a)3., F.S.

¹² Sec. 316.192(3)(c)2., F.S.

¹³ Sec. 316.192(5), F.S.

¹⁴ Sec. 316.193(3)(c)2., F.S.

¹⁵ Sec. 322.34(6)(a)-(b), F.S. In a related offense, if a person knowingly loans a vehicle to a person whose license is suspended, and the borrower causes death or injury, the owner's license is suspended for one year (322.36, F.S.).

B. SECTION DIRECTORY:

- Section 1** Creates s. 318.195, F.S., providing criminal penalties for a person who commits a moving violation that causes serious bodily injury to, or causes or contributes to the death of, a person operating or riding in a motor vehicle or operating or riding on a motorcycle; requiring that the person pay a specified fine, serve a minimum period of incarceration, and attend a driver improvement course; requiring the court to revoke the person's driver's license for a specified period; and providing that the enhanced penalties section does not prohibit the person from being charged with, convicted of, or punished for any other violation of law.
- Section 2** Provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See Fiscal Comments, below.
2. Expenditures:
See Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
See Fiscal Comments, below.
2. Expenditures:
See Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have a direct impact on the private sector; however mandatory 30- and 90-day jail sentences for additional traffic violations may impact employers and employees in an indeterminate manner.

D. FISCAL COMMENTS:

The bill may generate an indeterminate amount of revenue from fines for the behaviors criminalized by the bill.

The bill may increase the prison population of Florida, incurring additional costs. The Department of Corrections has not yet reviewed the bill for its impact on the prison population. In addition, local governments may see an increase in jail populations as a result of the bill's mandatory sentences.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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.

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill criminalizes moving violations that result in an injury or death to persons on other motor vehicles, but does not criminalize identical behavior resulting in the injury or death of pedestrians, bicyclists, or persons on other means of conveyance. This lack of uniformity could result in challenges to the validity of the bill.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to traffic offenses; creating s. 318.195,
 3 F.S.; providing criminal penalties for a person who
 4 commits a moving violation that causes serious bodily
 5 injury to, or causes or contributes to the death of, a
 6 person operating or riding in a motor vehicle or operating
 7 or riding on a motorcycle; requiring that the person pay a
 8 specified fine, serve a minimum period of incarceration,
 9 and attend a driver improvement course; requiring the
 10 court to revoke the person's driver's license for a
 11 specified period; providing that the act does not prohibit
 12 the person from being charged with, convicted of, or
 13 punished for any other violation of law; providing an
 14 effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 318.195, Florida Statutes, is created
 19 to read:

20 318.195 Enhanced penalties for moving violations causing
 21 injury or death.-

22 (1) A person who commits a moving violation that causes
 23 serious bodily injury, as defined in s. 316.1933, to a person
 24 operating or riding in a motor vehicle or operating or riding on
 25 a motorcycle commits a misdemeanor of the second degree,
 26 punishable as provided in s. 775.082 or s. 775.083, and, upon
 27 conviction, shall pay a fine of not less than \$500, serve a
 28 minimum of 30 days of incarceration, and attend a driver

29 improvement course. The court shall also revoke the person's
 30 driver's license for not less than 30 days.

31 (2) A person who commits a moving violation that causes or
 32 contributes to the death of a person operating or riding in a
 33 motor vehicle or operating or riding on a motorcycle commits a
 34 misdemeanor of the first degree, punishable as provided in s.
 35 775.082 or s. 775.083, and, upon conviction, shall pay a fine of
 36 not less than \$1,000, serve a minimum of 90 days of
 37 incarceration, and, in lieu of the requirements of s. 322.0261,
 38 attend an advanced driver improvement course. The court shall
 39 also revoke the person's driver's license for not less than 1
 40 year.

41 (3) This section does not prohibit a person from being
 42 charged with, convicted of, or punished for any other violation
 43 of law.

44 Section 2. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS


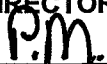
BILL #: HB 1271

Department of Transportation

SPONSOR(S): Horner

TIED BILLS:

IDEN./SIM. BILLS: SB 2686

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee		Johnson 	Miller 
2)	Transportation & Economic Development Appropriations Committee			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The bill addresses several issues related to transportation. Specifically, the bill:

- Codifies the Department of Transportation’s Engineer Training, Senior Engineer Training, and Right-of-Way Training Programs and authorizes the associated incentive pay increases.
- Codifies the \$75 per pay period pay additive for Motor Carrier Compliance Officers who maintain certification by the Commercial Vehicle Safety Alliance.
- Repeals an obsolete legislative review of a seaport loan program.
- Addresses licenses suspensions for toll violators. Specifically:
 - Maintains the current \$100 fine, where no administrative election is made as mandatory once in court, but restores the option to pay \$30, plus the unpaid toll, to the court clerk, plus court costs;
 - Provides that paying the citation prior to the court hearing does not constitute an adjudication and assessment of points against a driver’s license but allows adjudication and the assessment of points only if imposed by the court after a hearing;
 - Deletes the mandatory 60 day drivers license suspension for a person convicted of 10 toll violations within 26 months: and
 - Distinguishes between citations issued by toll enforcement officers and those issued by law enforcement officers, in terms of direction to the clerk as to where to direct the proceeds.
- Repeals the Secure Airports for Florida’s Economy (SAFE) Council.
- Provides for the transfer of the SAFE Council’s funds to DOT.
- Revises the distribution of fees from the “United We Stand” specialty license plate.
- Amends or repeals ss. 334.03, 334.044, and 334.047, F.S., to conform to changes made in 1995 when the system of assigning road jurisdiction was changed from a system based on road functional classification to a system depending on mutual agreement between governmental entities.
- Revises provisions relating to applications for contractor prequalification to clarify when interim financial statements are needed for contractor qualification applications.
- Provides express authority with regard to DOT’s rulemaking related to video billing and the associated post-payment of tolls by toll road users.
- Clarifies that compensation to DOT for the use of the right-of-way only applies to the longitudinal placement of electric utility transmission lines on limited access facilities.
- Repeals a required report relating to the “adopt-a-highway” program.
- Provides a mechanism for public-use airports to dispose of or remove personal property, derelict or abandoned aircraft or abandoned motor vehicles from the airport’s premises.

The bill transfers funds related to the sale and disposal of property abandoned at airports from the state school fund to the individual airport.

The change in toll provisions may result in fewer court cases related to toll violations.

The bill has an effective date of July 1, 2010.

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

STORAGE NAME: h1271.RBP.doc

DATE: 3/15/2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill contains numerous provisions relating to the Department of Transportation (DOT) and other transportation related issues. For ease of understanding, this analysis is organized by topic.

Trainee Programs (Section 1)

Current Situation

DOT administers three separate trainee programs: Engineer Training Program, Senior Engineer Training Program, and the Right of Way Training Program. The combined Engineer and Senior Engineer Training Programs constitute the Professional Engineer Training Program. DOT has used these programs for over 20 years and operates them under adopted internal guidelines. According to DOT, these programs are extremely effective in the recruiting and retaining of highly specialized professional staff.

On July 1, 2006, a law preventing pay additives and general salary increases to a group of positions sharing the same classification or occupation without legislative approval¹ became law and prevented DOT from providing the incremental pay increases associated with these training programs. In order to continue these programs, for Fiscal Years 2007-2008, 2008-2009, and 2009-2010, DOT was granted the authority to continue its training programs and to provide the pay incentive package for trainees in these programs in the General Appropriations Act.

Proposed Change

The bill creates a new s. 20.23(6), F.S., codifying DOT's Engineer Training Program, Senior Engineer Training Program, and Right of Way Training Program. The bill authorizes DOT to maintain the programs for its employees and prospective employees who have graduated from an approved engineering curriculum of four or more years in a school, college, or university approved by the State of Florida Board of Professional Engineers. These programs are to provide broad practical expertise in transportation engineering, leading to the licensure as a professional engineer.² The bill authorizes DOT to maintain these training programs for its employees to provide broad practical experience and enhanced knowledge in the areas of right-of-way property management, real estate appraisal, and business valuation relating to DOT right-of-way acquisition activities.

¹ Section 216.251(3), F.S.>

² The practice of engineering is regulated in ch. 471, F.S.

Motor Carrier Certification Program (Section 1)

Current Situation

The Commercial Vehicle Safety Alliance (CVSA) certification program provides a pay incentive for Motor Carrier Compliance Officers. This pay incentive is \$75 per pay period for those officers that maintain certification by meeting special training and performance requirements of the CVSA.³ This pay incentive program has been funded through federal appropriations and authorized through the General Appropriations Act (GAA) beginning in fiscal year 2007-2008 to the current fiscal year 2009-2010. Initially, DOT requested that the funds be distributed to eligible employees with the authority issued by the Department of Management Services (DMS).

Since initial approval, the Department of Management Services (DMS) notified DOT that this is not an appropriate method to provide these incentives, as it is not a statutorily authorized pay additive.⁴ Subsequently, DOT sought an alternative pay additive that was appropriate to accommodate the issuance of the CVSA pay incentive. DMS, in consultation with Legislative staff, provided DOT authority to use the Temporary Special Duty Pay Additive as a mechanism to continue to issue this authorized pay incentive in fiscal year 2007-2008 through the current fiscal year. Approximately 208 current employees statewide are receiving this pay additive. In its fiscal year 2010-2011 Legislative Budget Request, DOT requested funding contingent on federal appropriation.

Proposed Changes

The bill creates a new s. 20.23(7), F.S., authorizing DOT to continue to grant the \$75 per pay period pay additive to MCCO officers who maintain certification by the CVSA.

Seaport Loan Program (Section 2)

Current Situation

Section 315.03, F.S., grants various powers to the state's seaports. Section 315.03(12), F.S., authorizes certain entities, with oversight by the Florida Seaport Transportation and Economic Development Council, to establish a loan program that provides for the reuse of loan proceeds for certain program purposes. The law requires the Florida Seaport Transportation and Economic Development Council to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Proposed Change

The bill repeals an obsolete statutory provision requiring the Legislature to review the seaport loan program during the 2004 Regular Session.

Tolls (Sections 3, 5, and 13)

Current Situation

Subject to a few limited exemptions⁵ a person may not use any toll facility without paying tolls, and the failure to pay the toll is a noncriminal traffic infraction, punishable as a moving violation, pursuant to s. 316.1001, F.S.

If a toll agency issues a citation for failing to pay a toll, the person has 30 days from when the citation is issued to pay it directly to the issuing toll agency, in which case the citation is never filed with the court.

³DOT's Motor Carrier Compliance Officers are paid bi-weekly. The annual pay additive for one of these officers is \$1,950.

⁴ Authorize pay additives are contained in s. 110.2035(6)(c), F.S.

⁵ The exceptions are contained in s. 338.155, F.S. and include marked emergency vehicles on official business, state military personnel on official business, funeral processions of law enforcement officers killed in the line of duty, and persons with a certified disability that substantially impairs that person's ability to pay tolls in the toll basket.

The penalty paid to the toll agency is \$25, or such other amount as imposed by the governmental entity owning toll facility, plus the amount of the unpaid toll that is shown on the traffic citation.

If the person does not pay the toll agency within that 30-day period, the citation is no longer treated administratively by toll agency. The toll agency then files the citation with the court.⁶ The person then has an additional 45 days to pay the citation to the clerk of the court, but higher civil penalty and delinquent fees, plus court costs, apply.⁷

If the person pays the clerk of the court as indicated above, he or she is deemed to have admitted the infraction and has waived the right to a hearing on the toll violation,⁸ and since it is considered a moving violation, three points are assessed against the person's driver's license.⁹

During this entire 75-day period, the person may choose to request a court hearing. If the person requests a court hearing, or is required to appear in court after failing to respond to the citation,¹⁰ the person is deemed to have waived his or her right to the civil penalty provision for toll violations¹¹ and if the judge or hearing officer then determines that the toll violation was committed, that official may impose a civil penalty up to \$500. The person is also subject to applicable court costs, and 3 points are assessed against the person's driver's license for an adjudicated violation.¹²

According to DOT, for Fiscal Year 2008-2009, the Turnpike Enterprise sent out notices for 22.5 million toll violations. Of those approximately 212,000 uniform traffic citations were issued for nonpayment of tolls. Of the traffic citations issued 89,000 were resolved prior to going to court and 107,000 ended up in court.¹³ The ones that ended up in court were less than one-half of one percent of the total toll violations.

In 2009, the Legislature directed the Turnpike Enterprise to "pursue and implement new technologies and processes in its operations and collection of tolls and of other amounts associated with road and infrastructure usage. Such technologies and processes include without limitation, video billing and pricing." DOT has broad rulemaking authority over the turnpike system and establishes and changes its toll rates through the rulemaking process.¹⁴

Proposed Changes

The bill amends ss. 318.18(7) and 322.27(3)(d)7, F.S., to address license suspensions for toll violators. Once the toll violator is in court, the bill maintains the current mandatory \$100 fine, where no administrative election is mad. However, the bill restores the option to pay, \$30 plus the unpaid toll amount to the clerk of the court prior to the court hearing, with \$25 going to DOT and \$5, plus court costs, being retained by the court. The bill provides that paying the citation in this manner does not

⁶ Section 318.14(12), F.S.

⁷ The civil penalty for a toll violation is contained in s. 318.18(7), F.S.

⁸ Section 318.14(4), F.S.

⁹ Section 322.27(3)(d)7.

¹⁰ Section 318.14(5), F.S.

¹¹ Section 318.18(7), F.S.

¹² Section 322.27(3)(d)7, F.S.

¹³ The difference in the number of uniform traffic citations against the number of cases settled and the number of cases includes items such as dismissals of citations, cases where the defendant does not show up in court, judgments where the defendant does not pay the judgment, and license plate misreads.

¹⁴ S. 338.239, F.S.

constitute adjudication and the assessment of points on a driver's license may only be imposed by the court after a hearing.

The bill also removes the mandatory 60 day suspension of a driver's license for persons convicted of 10 toll violations within 36 months.¹⁵

The bill amends s. 338.155(1), F.S., to provide that DOT is authorized to adopt rules relating to the payment, collection, and enforcement of tolls, including but not limited to, rules for the implementation of video or other image billing and variable pricing. The bill also removes the obsolete phrase "guaranteed toll account."

Safe Council (Sections 6 and 7)

Current Situation

In 2003, the Legislature created the Secure Airports for Florida Economy (SAFE) Council to address issues relating to airport security. Its members included representatives from various airports, DOT, the Department of Community Affairs, the Department of Law Enforcement, the office of Tourism, Trade, and Economic Development, the airline industry, and the general aviation industry. The council is required to prepare and annually update, a five- year "Master Plan" defining the goals and objectives of the council regarding development of airport facilities in the state. This plan is intended to recommend specific infrastructure projects for the purpose of protecting the safety and security of passengers and cargo, enhancing international trade, promoting cargo flow, increasing enplanements, increasing airport revenues, and providing economic benefit to the state.¹⁶

Proposed Change

The bill repeals the SAFE Council, which was requested by the council. The bill provides that the funds accrued by the SAFE Council prior to July 1, 2010, are to be retained by DOT. DOT is authorized to use these funds for statewide training purposed relating to airport security and management. DOT is further authorized to use these funds for security related aviation projects pursuant to ch. 332, F.S.¹⁷

United We Stand License Plate (Section 4)

Current Situation

Section 320.08058(32), F.S., creates the United We Stand License plate, with 100 percent of the proceeds allocated to the SAFE Council to fund a grant program to enhance security at airports throughout the state.

Proposed Change

The bill changes the allocation of the proceeds from the United We Stand license plate from the SAFE Council to DOT to fund security related aviation projects.

Road System Definitions (Sections 8 through 10; 19 through 30)

Current Situation

In 1995, the state revised the system where DOT assigned road jurisdiction based on road functional classification to a system where road jurisdiction changes depend on mutual agreement between governmental entities. This was accomplished by revising ch. 335, F.S., relating to the State Highway System, where s. 335.04, F.S., was deleted and s. 335.0415, F.S., was created.

¹⁵ S. 318.18(7), F.S.

¹⁶ Section 322.14, F.S.

¹⁷ The statutory reference of ch 332, F.S., which is in the bill, is incorrect. The correct reference is ch. 332, F.S.

However, some provisions in ch. 334, F.S., relating to Transportation Administration relate to the functional classification and road jurisdiction process formerly in ch. 335, F.S. The bill amends ch. 334, F.S., to make it consistent with ch. 335, F.S.

Proposed Changes

The bill amends s. 334.03, F.S., to amend and delete several definitions relating to the Florida Transportation Code.

The bill amends the definitions of “city street system”, “county road system”, and “state highway system” that are in conflict with the public road jurisdiction and transfer process.¹⁸ The bill revises these definitions to be:

- Roads under the appropriate jurisdiction on June 10, 1995;
- Roads constructed by the city, county, or state for the appropriate jurisdiction;
- Roads subsequently transferred to that jurisdiction, but not roads transferred from the appropriate jurisdiction.

The bill amends the definition of “functional classification” to link the usage of “functional classification” in state statute to the functional classification that is done according to federal procedures, rather than what DOT previously used for jurisdictional requirements. The only reference to this term in state statute relates to the access control classification system.¹⁹

The bill deletes the terms “arterial road”, “collector road”, “local road”, “urban minor arterial road”, and “urban principal arterial road.” These are obsolete definitions related to the use of functional classification for determining road jurisdiction. The bill either deletes or amends the current statutory provisions that use these terms.

The bill amends the functions and duties of DOT in s. 334.044, F.S., to remove its authority to assign jurisdictional responsibility for public roads.

The bill amends s. 334.047, F.S., to remove an obsolete provision prohibiting DOT from setting a maximum number of urban principal arterial roads within a district or county.

The bill amends s. 316.222, F.S., relating to the operation of low-speed vehicles on certain roadways to remove cross-references and to clarify that of low speed vehicles may be operated on certain roads under the jurisdiction of a county, municipality, or an urban minor arterial road under DOT’s jurisdiction.

The bill also amends various sections of statute to conform cross-references related to the deletion of definitions.

Contractor Financial Statements (Section 11)

Current Situation

DOT has learned that contractors have difficulty understanding that they must submit the currently required audited financial statements and the application for qualification within the currently specified four month period. Contractors often submit one or the other. Then, they miss the deadline and must submit audited interim financial statements. According to DOT, contractors are also confused as to when the audited interim financial statements are due.

Proposed Change

The bill amends s. 337.14, F.S., to clarify interim financial statements are due as it relates to qualification applications for contractors to provide that if the application or annual financial statement

¹⁸ Section 335.0415, F.S.

¹⁹ Section 335.188(3)(c)(1), F.S.

show financial information that is more than four months old, interim financial statements are due along with an updated application.

Utilities on Right-of-Way (Section 12)

Current Situation

Section 337.401, F.S., addresses the use of the right-of-way by utilities. Specifically, s. 337.401(1), F.S., provides that DOT and local government entities which have jurisdiction and control of public roads and publically-owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining of any electric transmission lines along, across, or on any road or publicly-owned rail corridors under their respective jurisdictions.

In 2008, section 337.401(1), F.S., was amended to provide that for transmission lines that operate more than 69 kilovolts, and where there is no practical alternative available, DOT rules must provide for placement of, and access to, transmission lines within the right-of-way of any DOT-controlled public roads, including longitudinally within limited access facilities to the greatest extent allowed by federal law, providing that compliance with minimum clear zone and other safety standards established by rules or regulations is achieved.²⁰ Current law requires compensation to DOT for the use of the right-of-way in a limited-access facility.

Proposed Changes

The bill amends s. 337.401(1), F.S., to provide that compensation to DOT by an electric utility for the use of the right-of-way only applies to the longitudinal placement of electric utility transmission lines on limited access facilities. The bill also changes DOT's rulemaking authority on non-limited access right-of-way with respect to 69 or more kilovolts aerial and underground electric utility transmission lines. The bill also eliminates DOT's authority to require that these lines be removed from the right-of-way in order to accommodate the expansion or improvement of transportation facilities.

Adopt-A-Highway (Section 14)

Current Situation

Section 403.4131, F.S., requires DOT to establish an "adopt-a-highway" program to allow local organizations to be identified with specific highway cleanup and beautification projects. The statute requires DOT to annually report to the Governor and Legislature the projects achieved and the savings from the "adopt-a-highway" program.

Proposed Change

The bill removes DOT's required annual report on the "adopt-a-highway" program.

Abandoned Property at Airports (Sections 15 through 18)

Current Situation

Currently, s. 705.18, F.S., addresses the disposal of personal property lost or abandoned at public use airports.²¹ However, the statute primarily addresses personal property, and provides that all moneys received from the sale, after associated expenses, are deposited into the state school fund.

The Florida Airports Council estimates that annually over 100 aircraft and 1,000 motor vehicles are abandoned on airport property. The airports currently use various statutes and local ordinances to remove derelict or abandoned aircraft and motor vehicles; however, the law does not clearly give them ability to remove this property and to recover the costs associated with its removal.

²⁰ Section 29, Ch 2008-227, L.O.F.

²¹ Section 332.004(14), F.S., defines "public use airport" as any publically owned airport which is used or to be used for public purposes.

Proposed Changes

The bill amends ch. 705.18, F.S., relating to the disposal of personal property lost or abandoned on university and community college campuses or certain public-use airports to remove references to abandoned property at public use airports. Any proceeds from the disposal of abandoned property at airports will no longer go to the state school fund, but will go to the airport to cover its cost of disposing of the abandoned property.

1. Abandoned Personal Property

The bill creates s. 705.182, F.S., relating to the disposal of personal property, except for motor vehicles and aircraft, found on the premises of public-use airports. The airport's director (director) or designee is required to take charge of the property and record the date it was found.

If, after 30 calendar days, or a longer period as deemed appropriate under the circumstances, the property is not claimed by its owner, the director or designee may:

- Retain the property for use by the airport or by the state or unit of local government owning or operating the airport;
- Trade the property to another unit of local government or state agency;
- Donate the property to a charitable organization;
- Sell the property; or
- Dispose of the property through an appropriate refuse removal or salvage company that provides salvage service for the type of personal property found.

Prior to the property's disposal, the airport must notify the property owner, if known, that the property was found at the airport and that the airport intends to dispose of it.

If the airport decides to sell the property, it must do so at a public auction either on the Internet or at a specified physical location. The airport must, at least 10 days prior to the sale, provide notice of the time and place of the sale in a publication of general circulation within the county where the airport is located. This is following written notice to the property owner, if known, via certified mail, return receipt requested. This notice is considered sufficient if it refers to the airport's intention to sell all of its then-accumulated found property, and it is not required to identify each individual item that will be sold. Prior to the sale, the owner may reclaim the property by presenting to the airport's director or designee acceptable evidence of ownership. The proceeds from the property's sale of property are retained by the airport to be used in any lawfully authorized manner.

The airport is not precluded from allowing a domestic or international air carrier or other airport tenant from establishing its own lost and found procedures for personal property and from disposing of such personal property.

The purchaser or recipient in good faith of the personal property sold or obtained takes the property free of the rights of persons then holding any legal or equitable interest in the property, whether or not the interest is recorded.

2. Abandoned Aircraft

The bill creates s. 705.183, F.S., relating to the disposal of derelict or abandoned aircraft on the premises of public use airports. The provisions apply whether or not the premises is under lease or license to a third party. When one of these aircraft is found, the airport's director or designee must record the date the aircraft was found or determined to be present on airport property.

"Abandoned aircraft" is defined as an aircraft that has been disposed of in a public-use airport in a wrecked, inoperative, or partially dismantled condition or an aircraft that has remained in an idle state on the premises owned or controlled by the operator of a public-use airport for 45 consecutive calendar days.

“Derelict aircraft” is defined as any aircraft that is not in flyable condition, does not have a current certificate of air worthiness issued by the Federal Aviation Administration (FAA) and is not in the process of actively being repaired.

The airport director or designee is required to contact the FAA Aircraft Registration Branch to determine the name and address of the last registered aircraft owner. The airport is also required to conduct a diligent search of the appropriate records, or a contact with an aircraft title search company to determine the name and address of any person having an equitable or legal interest in the aircraft.

Within 10 business days of receiving information related to persons with interest in the aircraft, the director or designee must notify, by certified mail, return receipt requested, all persons having an equitable or legal interest in the aircraft. This notice must advise them of the location of the derelict or abandoned aircraft, that fees and charges accrued for the use of the airport by the aircraft, the amount of these fees, that the aircraft is subject to a lien for the accrued fees and charges for use of the airport and for the transportation, storage, and removal of the aircraft, that the lien is subject to enforcement pursuant to law, and that the airport may cause the use, trade, sale, or removal of the aircraft. If the director or designee determines that the aircraft poses a danger to the health and safety of airport users, the notice may require the removal of the aircraft in less than 30 calendar days.

If the owner of the aircraft is unknown, or cannot be found, the director or designee is required to place a laminated notice, in a specific form, on the aircraft. The notice provides the same information that was provided in the notice mailed to those with an equitable or legal interest in the aircraft. The notice must be weatherproof and at least 8 inches by 10 inches.

If, after 30 calendar days from the date the notice is received or posted on the aircraft, the aircraft has not been removed from the airport upon payment in full of all accrued fees and charges for the use of the airport and for the transportation, storage, and removal of the aircraft by the owner or any person with an interest in the aircraft, or shown reasonable cause for failure to do so, the director or designee may cause the use, trade, sale, or removal of the aircraft.

If the airport elects to sell the aircraft, the sale must be a public auction after giving at least 10 calendar days notice of the time and place of the sale. The notice must be in a publication of general circulation within the county where the airport is located and after providing written notice to all parties known to have an interest in the aircraft.

If the airport elects to dispose of the aircraft, the airport may negotiate with the refuse or removal company²² for the price for the aircraft, or if circumstances warrant, a price to pay the company to dispose of the aircraft. All information pertaining to the price and the justification for the prices shall be prepared and maintained by the airport, and the negotiated price is considered a reasonable price.

If the sale or negotiated price is less than the airport’s then current charges and costs against the aircraft, or the airport is required to pay a salvage company for its services, the owner of the aircraft remains liable for the airport’s costs that are not offset by the sale or negotiated price, in addition to the owner’s liability for payment to the airport of the price the airport was required to pay any salvage company. All costs incurred by the airport in the removal, storage, and sale of any aircraft are recoverable against the aircraft’s owner.

The airport shall have a lien on derelict or abandoned aircraft for all fees and charges for the use of the airport by the aircraft and for all fees and charges incurred by the airport for the transportation, storage, and removal of the aircraft. Prior to perfecting the lien, the director or designee must serve notice of the lien on the last registered owner and all persons having an equitable or legal interest in the aircraft. Service of the notice does not dispense with recording the claim of lien. This claim of lien must contain the following information:

²² The bill references s. 705.182(2)(e), which relates to the disposal of personal property found at in the premises of public use airports and references refuse removal and salvage companies

- The name and address of the airport.
- The name of the last registered aircraft owner and all persons having a legal or equitable interest in the aircraft.
- The fees and charges incurred by the aircraft for the use of the airport, and the fees and charges for the transportation, storage, and removal of the aircraft.
- A description of the aircraft sufficient for identification.

The claim of lien is required to be signed and sworn to by the airport's director or designee. The claim of lien is sufficient if it is substantially the form provided in the bill. However, the negligent inclusion or omission of any information in the claim of lien, which does not prejudice the last registered owner, does not constitute a default that operates to defeat an otherwise valid lien.

The claim of lien is required to be served on the aircraft's last registered owner and all persons having an equitable or legal interest in the aircraft, and shall be served before it is recorded.

The claim of lien is required to be recorded with the clerk of court in the county where the airport is located. This recording is constructive notice to all persons of the contents and effect of such claim. The lien attaches when it is recorded and takes priority at that time.

The bill provides that a purchaser or recipient in good faith of an aircraft sold or obtained under this section takes the aircraft free of the rights of persons then holding any legal or equitable interest in the aircraft, whether or not the interest is recorded. The purchaser is required to notify the FAA of the change in the aircraft's registered owner.

If the aircraft is sold at a public sale, the airport must deduct from the proceeds the costs of transportation, storage, publication of notice, and all other costs reasonably incurred by the airport. The balance of the proceeds are deposited into an interest-bearing account no later than 30 calendar days after the airport receives the proceeds and the funds must be held for one year. Within one year of the date of deposit, the aircraft's rightful owner may claim the balance of the proceeds by making application to the airport and presenting to the airport's director or designee of acceptable written evidence of ownership. If the rightful owner fails to come forward to claim the proceeds within one year, the balance of the proceeds are retained by the airport to be used in any legally authorized manner.

Any person acquiring legal interest in an aircraft that is caused to be sold by an airport is the lawful owner of the aircraft and all other legal or equitable interest in the aircraft is divested with no further force and effect, provided that the holder of such interest was notified of the intended disposal of the aircraft. The airport is authorized to issue documents of disposition to the purchaser or recipient of an aircraft disposed of under this section.

3. Abandoned Motor Vehicles

The bill creates s. 705.184, F.S., relating to the disposal of derelict or abandoned motor vehicles on the premises of public-use airports. When one of these vehicles is found, the director or designee must record of the date the vehicle was found or determined to be present on airport property.

"Abandoned motor vehicle" is defined as a motor vehicle that has been disposed of in a public-use airport in a wrecked, inoperative, or partially dismantled condition or a motor vehicle that has remained in an idle state on the premises owned or controlled by the operator of a public-use airport for 45 consecutive calendar days.

"Derelict motor vehicle" is defined as any motor vehicle that is not in drivable condition.

After information relating to the derelict or abandoned motor vehicle is recorded, the director or designee may have the motor vehicle removed from the airport's premises by the airport's own wrecker or by a licensed independent wrecking company to be stored at a suitable location on or off the airport premises. If the vehicle is removed by the airport's own wrecker, the provisions in the bill apply.

However, if the vehicle is removed by a licensed independent wrecker company, current law for the disposal of vehicles by wrecker companies applies and the procedures below do not apply.²³

The director or designee must notify the Department of Highway Safety and Motor Vehicles (DHSMV) that it has possession of the motor vehicle and to determine the name and address of the vehicle's last registered owner, the insurance company insuring the vehicle,²⁴ and any person who has filed a lien on the motor vehicle.

The director or designee, within seven business days of receiving this information, must notify by certified mail, return receipt requested the owner of the vehicle, the insurance company insuring the vehicle, and all persons claiming a lien against the vehicle. The notice shall state the fact of possession of the vehicle, that charges for a reasonable towing, storage, and parking, have accrued and the amount of those fees, that a lien will be claimed, that the lien is subject to enforcement pursuant to law, and that the owner or any lienholder has the right to a hearing to contest the airport's possession.

If, after 30 calendar days from the date the notice was received, the vehicle has not been removed from the airport upon payment in full of all accrued charges for reasonable tow, storage, and parking fees, the vehicle may be disposed of, including, but not limited to, being sold free of all prior liens that are more than five years of age, or after 50 calendar days from the time the motor vehicle is stored if any prior liens are five years or less.

If attempts to notify the owner and/or lienholder are unsuccessful, the required notice is considered met and the vehicle may be disposed of in the manner provided for all abandoned vehicles.

The owner of, or any person claiming a lien on the motor vehicle has 10 calendar days after receiving knowledge of the location of the motor vehicle to file a complaint in the county court of the county where the motor vehicle is stored, to determine if the property was wrongfully taken or withheld.

Upon the filing of the complaint, the owner or leinholder may have the vehicle released upon posting with the court a cash or surety bond or other adequate security equal to the amount of fees for towing, storage, and accrued parking. This is to ensure the payment of the fees if the vehicle owner does not prevail. Once the security is posted and any applicable fees are paid, the clerk of the court must issue a certificate notifying the airport that the security was posted and directing the airport to release the vehicle. When the vehicle is released, after reasonable inspection, the owner or leinholder must give receipt to the airport reciting any claims for loss or damage to the vehicle or its contents.

If after 30 calendar days from receiving the notice the owner or any person claiming a lien has not removed the vehicle and paid the fees or shown reasonable cause for failure to do so, the director or designee may dispose of the vehicle in any manner provided.

If the airport elects to sell the vehicle, it may be sold free in clear of all prior liens after 35 calendar days from the time the motor vehicle is stored if any of the prior liens are more than five years old, or after 50 calendar days from the time the motor vehicle is stored if any prior lines are five years old or less. The vehicle must be sold at public auction, either on the Internet or at a specified location. If the date of the sale was not included in the previously required notice, notice of the of the sale, sent by certified mail, return receipt requested, must be given to the owner and to all persons claiming a lien on the vehicle. The notice must be mailed not less than 10 days before to the date of the sale. Additionally, a public notice must be in a publication of general circulation within the county where the sale is to be held at least 10 calendar days prior to the date of the sale. The proceeds of the sale must to be used to recover the airport's costs incurred for towing, storage, and the sale of the vehicle, as well as any

²³ Sections 323.001 and 713.78, F.S.

²⁴ This is notwithstanding the provisions of s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority, and claims.

accrued parking fees. Any proceeds exceeding these costs are retained by the airport for use in any authorized manner.

The airport or, if used, a licensed independent wrecking company, pursuant to s. 713.78, F.S.,²⁵ has a lien on the derelict or abandoned vehicle for a reasonable tow fee, a reasonable storage fee, and or accrued parking fees, except that no storage fee shall be charged if the vehicle is stored for less than six hours. Prior to perfecting a lien, the director or designee must serve notice of the lien on the owner, the insurance company, and all persons of record claiming a lien against the vehicle. If attempts to notify the owner, insurance company, and lienholders are unsuccessful, the notice requirement will be considered met. The serving of the notice does not dispense with recording the claim of lien. This claim of lien must contain the following information:

- The name and address of the airport.
- The name of the owner of the vehicle, the insurance company insuring the motor vehicle, and all persons of record claiming a lien against the vehicle.
- The fees incurred for a reasonable tow, reasonable storage, and parking, if any.
- A description of the motor vehicle sufficient for identification.

The claim of lien is required to be signed and sworn to by the director or designee. The claim of lien is considered sufficient if it is substantially the form provided in the bill. However, the bill provides that the negligent inclusion or omission of any information in the claim of lien, which does not prejudice the owner, does not constitute a default that operates to defeat an otherwise valid lien.

The claim of lien is required to be served on owner, the insurance company, and all recorded lienholders. If attempts at notification prove unsuccessful, the requirement of notification will be considered met. The claim of lien shall be served before it is recorded with the clerk of court in the county where the airport is located.

The bill provides a purchaser or recipient in good faith of a vehicle sold or obtained under this section takes the vehicle free of the rights of persons then holding any legal or equitable interest in the vehicle, whether or not this interest is recorded.

Effective Date (Section 31)

The bill has an effective date of July 1, 2010.

B. SECTION DIRECTORY:

- Section 1 Amends s. 20.23, F.S., relating to the Department of Transportation, authorizing DOT to maintain specified training programs for certain persons; authorizing DOT to provide for incremental increase to the base salary upon successful completion of the training phase; authorizing DOT to grant a specified pay additive to law enforcement officers assigned to the MCCO who maintain certification by the CVSA.
- Section 2 Repeals s. 215.03(12)(c), F.S., relating to a legislative review of a loan program of the Florida Seaport Transportation and Economic Development Council.
- Section 3 Amends s. 318.18, F.S., relating to the amount of penalties; revising provisions for distribution of proceeds collected by the clerk of the court for disposition of citations for failure to pay toll; providing alternative procedures for disposition of such citation; providing for adjudication to be withheld and no points assessed against the driver's license of a person who is convicted of failing to pay toll 10 or more times within a 36-month period.

²⁵ Section 713.78, F.S., relates to liens for recovering, towing, or storing vehicles and vessels.

- Section 4 Amends s. 320.08058, F.S., relating to specialty license plates, revising authorized uses of revenue received from the United We Stand license plates.
- Section 5 Amends s. 322.27, F.S., relating to the authority of the Department of Highway Safety and Motor Vehicles to suspend or revoke driver's licenses; providing for assessment of points against a driver's license for specified violations of requirements to pay a toll only when the points are imposed by a court.
- Section 6 Repeals s. 332.14, F.S., relating to the Secure Airports for Florida's Economy Council.
- Section 7 Provides for the use of funds accrued by the Secure Airports for Florida's Economy Council.
- Section 8 Amends s. 334.03, F.S., relating to definitions; revising definitions for purposes of the Florida Transportation Code.
- Section 9 Amends s. 334.044, F.S., relating to Department of Transportation; powers and duties; revising powers and duties of DO; removing provisions for assigning jurisdiction of roads and designating facilities as part of the State Highway System.
- Section 10 Amends s. 337.047, F.S., relating to a Department of Transportation prohibition; removing a prohibition against DOT establishing a maximum number of miles of certain roads within a district or county.
- Section 11 Amends s. 337.14, relating to application for qualification; certificate of qualification; restrictions; request for hearing; revising application procedures for the qualification of contractors; requiring any interim financial statement to be accompanied by an updated application.
- Section 12 Amends s. 337.401, F.S., relating to the use of right-of-way for utilities subject to regulation; permit; fees; revising provisions for rules of DOT that provide for the placement of and access to certain electrical transmission lines on the right-of-way of DOT-controlled roads; authorizing the rules to include the use of the limited access right-of-way for longitudinal placement of such transmission lines is reasonable based upon consideration of certain economic and environmental factors.
- Section 13 Amends s. 338.155, F.S., relating to payment of tolls on toll facilities required; exemptions; authorizing DOT to adopt rules relating to the payment, collection, and enforcement of tolls.
- Section 14 Amends s. 403.4131, F.S., relating to the Adopt-A-Highway program.
- Section 15 Amends s. 705.18, F.S., relating to personal property lost or abandoned on university or community college campuses or certain public-use airports; removing provisions for the disposal of personal property lost or abandoned at public use airports.
- Section 16 Creates s. 705.182, F.S., relating to the disposal of personal property found on the premises of public-use airports; providing time frames, providing options for disposing of property; providing procedures for selling abandoned property; providing for notice of sale; permitting airport tenants to establish own procedures; providing that purchaser owns property free and clear.
- Section 17 Creates s. 705.183, F.S., relating to the disposal of derelict or abandoned aircraft on the premises of public-use airports; providing procedures, providing definitions; providing for notification of aircraft owner and persons having an interest in the aircraft; providing notice requirements; providing requirements for sale of aircraft; providing for liability of charges related to aircraft; providing for claim of lien; providing for disposition of funds.

- Section 18 Creates s. 705.184, F.S., relating to derelict or abandoned motor vehicles on the premises of public-use airports; creating a process to remove these vehicles, providing definitions; providing for removal of motor vehicle; providing notice requirements; providing for sale of motor vehicle; providing for liability of charges related to motor vehicle; providing for claim of lien.
- Section 19 Amends s. 163.3180, F.S., relating to concurrency to conform a cross-reference.
- Section 20 Amends s. 288.063, F.S., relating to contracts for transportation projects to conform a cross-reference.
- Section 21 Amends s. 311.07, F.S., relating to Florida seaport transportation and economic development funding to conform a cross-reference.
- Section 22 Amends s. 311.09, F.S., relating to the Florida Seaport Transportation and Economic Development Council to conform a cross-reference.
- Section 23 Amends s. 316.2222, F.S., relating to the operation of low-speed vehicles on certain roadways to remove cross-references and to clarify that these vehicles may be operated on certain roads.
- Section 24 Amends s. 316.515, F.S., relating to maximum width, height, and length to conform a cross-reference.
- Section 25 Amends s. 336.01, F.S., relating to designation of county road system to conform a cross-reference.
- Section 26 Amends s. 338.222, F.S., relating to DOT as the sole governmental entity to acquire, construct, or operate turnpike projects to conform a cross-reference.
- Section 27 Amends s. 341.8225, F.S., relating to DOT as the sole governmental entity to acquire, construct, or operate high-speed rail projects to conform a cross-reference.
- Section 28 Amends s. 479.01, F.S., relating to definitions to conform a cross-reference.
- Section 29 Amends s. 479.07, F.S., relating to sign permits to conform a cross-reference.
- Section 30 Amends s. 479.261, F.S., relating to the logo sign program to conform a cross-reference.
- Section 31 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The state school fund will lose any revenue that it currently receives from the disposal of property that is abandoned at airports.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Airports operated by local governments may receive additional revenue related to the disposal of abandoned property. However, the additional revenue is intended to cover the airports cost related to the disposal of this property.

2. Expenditures:

Some local governments may see a decrease in expenditures due to the change in the process for handling toll violations, which may result in fewer cases on the county court docket.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

The codification of DOT's training programs and the pay additives for MCCO officers with a CVSA codify what has been annually authorized in the General Appropriations Act. There is no fiscal impact related to these codifications.

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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill updates DOT's existing rule-making authority regarding tolls to allow them to implement video billing and variable pricing.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 206 refers to ch. 322, F.S., which is related to driver's licenses. The reference should be ch. 332, F.S., which relates to airports.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

29 | repealing s. 332.14, F.S., relating to the Secure Airports
 30 | for Florida's Economy Council; providing for the use of
 31 | funds accrued by the Secure Airports for Florida's Economy
 32 | Council; amending s. 334.03, F.S.; revising definitions
 33 | for purposes of the Florida Transportation Code; amending
 34 | s. 334.044, F.S.; revising powers and duties of the
 35 | department; removing provisions for assigning jurisdiction
 36 | of roads and designating facilities as part of the State
 37 | Highway System; amending s. 334.047, F.S.; removing a
 38 | prohibition against the department establishing a maximum
 39 | number of miles of certain roads within a district or
 40 | county; amending s. 337.14, F.S.; revising application
 41 | procedures for the qualification of contractors; requiring
 42 | any required interim financial statement to be accompanied
 43 | by an updated application; amending s. 337.401, F.S.;
 44 | revising provisions for rules of the department that
 45 | provide for the placement of and access to certain
 46 | electrical transmission lines on the right-of-way of
 47 | department-controlled roads; authorizing the rules to
 48 | include that the use of the limited access right-of-way
 49 | for longitudinal placement of such transmission lines is
 50 | reasonable based upon consideration of certain economic
 51 | and environmental factors; amending s. 338.155, F.S.;
 52 | authorizing the department to adopt rules relating to the
 53 | payment, collection, and enforcement of tolls; amending s.
 54 | 403.4131, F.S.; removing provisions relating to a report
 55 | on the adopt-a-highway program; amending s. 705.18, F.S.;
 56 | removing provisions for disposal of personal property lost

57 | or abandoned at certain public-use airports; creating s.
 58 | 705.182, F.S.; providing for disposal of personal property
 59 | found on premises owned or controlled by the operator of a
 60 | public-use airport; providing a timeframe for the property
 61 | to be claimed; providing options for disposing of such
 62 | personal property; providing procedures for selling
 63 | abandoned personal property; providing for notice of sale;
 64 | providing that the rightful owner of such property may
 65 | reclaim the property at any time prior to sale; permitting
 66 | airport tenants to establish lost and found procedures;
 67 | providing that purchaser holds title to the property free
 68 | of the rights of persons then holding any legal or
 69 | equitable interest thereto; creating s. 705.183, F.S.;
 70 | providing for disposition of derelict or abandoned
 71 | aircraft on the premises of public-use airports; providing
 72 | procedures for such disposition; requiring a record of
 73 | when the aircraft is found; defining the terms "derelict
 74 | aircraft" and "abandoned aircraft"; providing for
 75 | notification of aircraft owner and all persons having an
 76 | equitable or legal interest in the aircraft; providing for
 77 | notice if the owner of the aircraft is unknown or cannot
 78 | be found; providing for disposition if the aircraft is not
 79 | removed upon payment of required fees; requiring any sale
 80 | of the aircraft to be at a public auction; providing
 81 | notice requirements for such public auction; providing
 82 | procedures for disposal of the aircraft; providing for
 83 | liability if charges and costs related to the disposition
 84 | are more than that obtained from the sale; providing for a

85 | lien by the airport for fees and charges; providing for
 86 | notice of lien; requiring recording of a claim of lien;
 87 | providing for the form of the claim of lien; providing for
 88 | service of the claim of lien; providing that the purchaser
 89 | of the aircraft takes the property free of rights of
 90 | persons holding legal or equitable interest in the
 91 | aircraft; requiring purchaser or recipient to notify the
 92 | Federal Aviation Administration of change in ownership;
 93 | providing for disposition of moneys received for an
 94 | aircraft sold at public sale; authorizing the airport to
 95 | issue documents relating to the aircraft's disposal;
 96 | creating s. 705.184, F.S.; providing for disposition of
 97 | derelict or abandoned motor vehicles on the premises of
 98 | public-use airports; providing procedures; requiring
 99 | recording of the abandoned motor vehicle; defining the
 100 | terms "derelict motor vehicle" and "abandoned motor
 101 | vehicle"; providing for removal of such motor vehicle from
 102 | airport premises; providing for notice to the owner, the
 103 | company insuring the motor vehicle, and any lienholder;
 104 | providing for disposition if the motor vehicle is not
 105 | removed upon payment of required fees; requiring any sale
 106 | of the motor vehicle to be at a public auction; providing
 107 | notice requirements for such public auction; providing
 108 | procedures for disposal of the motor vehicle; providing
 109 | for a lien by the airport or a licensed independent
 110 | wrecker for fees and charges; providing for notice of
 111 | lien; requiring recording of a claim of lien; providing
 112 | for the form of the claim of lien; providing for service

113 of claim of lien; providing that the purchaser of the
 114 motor vehicle takes the property free of the rights of
 115 persons holding legal or equitable interest in the motor
 116 vehicle; amending ss. 163.3180, 288.063, 311.07, 311.09,
 117 316.2122, 316.515, 336.01, 338.222, 341.8225, 479.01,
 118 479.07, and 479.261, F.S.; correcting cross-references;
 119 providing an effective date.

120

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

122

123 Section 1. Subsections (6) and (7) of section 20.23,
 124 Florida Statutes, as amended by chapter 2009-271, Laws of
 125 Florida, are renumbered as subsections (8) and (9),
 126 respectively, and new subsections (6) and (7) are added to that
 127 section, to read:

128 20.23 Department of Transportation.—There is created a
 129 Department of Transportation which shall be a decentralized
 130 agency.

131 (6) The department is authorized to maintain training
 132 programs for department employees and prospective employees who
 133 are graduates from an approved engineering curriculum of 4 years
 134 or more in a school, college, or university approved by the
 135 Board of Professional Engineers to provide broad practical
 136 expertise in the field of transportation engineering, leading to
 137 licensure as a professional engineer. The department is
 138 authorized to maintain these training programs for department
 139 employees to provide broad practical experience and enhanced
 140 knowledge in the areas of right-of-way property management, real

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

146 (7) The department is authorized to continue to grant a
 147 pay additive of \$75 per pay period for law enforcement officers
 148 assigned to the Office of Motor Carrier Compliance who maintain
 149 certification by the Commercial Vehicle Safety Alliance.

150 Section 2. Paragraph (c) of subsection (12) of section
 151 315.03, Florida Statutes, is repealed.

152 Section 3. Subsection (7) of section 318.18, Florida
 153 Statutes, is amended to read:

154 318.18 Amount of penalties.—The penalties required for a
 155 noncriminal disposition pursuant to s. 318.14 or a criminal
 156 offense listed in s. 318.17 are as follows:

157 (7) Mandatory \$100 fine for each violation of s. 316.1001
 158 plus the amount of the unpaid toll shown on the traffic citation
 159 for each citation issued. The clerk of the court shall forward
 160 \$25 of the \$100 fine received, plus the amount of the unpaid
 161 toll that is shown on the citation, to the governmental entity
 162 that issued the citation for citations issued by toll
 163 enforcement officers or to the entity administering the tolls at
 164 the facility where the violation occurred for citations issued
 165 by law enforcement officers. However, a person may elect to pay
 166 \$30 to the clerk of the court, plus the amount of the unpaid
 167 toll that is shown on the citation, in which case adjudication
 168 is withheld, and no points are assessed under s. 322.27. Upon

169 receipt of the \$30 and unpaid toll amount, the clerk of the
 170 court shall retain \$5 for administrative purposes and shall
 171 forward the remaining \$25, plus the amount of the unpaid toll
 172 shown on the citation, to the governmental entity that issued
 173 the citation for citations issued by toll enforcement officers
 174 or to the entity administering the tolls at the facility where
 175 the violation occurred for citations issued by law enforcement
 176 officers. Additionally, adjudication shall be withheld and no
 177 points shall be assessed under s. 322.27, except when
 178 adjudication is imposed by the court after a hearing pursuant to
 179 s. 318.14(5), ~~or on whose behalf the citation was issued.~~ If a
 180 plea arrangement is reached prior to the date set for a
 181 scheduled evidentiary hearing and, as a result of the plea,
 182 adjudication is withheld, there shall be a mandatory fine
 183 assessed per citation of not less than \$50 and not more than
 184 \$100, plus the amount of the unpaid toll for each citation
 185 issued. The clerk of the court shall forward \$25 of the fine
 186 imposed plus the amount of the unpaid toll that is shown on the
 187 citation to the governmental entity that issued the citation or
 188 on whose behalf the citation was issued. The court shall have
 189 specific authority to consolidate issued citations for the same
 190 defendant for the purpose of sentencing and aggregate
 191 jurisdiction. ~~In addition, the department shall suspend for 60~~
 192 ~~days the driver's license of a person who is convicted of 10~~
 193 ~~violations of s. 316.1001 within a 36-month period.~~ Any funds
 194 received by a governmental entity for this violation may be used
 195 for any lawful purpose related to the operation or maintenance
 196 of a toll facility.

HB 1271

2010

197 Section 4. Paragraph (b) of subsection (32) of section
 198 320.08058, Florida Statutes, is amended to read:

199 320.08058 Specialty license plates.—

200 (32) UNITED WE STAND LICENSE PLATES.—

201 (b) The department shall retain all revenues from the sale
 202 of such plates until all startup costs for developing and
 203 issuing the plates have been recovered. Thereafter, 100 percent
 204 of the annual use fee shall be distributed to the Department of
 205 Transportation to fund security-related aviation projects
 206 pursuant to chapter 322 SAFE Council to fund a grant program to
 207 enhance security at airports throughout the state, pursuant to
 208 s. 322.14.

209 Section 5. Paragraph (d) of subsection (3) of section
 210 322.27, Florida Statutes, is amended to read:

211 322.27 Authority of department to suspend or revoke
 212 license.—

213 (3) There is established a point system for evaluation of
 214 convictions of violations of motor vehicle laws or ordinances,
 215 and violations of applicable provisions of s. 403.413(6)(b) when
 216 such violations involve the use of motor vehicles, for the
 217 determination of the continuing qualification of any person to
 218 operate a motor vehicle. The department is authorized to suspend
 219 the license of any person upon showing of its records or other
 220 good and sufficient evidence that the licensee has been
 221 convicted of violation of motor vehicle laws or ordinances, or
 222 applicable provisions of s. 403.413(6)(b), amounting to 12 or
 223 more points as determined by the point system. The suspension
 224 shall be for a period of not more than 1 year.

225 (d) The point system shall have as its basic element a
 226 graduated scale of points assigning relative values to
 227 convictions of the following violations:
 228 1. Reckless driving, willful and wanton-4 points.
 229 2. Leaving the scene of a crash resulting in property
 230 damage of more than \$50-6 points.
 231 3. Unlawful speed resulting in a crash-6 points.
 232 4. Passing a stopped school bus-4 points.
 233 5. Unlawful speed:
 234 a. Not in excess of 15 miles per hour of lawful or posted
 235 speed-3 points.
 236 b. In excess of 15 miles per hour of lawful or posted
 237 speed-4 points.
 238 6. A violation of a traffic control signal device as
 239 provided in s. 316.074(1) or s. 316.075(1)(c)1.-4 points.
 240 7. All other moving violations (including parking on a
 241 highway outside the limits of a municipality)-3 points. However,
 242 no points shall be imposed for a violation of s. 316.0741 or s.
 243 316.2065(12); and points shall be imposed for a violation of s.
 244 316.1001 only when imposed by the court after a hearing pursuant
 245 to s. 318.14(5).
 246 8. Any moving violation covered above, excluding unlawful
 247 speed, resulting in a crash-4 points.
 248 9. Any conviction under s. 403.413(6)(b)-3 points.
 249 10. Any conviction under s. 316.0775(2)-4 points.
 250 Section 6. Section 332.14, Florida Statutes, is repealed.
 251 Section 7. All funds accrued by the Secure Airports for
 252 Florida's Economy Council prior to July 1, 2010, shall be

253 retained by the Department of Transportation. The Department of
 254 Transportation is authorized to use these funds for statewide
 255 training purposes relating to airport security and management.
 256 The Department of Transportation is further authorized to use
 257 these funds for security-related aviation projects pursuant to
 258 chapter 332, Florida Statutes.

259 Section 8. Section 334.03, Florida Statutes, is amended to
 260 read:

261 334.03 Definitions.—When used in the Florida
 262 Transportation Code, the term:

263 ~~(1) "Arterial road" means a route providing service which~~
 264 ~~is relatively continuous and of relatively high traffic volume,~~
 265 ~~long average trip length, high operating speed, and high~~
 266 ~~mobility importance. In addition, every United States numbered~~
 267 ~~highway is an arterial road.~~

268 (1)(2) "Bridge" means a structure, including supports,
 269 erected over a depression or an obstruction, such as water or a
 270 highway or railway, and having a track or passageway for
 271 carrying traffic as defined in chapter 316 or other moving
 272 loads.

273 (2)(3) "City street system" means all local roads within a
 274 municipality that were under the jurisdiction of that
 275 municipality on June 10, 1995; roads transferred to the
 276 municipality's jurisdiction after that date by mutual consent
 277 with another governmental entity, but not including roads so
 278 transferred from the municipality's jurisdiction; and roads
 279 constructed by a municipality for its street system, and all
 280 ~~collector roads inside that municipality, which are not in the~~

281 ~~county road system.~~

282 ~~(4) "Collector road" means a route providing service which~~
 283 ~~is of relatively moderate average traffic volume, moderately~~
 284 ~~average trip length, and moderately average operating speed.~~
 285 ~~Such a route also collects and distributes traffic between local~~
 286 ~~roads or arterial roads and serves as a linkage between land~~
 287 ~~access and mobility needs.~~

288 (3)~~(5)~~ "Commissioners" means the governing body of a
 289 county.

290 (4)~~(6)~~ "Consolidated metropolitan statistical area" means
 291 two or more metropolitan statistical areas that are socially and
 292 economically interrelated as defined by the United States Bureau
 293 of the Census.

294 (5)~~(7)~~ "Controlled access facility" means a street or
 295 highway to which the right of access is highly regulated by the
 296 governmental entity having jurisdiction over the facility in
 297 order to maximize the operational efficiency and safety of the
 298 high-volume through traffic utilizing the facility. Owners or
 299 occupants of abutting lands and other persons have a right of
 300 access to or from such facility at such points only and in such
 301 manner as may be determined by the governmental entity.

302 (6)~~(8)~~ "County road system" means all roads within a
 303 county which were under the jurisdiction of that county on June
 304 10, 1995; roads transferred to the county's jurisdiction after
 305 that date by mutual consent with another governmental entity,
 306 but not including roads so transferred from the county's
 307 jurisdiction; and roads constructed by a county for that
 308 county's road system ~~collector roads in the unincorporated areas~~

309 | ~~of a county and all extensions of such collector roads into and~~
 310 | ~~through any incorporated areas, all local roads in the~~
 311 | ~~unincorporated areas, and all urban minor arterial roads not in~~
 312 | ~~the State Highway System.~~

313 | ~~(7)-(9)~~ "Department" means the Department of
 314 | Transportation.

315 | ~~(8)-(10)~~ "Florida Intrastate Highway System" means a system
 316 | of limited access and controlled access facilities on the State
 317 | Highway System which have the capacity to provide high-speed and
 318 | high-volume traffic movements in an efficient and safe manner.

319 | ~~(9)-(11)~~ "Functional classification" means the assignment
 320 | of roads into systems according to the character of service they
 321 | provide in relation to the total road network using procedures
 322 | developed by the Federal Highway Administration. ~~Basic~~
 323 | ~~functional categories include arterial roads, collector roads,~~
 324 | ~~and local roads which may be subdivided into principal, major,~~
 325 | ~~or minor levels. Those levels may be additionally divided into~~
 326 | ~~rural and urban categories.~~

327 | ~~(10)-(12)~~ "Governmental entity" means a unit of government,
 328 | or any officially designated public agency or authority of a
 329 | unit of government, that has the responsibility for planning,
 330 | construction, operation, or maintenance or jurisdiction over
 331 | transportation facilities; the term includes the Federal
 332 | Government, the state government, a county, an incorporated
 333 | municipality, a metropolitan planning organization, an
 334 | expressway or transportation authority, a road and bridge
 335 | district, a special road and bridge district, and a regional
 336 | governmental unit.

337 (11)~~(13)~~ "Limited access facility" means a street or
 338 highway especially designed for through traffic, and over, from,
 339 or to which owners or occupants of abutting land or other
 340 persons have no right or easement of access, light, air, or view
 341 by reason of the fact that their property abuts upon such
 342 limited access facility or for any other reason. Such highways
 343 or streets may be facilities from which trucks, buses, and other
 344 commercial vehicles are excluded; or they may be facilities open
 345 to use by all customary forms of street and highway traffic.

346 (12)~~(14)~~ "Local governmental entity" means a unit of
 347 government with less than statewide jurisdiction, or any
 348 officially designated public agency or authority of such a unit
 349 of government, that has the responsibility for planning,
 350 construction, operation, or maintenance of, or jurisdiction
 351 over, a transportation facility; the term includes, but is not
 352 limited to, a county, an incorporated municipality, a
 353 metropolitan planning organization, an expressway or
 354 transportation authority, a road and bridge district, a special
 355 road and bridge district, and a regional governmental unit.

356 ~~(15) "Local road" means a route providing service which is~~
 357 ~~of relatively low average traffic volume, short average trip~~
 358 ~~length or minimal through-traffic movements, and high land~~
 359 ~~access for abutting property.~~

360 (13)~~(16)~~ "Metropolitan area" means a geographic region
 361 comprising as a minimum the existing urbanized area and the
 362 contiguous area projected to become urbanized within a 20-year
 363 forecast period. The boundaries of a metropolitan area may be
 364 designated so as to encompass a metropolitan statistical area or

365 a consolidated metropolitan statistical area. If a metropolitan
 366 area, or any part thereof, is located within a nonattainment
 367 area, the boundaries of the metropolitan area must be designated
 368 so as to include the boundaries of the entire nonattainment
 369 area, unless otherwise provided by agreement between the
 370 applicable metropolitan planning organization and the Governor.

371 (14)~~(17)~~ "Metropolitan statistical area" means an area
 372 that includes a municipality of 50,000 persons or more, or an
 373 urbanized area of at least 50,000 persons as defined by the
 374 United States Bureau of the Census, provided that the component
 375 county or counties have a total population of at least 100,000.

376 (15)~~(18)~~ "Nonattainment area" means an area designated by
 377 the United States Environmental Protection Agency, pursuant to
 378 federal law, as exceeding national primary or secondary ambient
 379 air quality standards for the pollutants carbon monoxide or
 380 ozone.

381 (16)~~(19)~~ "Periodic maintenance" means activities that are
 382 large in scope and require a major work effort to restore
 383 deteriorated components of the transportation system to a safe
 384 and serviceable condition, including, but not limited to, the
 385 repair of large bridge structures, major repairs to bridges and
 386 bridge systems, and the mineral sealing of lengthy sections of
 387 roadway.

388 (17)~~(20)~~ "Person" means any person described in s. 1.01 or
 389 any unit of government in or outside the state.

390 (18)~~(21)~~ "Right of access" means the right of ingress to a
 391 highway from abutting land and egress from a highway to abutting
 392 land.

393 ~~(19)~~~~(22)~~ "Right-of-way" means land in which the state, the
 394 department, a county, or a municipality owns the fee or has an
 395 easement devoted to or required for use as a transportation
 396 facility.

397 ~~(20)~~~~(23)~~ "Road" means a way open to travel by the public,
 398 including, but not limited to, a street, highway, or alley. The
 399 term includes associated sidewalks, the roadbed, the right-of-
 400 way, and all culverts, drains, sluices, ditches, water storage
 401 areas, waterways, embankments, slopes, retaining walls, bridges,
 402 tunnels, and viaducts necessary for the maintenance of travel
 403 and all ferries used in connection therewith.

404 ~~(21)~~~~(24)~~ "Routine maintenance" means minor repairs and
 405 associated tasks necessary to maintain a safe and efficient
 406 transportation system. The term includes: pavement patching;
 407 shoulder repair; cleaning and repair of drainage ditches,
 408 traffic signs, and structures; mowing; bridge inspection and
 409 maintenance; pavement striping; litter cleanup; and other
 410 similar activities.

411 ~~(22)~~~~(25)~~ "State Highway System" means ~~the following, which~~
 412 ~~shall be facilities to which access is regulated:~~

413 ~~(a)~~ the interstate system and all other roads within the
 414 state which were under the jurisdiction of the state on June 10,
 415 1995; roads transferred to the state's jurisdiction after that
 416 date by mutual consent with another governmental entity, but not
 417 including roads so transferred from the state's jurisdiction;
 418 and roads constructed by an agency of the state for the State
 419 Highway System. These facilities shall be facilities to which
 420 access is regulated.

421 ~~(b) All rural arterial routes and their extensions into~~
 422 ~~and through urban areas;~~

423 ~~(c) All urban principal arterial routes; and~~

424 ~~(d) The urban minor arterial mileage on the existing State~~
 425 ~~Highway System as of July 1, 1987, plus additional mileage to~~
 426 ~~comply with the 2 percent requirement as described below.~~

427

428 ~~However, not less than 2 percent of the public road mileage of~~
 429 ~~each urbanized area on record as of June 30, 1986, shall be~~
 430 ~~included as minor arterials in the State Highway System.~~

431 ~~Urbanized areas not meeting the foregoing minimum requirement~~
 432 ~~shall have transferred to the State Highway System additional~~
 433 ~~minor arterials of the highest significance in which case the~~
 434 ~~total minor arterials in the State Highway System from any~~
 435 ~~urbanized area shall not exceed 2.5 percent of that area's total~~
 436 ~~public urban road mileage.~~

437 (23)~~(26)~~ "State Park Road System" means roads embraced
 438 within the boundaries of state parks and state roads leading to
 439 state parks, other than roads of the State Highway System, the
 440 county road systems, or the city street systems.

441 (24)~~(27)~~ "State road" means a street, road, highway, or
 442 other way open to travel by the public generally and dedicated
 443 to the public use according to law or by prescription and
 444 designated by the department, as provided by law, as part of the
 445 State Highway System.

446 (25)~~(28)~~ "Structure" means a bridge, viaduct, tunnel,
 447 causeway, approach, ferry slip, culvert, toll plaza, gate, or
 448 other similar facility used in connection with a transportation

449 facility.

450 (26)~~(29)~~ "Sufficiency rating" means the objective rating
 451 of a road or section of a road for the purpose of determining
 452 its capability to serve properly the actual or anticipated
 453 volume of traffic using the road.

454 (27)~~(30)~~ "Transportation corridor" means any land area
 455 designated by the state, a county, or a municipality which is
 456 between two geographic points and which area is used or suitable
 457 for the movement of people and goods by one or more modes of
 458 transportation, including areas necessary for management of
 459 access and securing applicable approvals and permits.

460 Transportation corridors shall contain, but are not limited to,
 461 the following:

- 462 (a) Existing publicly owned rights-of-way;
- 463 (b) All property or property interests necessary for
 464 future transportation facilities, including rights of access,
 465 air, view, and light, whether public or private, for the purpose
 466 of securing and utilizing future transportation rights-of-way,
 467 including, but not limited to, any lands reasonably necessary
 468 now or in the future for securing applicable approvals and
 469 permits, borrow pits, drainage ditches, water retention areas,
 470 rest areas, replacement access for landowners whose access could
 471 be impaired due to the construction of a future facility, and
 472 replacement rights-of-way for relocation of rail and utility
 473 facilities.

474 (28)~~(31)~~ "Transportation facility" means any means for the
 475 transportation of people or property from place to place which
 476 is constructed, operated, or maintained in whole or in part from

477 public funds. The term includes the property or property rights,
 478 both real and personal, which have been or may be established by
 479 public bodies for the transportation of people or property from
 480 place to place.

481 (29)~~(32)~~ "Urban area" means a geographic region comprising
 482 as a minimum the area inside the United States Bureau of the
 483 Census boundary of an urban place with a population of 5,000 or
 484 more persons, expanded to include adjacent developed areas as
 485 provided for by Federal Highway Administration regulations.

486 ~~(33) "Urban minor arterial road" means a route that~~
 487 ~~generally interconnects with and augments an urban principal~~
 488 ~~arterial road and provides service to trips of shorter length~~
 489 ~~and a lower level of travel mobility. The term includes all~~
 490 ~~arterials not classified as "principal" and contain facilities~~
 491 ~~that place more emphasis on land access than the higher system.~~

492 (30)~~(34)~~ "Urban place" means a geographic region composed
 493 of one or more contiguous census tracts that have been found by
 494 the United States Bureau of the Census to contain a population
 495 density of at least 1,000 persons per square mile.

496 ~~(35) "Urban principal arterial road" means a route that~~
 497 ~~generally serves the major centers of activity of an urban area,~~
 498 ~~the highest traffic volume corridors, and the longest trip~~
 499 ~~purpose and carries a high proportion of the total urban area~~
 500 ~~travel on a minimum of mileage. Such roads are integrated, both~~
 501 ~~internally and between major rural connections.~~

502 (31)~~(36)~~ "Urbanized area" means a geographic region
 503 comprising as a minimum the area inside an urban place of 50,000
 504 or more persons, as designated by the United States Bureau of

505 | the Census, expanded to include adjacent developed areas as
 506 | provided for by Federal Highway Administration regulations.
 507 | Urban areas with a population of fewer than 50,000 persons which
 508 | are located within the expanded boundary of an urbanized area
 509 | are not separately recognized.

510 | (32)~~(37)~~ "511" or "511 services" means three-digit
 511 | telecommunications dialing to access interactive voice response
 512 | telephone traveler information services provided in the state as
 513 | defined by the Federal Communications Commission in FCC Order
 514 | No. 00-256, July 31, 2000.

515 | (33)~~(38)~~ "Interactive voice response" means a software
 516 | application that accepts a combination of voice telephone input
 517 | and touch-tone keypad selection and provides appropriate
 518 | responses in the form of voice, fax, callback, e-mail, and other
 519 | media.

520 | Section 9. Subsections (11) and (13) of section 334.044,
 521 | Florida Statutes, are amended to read:

522 | 334.044 Department; powers and duties.—The department
 523 | shall have the following general powers and duties:

524 | (11) To establish a numbering system for public roads and~~and~~
 525 | ~~to functionally classify such roads, and to assign~~
 526 | ~~jurisdictional responsibility.~~

527 | (13) To ~~designate existing and to plan proposed~~
 528 | transportation facilities as part of the State Highway System,
 529 | and to construct, maintain, and operate such facilities.

530 | Section 10. Section 334.047, Florida Statutes, is amended
 531 | to read:

532 | 334.047 Prohibition.—Notwithstanding any other provision

HB 1271

2010

533 of law to the contrary, the Department of Transportation may not
 534 establish a cap on the number of miles in the State Highway
 535 System ~~or a maximum number of miles of urban principal arterial~~
 536 ~~roads, as defined in s. 334.03, within a district or county.~~

537 Section 11. Subsection (1) of section 337.14, Florida
 538 Statutes, is amended to read:

539 337.14 Application for qualification; certificate of
 540 qualification; restrictions; request for hearing.—

541 (1) Any person desiring to bid for the performance of any
 542 construction contract in excess of \$250,000 which the department
 543 proposes to let must first be certified by the department as
 544 qualified pursuant to this section and rules of the department.
 545 The rules of the department shall address the qualification of
 546 persons to bid on construction contracts in excess of \$250,000
 547 and shall include requirements with respect to the equipment,
 548 past record, experience, financial resources, and organizational
 549 personnel of the applicant necessary to perform the specific
 550 class of work for which the person seeks certification. The
 551 department is authorized to limit the dollar amount of any
 552 contract upon which a person is qualified to bid or the
 553 aggregate total dollar volume of contracts such person is
 554 allowed to have under contract at any one time. Each applicant
 555 seeking qualification to bid on construction contracts in excess
 556 of \$250,000 shall furnish the department a statement under oath,
 557 on such forms as the department may prescribe, setting forth
 558 detailed information as required on the application. Each
 559 application for certification shall be accompanied by the latest
 560 annual financial statement of the applicant completed within the

561 | last 12 months. If the application or the annual financial
 562 | statement shows the financial condition of the applicant more
 563 | than 4 months prior to the date on which the application is
 564 | received by the department, then an interim financial statement
 565 | must ~~also~~ be submitted and be accompanied by an updated
 566 | application. The interim financial statement must cover the
 567 | period from the end date of the annual statement and must show
 568 | the financial condition of the applicant no more than 4 months
 569 | prior to the date the interim financial statement ~~on which the~~
 570 | ~~application~~ is received by the department. Each required annual
 571 | or interim financial statement must be audited and accompanied
 572 | by the opinion of a certified public accountant or a public
 573 | accountant approved by the department. The information required
 574 | by this subsection is confidential and exempt from the
 575 | provisions of s. 119.07(1). The department shall act upon the
 576 | application for qualification within 30 days after the
 577 | department determines that the application is complete. The
 578 | department may waive the requirements of this subsection for
 579 | projects having a contract price of \$500,000 or less if the
 580 | department determines that the project is of a noncritical
 581 | nature and the waiver will not endanger public health, safety,
 582 | or property.

583 | Section 12. Subsection (1) of section 337.401, Florida
 584 | Statutes, is amended to read:

585 | 337.401 Use of right-of-way for utilities subject to
 586 | regulation; permit; fees.—

587 | (1) (a) The department and local governmental entities,
 588 | referred to in ss. 337.401-337.404 as the "authority," that have

589 jurisdiction and control of public roads or publicly owned rail
 590 corridors are authorized to prescribe and enforce reasonable
 591 rules or regulations with reference to the placing and
 592 maintaining along, across, or on any road or publicly owned rail
 593 corridors under their respective jurisdictions any electric
 594 transmission, telephone, telegraph, or other communications
 595 services lines; pole lines; poles; railways; ditches; sewers;
 596 water, heat, or gas mains; pipelines; fences; gasoline tanks and
 597 pumps; or other structures referred to in this section as the
 598 "utility." ~~For aerial and underground electric utility~~
 599 ~~transmission lines designed to operate at 69 or more kilovolts~~
 600 ~~that are needed to accommodate the additional electrical~~
 601 ~~transfer capacity on the transmission grid resulting from new~~
 602 ~~base load generating facilities, where there is no other~~
 603 ~~practicable alternative available for placement of the electric~~
 604 ~~utility transmission lines on the department's rights-of-way,~~
 605 ~~the department's rules shall provide for placement of and access~~
 606 ~~to such transmission lines adjacent to and within the right-of-~~
 607 ~~way of any department-controlled public roads, including~~
 608 ~~longitudinally within limited access facilities to the greatest~~
 609 ~~extent allowed by federal law, if compliance with the standards~~
 610 ~~established by such rules is achieved. Such rules may include,~~
 611 ~~but need not be limited to, that the use of the right-of-way is~~
 612 ~~reasonable based upon a consideration of economic and~~
 613 ~~environmental factors, including, without limitation, other~~
 614 ~~practicable alternative alignments, utility corridors and~~
 615 ~~easements, impacts on adjacent property owners, and minimum~~
 616 ~~clear zones and other safety standards, and further provide that~~

617 ~~placement of the electric utility transmission lines within the~~
 618 ~~department's right-of-way does not interfere with operational~~
 619 ~~requirements of the transportation facility or planned or~~
 620 ~~potential future expansion of such transportation facility. If~~
 621 ~~the department approves longitudinal placement of electric~~
 622 ~~utility transmission lines in limited access facilities,~~
 623 ~~compensation for the use of the right-of-way is required. Such~~
 624 ~~consideration or compensation paid by the electric utility in~~
 625 ~~connection with the department's issuance of a permit does not~~
 626 ~~create any property right in the department's property~~
 627 ~~regardless of the amount of consideration paid or the~~
 628 ~~improvements constructed on the property by the utility. Upon~~
 629 ~~notice by the department that the property is needed for~~
 630 ~~expansion or improvement of the transportation facility, the~~
 631 ~~electric utility transmission line will relocate from the~~
 632 ~~facility at the electric utility's sole expense. The electric~~
 633 ~~utility shall pay to the department reasonable damages resulting~~
 634 ~~from the utility's failure or refusal to timely relocate its~~
 635 ~~transmission lines. The rules to be adopted by the department~~
 636 ~~may also address the compensation methodology and relocation. As~~
 637 ~~used in this subsection, the term "base-load generating~~
 638 ~~facilities" means electric power plants that are certified under~~
 639 ~~part II of chapter 403. The department may enter into a permit-~~
 640 ~~delegation agreement with a governmental entity if issuance of a~~
 641 ~~permit is based on requirements that the department finds will~~
 642 ~~ensure the safety and integrity of facilities of the Department~~
 643 ~~of Transportation; however, the permit-delegation agreement does~~
 644 ~~not apply to facilities of electric utilities as defined in s.~~

645 366.02(2).

646 (b) For aerial and underground electric utility
 647 transmission lines designed to operate at 69 or more kilovolts
 648 that are needed to accommodate the additional electrical
 649 transfer capacity on the transmission grid resulting from new
 650 base-load generating facilities, the department's rules shall
 651 provide for placement of and access to such transmission lines
 652 adjacent to and within the right-of-way of any department-
 653 controlled public roads, including longitudinally within limited
 654 access facilities where there is no other practicable
 655 alternative available, to the greatest extent allowed by federal
 656 law, if compliance with the standards established by such rules
 657 is achieved. Such rules may include, but need not be limited to,
 658 that the use of the limited access right-of-way for longitudinal
 659 placement of electric utility transmission lines is reasonable
 660 based upon a consideration of economic and environmental
 661 factors, including, without limitation, other practicable
 662 alternative alignments, utility corridors and easements, impacts
 663 on adjacent property owners, and minimum clear zones and other
 664 safety standards, and further provide that placement of the
 665 electric utility transmission lines within the department's
 666 right-of-way does not interfere with operational requirements of
 667 the transportation facility or planned or potential future
 668 expansion of such transportation facility. If the department
 669 approves longitudinal placement of electric utility transmission
 670 lines in limited access facilities, compensation for the use of
 671 the right-of-way is required. Such consideration or compensation
 672 paid by the electric utility in connection with the department's

673 issuance of a permit does not create any property right in the
 674 department's property regardless of the amount of consideration
 675 paid or the improvements constructed on the property by the
 676 utility. Upon notice by the department that the property is
 677 needed for expansion or improvement of the transportation
 678 facility, the electric utility transmission line will relocate
 679 at the electric utility's sole expense. The electric utility
 680 shall pay to the department reasonable damages resulting from
 681 the utility's failure or refusal to timely relocate its
 682 transmission lines. The rules to be adopted by the department
 683 may also address the compensation methodology and relocation. As
 684 used in this subsection, the term "base-load generating
 685 facilities" means electric power plants that are certified under
 686 part II of chapter 403.

687 Section 13. Subsection (1) of section 338.155, Florida
 688 Statutes, is amended to read:

689 338.155 Payment of toll on toll facilities required;
 690 exemptions.—

691 (1) No persons are permitted to use any toll facility
 692 without payment of tolls, except employees of the agency
 693 operating the toll project when using the toll facility on
 694 official state business, state military personnel while on
 695 official military business, handicapped persons as provided in
 696 this section, persons exempt from toll payment by the
 697 authorizing resolution for bonds issued to finance the facility,
 698 and persons exempt on a temporary basis where use of such toll
 699 facility is required as a detour route. Any law enforcement
 700 officer operating a marked official vehicle is exempt from toll

701 payment when on official law enforcement business. Any person
 702 operating a fire vehicle when on official business or a rescue
 703 vehicle when on official business is exempt from toll payment.
 704 Any person participating in the funeral procession of a law
 705 enforcement officer or firefighter killed in the line of duty is
 706 exempt from toll payment. The secretary, or the secretary's
 707 designee, may suspend the payment of tolls on a toll facility
 708 when necessary to assist in emergency evacuation. The failure to
 709 pay a prescribed toll constitutes a noncriminal traffic
 710 infraction, punishable as a moving violation pursuant to s.
 711 318.18. The department is authorized to adopt rules relating to
 712 the payment, collection, and enforcement of tolls, including,
 713 but not limited to, rules for the implementation of video or
 714 other image billing and variable pricing ~~guaranteed toll~~
 715 ~~accounts.~~

716 Section 14. Subsection (1) of section 403.4131, Florida
 717 Statutes, is amended to read:

718 403.4131 Litter control.—

719 (1) The Department of Transportation shall establish an
 720 "adopt-a-highway" program to allow local organizations to be
 721 identified with specific highway cleanup and highway
 722 beautification projects authorized under s. 339.2405. ~~The~~
 723 ~~department shall report to the Governor and the Legislature on~~
 724 ~~the progress achieved and the savings incurred by the "adopt-a-~~
 725 ~~highway" program.~~ The department shall also monitor and report
 726 ~~on~~ compliance with the provisions of the adopt-a-highway program
 727 to ensure that organizations participating ~~that participate~~ in
 728 the program comply with the goals identified by the department.

729 Section 15. Section 705.18, Florida Statutes, is amended
 730 to read:

731 705.18 Disposal of personal property lost or abandoned on
 732 university or community college campuses ~~or certain public use~~
 733 ~~airports~~; disposition of proceeds from sale thereof.-

734 (1) Whenever any lost or abandoned personal property shall
 735 be found on a campus of an institution in the State University
 736 System or a campus of a state-supported community college, ~~or on~~
 737 ~~premises owned or controlled by the operator of a public use~~
 738 ~~airport having regularly scheduled international passenger~~
 739 ~~service~~, the president of the institution or the president's
 740 designee ~~or the director of the airport or the director's~~
 741 ~~designee~~ shall take charge of the property thereof and make a
 742 record of the date such property was found. If, within 30 days
 743 after such property is found, or a longer period of time as may
 744 be deemed appropriate by the president ~~or the director~~ under the
 745 circumstances, the property ~~it~~ is not claimed by the owner, the
 746 president ~~or director~~ shall order it sold at public outcry after
 747 giving notice of the time and place of sale in a publication of
 748 general circulation on the campus of such institution ~~or within~~
 749 ~~the county where the airport is located~~ and written notice to
 750 the owner if known. The rightful owner of such property may
 751 reclaim the same at any time prior to sale.

752 (2) All moneys realized from such institution's sale shall
 753 be placed in an appropriate fund and used solely for student
 754 scholarship and loan purposes. ~~All moneys realized from such~~
 755 ~~sale by an airport, less its costs of storage, transportation,~~
 756 ~~and publication of notice, shall, unless another use is required~~

757 ~~by federal law, be deposited into the state school fund.~~

758 Section 16. Section 705.182, Florida Statutes, is created
759 to read:

760 705.182 Disposal of personal property found on the
761 premises of public-use airports.-

762 (1) Whenever any personal property, other than an aircraft
763 or motor vehicle, is found on premises owned or controlled by
764 the operator of a public-use airport, the director of the
765 airport or the director's designee shall take charge of the
766 property and make a record of the date such property was found.

767 (2) If, within 30 calendar days after such property is
768 found or for a longer period of time as may be deemed
769 appropriate by the director or the director's designee under the
770 circumstances, the property is not claimed by the owner, the
771 director or the director's designee may:

772 (a) Retain any or all of the property for use by the
773 airport or for use by the state or the unit of local government
774 owning or operating the airport;

775 (b) Trade such property to another unit of local
776 government or a state agency;

777 (c) Donate the property to a charitable organization;

778 (d) Sell the property; or

779 (e) Dispose of the property through an appropriate refuse
780 removal company or a company that provides salvage services for
781 the type of personal property found or located on the airport
782 premises.

783 (3) The airport shall notify the owner, if known, of the
784 property found on the airport premises and that the airport

785 intends to dispose of the property as provided in subsection
 786 (2).

787 (4) If the airport elects to sell the property under
 788 paragraph (2)(d), the property must be sold at a public auction
 789 either on the Internet or at a specified physical location after
 790 giving notice of the time and place of sale, at least 10
 791 calendar days prior to the date of sale, in a publication of
 792 general circulation within the county where the airport is
 793 located and after written notice, via certified mail, return
 794 receipt requested, is provided to the owner, if known. Any such
 795 notice shall be sufficient if the notice refers to the airport's
 796 intention to sell all then-accumulated found property, and there
 797 is no requirement that the notice identify each item to be sold.
 798 The rightful owner of such property may reclaim the property at
 799 any time prior to sale by presenting acceptable evidence of
 800 ownership to the airport director or the director's designee.
 801 All proceeds from the sale of the property shall be retained by
 802 the airport for use by the airport in any lawfully authorized
 803 manner.

804 (5) Nothing in this section shall preclude the airport
 805 from allowing a domestic or international air carrier or other
 806 tenant, on premises owned or controlled by the operator of a
 807 public-use airport, to establish its own lost and found
 808 procedures for personal property and to dispose of such personal
 809 property.

810 (6) A purchaser or recipient in good faith of personal
 811 property sold or obtained under this section shall take the
 812 property free of the rights of persons then holding any legal or

813 equitable interest thereto, whether or not recorded.

814 Section 17. Section 705.183, Florida Statutes, is created
815 to read:

816 705.183 Disposal of derelict or abandoned aircraft on the
817 premises of public-use airports.-

818 (1) (a) Whenever any derelict or abandoned aircraft is
819 found or located on premises owned or controlled by the operator
820 of a public-use airport, whether or not such premises are under
821 a lease or license to a third party, the director of the airport
822 or the director's designee shall make a record of the date the
823 aircraft was found or determined to be present on the airport
824 premises.

825 (b) For purposes of this section, the term:

826 1. "Abandoned aircraft" means an aircraft that has been
827 disposed of on a public-use airport in a wrecked, inoperative,
828 or partially dismantled condition or an aircraft that has
829 remained in an idle state on premises owned or controlled by the
830 operator of a public-use airport for 45 consecutive calendar
831 days.

832 2. "Derelict aircraft" means any aircraft that is not in a
833 flyable condition, does not have a current certificate of air
834 worthiness issued by the Federal Aviation Administration, and is
835 not in the process of actively being repaired.

836 (2) The director or the director's designee shall contact
837 the Federal Aviation Administration, Aircraft Registration
838 Branch, to determine the name and address of the last registered
839 owner of the aircraft and shall make a diligent personal search
840 of the appropriate records, or contact an aircraft title search

841 company, to determine the name and address of any person having
 842 an equitable or legal interest in the aircraft. Within 10
 843 business days after receipt of the information, the director or
 844 the director's designee shall notify the owner and all persons
 845 having an equitable or legal interest in the aircraft by
 846 certified mail, return receipt requested, of the location of the
 847 derelict or abandoned aircraft on the airport premises, that
 848 fees and charges for the use of the airport by the aircraft have
 849 accrued and the amount thereof, that the aircraft is subject to
 850 a lien under subsection (5) for the accrued fees and charges for
 851 the use of the airport and for the transportation, storage, and
 852 removal of the aircraft, that the lien is subject to enforcement
 853 pursuant to law, and that the airport may cause the use, trade,
 854 sale, or removal of the aircraft as described in s.
 855 705.182(2)(a), (b), (d), or (e) if, within 30 calendar days
 856 after the date of receipt of such notice, the aircraft has not
 857 been removed from the airport upon payment in full of all
 858 accrued fees and charges for the use of the airport and for the
 859 transportation, storage, and removal of the aircraft. Such
 860 notice may require removal of the aircraft in less than 30
 861 calendar days if the aircraft poses a danger to the health or
 862 safety of users of the airport, as determined by the director or
 863 the director's designee.

864 (3) If the owner of the aircraft is unknown or cannot be
 865 found, the director or the director's designee shall cause a
 866 laminated notice to be placed upon such aircraft in
 867 substantially the following form:
 868

869 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
 870 PROPERTY. This property, to wit: ...(setting forth brief
 871 description)... is unlawfully upon public property known as
 872 ...(setting forth brief description of location)... and has
 873 accrued fees and charges for the use of the ...(same description
 874 of location as above)... and for the transportation, storage,
 875 and removal of the property. These accrued fees and charges must
 876 be paid in full and the property must be removed within 30
 877 calendar days after the date of this notice; otherwise, the
 878 property will be removed and disposed of pursuant to chapter
 879 705, Florida Statutes. The property is subject to a lien for all
 880 accrued fees and charges for the use of the public property
 881 known as ...(same description of location as above)... by such
 882 property and for all fees and charges incurred by the public
 883 property known as ...(same description of location as above)...
 884 for the transportation, storage, and removal of the property.
 885 This lien is subject to enforcement pursuant to law. The owner
 886 will be liable for such fees and charges, as well as the cost
 887 for publication of this notice. Dated this: ...(setting forth
 888 the date of posting of notice)..., signed: ...(setting forth
 889 name, title, address, and telephone number of law enforcement
 890 officer)....

891
 892 Such notice shall be not less than 8 inches by 10 inches and
 893 shall be sufficiently weatherproof to withstand normal exposure
 894 to the weather. If, at the end of 30 calendar days after posting
 895 the notice, the owner or any person interested in the described
 896 derelict or abandoned aircraft has not removed the aircraft from

897 the airport upon payment in full of all accrued fees and charges
 898 for the use of the airport and for the transportation, storage,
 899 and removal of the aircraft, or shown reasonable cause for
 900 failure to do so, the director or the director's designee may
 901 cause the use, trade, sale, or removal of the aircraft as
 902 described in s. 705.182(2) (a), (b), (d), or (e).

903 (4) Such aircraft shall be removed within the time period
 904 specified in the notice provided under subsection (2) or
 905 subsection (3). If, at the end of such period of time, the owner
 906 or any person interested in the described derelict or abandoned
 907 aircraft has not removed the aircraft from the airport upon
 908 payment in full of all accrued fees and charges for the use of
 909 the airport and for the transportation, storage, and removal of
 910 the aircraft, or shown reasonable cause for the failure to do
 911 so, the director or the director's designee may cause the use,
 912 trade, sale, or removal of the aircraft as described in s.
 913 705.182(2) (a), (b), (d), or (e).

914 (a) If the airport elects to sell the aircraft in
 915 accordance with s. 705.182(2) (d), the aircraft must be sold at
 916 public auction after giving notice of the time and place of
 917 sale, at least 10 calendar days prior to the date of sale, in a
 918 publication of general circulation within the county where the
 919 airport is located and after providing written notice of the
 920 intended sale to all parties known to have an interest in the
 921 aircraft.

922 (b) If the airport elects to dispose of the aircraft in
 923 accordance with s. 705.182(2) (e), the airport shall be entitled
 924 to negotiate with the company for a price to be received from

925 such company in payment for the aircraft, or, if circumstances
 926 so warrant, a price to be paid to such company by the airport
 927 for the costs of disposing of the aircraft. All information
 928 pertaining to the establishment of such price and the
 929 justification for the amount of such price shall be prepared and
 930 maintained by the airport, and such negotiated price shall be
 931 deemed to be a commercially reasonable price.

932 (c) If the sale price or the negotiated price is less than
 933 the airport's then current charges and costs against the
 934 aircraft, or if the airport is required to pay the salvage
 935 company for its services, the owner of the aircraft shall remain
 936 liable to the airport for the airport's costs that are not
 937 offset by the sale price or negotiated price, in addition to the
 938 owner's liability for payment to the airport of the price the
 939 airport was required to pay any salvage company. All costs
 940 incurred by the airport in the removal, storage, and sale of any
 941 aircraft shall be recoverable against the owner of the aircraft.

942 (5) The airport shall have a lien on a derelict or
 943 abandoned aircraft for all fees and charges for the use of the
 944 airport by such aircraft and for all fees and charges incurred
 945 by the airport for the transportation, storage, and removal of
 946 the aircraft. As a prerequisite to perfecting a lien under this
 947 section, the airport director or the director's designee must
 948 serve a notice in accordance with subsection (2) on the last
 949 registered owner and all persons having an equitable or legal
 950 interest in the aircraft. Serving the notice does not dispense
 951 with recording the claim of lien.

952 (6) (a) For the purpose of perfecting its lien under this

953 section, the airport shall record a claim of lien which shall
 954 state:

- 955 1. The name and address of the airport.
 956 2. The name of the last registered owner of the aircraft
 957 and all persons having a legal or equitable interest in the
 958 aircraft.
 959 3. The fees and charges incurred by the aircraft for the
 960 use of the airport and the fees and charges for the
 961 transportation, storage, and removal of the aircraft.
 962 4. A description of the aircraft sufficient for
 963 identification.

964 (b) The claim of lien shall be signed and sworn to or
 965 affirmed by the airport director or the director's designee.

966 (c) The claim of lien shall be sufficient if it is in
 967 substantially the following form:

968
 969 CLAIM OF LIEN

970 State of _____
 971 County of _____
 972 Before me, the undersigned notary public, personally appeared
 973 _____ , who was duly sworn and says that he/she is the
 974 _____ of _____ , whose address is _____ ; and that the
 975 following described aircraft:
 976 ...(Description of aircraft)...
 977 owned by _____ , whose address is _____ , has accrued
 978 \$ _____ in fees and charges for the use by the aircraft of
 979 _____ and for the transportation, storage, and removal
 980 of the aircraft from _____ ; that the lienor served its

HB 1271

2010

981 notice to the last registered owner and all persons having a
 982 legal or equitable interest in the aircraft on _____,
 983 ...(year)..., by _____.
 984 ...(Signature)...
 985 Sworn to (or affirmed) and subscribed before me this _____ day
 986 of _____, ...(year)..., by ...(name of person making statement)....
 987 ...(Signature of Notary Public)... ...(Print, Type, or Stamp
 988 Commissioned name of Notary Public)...
 989 Personally Known OR Produced _____ as identification.

990
 991 However, the negligent inclusion or omission of any information
 992 in this claim of lien which does not prejudice the last
 993 registered owner does not constitute a default that operates to
 994 defeat an otherwise valid lien.

995 (d) The claim of lien shall be served on the last
 996 registered owner of the aircraft and all persons having an
 997 equitable or legal interest in the aircraft. The claim of lien
 998 shall be so served before recordation.

999 (e) The claim of lien shall be recorded with the clerk of
 1000 court in the county where the airport is located. The recording
 1001 of the claim of lien shall be constructive notice to all persons
 1002 of the contents and effect of such claim. The lien shall attach
 1003 at the time of recordation and shall take priority as of that
 1004 time.

1005 (7) A purchaser or recipient in good faith of an aircraft
 1006 sold or obtained under this section takes the property free of
 1007 the rights of persons then holding any legal or equitable
 1008 interest to the aircraft, whether or not recorded. The purchaser

HB 1271

2010

1009 | or recipient is required to notify the appropriate Federal
 1010 | Aviation Administration office of such change in the registered
 1011 | owner of the aircraft.

1012 | (8) If the aircraft is sold at public sale, the airport
 1013 | shall deduct from the proceeds of sale the costs of
 1014 | transportation, storage, publication of notice, and all other
 1015 | costs reasonably incurred by the airport, and any balance of the
 1016 | proceeds shall be deposited into an interest-bearing account not
 1017 | later than 30 calendar days after the airport's receipt of the
 1018 | proceeds and held there for 1 year. The rightful owner of the
 1019 | aircraft may claim the balance of the proceeds within 1 year
 1020 | after the date of the deposit by making application to the
 1021 | airport and presenting acceptable written evidence of ownership
 1022 | to the airport's director or the director's designee. If no
 1023 | rightful owner claims the proceeds within the 1-year period, the
 1024 | balance of the proceeds shall be retained by the airport to be
 1025 | used in any manner authorized by law.

1026 | (9) Any person acquiring a legal interest in an aircraft
 1027 | that is sold by an airport under this section or s. 705.182
 1028 | shall be the lawful owner of such aircraft and all other legal
 1029 | or equitable interests in such aircraft shall be divested and of
 1030 | no further force and effect, provided that the holder of any
 1031 | such legal or equitable interests was notified of the intended
 1032 | disposal of the aircraft to the extent required in this section.
 1033 | The airport may issue documents of disposition to the purchaser
 1034 | or recipient of an aircraft disposed of under this section.

1035 | Section 18. Section 705.184, Florida Statutes, is created
 1036 | to read:

HB 1271

2010

1037 705.184 Derelict or abandoned motor vehicles on the
 1038 premises of public-use airports.-

1039 (1) (a) Whenever any derelict or abandoned motor vehicle is
 1040 found on premises owned or controlled by the operator of a
 1041 public-use airport, including airport premises leased to a third
 1042 party, the director of the airport or the director's designee
 1043 may take charge of the motor vehicle and make a record of the
 1044 date such motor vehicle was found.

1045 (b) For purposes of this section, the term:

1046 1. "Abandoned motor vehicle" means a motor vehicle that
 1047 has been disposed of on a public-use airport in a wrecked,
 1048 inoperative, or partially dismantled condition or a motor
 1049 vehicle that has remained in an idle state on the premises of a
 1050 public-use airport for 45 consecutive calendar days.

1051 2. "Derelict motor vehicle" means any motor vehicle that
 1052 is not in a drivable condition.

1053 (c) After the information relating to the abandoned or
 1054 derelict motor vehicle is recorded in the airport's records, the
 1055 director or the director's designee may cause the motor vehicle
 1056 to be removed from airport premises by the airport's wrecker or
 1057 by a licensed independent wrecker company to be stored at a
 1058 suitable location on or off the airport premises. If the motor
 1059 vehicle is to be removed from airport premises by the airport's
 1060 wrecker, the airport must follow the procedures in subsections
 1061 (2)-(8). The procedures in subsections (2)-(8) do not apply if
 1062 the motor vehicle is removed from the airport premises by a
 1063 licensed independent wrecker company.

1064 (2) The airport director or the director's designee shall

1065 | contact the Department of Highway Safety and Motor Vehicles to
 1066 | notify that department that the airport has possession of the
 1067 | abandoned or derelict motor vehicle and to determine the name
 1068 | and address of the owner of the motor vehicle, the insurance
 1069 | company insuring the motor vehicle, notwithstanding the
 1070 | provisions of s. 627.736, and any person who has filed a lien on
 1071 | the motor vehicle. Within 7 business days after receipt of the
 1072 | information, the director or the director's designee shall send
 1073 | notice by certified mail, return receipt requested, to the owner
 1074 | of the motor vehicle, the insurance company insuring the motor
 1075 | vehicle, notwithstanding the provisions of s. 627.736, and all
 1076 | persons of record claiming a lien against the motor vehicle. The
 1077 | notice shall state the fact of possession of the motor vehicle,
 1078 | that charges for reasonable towing, storage, and parking fees,
 1079 | if any, have accrued and the amount thereof, that a lien as
 1080 | provided in subsection (6) will be claimed, that the lien is
 1081 | subject to enforcement pursuant to law, that the owner or
 1082 | lienholder, if any, has the right to a hearing as set forth in
 1083 | subsection (4), and that any motor vehicle which, at the end of
 1084 | 30 calendar days after receipt of the notice, has not been
 1085 | removed from the airport upon payment in full of all accrued
 1086 | charges for reasonable towing, storage, and parking fees, if
 1087 | any, may be disposed of as provided in s. 705.182(2)(a), (b),
 1088 | (d), or (e), including, but not limited to, the motor vehicle
 1089 | being sold free of all prior liens after 35 calendar days after
 1090 | the time the motor vehicle is stored if any prior liens on the
 1091 | motor vehicle are more than 5 years of age or after 50 calendar
 1092 | days after the time the motor vehicle is stored if any prior

HB 1271

2010

1093 | liens on the motor vehicle are 5 years of age or less.

1094 | (3) If attempts to notify the owner or lienholder pursuant
 1095 | to subsection (2) are not successful, the requirement of notice
 1096 | by mail shall be considered met and the director or the
 1097 | director's designee, in accordance with subsection (5), may
 1098 | cause the motor vehicle to be disposed of as provided in s.
 1099 | 705.182(2)(a), (b), (d), or (e), including, but not limited to,
 1100 | the motor vehicle being sold free of all prior liens after 35
 1101 | calendar days after the time the motor vehicle is stored if any
 1102 | prior liens on the motor vehicle are more than 5 years of age or
 1103 | after 50 calendar days after the time the motor vehicle is
 1104 | stored if any prior liens on the motor vehicle are 5 years of
 1105 | age or less.

1106 | (4) (a) The owner of, or any person with a lien on, a motor
 1107 | vehicle removed pursuant to subsection (1), may, within 10
 1108 | calendar days after the time he or she has knowledge of the
 1109 | location of the motor vehicle, file a complaint in the county
 1110 | court of the county in which the motor vehicle is stored to
 1111 | determine if his or her property was wrongfully taken or
 1112 | withheld.

1113 | (b) Upon filing a complaint, an owner or lienholder may
 1114 | have his or her motor vehicle released upon posting with the
 1115 | court a cash or surety bond or other adequate security equal to
 1116 | the amount of the fees for towing, storage, and accrued parking,
 1117 | if any, to ensure the payment of such fees in the event he or
 1118 | she does not prevail. Upon the posting of the bond or other
 1119 | adequate security and the payment of any applicable fee, the
 1120 | clerk of the court shall issue a certificate notifying the

HB 1271

2010

1121 | airport of the posting of the bond or other adequate security
 1122 | and directing the airport to release the motor vehicle. At the
 1123 | time of such release, after reasonable inspection, the owner or
 1124 | lienholder shall give a receipt to the airport reciting any
 1125 | claims he or she has for loss or damage to the motor vehicle or
 1126 | the contents of the motor vehicle.

1127 | (5) If, after 30 calendar days after receipt of the
 1128 | notice, the owner or any person claiming a lien has not removed
 1129 | the motor vehicle from its storage location upon payment in full
 1130 | of all accrued charges for reasonable towing, storage, and
 1131 | parking fees, if any, or shown reasonable cause for the failure
 1132 | to do so, the airport director or the director's designee may
 1133 | dispose of the motor vehicle as provided in s. 705.182(2)(a),
 1134 | (b), (d), or (e). If the airport elects to sell the motor
 1135 | vehicle pursuant to s. 705.182(2)(d), the motor vehicle may be
 1136 | sold free of all prior liens after 35 calendar days after the
 1137 | time the motor vehicle is stored if any prior liens on the motor
 1138 | vehicle are more than 5 years of age or after 50 calendar days
 1139 | after the time the motor vehicle is stored if any prior liens on
 1140 | the motor vehicle are 5 years of age or less. The sale shall be
 1141 | a public auction either on the Internet or at a specified
 1142 | physical location. If the date of the sale was not included in
 1143 | the notice required in subsection (2), notice of the sale, sent
 1144 | by certified mail, return receipt requested, shall be given to
 1145 | the owner of the motor vehicle and to all persons claiming a
 1146 | lien on the motor vehicle. Such notice shall be mailed not less
 1147 | than 10 calendar days before the date of the sale. In addition
 1148 | to the notice by mail, public notice of the time and place of

HB 1271

2010

1149 the sale at auction shall be made by publishing a notice of the
 1150 sale at auction one time, at least 10 calendar days prior to the
 1151 date of sale, in a newspaper of general circulation in the
 1152 county in which the sale is to be held. All costs incurred by
 1153 the airport for the towing, storage, and sale of the motor
 1154 vehicle, as well as all accrued parking fees, if any, shall be
 1155 recovered by the airport from the proceeds of the sale, and any
 1156 proceeds of the sale in excess of such costs shall be retained
 1157 by the airport for use by the airport in any manner authorized
 1158 by law.

1159 (6) The airport pursuant to this section or, if used, a
 1160 licensed independent wrecker company pursuant to s. 713.78 shall
 1161 have a lien on an abandoned or derelict motor vehicle for all
 1162 reasonable towing, storage, and accrued parking fees, if any,
 1163 except that no storage fee shall be charged if the motor vehicle
 1164 is stored less than 6 hours. As a prerequisite to perfecting a
 1165 lien under this section, the airport director or the director's
 1166 designee must serve a notice in accordance with subsection (2)
 1167 on the owner of the motor vehicle, the insurance company
 1168 insuring the motor vehicle, notwithstanding the provisions of s.
 1169 627.736, and all persons of record claiming a lien against the
 1170 motor vehicle. If attempts to notify the owner, the insurance
 1171 company insuring the motor vehicle, notwithstanding the
 1172 provisions of s. 627.736, or lienholders are not successful, the
 1173 requirement of notice by mail shall be considered met. Serving
 1174 of the notice does not dispense with recording the claim of
 1175 lien.

1176 (7) (a) For the purpose of perfecting its lien under this

1177 section, the airport shall record a claim of lien which shall
 1178 state:

- 1179 1. The name and address of the airport.
- 1180 2. The name of the owner of the motor vehicle, the
 1181 insurance company insuring the motor vehicle, notwithstanding
 1182 the provisions of s. 627.736, and all persons of record claiming
 1183 a lien against the motor vehicle.
- 1184 3. The costs incurred from reasonable towing, storage, and
 1185 parking fees, if any.
- 1186 4. A description of the motor vehicle sufficient for
 1187 identification.

1188 (b) The claim of lien shall be signed and sworn to or
 1189 affirmed by the airport director or the director's designee.

1190 (c) The claim of lien shall be sufficient if it is in
 1191 substantially the following form:

1192
 1193 CLAIM OF LIEN

1194 State of _____
 1195 County of _____

1196 Before me, the undersigned notary public, personally appeared
 1197 _____, who was duly sworn and says that he/she is the
 1198 _____ of _____, whose address is _____; and that the
 1199 following described motor vehicle:

1200 ...(Description of motor vehicle)...
 1201 owned by _____, whose address is _____, has accrued
 1202 \$ _____ in fees for a reasonable tow, for storage, and for
 1203 parking, if applicable; that the lienor served its notice to the
 1204 owner, the insurance company insuring the motor vehicle

1205 notwithstanding the provisions of s. 627.736, Florida Statutes,
 1206 and all persons of record claiming a lien against the motor
 1207 vehicle on _____, ... (year)...., by _____.
 1208 ... (Signature)...
 1209 Sworn to (or affirmed) and subscribed before me this _____ day
 1210 of _____, ... (year)...., by ... (name of person making statement)....
 1211 ... (Signature of Notary Public)... ... (Print, Type, or Stamp
 1212 Commissioned name of Notary Public)...
 1213 Personally Known OR Produced _____ as identification.

1214
 1215 However, the negligent inclusion or omission of any information
 1216 in this claim of lien which does not prejudice the owner does
 1217 not constitute a default that operates to defeat an otherwise
 1218 valid lien.

1219 (d) The claim of lien shall be served on the owner of the
 1220 motor vehicle, the insurance company insuring the motor vehicle,
 1221 notwithstanding the provisions of s. 627.736, and all persons of
 1222 record claiming a lien against the motor vehicle. If attempts to
 1223 notify the owner, the insurance company insuring the motor
 1224 vehicle notwithstanding the provisions of s. 627.736, or
 1225 lienholders are not successful, the requirement of notice by
 1226 mail shall be considered met. The claim of lien shall be so
 1227 served before recordation.

1228 (e) The claim of lien shall be recorded with the clerk of
 1229 court in the county where the airport is located. The recording
 1230 of the claim of lien shall be constructive notice to all persons
 1231 of the contents and effect of such claim. The lien shall attach
 1232 at the time of recordation and shall take priority as of that

HB 1271

2010

1233 time.

1234 (8) A purchaser or recipient in good faith of a motor
 1235 vehicle sold or obtained under this section takes the property
 1236 free of the rights of persons then holding any legal or
 1237 equitable interest thereto, whether or not recorded.

1238 Section 19. Paragraph (a) of subsection (12) of section
 1239 163.3180, Florida Statutes, is amended to read:

1240 163.3180 Concurrency.—

1241 (12) (a) A development of regional impact may satisfy the
 1242 transportation concurrency requirements of the local
 1243 comprehensive plan, the local government's concurrency
 1244 management system, and s. 380.06 by payment of a proportionate-
 1245 share contribution for local and regionally significant traffic
 1246 impacts, if:

1247 1. The development of regional impact which, based on its
 1248 location or mix of land uses, is designed to encourage
 1249 pedestrian or other nonautomotive modes of transportation;

1250 2. The proportionate-share contribution for local and
 1251 regionally significant traffic impacts is sufficient to pay for
 1252 one or more required mobility improvements that will benefit a
 1253 regionally significant transportation facility;

1254 3. The owner and developer of the development of regional
 1255 impact pays or assures payment of the proportionate-share
 1256 contribution; and

1257 4. If the regionally significant transportation facility
 1258 to be constructed or improved is under the maintenance authority
 1259 of a governmental entity, as defined by s. 334.03 ~~(10)~~ ~~(12)~~, other
 1260 than the local government with jurisdiction over the development

HB 1271

2010

1261 of regional impact, the developer is required to enter into a
 1262 binding and legally enforceable commitment to transfer funds to
 1263 the governmental entity having maintenance authority or to
 1264 otherwise assure construction or improvement of the facility.
 1265

1266 The proportionate-share contribution may be applied to any
 1267 transportation facility to satisfy the provisions of this
 1268 subsection and the local comprehensive plan, but, for the
 1269 purposes of this subsection, the amount of the proportionate-
 1270 share contribution shall be calculated based upon the cumulative
 1271 number of trips from the proposed development expected to reach
 1272 roadways during the peak hour from the complete buildout of a
 1273 stage or phase being approved, divided by the change in the peak
 1274 hour maximum service volume of roadways resulting from
 1275 construction of an improvement necessary to maintain the adopted
 1276 level of service, multiplied by the construction cost, at the
 1277 time of developer payment, of the improvement necessary to
 1278 maintain the adopted level of service. For purposes of this
 1279 subsection, "construction cost" includes all associated costs of
 1280 the improvement. Proportionate-share mitigation shall be limited
 1281 to ensure that a development of regional impact meeting the
 1282 requirements of this subsection mitigates its impact on the
 1283 transportation system but is not responsible for the additional
 1284 cost of reducing or eliminating backlogs. This subsection also
 1285 applies to Florida Quality Developments pursuant to s. 380.061
 1286 and to detailed specific area plans implementing optional sector
 1287 plans pursuant to s. 163.3245.

1288 Section 20. Subsection (3) of section 288.063, Florida

1289 Statutes, is amended to read:
 1290 288.063 Contracts for transportation projects.-
 1291 (3) With respect to any contract executed pursuant to this
 1292 section, the term "transportation project" means a
 1293 transportation facility as defined in s. 334.03(28)~~(31)~~ which is
 1294 necessary in the judgment of the Office of Tourism, Trade, and
 1295 Economic Development to facilitate the economic development and
 1296 growth of the state. Except for applications received prior to
 1297 July 1, 1996, such transportation projects shall be approved
 1298 only as a consideration to attract new employment opportunities
 1299 to the state or expand or retain employment in existing
 1300 companies operating within the state, or to allow for the
 1301 construction or expansion of a state or federal correctional
 1302 facility in a county with a population of 75,000 or less that
 1303 creates new employment opportunities or expands or retains
 1304 employment in the county. The Office of Tourism, Trade, and
 1305 Economic Development shall institute procedures to ensure that
 1306 small and minority businesses have equal access to funding
 1307 provided under this section. Funding for approved transportation
 1308 projects may include any expenses, other than administrative
 1309 costs and equipment purchases specified in the contract,
 1310 necessary for new, or improvement to existing, transportation
 1311 facilities. Funds made available pursuant to this section may
 1312 not be expended in connection with the relocation of a business
 1313 from one community to another community in this state unless the
 1314 Office of Tourism, Trade, and Economic Development determines
 1315 that without such relocation the business will move outside this
 1316 state or determines that the business has a compelling economic

HB 1271

2010

1317 rationale for the relocation which creates additional jobs.
 1318 Subject to appropriation for projects under this section, any
 1319 appropriation greater than \$10 million shall be allocated to
 1320 each of the districts of the Department of Transportation to
 1321 ensure equitable geographical distribution. Such allocated funds
 1322 that remain uncommitted by the third quarter of the fiscal year
 1323 shall be reallocated among the districts based on pending
 1324 project requests.

1325 Section 21. Paragraph (b) of subsection (3) of section
 1326 311.07, Florida Statutes, is amended to read:

1327 311.07 Florida seaport transportation and economic
 1328 development funding.—

1329 (3)

1330 (b) Projects eligible for funding by grants under the
 1331 program are limited to the following port facilities or port
 1332 transportation projects:

1333 1. Transportation facilities within the jurisdiction of
 1334 the port.

1335 2. The dredging or deepening of channels, turning basins,
 1336 or harbors.

1337 3. The construction or rehabilitation of wharves, docks,
 1338 structures, jetties, piers, storage facilities, cruise
 1339 terminals, automated people mover systems, or any facilities
 1340 necessary or useful in connection with any of the foregoing.

1341 4. The acquisition of vessel tracking systems, container
 1342 cranes, or other mechanized equipment used in the movement of
 1343 cargo or passengers in international commerce.

1344 5. The acquisition of land to be used for port purposes.

1345 6. The acquisition, improvement, enlargement, or extension
1346 of existing port facilities.

1347 7. Environmental protection projects which are necessary
1348 because of requirements imposed by a state agency as a condition
1349 of a permit or other form of state approval; which are necessary
1350 for environmental mitigation required as a condition of a state,
1351 federal, or local environmental permit; which are necessary for
1352 the acquisition of spoil disposal sites and improvements to
1353 existing and future spoil sites; or which result from the
1354 funding of eligible projects listed in this paragraph.

1355 8. Transportation facilities as defined in s.
1356 334.03(28)~~(31)~~ which are not otherwise part of the Department of
1357 Transportation's adopted work program.

1358 9. Seaport intermodal access projects identified in the 5-
1359 year Florida Seaport Mission Plan as provided in s. 311.09(3).

1360 10. Construction or rehabilitation of port facilities as
1361 defined in s. 315.02, excluding any park or recreational
1362 facilities, in ports listed in s. 311.09(1) with operating
1363 revenues of \$5 million or less, provided that such projects
1364 create economic development opportunities, capital improvements,
1365 and positive financial returns to such ports.

1366 Section 22. Subsection (7) of section 311.09, Florida
1367 Statutes, is amended to read:

1368 311.09 Florida Seaport Transportation and Economic
1369 Development Council.—

1370 (7) The Department of Transportation shall review the list
1371 of projects approved by the council for consistency with the
1372 Florida Transportation Plan and the department's adopted work

HB 1271

2010

1373 program. In evaluating the consistency of a project, the
 1374 department shall determine whether the transportation impact of
 1375 the proposed project is adequately handled by existing state-
 1376 owned transportation facilities or by the construction of
 1377 additional state-owned transportation facilities as identified
 1378 in the Florida Transportation Plan and the department's adopted
 1379 work program. In reviewing for consistency a transportation
 1380 facility project as defined in s. 334.03(28)~~(31)~~ which is not
 1381 otherwise part of the department's work program, the department
 1382 shall evaluate whether the project is needed to provide for
 1383 projected movement of cargo or passengers from the port to a
 1384 state transportation facility or local road. If the project is
 1385 needed to provide for projected movement of cargo or passengers,
 1386 the project shall be approved for consistency as a consideration
 1387 to facilitate the economic development and growth of the state
 1388 in a timely manner. The Department of Transportation shall
 1389 identify those projects which are inconsistent with the Florida
 1390 Transportation Plan and the adopted work program and shall
 1391 notify the council of projects found to be inconsistent.

1392 Section 23. Section 316.2122, Florida Statutes, is amended
 1393 to read:

1394 316.2122 Operation of a low-speed vehicle or mini truck on
 1395 certain roadways.—The operation of a low-speed vehicle as
 1396 defined in s. 320.01(42) or a mini truck as defined in s.
 1397 320.01(45) on any road under the jurisdiction of a county or
 1398 municipality or on an urban minor arterial road under the
 1399 jurisdiction of the Department of Transportation ~~as defined in~~
 1400 ~~s. 334.03(15) or (33)~~ is authorized with the following

1401 | restrictions:

1402 | (1) A low-speed vehicle or mini truck may be operated only
 1403 | on streets where the posted speed limit is 35 miles per hour or
 1404 | less. This does not prohibit a low-speed vehicle or mini truck
 1405 | from crossing a road or street at an intersection where the road
 1406 | or street has a posted speed limit of more than 35 miles per
 1407 | hour.

1408 | (2) A low-speed vehicle must be equipped with headlamps,
 1409 | stop lamps, turn signal lamps, taillamps, reflex reflectors,
 1410 | parking brakes, rearview mirrors, windshields, seat belts, and
 1411 | vehicle identification numbers.

1412 | (3) A low-speed vehicle or mini truck must be registered
 1413 | and insured in accordance with s. 320.02 and titled pursuant to
 1414 | chapter 319.

1415 | (4) Any person operating a low-speed vehicle or mini truck
 1416 | must have in his or her possession a valid driver's license.

1417 | (5) A county or municipality may prohibit the operation of
 1418 | low-speed vehicles or mini trucks on any road under its
 1419 | jurisdiction if the governing body of the county or municipality
 1420 | determines that such prohibition is necessary in the interest of
 1421 | safety.

1422 | (6) The Department of Transportation may prohibit the
 1423 | operation of low-speed vehicles or mini trucks on any road under
 1424 | its jurisdiction if it determines that such prohibition is
 1425 | necessary in the interest of safety.

1426 | Section 24. Paragraph (c) of subsection (5) of section
 1427 | 316.515, Florida Statutes, is amended to read:

1428 | 316.515 Maximum width, height, length.—

1429 (5) IMPLEMENTS OF HUSBANDRY AND FARM EQUIPMENT;
 1430 AGRICULTURAL TRAILERS; FORESTRY EQUIPMENT; SAFETY REQUIREMENTS.—

1431 (c) The width and height limitations of this section do
 1432 not apply to farming or agricultural equipment, whether self-
 1433 propelled, pulled, or hauled, when temporarily operated during
 1434 daylight hours upon a public road that is not a limited access
 1435 facility as defined in s. 334.03(11)~~(13)~~, and the width and
 1436 height limitations may be exceeded by such equipment without a
 1437 permit. To be eligible for this exemption, the equipment shall
 1438 be operated within a radius of 50 miles of the real property
 1439 owned, rented, or leased by the equipment owner. However,
 1440 equipment being delivered by a dealer to a purchaser is not
 1441 subject to the 50-mile limitation. Farming or agricultural
 1442 equipment greater than 174 inches in width must have one warning
 1443 lamp mounted on each side of the equipment to denote the width
 1444 and must have a slow-moving vehicle sign. Warning lamps required
 1445 by this paragraph must be visible from the front and rear of the
 1446 vehicle and must be visible from a distance of at least 1,000
 1447 feet.

1448 Section 25. Section 336.01, Florida Statutes, is amended
 1449 to read:

1450 336.01 Designation of county road system.—The county road
 1451 system shall be as defined in s. 334.03(6)~~(8)~~.

1452 Section 26. Subsection (2) of section 338.222, Florida
 1453 Statutes, is amended to read:

1454 338.222 Department of Transportation sole governmental
 1455 entity to acquire, construct, or operate turnpike projects;
 1456 exception.—

HB 1271

2010

1457 (2) The department may contract with any local
 1458 governmental entity as defined in s. 334.03 (12) ~~(14)~~ for the
 1459 design, right-of-way acquisition, or construction of any
 1460 turnpike project which the Legislature has approved. Local
 1461 governmental entities may negotiate with the department for the
 1462 design, right-of-way acquisition, and construction of any
 1463 section of the turnpike project within areas of their respective
 1464 jurisdictions or within counties with which they have interlocal
 1465 agreements.

1466 Section 27. Subsection (2) of section 341.8225, Florida
 1467 Statutes, is amended to read:

1468 341.8225 Department of Transportation sole governmental
 1469 entity to acquire, construct, or operate high-speed rail
 1470 projects; exception.-

1471 (2) Local governmental entities, as defined in s.
 1472 334.03 (12) ~~(14)~~, may negotiate with the department for the
 1473 design, right-of-way acquisition, and construction of any
 1474 component of the high-speed rail system within areas of their
 1475 respective jurisdictions or within counties with which they have
 1476 interlocal agreements.

1477 Section 28. Subsection (24) of section 479.01, Florida
 1478 Statutes, is amended to read:

1479 479.01 Definitions.-As used in this chapter, the term:

1480 (24) "Urban area" has the same meaning as defined in s.
 1481 334.03 (29) ~~(32)~~.

1482 Section 29. Subsection (1) of section 479.07, Florida
 1483 Statutes, is amended to read:

1484 479.07 Sign permits.-

HB 1271

2010

1485 (1) Except as provided in ss. 479.105(1)(e) and 479.16, a
 1486 person may not erect, operate, use, or maintain, or cause to be
 1487 erected, operated, used, or maintained, any sign on the State
 1488 Highway System outside an urban area, as defined in s.
 1489 334.03 (29)~~(32)~~, or on any portion of the interstate or federal-
 1490 aid primary highway system without first obtaining a permit for
 1491 the sign from the department and paying the annual fee as
 1492 provided in this section. As used in this section, the term "on
 1493 any portion of the State Highway System, interstate, or federal-
 1494 aid primary system" means a sign located within the controlled
 1495 area which is visible from any portion of the main-traveled way
 1496 of such system.

1497 Section 30. Subsection (5) of section 479.261, Florida
 1498 Statutes, is amended to read:

1499 479.261 Logo sign program.—

1500 (5) At a minimum, permit fees for businesses that
 1501 participate in the program must be established in an amount
 1502 sufficient to offset the total cost to the department for the
 1503 program, including contract costs. The department shall provide
 1504 the services in the most efficient and cost-effective manner
 1505 through department staff or by contracting for some or all of
 1506 the services. The department shall adopt rules that set
 1507 reasonable rates based upon factors such as population, traffic
 1508 volume, market demand, and costs for annual permit fees.
 1509 However, annual permit fees for sign locations inside an urban
 1510 area, as defined in s. 334.03 (29)~~(32)~~, may not exceed \$5,000,
 1511 and annual permit fees for sign locations outside an urban area,
 1512 as defined in s. 334.03 (29)~~(32)~~, may not exceed \$2,500. After

HB 1271

2010

1513 recovering program costs, the proceeds from the annual permit
1514 fees shall be deposited into the State Transportation Trust Fund
1515 and used for transportation purposes.

1516 Section 31. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1297

Northeast Florida Regional Transportation

SPONSOR(S): Gibson

TIED BILLS:

IDEN./SIM. BILLS: SB 2470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Roads, Bridges & Ports Policy Committee		Johnson	Miller <i>PM.</i>
2) Transportation & Economic Development Appropriations Committee			
3) Economic Development Policy Committee			
4)			
5)			

SUMMARY ANALYSIS

The Jacksonville Transportation Authority (JTA) is an independent special district that provides regional transit services and roadway infrastructure connecting Northeast Florida.

In 2009, the Legislature required the Department of Transportation to direct a study to be conducted and funded by JTA to consider a framework for creating a transportation authority in the northeast region of Florida. The required report was completed and received by the Legislature on February 1, 2010. One of the report's recommendations is for the Legislature to form a Regional Transportation Study Commission to finalize the analysis in the report and to prepare draft legislation on forming the Regional transportation Authority (RTA).

The bill creates the Northeast Florida Regional Transportation Study Commission. The commission will be composed of citizens from Baker, Clay, Duval, Flagler, Nassau, Putnam, and St. Johns, with nonvoting representatives from the JTA, DOT, the Northeast Florida Regional Council, and the North Florida Transportation Planning Organization. The commission will be staffed and funded by JTA.

By December 31, 2012, the commission is required to prepare a report detailing its findings and making specific legislative recommendations, including:

- A regional transportation elements plan;
- The defining characteristics of transportation elements of regional significance;
- An implementation plan for undertaking a regional transportation elements plan, which may include the establishment of the regional transportation authority,
- Draft legislation consistent with this act; and
- Any other recommendations the commission deems appropriate.

The commission terminates upon the delivery of the final report.

The commission will be funded by JTA and does not have a fiscal impact on state government.

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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

The Jacksonville Transportation Authority (JTA) is an independent special district that provides regional transit services and roadway infrastructure connecting Northeast Florida. The governing body of the JTA consists of seven members. Three members are appointed by the Governor and confirmed by the Senate. Three members are appointed by the mayor of the City of Jacksonville and are subject to confirmation by the Jacksonville City Council. The seventh non-voting member is the district secretary of the Department of Transportation (DOT) for the district that contains the City of Jacksonville. Except for the district secretary, all members must be residents and qualified electors of Duval County and serve four-year terms.

In 2009, Section 20 of HB 1213 required DOT to direct a study to be conducted and funded by JTA to consider a framework for creating a transportation authority in the northeast region of Florida. The required report was completed and received by the Legislature on February 1, 2010.¹ One of the report's recommendations is for the Legislature to form a Regional Transportation Study Commission to finalize the analysis in the report and to prepare draft legislation on forming the Regional transportation Authority (RTA).

Proposed Changes

The bill creates the Northeast Florida Regional Transportation Study Commission. The commission will be composed of 20 members designated as follows:

¹ A copy of the report is available at <http://www.jtafla.com/Projects/showPage.aspx?Sel=213>

- Two citizens from each of the following counties; appointed by the County Commissioners of each county: Baker, Clay, Flagler, Nassau, Putnam, and St. Johns.
- Four citizens from Duval County appointed by the Jacksonville City Council.
- The chair of the JTA, who serves as chair of the commission.
- The Department of Transportation, District II Secretary, who is a nonvoting member.
- The chair of the Northeast Florida Regional Council, who is a nonvoting member.
- The chair of the North Florida Transportation Planning Organization, who is a nonvoting member.

Members serve until the work of the commission is complete and the commission is terminated. The chair of the JTA, the DOT District Secretary, the chair of the Northeast Florida Regional Council, and the chair of the North Florida Transportation Planning Organization stop being members if they no longer hold the position indicated in the bill. If this occurs, the members would be replaced by their successor in the position.

The members of the commission will serve without compensation, but will be reimbursed for all necessary expenses related to performing their duties, including travel expenses, pursuant to s. 112.061, F.S.

A county commission or the Jacksonville City Council may, for cause, remove or suspend a member it appoints, including, but not limited to, failure to attend two or more commission meetings during a 9-month period.

JTA's staff will act as the commission's staff and, subject to the approved funding by JTA's board and other such funds as the commission may receive, shall supply such information, assistance, and facilities as deemed necessary for the commission to carry out its duties.

The commission is to have committees with such membership, duties, and other matters as determined by the chair. The members of the committee do not need to be members of the commission and may include persons from airport authorities, port authorities, rail or other transportation industries, and others. All committees are required to report at each commission meeting and present their final reports for consideration by the commission at the direction of the chair.

The commission is to meet at the times and locations determined by the chair. The bill requires there to be regular monthly meetings, to the extent reasonably convenient, that are held in one or more central locations; however, at least one meeting must be held in each of the counties throughout the region. Each meeting must allow for public comments.

The commission is required to make available to the public its meeting minutes, reports, and recommendations upon request and to the extent feasible, shall publish its reports and recommendations electronically. JTA is required to make its Internet website available to the commission for this purpose.

The commission, by December 31, 2012, shall prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report detailing its findings and making specific legislative recommendations, including:

- A regional transportation elements plan;
- The defining characteristics of transportation elements of regional significance;
- An implementation plan for undertaking a regional transportation elements plan, which may include the establishment of the regional transportation authority;
- Draft legislation consistent with this act; and
- Any other recommendations the commission deems appropriate.

The bill provides that a county's membership on the commission, and the participation of the county's appointees in the work of the commission, is not intended to constitute the county's consent to be included within the jurisdiction of a regional transportation authority.

The bill provides that the act expires and the commission terminates upon delivery of its final report.

The bill has an effective date of July 1, 2010.

B. SECTION DIRECTORY:

Section 1 Creating the Northeast Florida Regional Transportation Study Commission; providing for membership and organization; providing for reimbursement of expenses; providing for removal and suspension of commission members; providing for staff of the JTA to act as staff to the commission; providing for funding of staff and facilities; providing for committees within the commission; providing for commission meetings; providing for the commission to make available to the public its meeting minutes, reports, and recommendations and publish its reports and recommendations electronically; directing JTA to make its Internet site available for such purposes; requiring the commission to submit reports to the Governor and the Legislature; providing that a county's membership in the commission and participation of a county's appointees does not constitute consent of the county to inclusion within the jurisdiction of a regional transportation authority; providing for expiration of the act and termination of the commission.

Section 2 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:

Primary funding for the commission will come from JTA and is subject to approval by the board of JTA. Other local funding for the commission could be provided at the option of the local governments in the affected counties. JTA estimates that the total cost for the commission will be approximately \$1.5 million.

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to Northeast Florida regional
 3 transportation; creating the Northeast Florida Regional
 4 Transportation Study Commission; providing for membership
 5 and organization; providing for reimbursement of expenses;
 6 providing for removal and suspension of commission
 7 members; providing for staff of the Jacksonville
 8 Transportation Authority to act as staff to the
 9 commission; providing for funding of staff and facilities;
 10 providing for committees within the commission; providing
 11 for commission meetings; providing for the commission to
 12 make available to the public its meeting minutes, reports,
 13 and recommendations and publish its reports and
 14 recommendations electronically; directing the authority to
 15 make its Internet site available for such purposes;
 16 requiring the commission to submit reports to the Governor
 17 and the Legislature; providing that a county's membership
 18 in the commission and participation of a county's
 19 appointees does not constitute consent of the county to
 20 inclusion within the jurisdiction of a regional
 21 transportation authority; providing for expiration of the
 22 act and termination of the commission; providing an
 23 effective date.

24
 25 WHEREAS, pursuant to House Bill 1213, 2009, the Department
 26 of Transportation directed the Jacksonville Transportation
 27 Authority to prepare a report to recommend to the Legislature
 28 the framework for a regional transportation authority for the

29 northeast region of the state comprised of Baker, Clay, Duval,
 30 Flagler, Nassau, Putnam, and St. Johns Counties, and

31 WHEREAS, the report was completed and received by the
 32 Legislature on February 1, 2010, and

33 WHEREAS, based upon the recommendations of the report, it
 34 is necessary and appropriate to create a study commission to
 35 continue the work commenced, NOW, THEREFORE,

36

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

38

39 Section 1. Northeast Florida Regional Transportation Study
 40 Commission.-

41 (1) There is created the Northeast Florida Regional
 42 Transportation Study Commission, which shall be composed of 20
 43 members designated and to be appointed as follows:

44 (a) Two citizens of Baker County appointed by the Board of
 45 County Commissioners of Baker County.

46 (b) Two citizens of Clay County appointed by the Board of
 47 County Commissioners of Clay County.

48 (c) Four citizens of Duval County appointed by the City
 49 Council of the City of Jacksonville.

50 (d) Two citizens of Flagler County appointed by the Board
 51 of County Commissioners of Flagler County.

52 (e) Two citizens of Nassau County appointed by the Board
 53 of County Commissioners of Nassau County.

54 (f) Two citizens of Putnam County appointed by the Board
 55 of County Commissioners of Putnam County.

56 (g) Two citizens of St. Johns County appointed by the

57 Board of County Commissioners of St. Johns County.

58 (h) The chair of the Jacksonville Transportation
 59 Authority, who shall serve as chair of the commission.

60 (i) The Department of Transportation's district secretary
 61 serving in district II, who shall be a nonvoting member of the
 62 commission.

63 (j) The chair of the Northeast Florida Regional Council,
 64 who shall be a nonvoting member of the commission.

65 (k) The chair of the North Florida Transportation Planning
 66 Organization, who shall be a nonvoting member of the commission.

67 (2) (a) Members shall serve until the work of the
 68 commission is completed and the commission is terminated, except
 69 that persons serving under paragraphs (1) (h)-(k) shall cease
 70 membership if they no longer serve in the position indicated in
 71 paragraphs (1) (h)-(k) and shall be replaced by the person
 72 replacing them in such position.

73 (b) Members of the commission shall serve without
 74 compensation but shall be reimbursed for all necessary expenses
 75 in the performance of their duties, including travel expenses,
 76 in accordance with s. 112.061, Florida Statutes.

77 (c) A county commission, or the city council in the case
 78 of Duval County, may remove or suspend a member appointed by it
 79 for cause, including, but not limited to, failure to attend two
 80 or more meetings of the commission during any 9-month period.

81 (3) The staff of the Jacksonville Transportation Authority
 82 shall act as staff to the commission and, subject to the
 83 appropriation of funding by the board of the Jacksonville
 84 Transportation Authority and such other funds as the commission

85 may receive, shall supply such information, assistance, and
 86 facilities as are deemed necessary for the commission to carry
 87 out its duties under this act.

88 (4) The commission shall have such committees with such
 89 membership, duties, and other matters as the chair shall
 90 determine. Members of such committees need not be members of the
 91 commission and may include persons from airport authorities,
 92 port authorities, rail or other transportation industries, and
 93 others. All committees shall report to the commission at each
 94 commission meeting and shall present their final reports for
 95 consideration by the commission in accordance with the direction
 96 of the chair.

97 (5)(a) The commission shall meet at the times and
 98 locations as the chair shall determine. There shall be regular
 99 monthly meetings, to the extent reasonably convenient, that are
 100 held in one or more central locations; however, at least one
 101 meeting must be held in each of the counties throughout the
 102 region. Each meeting must include provision for public comments.

103 (b) The commission shall make available to the public its
 104 meeting minutes, reports, and recommendations upon request and,
 105 to the extent feasible, shall publish its reports and
 106 recommendations electronically. The Jacksonville Transportation
 107 Authority shall make its Internet website available to the
 108 commission for such purposes.

109 (6) By December 31, 2012, the commission shall prepare and
 110 submit to the Governor, the President of the Senate, and the
 111 Speaker of the House of Representatives a report detailing its
 112 findings and making specific legislative recommendations,

113 | including a regional transportation elements plan, the defining
 114 | characteristics of transportation elements of regional
 115 | significance, and an implementation plan for undertaking a
 116 | regional transportation elements plan, and which may include the
 117 | establishment of the regional transportation authority, draft
 118 | legislation consistent with this act, and any other
 119 | recommendations it deems appropriate.

120 | (7) A county's membership in the commission, and the
 121 | participation of a county's appointees in the work of the
 122 | commission, is not intended to constitute the consent of the
 123 | county to inclusion within the jurisdiction of a regional
 124 | transportation authority.

125 | (8) This act shall expire and the commission shall
 126 | terminate upon delivery of the final report required in
 127 | subsection (6).

128 | Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1331

Public Roadways

SPONSOR(S): Abruzzo

TIED BILLS:

IDEN./SIM. BILLS: SB 1842

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee		Johnson <i>AKS</i>	Miller <i>P.M.</i>
2)	Transportation & Economic Development Appropriations Committee			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The State Highway System Access Management Act provides for the regulation of access to the State Highway System. This law provides that adjacent property owners have a right to reasonable, but not unregulated, access to their property. These access rights are subject to reasonable regulation to ensure a safe and efficient highway system. The Department of Transportation (DOT) has implemented access management guidelines to provide guidance on access management issues.

The bill prohibits the design, construction, or maintenance of public streets, roads, highways, and bridges from impeding the existing access of adjacent property owners. The bill also prohibits DOT from dividing state highways or erecting media barriers in areas zoned for business within a county or municipality without receiving approval by a majority vote of the governing body of the county or municipality.

DOT may see an increase in expenditures due to having to receive local government approval for dividing highways. Municipalities and counties may incur incidental expenses associated with approving highway divisions and media barriers.

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Sections 335.18 through 335.188, F.S. creates the "State Highway System Access Management Act." This law provides that the access management regulations are necessary "to protect the public health, safety, and welfare, to preserve the functional integrity of the State Highway System, and to promote the safe and efficient movement of people of goods within the state."

The law also gives property owners whose property abuts the State Highway System the right to reasonable access, but not unregulated access to the property. These access rights are "subject to reasonable regulation to ensure the public's right and interest in a safe and efficient highway system."

The Department of Transportation (DOT) has implemented access management guidelines to provide guidance on access management issues.¹ The guidelines address the location, design, and operation of driveways, median openings, interchanges, and street connections. A basic principal of access management is to limit the number of conflict points along a roadway by limiting the number of driveways and median openings and restricting certain movements at some median openings. The goal of these guidelines is to properly balance access and mobility in the design of state roadways.

Proposed Changes

The bill prohibits the design, construction, or maintenance of public streets, roads, highways, and bridges from impeding the existing access of adjacent property owners. The bill also prohibits DOT from dividing state highways or erecting media barriers in areas zoned for business within a county or municipality without receiving approval by a majority vote of the governing body of the county or municipality.

The bill has an effective date of July 1, 2010.

B. SECTION DIRECTORY:

Section 1 Requires that public roadways and bridges be designed, constructed, and maintained in a manner that does not impede existing access of adjacent property owners; prohibiting

¹ Information on DOT's access management program is available at <http://www.dot.state.fl.us/planning/systems/sm/accman/>.

DOT from dividing state highways or erecting media barriers in an area zoned for business use without approval of the project by the governing body.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

DOT may incur some additional expenditures associated with getting local government approval of certain projects.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Municipalities and counties may incur some incidental expenditures associated with the approval of certain DOT projects.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Requiring local government approval prior to DOT dividing highways or placing media barriers on a roadway may maintain access to certain businesses and thereby reduce economic impacts resulting from reduced access for traffic to those businesses. However, there may be safety concerns due to the constraints on project design caused by requiring local government approval of these design features as required by the bill. These constraints could affect DOT's ability to limit the number of driveways and median openings, and to restrict movements at some median openings, leading to an increase number of vehicle conflict points.

D. FISCAL COMMENTS:

None

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 spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 221 Drowsy Driving Prevention
SPONSOR(S): Roads, Bridges & Ports Policy Committee
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Roads, Bridges & Ports Policy Committee; Johnson; Miller. Rows 2-6 are empty.

SUMMARY ANALYSIS

The bill creates the Ronshay Dugans Act.

The bill designates the first week in September as "Drowsy Driving Prevention Week" in Florida, and encourages the Department of Highway Safety and Motor Vehicles (DHSMV) and the Department of Transportation (DOT) to educate law enforcement and the public about the relationship between fatigue and the dangers of driving.

Any fiscal impact to the DHSMV and DOT can be absorbed within their existing resources. There is no fiscal impact to local governments.

The bill takes effect upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill creates the "Ronshay Dugans Act"

Drowsy Driving

Current Situation

A 2005 National Sleep Foundation poll found that 60 percent of adult drivers had driven, in the past year, a vehicle while feeling drowsy, with more than one-third actually falling asleep behind the wheel. Forty percent of the drivers admitted to having an accident or near accident because they dozed off or were too tired to drive.

The National Highway Traffic Safety Administration estimates that each year, driver fatigue results in 100,000 police reported crashes, with an estimated 1,550 deaths, 71,000 injuries, and \$12.5 billion in monetary losses. However, it is difficult to attribute an accident to drowsiness because there is no test available to determine drowsiness, and there are inconsistent reporting practices related to drowsy driving. In addition, drowsiness may be a factor in crashes which are attributed to other causes.

Some of the dangers that sleepiness or fatigue may cause are:

- Impaired reaction time, judgment, or vision;
- Problems with information processing and short-term memory;
- Decreased performance, vigilance, and motivation; and
- Increased moodiness and aggressive behavior.

The National Sleep Foundation currently promotes a "Drowsy Driving Prevention Week." In 2009, that week was from November 2 through 8.¹

Proposed Changes

The bill designates the first week in September as "Drowsy Driving Prevention Week" in Florida. During this week, the Department of Highway Safety and Motor Vehicles (DHSMV) and the Department of

¹ Information concerning drowsy driving was obtained from www.drowsydriving.org, which is sponsored by the National Sleep Foundation.

Transportation (DOT) are encouraged to educate the law enforcement community and the public about the relationship between fatigue and performance and the research showing that fatigue is as much of an impairment as alcohol and is as dangerous behind the wheel.

According to DOT, its impaired driving initiatives incorporate educational information related to drowsy driving.

B. SECTION DIRECTORY:

Section 1 Provides a short title.

Section 2 Designates the first week in September as "Drowsy Driving Prevention Week" in Florida.

Section 3 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

According to DOT, any administrative expenses associated with reviewing its current initiatives for an appropriate focus on drowsy driving is expected to be absorbed within its existing resources.

According to DHSMV, the cost of creating and implementing educational materials related to drowsy driving will be absorbed by the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Awareness of drowsy driving may reduce the number of accidents attributed to it.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not affect county or municipal government.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to drowsy driving prevention; creating the
 3 "Ronshay Dugans Act"; designating Drowsy Driving
 4 Prevention Week; encouraging the Department of Highway
 5 Safety and Motor Vehicles and the Department of
 6 Transportation to educate the law enforcement community
 7 and the public about the relationship between fatigue and
 8 driving performance; providing an effective date.
 9

10 Be It Enacted by the Legislature of the State of Florida:
 11

12 Section 1. This act may be cited as the "Ronshay Dugans
 13 Act."

14 Section 2. (1) The first week of September is designated
 15 as "Drowsy Driving Prevention Week" in this state.

16 (2) During Drowsy Driving Prevention Week, the Department
 17 of Highway Safety and Motor Vehicles and the Department of
 18 Transportation are encouraged to educate the law enforcement
 19 community and the public about the relationship between fatigue
 20 and driving performance and the research showing fatigue to be
 21 as much of an impairment as alcohol and as dangerous while
 22 operating a motor vehicle.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 971 Highway Safety & Motor Vehicles
SPONSOR(S): Roads, Bridges & Ports Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2400

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Roads, Bridges & Ports Policy Committee		Brown <i>RB</i>	Miller <i>PM.</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

PCS/HB 971 contains numerous changes to highway safety and motor vehicle laws administered by the Department of Highway Safety and Motor Vehicles (DHSMV). Examples of major provisions in the bill include:

- Amending provisions relating to law enforcement officers submission of crash reports;
- Requiring additional commercial vehicles to slow at railroad crossings;
- Allowing GPS devices to be attached to a motor vehicle’s windshield;
- Exempting additional vehicles from sunscreening prohibitions;
- Provides DHSMV with additional authority to suspend driver’s licenses of those persons convicted of driving without proof of insurance;
- Removing signature requirements from certain non-criminal traffic infraction citations;
- Allowing additional categories of drivers with suspended licenses to provide ‘proof of compliance’ and be re-instated;
- Creating a unique numbering system for specialty license plates for state legislators;
- Allowing disabled veterans to renew motor vehicle registrations biannually;
- Prohibiting motor vehicles that resemble or imitate FHP vehicles;
- Ensuring that FHP officers have the same authority as other law enforcement officers; and
- Increasing a disqualification period for certain commercial driver’s license holders who violate out-of-service orders.

The bill’s provisions are generally technical or administrative in nature and will have no fiscal impacts. Some of the provisions could have an indeterminate fiscal impact on state government and the private sector.

The bill has an effective date of September 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Commercial Vehicles; Federal Requirements (Sections 1, 6, 15)

Current Situation

The Federal Motor Carrier Safety Administration (FMCSA) requires states to meet certain criteria related to commercial vehicles. The FMCSA has requested minor modifications to current Florida law regarding commercial motor vehicles at railroad crossings, the length of certain commercial driver's license disqualifications, and shortening a renewal period.

Section 316.159, F.S., requires vehicles for hire, school buses, and any motor vehicle carrying explosive substances or flammable liquids as cargo, to stop before crossing a railroad track at grade. An exception is made for motor vehicles traveling at the express direction of a law enforcement officer or traffic signal (however, school buses are required to stop in *all* instances other than at the express direction of a law enforcement officer).

Out-of-service orders are issued to commercial motor vehicle operators for significant safety violations. Section 322.061, F.S., penalizes commercial operators who continue to drive while under an out-of-service order. A first violation of an out-of-service order disqualifies a driver for not less than 90 days, but not more than 1 year. Two violations within 10 years subject a driver to a disqualification period of between 1 and 5 years.

Proposed Changes

The bill provides that drivers of commercial motor vehicles not otherwise encompassed by the current statute's 'stop' requirement must slow before crossing a railroad grade. The bill increases the minimum disqualifications for commercial drivers operating while under an out-of-service order from 90 days to 180 days for a first violation, and from 1 year to 2 years for a second violation. The bill also shortens the advance renewal of registration period for vehicles covered by the International Registration Plan¹ from 5 months to 3 months prior to the date registration expires.

¹ According the Florida Department of Highway Safety and Motor Vehicle website (www.flhsmv.com), "[t]he International Registration Plan (IRP) is a reciprocal agreement that authorizes the proportional registration among the states of commercial motor vehicles. This means if a truck is operated in multiple states, the owner must annually report mileage driven in each state and taxes are paid proportionately based on the mileage driven."

Windshield Restrictions, Sunscreening (Section 2, 3)

Current Situation

Section 316.2952(2), F.S., provides that no devices, sunscreen materials, products, or other coverings may be attached to a windshield except:

- A certificate or paper required to be displayed by law,
- Sunscreening material in a strip at the top of the windshield, if the material is in compliance with federal standards, or
- A device issued by a governmental entity for the purpose of electronic toll payments,

Sections 316.2953 – 316.2956, F.S., generally restrict motor vehicle operators from applying window tint beyond a certain level of opacity. A medical exclusion currently exists in s. 316.29545, F.S., for persons with Lupus, and for law enforcement vehicles that are used for undercover or canine operations.

Proposed Changes

The bill adds an additional category of devices that may lawfully be attached to a windshield. The bill permits a global positioning system (GPS) device or similar satellite receiver device using the GPS system for the purpose of obtaining navigation or routing information while the motor vehicle is being operated.

The bill amends s. 316.29545, F.S., to expand the medical exception. DHSMV is directed to consult with its Medical Advisory Board,² to establish exceptions for persons with certain auto-immune disorders. The bill also exempts vehicles owned or leased by private investigative agencies licensed under Ch. 493, Florida Statutes.

Driver's License and Vehicle Registration Suspension (Section 4)

Current Situation

Section 316.646, F.S., requires drivers to maintain proof of insurance "in his or her immediate possession at all times while operating the motor vehicle." Failure to present proof of insurance upon request is a non-moving traffic infraction, and upon being cited for this failure, the driver is required to provide proof of insurance before or at a scheduled court hearing. If the driver subsequently fails to provide proof of insurance to the court, s. 316.646, F.S., "the court *may* immediately suspend the registration and driver's license" of the offender.

According to DHSMV, in FY 2008-09, there were 79,329 roadside stops with records indicating the driver failed to provide proof of insurance. Of these, 66,350 cases were deemed guilty by the court, and paid a fine to the clerk. DHSMV asserts that it "could take no action on these cases although the owners were clearly driving without insurance."³

Proposed Changes

PCS/HB 971 amends the provision of s. 316.646, F.S., dealing with suspension of a driver's registration and license. The bill removes the court's discretionary suspension by providing that, upon conviction, the court "shall immediately notify" DHSMV of the conviction. If the court does not independently suspend the driver's license and registration, DHSMV will do so administratively.

² Created in s. 322.125, F.S.

³ *Department of Highway Safety and Motor Vehicles Bill Analysis, HB 971*, on file with the Roads, Bridges, and Ports Policy Committee.

Signature Requirements (Section 5)

Current Situation

Section 318.14, F.S., currently requires that both criminal violations and noncriminal traffic infraction citations must contain a promise to appear before the court, and be signed by the offender.

Proposed Changes

The bill amends s. 318.14, F.S., to eliminate the signature requirement on some non-criminal traffic infractions. Violations requiring a mandatory hearing⁴ and criminal violations will continue to require a signature from the offender. According to DHSMV, this change brings Florida in line with many other states that require a signature only on criminal citations, and will “enhance and streamline electronic citation transmission.”⁵

Driving While License Suspended or Revoked; Failure to Pay Obligations (Section 5, 14)

Current Situation

Section 322.34, F.S., provides that driving with a suspended license is a moving violation punishable as provided in Ch. 318, Florida Statutes. *Knowingly* driving with a suspended license is a second degree misdemeanor, but upon a third or subsequent offense, becomes a third-degree felony.

Section 322.264, F.S., provides a number of violations that, when committed 3 or more times in a 5-year period, result in a driver being determined a “habitual traffic offender,” and immediately subject to a 5 year license suspension. These violations include:

- Voluntary or involuntary manslaughter,
- Violations of s. 316.193, F.S. (DUI),
- Any felony during which a motor vehicle was used,
- Driving with a suspended license,
- Failing to stop and render aid as required, in the event of a motor vehicle crash resulting in death or personal injury of another, and
- Driving a commercial motor vehicle while under an out-of-service order.

Section 318.14(10), F.S., provides a mechanism by which drivers who have been cited for certain non-criminal infractions may enter a plea of *nolo contendere* and provide proof of compliance. By doing so, the offender avoids paying a fine or making a court appearance, and proves to the court that he or she has corrected the violation. Drivers may only take advantage of this opportunity three times in a lifetime. The infractions that a driver may ‘make good’ under this subsection are:

- Operating a motor vehicle without a license, or failing to have a license in possession, operating a motor vehicle with a license that has been suspended for failing to appear, failure to pay a civil penalty, or failure to attend a required driver improvement course;
- Operating a motor vehicle without a valid vehicle registration; and
- Operating a motor vehicle without proof of insurance.

Pursuant to s. 318.14(10)(b), F.S., “proof of compliance” consists of a valid, renewed, or re-instated driver’s license or motor vehicle registration and proper proof of insurance required by s. 316.646, F.S. Although the fine is waived, a \$25 fee is charged to the driver.

Section 318.15, F.S., provides that if a traffic offender fails to timely pay a non-criminal traffic fine, fails to appear at a subsequent hearing, or fails to attend a driver improvement school when required, the person

⁴ Section 318.19, F.S., requires a mandatory hearing for the following offenses: Any infraction resulting in a crash causing death or serious bodily injury, failing to stop for a school bus on the side that children enter and exit, drivers overloading a motor vehicle or failing to secure a load, or speeding in excess of 30 mph over posted limits.

⁵ *Department of Highway Safety and Motor Vehicles Bill Analysis, HB 971*, on file with the Roads, Bridges, and Ports Policy Committee.

shall have his or her driver's license administratively suspended by DHSMV.⁶ After being suspended under this section, the offender must comply with all traffic-related obligations and penalties imposed before re-applying to the court for license re-instatement.

Similarly, s. 322.245(1), F.S., provides that if a person is charged with a violation of certain criminal traffic offenses or with the commission of any misdemeanor traffic offense, and fails to comply with all of the directives of the court, the clerk must provide notice to the person that he or she must comply within 30 days after the date of the notice and pay a delinquency fee of up to \$25 to the clerk, or the person's driver's license will be suspended.

Section 322.245(2) – (3), F.S., provide for license suspension for failure to pay child support, and s. 322.245(5), F.S., essentially repeats s. 318.15, F.S., providing for license suspension for failure to pay any previous fines outstanding by an offender for non-criminal traffic violations.

According to DHSMV, license suspensions for failure to pay previous fines has created a 'snowball' effect for certain drivers whereby the offender, unable to pay a traffic fine but needing to operate his or her vehicle in order to remain employed, receives additional violations and fines, which the offender is still unable to pay.⁷ Because convictions are dated from the date the citation is *paid*, drivers who are unable to make full payment for a non-criminal traffic citation face an open-ended period of time, not an actual 5-year period, during which they run the risk of receiving additional citations and being labeled habitual traffic offenders. DHSMV states that "[t]his process continues to put these drivers further behind and they are unable to 'dig out' from under the mountain of debt that arises."⁸

Proposed Changes

PCS/HB 971 includes additional offenses to the list in s. 318.14(10)(a), F.S., for which an offender can provide proof of compliance:

- Operating a motor vehicle with a license suspended for failure to pay child support or other financial obligations pursuant to s. 322.245, F.S. (but excluding criminal fines under s. 322.245(1), F.S.) and
- Operating a motor vehicle with a license suspended for failing to attend school.⁹

DHSMV has identified these additional categories as offenses that generally relate to financial concerns, not the driver's actual ability to operate a motor vehicle.

The bill also creates a new subsection (11) in s. 322.34, F.S. The subsection creates a "proof of compliance" mechanism similar to that currently contained in s. 318.14(10), F.S., and described in the Current Situation, above. With this mechanism, offenders who have had their licenses suspended for underlying violations identical to s. 318.14(10)(a), F.S. (including the new offenses added by this bill – described in the two bullet-points immediately above) may provide proof of compliance to a clerk or other authorized official, and have his or her license re-instated. This option is not available to holders of commercial driver's licenses, and like s. 318.14(10), F.S., drivers may only take advantage of this opportunity three times in a lifetime.

The bill grants an opportunity to provide proof of compliance to new categories of offenders who may have been suspended largely as a result of their inability to pay fines, rather than their actual driving ability. It is possible that offenders currently driving on suspended licenses will attempt to stop the 'snowball' effect by getting their overdue fines paid, re-registering their motor vehicles, and acquiring proper insurance.

⁶ Section 318.15, F.S., provides that the clerk of court must notify DHSMV of the failure within 10 days, and DHSMV must suspend the license on the 20th day following the order to suspend.

⁷ *Department of Highway Safety and Motor Vehicles Bill Analysis, HB 971*, on file with the Roads, Bridges, and Ports Policy Committee.

⁸ *Id.*

⁹ Section 322.091, F.S., generally requires minors to be enrolled in public or nonpublic school, or be enrolled in a home education program, in order to maintain a driver's license.

License Plates for Members of Congress and Legislators (Section 7)

Current Situation

Section 320.0807, F.S., requires DHSMV to provide license plates to members of Congress, members of the Florida House of Representatives, and state Senators, upon request. Pursuant to s. 320.0807(2), F.S., one license plate provided to a legislator shall have the legislator's appropriate district number. If additional plates are requested, they will have numbers assigned by DHSMV.

Proposed Changes

The bill adds a requirement that in addition to the district number of a state representative or senator, the license plate will include the letters "HR" or "SS," as appropriate. For members of Congress, the license plate will include the letters "MC." The bill also provides that legislators may request any other configuration which is not already in use.

License Plates for Disabled Veterans (Section 8)

Current Situation

Section 320.084, F.S., requires DHSMV to provide one free license plate to disabled veterans. The plate is renewable annually, and the renewal may be accomplished by a sticker indicating the year of expiration. A sticker may not extend the validity of the plate more than 15 months.

Proposed Changes

PCS/HB 971 amends s. 320.084, F.S., to provide for annual or biannual registration. A renewal by validation sticker is extended from 15 to 27 months, to conform with biannual registration periods.

Florida Highway Patrol (Sections 9, 10)

Current Situation

Chapter 321, Florida Statutes, outlines the duties and responsibilities of the Florida Highway Patrol (FHP), which are primarily traffic-related. DHSMV has identified situations in which the authority of FHP law enforcement officers to issue warrants pursuant to Ch. 933, Florida Statutes, and make arrests pursuant to Ch. 901, Florida Statutes, has been questioned.¹⁰

Proposed Changes

PCS/HB 971 clarifies s. 321.05, F.S., regarding the powers and duties of the Florida Highway Patrol. The bill provides that FHP members are sworn state law enforcement officers entitled to the same privileges as other law enforcement officers, including authority to obtain search warrants pursuant to Ch. 933, Florida Statutes, and make arrests pursuant to Ch. 901, Florida Statutes.

The bill also clarifies, in s. 321.03, F.S., that it is unlawful to operate a motor vehicle colored in the same or similar manner as a FHP motor vehicle, unless specifically authorized.

Periodic Re-Examination of Drivers (Section 11)

Current Situation

Section 322.121, F.S., implies a definition of "safe drivers," being those drivers "who have not had any convictions for the 3 years preceding renewal and whose driving privilege in this state has not been

¹⁰ Department of Highway Safety and Motor Vehicles Bill Analysis, HB 971, on file with the Roads, Bridges, and Ports Policy Committee.

revoked, disqualified, or suspended at any time during the 7 years preceding renewal.” Drivers who do not meet this definition are referred to in the statute as “problem drivers.” During the license renewal process, the statute requires “problem drivers” to be tested with respect to their ability to read and understand highway signs regulating, warning, and directing traffic, in addition to eyesight and hearing examinations that *all* drivers undergo.

DHSMV states that “almost 300,000 road sign exams are given each year to these individuals,” and over 95 percent pass the exam on their first attempt. “Typically, road signs do not change, so the relevancy of the knowledge on the exams is not related to problem driving.”¹¹

Proposed Changes

The bill eliminates the requirement in s. 322.121, F.S., that “problem drivers” re-take the road-sign test. All drivers will continue to require eyesight and hearing tests.

Driver’s Licenses for Foreign Nationals (Section 12)

Current Situation

Section 322.08(2)(c), F.S., contains a list of 8 different “proofs of identity” that will satisfy DHSMV requirements for issuing a driver’s license. These include, for example, a U.S. birth certificate, a valid unexpired U.S. passport, and other official documents. Subparagraph 8. permits the use of a “proof of non-immigrant classification provided by the U.S. Department of Homeland Security.”

Among other provisions, s. 322.18, F.S., governs renewal of driver’s licenses. Section 322.18(2)(d), F.S., provides that, if a person applied for a driver’s license under s. 322.08(2)(c)8., F.S., the license expires 1 year after the date of issuance, or upon the expiration date of the Homeland Security document, whichever occurs first.

Section 322.21(1)(c), F.S., contains a \$15 delinquent fee for driver’s license renewals that are made within 12 months after the license expiration date.

A foreign visitor applying for a Florida driver’s license will receive a license that expires at the same time as the person’s visa, pursuant to s. 322.18(2)(d), F.S. If the visitor returns to Florida in the next year, and attempts to renew a license for another period, he or she is charged with the \$15 delinquent fee for failing to renew the license before its expiration date – although it was impossible for the person to do so.

Proposed Changes

The bill amends s. 322.18, F.S., to clarify that a license issued as a result of documents described by s. 322.08(2)(c)8., F.S., cannot be administratively renewed. As a result, when foreign visitors request a driver’s license, the license is always deemed an “original” license, not a “renewal.” This removes the ‘Catch-22’ faced by returning foreign visitors being charged with a delinquent fee for a renewal provision with which they cannot otherwise comply.

Vision Tests (Section 12)

Current Situation

Section 322.08(5)(a)2., F.S., requires driver’s license applicants over the age of 80 to submit to vision tests administered by a physician or optometrist licensed by the State of Florida. Doctors at federal hospitals must be licensed by a U.S. state, but are not necessarily licensed by the state in which the federal hospital is located.

¹¹ Department of Highway Safety and Motor Vehicles Bill Analysis, HB 971, on file with the Roads, Bridges, and Ports Policy Committee.

Proposed Changes

The bill adds "licensed physicians at federally established veterans' hospitals," to the list of doctors who may perform vision tests for senior driver's license applicants.

Crash Reports (Section 13)

Current Situation

Section 322.2615, F.S., details a process by which a law enforcement officer can suspend a driver's license for driving under the influence. If the law enforcement officer completed a crash report as part of the DUI investigation, s. 322.2615, F.S., requires the officer to submit the crash report to DHSMV within 5 days.

Proposed Changes

The bill amends s. 322.2615, F.S., to provide that a law enforcement officer's crash report submission as part of a DUI suspension is permissive, not mandatory.

Commercial Driving Schools (Section 16)

Current Situation

Chapter 488, Florida Statutes, requires all commercial driving schools (except truck driving schools) and their instructors to obtain a license from DHSMV in order to operate in Florida. The chapter contains license and application requirements, requires the school and agents of the school to obtain identifications cards from DHSMV; and provides for revocation or suspension of a school or instructor's license for violations of the chapter. Violations are considered first degree misdemeanors.

Proposed Changes

The bill provides additional restrictions on instructors, agents, and employees of commercial driving schools. The bill provides that DHSMV may suspend or revoke the license or certificate of any instructor, agent, or employee of a driving school who:

- has ever been convicted of, pled no contest to, or had adjudication withheld on any felony or misdemeanor (as proven by a criminal background check the cost of which has been borne by the instructor, agent, or employee);
- has committed any fraud or willful misrepresentation in applying for a license under the chapter; or
- has solicited business on any premises used by DHSMV or a tax collector for the purpose of licensing drivers.

The bill has an effective date of September 1, 2010.

B. SECTION DIRECTORY:

- | | |
|-----------|--|
| Section 1 | Amends s. 316.159, F.S.; requiring that drivers of certain commercial motor vehicles slow before crossing a railroad grade. |
| Section 2 | Amends s. 316.2952, F.S.; authorizing certain satellite reception devices to be attached to the windshield of a motor vehicle. |
| Section 3 | Amends s. 316.29545, F.S.; excluding vehicles owned or leased by private investigative services from certain window tinting restrictions; excluding vehicles operated by persons with certain medical conditions from certain restrictions; providing rulemaking authority to the Department of Highway Safety and Motor Vehicles regarding sunscreening restrictions. |

- Section 4 Amends s. 316.646, F.S.; directing DHSMV to suspend the registration and driver's license of a person convicted of failure to maintain required security on a motor vehicle.
- Section 5 Amends s. 318.14, F.S.; correcting an erroneous reference; removing a requirement that a person who commits a noncriminal traffic infraction be cited to appear before an official; requiring a person who commits a traffic violation requiring a hearing or a criminal traffic violation to sign and accept a citation indicating a promise to appear for a hearing; providing penalties; providing for certain persons cited for specified offenses to provide proof of compliance to a designated official; providing alternative citation disposition procedures for the offense of operating a motor vehicle with a license that has been suspended for failure to pay certain financial obligations or failure to comply with specified education requirements.
- Section 6 Amends s. 320.071, F.S.; revising the time period during which the owner of an apportionable motor vehicle may file an application for renewal of registration.
- Section 7 Amends s. 320.0807, F.S.; revising provisions governing the special license plates issued to federal and state legislators.
- Section 8 Amends s. 320.084, F.S.; providing for a biennial registration renewal period for disabled veteran license plates.
- Section 9 Amends s. 321.03, F.S.; providing that it is unlawful to possess or color or cause to be colored a motor vehicle or motorcycle of the same or similar color as those prescribed for the Florida Highway Patrol unless specifically authorized by the Florida Highway Patrol.
- Section 10 Amends s. 321.05, F.S.; providing that officers of the Florida Highway Patrol have the same arrest and other authority as that provided for certain other state law enforcement officers.
- Section 11 Amends s. 322.121, F.S.; revising legislative intent for reexamination of licensed drivers upon renewal of the driver's license; removing a requirement that each licensee must pass a reexamination at the time of license renewal.
- Section 12 Amends s. 322.18, F.S.; providing that a person issued a driver's license using proof of nonimmigrant classification under specified provisions is not eligible to renew that license; authorizing a licensed physician at a federally established veterans hospital to administer a vision test for purposes of renewing a driver's license.
- Section 13 Amends s. 322.2615, F.S.; removing a requirement that an officer submit a copy of a crash report regarding certain DUI investigations; authorizing the officer to submit such report.
- Section 14 Amends s. 322.34, F.S.; providing that if a person does not hold a commercial driver's license and is cited for an offense of knowingly driving while his or her license is suspended, revoked, or canceled, he or she may, in lieu of payment of a fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau; limiting a driver's option to elect such a remedy.
- Section 15 Amends s. 322.61, F.S.; revising the period of disqualification from operating a commercial motor vehicle for a violation of an out-of-service order.
- Section 16 Amends s. 488.06, F.S.; specifying additional circumstances under which DHSMV may suspend or revoke a license or certificate of a driving school.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Increased revenue may be realized by various fines contained in the bill, however, the amount is indeterminate, based on future violators' behavior. It is possible that additional revenue will be generated by the provisions allowing additional categories of suspended drivers to "make good" on previous fines and re-instate their driver's licenses.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DHSMV and private citizens may reduce time and costs by eliminating road-sign tests, as DHSMV reports it conducted approximately 300,000 tests in the previous fiscal year, with little appreciable result.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides DHSMV with rulemaking authority to implement the provisions of s. 316.29545, F.S., regarding exemptions to motor vehicle window tinting restrictions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to highway safety and motor vehicles;
 3 amending s. 316.159, F.S.; requiring that drivers of
 4 certain commercial motor vehicles slow before crossing a
 5 railroad grade; amending s. 316.2952, F.S.; authorizing
 6 certain satellite reception devices to be attached to the
 7 windshield of a motor vehicle; amending s. 316.29545,
 8 F.S.; excluding vehicles owned or leased by private
 9 investigative services from certain restrictions when used
 10 in specified activities; excluding vehicles operated by
 11 persons with certain medical conditions from certain
 12 restrictions; providing rulemaking authority to the
 13 Department of Highway Safety and Motor Vehicles regarding
 14 sunscreening restrictions; amending s. 316.646, F.S.;
 15 directing the Department of Highway Safety and Motor
 16 Vehicles to suspend the registration and driver's license
 17 of a person convicted of failure to maintain required
 18 security on a motor vehicle; amending s. 318.14, F.S.;
 19 providing procedures for disposition of a citation for
 20 violating a specified learner's driver's license
 21 restrictions; removing an erroneous reference; removing a
 22 requirement that a person who commits a noncriminal
 23 traffic infraction be cited to appear before an official;
 24 requiring a person who commits a traffic violation
 25 requiring a hearing or a criminal traffic violation to
 26 sign and accept a citation indicating a promise to appear
 27 for a hearing; providing penalties; providing for certain
 28 persons cited for specified offenses to provide proof of

29 compliance to a designated official; providing alternative
 30 citation disposition procedures for the offense of
 31 operating a motor vehicle with a license that has been
 32 suspended for failure to pay certain financial obligations
 33 or failure to comply with specified education
 34 requirements; amending s. 320.071, F.S.; revising the time
 35 period during which the owner of an apportionable motor
 36 vehicle may file an application for renewal of
 37 registration; amending s. 320.0807, F.S.; revising
 38 provisions governing the special license plates issued to
 39 federal and state legislators; amending s. 320.084, F.S.;
 40 providing for a biennial registration renewal period for
 41 disabled veteran license plates; amending s. 321.03, F.S.;
 42 providing that it is unlawful to possess or color or cause
 43 to be colored a motor vehicle or motorcycle of the same or
 44 similar color as those prescribed for the Florida Highway
 45 Patrol unless specifically authorized by the Florida
 46 Highway Patrol; amending s. 321.05, F.S.; providing that
 47 officers of the Florida Highway Patrol have the same
 48 arrest and other authority as that provided for certain
 49 other state law enforcement officers; amending s. 322.121,
 50 F.S.; revising legislative intent for reexamination of
 51 licensed drivers upon renewal of the driver's license;
 52 removing a requirement that each licensee must pass a
 53 reexamination at the time of license renewal; amending s.
 54 322.18, F.S.; providing that a person issued a driver's
 55 license using proof of nonimmigrant classification under
 56 specified provisions is not eligible to renew that

57 license; authorizing a licensed physician at a federally
 58 established veterans hospital to administer a vision test
 59 for purposes of renewing a driver's license; correcting a
 60 cross-reference; amending s. 322.2615, F.S.; revising
 61 requirements for information an officer must submit to the
 62 department after suspending a driver's license for certain
 63 DUI offenses; removing a requirement that the officer
 64 submit a copy of a crash report; authorizing the officer
 65 to submit such report; amending s. 322.34, F.S.; providing
 66 that if a person does not hold a commercial driver's
 67 license and is cited for an offense of knowingly driving
 68 while his or her license is suspended, revoked, or
 69 canceled, he or she may, in lieu of payment of a fine or
 70 court appearance, elect to enter a plea of nolo contendere
 71 and provide proof of compliance to the clerk of the court,
 72 designated official, or authorized operator of a traffic
 73 violations bureau; limiting a driver's option to elect
 74 such a remedy; amending s. 322.61, F.S.; revising the
 75 period of disqualification from operating a commercial
 76 motor vehicle for a violation of an out-of-service order;
 77 amending s. 488.06, F.S.; specifying additional
 78 circumstances under which the department may suspend or
 79 revoke a license or certificate of a driving school;
 80 providing an effective date.

81
 82 Be It Enacted by the Legislature of the State of Florida:
 83 Section 1. Section 316.159, Florida Statutes, is amended
 84 to read:

85 316.159 Certain vehicles to stop or slow at all railroad
 86 grade crossings.—

87 (1) The driver of any motor vehicle carrying passengers
 88 for hire, excluding taxicabs, of any school bus carrying any
 89 school child, or of any vehicle carrying explosive substances or
 90 flammable liquids as a cargo or part of a cargo, before crossing
 91 at grade any track or tracks of a railroad, shall stop such
 92 vehicle within 50 feet but not less than 15 feet from the
 93 nearest rail of the railroad and, while so stopped, shall listen
 94 and look in both directions along the track for any approaching
 95 train, and for signals indicating the approach of a train,
 96 except as hereinafter provided, and shall not proceed until he
 97 or she can do so safely. After stopping as required herein and
 98 upon proceeding when it is safe to do so, the driver of any such
 99 vehicle shall cross only in a gear of the vehicle so that there
 100 will be no necessity for changing gears while traversing the
 101 crossing, and the driver shall not shift gears while crossing
 102 the track or tracks.

103 (2) No stop need be made at any such crossing where a
 104 police officer, a traffic control signal, or a sign directs
 105 traffic to proceed. However, any school bus carrying any school
 106 child shall be required to stop unless directed to proceed by a
 107 police officer.

108 (3) The driver of any commercial motor vehicle that is not
 109 required to stop under subsection (1) or subsection (2) before
 110 crossing the track or tracks of any railroad grade crossing
 111 shall slow the motor vehicle and check that the tracks are clear
 112 of an approaching train.

113 ~~(4)(3)~~ A violation of this section is a noncriminal
 114 traffic infraction, punishable as a moving violation as provided
 115 in chapter 318.

116 Section 2. Paragraph (d) is added to subsection (2) of
 117 section 316.2952, Florida Statutes, to read:

118 316.2952 Windshields; requirements; restrictions.—

119 (2) A person shall not operate any motor vehicle on any
 120 public highway, road, or street with any sign, sunscreening
 121 material, product, or covering attached to, or located in or
 122 upon, the windshield, except the following:

123 (d) A global positioning system device or similar
 124 satellite receiver device which uses the global positioning
 125 system operated pursuant to 10 U.S.C. s. 2281 for the purpose of
 126 obtaining navigation or routing information while the motor
 127 vehicle is being operated.

128 Section 3. Section 316.29545, Florida Statutes, is amended
 129 to read:

130 316.29545 Window sunscreening exclusions; medical
 131 exemption; certain law enforcement vehicles and private
 132 investigative service vehicles exempt.—

133 (1) The department shall issue medical exemption
 134 certificates to persons who are afflicted with Lupus, any
 135 autoimmune disease or other ~~similar~~ medical conditions which
 136 require a limited exposure to light, which certificates shall
 137 entitle the person to whom the certificate is issued to have
 138 sunscreening material on the windshield, side windows, and
 139 windows behind the driver which is in violation of the
 140 requirements of ss. 316.2951–316.2957. The department shall

141 consult with the Medical Advisory Board established in s.
 142 322.125 to provide guidance with respect to the autoimmune
 143 diseases and other medical conditions which shall be included
 144 on, by rule, for the form of the medical certificate authorized
 145 by this section. At a minimum, the medical exemption certificate
 146 shall include a vehicle description with the make, model, year,
 147 vehicle identification number, medical exemption decal number
 148 issued for the vehicle, and the name of the person or persons
 149 who are the registered owners of the vehicle. A medical
 150 exemption certificate shall be nontransferable and shall become
 151 null and void upon the sale or transfer of the vehicle
 152 identified on the certificate.

153 (2) The department shall exempt all law enforcement
 154 vehicles used in undercover or canine operations from the window
 155 sunscreening requirements of ss. 316.2951-316.2957.

156 (3) The department shall exempt from the window
 157 sunscreening restrictions of ss. 316.2953, 316.2954, and
 158 316.2956 vehicles that are owned or leased by private
 159 investigative agencies licensed under chapter 493.

160 ~~(4)-(3)~~ The department may charge a fee in an amount
 161 sufficient to defray the expenses of issuing a medical exemption
 162 certificate as described in subsection (1).

163 (5) The department is authorized to promulgate rules for
 164 the implementation of this section.

165 Section 4. Subsection (3) of section 316.646, Florida
 166 Statutes, is amended to read:

167 316.646 Security required; proof of security and display
 168 thereof; dismissal of cases.-

169 (3) Any person who violates this section commits a
 170 nonmoving traffic infraction subject to the penalty provided in
 171 chapter 318 and shall be required to furnish proof of security
 172 as provided in this section. If any person charged with a
 173 violation of this section fails to furnish proof~~7~~ at or before
 174 the scheduled court appearance date~~7~~ that security was in effect
 175 at the time of the violation, the court shall, upon conviction,
 176 notify the department to ~~may immediately~~ suspend the
 177 registration and driver's license of such person. If the court
 178 fails to order the suspension of the person's registration and
 179 driver's license for a conviction of this section at the time of
 180 sentencing, the department shall, upon receiving notice of the
 181 conviction from the court, suspend the person's registration and
 182 driver's license for the violation of this section. Such license
 183 and registration may be reinstated only as provided in s.
 184 324.0221.

185 Section 5. Subsections (1), (2), (3), (10), and (13) of
 186 section 318.14, Florida Statutes, are amended to read:

187 318.14 Noncriminal traffic infractions; exception;
 188 procedures.—

189 (1) Except as provided in ss. 318.17 and 320.07(3)(c), any
 190 person cited for a violation of chapter 316, s. 320.0605, s.
 191 320.07(3)(a) or (b), s. 322.065, s. 322.15(1), s. 322.16(2) or
 192 (3), s. 322.1615 ~~s. 322.161(5)~~, s. 322.19, or s. 1006.66(3) is
 193 charged with a noncriminal infraction and must be cited for such
 194 an infraction ~~and cited to appear before an official~~. If another
 195 person dies as a result of the noncriminal infraction, the
 196 person cited may be required to perform 120 community service

197 hours under s. 316.027(4), in addition to any other penalties.

198 (2) Except as provided in s. 316.1001(2), any person cited
 199 for a violation requiring a mandatory hearing listed in s.
 200 318.19 or any other criminal traffic violation listed in chapter
 201 316 ~~an infraction under this section~~ must sign and accept a
 202 citation indicating a promise to appear. The officer may
 203 indicate on the traffic citation the time and location of the
 204 scheduled hearing and must indicate the applicable civil penalty
 205 established in s. 318.18.

206 (3) Any person who willfully refuses to accept and sign a
 207 summons as provided in subsection (2) commits ~~is guilty of~~ a
 208 misdemeanor of the second degree.

209 (10)(a) Any person who does not hold a commercial driver's
 210 license and who is cited for an offense listed under this
 211 subsection may, in lieu of payment of fine or court appearance,
 212 elect to enter a plea of nolo contendere and provide proof of
 213 compliance to the clerk of the court, designated official, or
 214 authorized operator of a traffic violations bureau. In such
 215 case, adjudication shall be withheld; however, no election shall
 216 be made under this subsection if such person has made an
 217 election under this subsection in the 12 months preceding
 218 election hereunder. No person may make more than three elections
 219 under this subsection. This subsection applies to the following
 220 offenses:

- 221 1. Operating a motor vehicle without a valid driver's
 222 license in violation of the provisions of s. 322.03, s. 322.065,
 223 or s. 322.15(1), or operating a motor vehicle with a license
 224 that ~~which~~ has been suspended for failure to appear, failure to

225 pay civil penalty, failure to pay any other financial obligation
 226 as provided in s. 322.245 other than those specified in s.
 227 322.245(1), or failure to attend a driver improvement course
 228 pursuant to s. 322.291.

229 2. Operating a motor vehicle without a valid registration
 230 in violation of s. 320.0605, s. 320.07, or s. 320.131.

231 3. Operating a motor vehicle in violation of s. 316.646.

232 4. Operating a motor vehicle with a license that has been
 233 suspended for child support in violation of s. 322.245 or s.
 234 61.13016.

235 5. Operating a motor vehicle with a license which has been
 236 suspended in violation of s. 322.091.

237 (b) Any person cited for an offense listed in this
 238 subsection shall present proof of compliance prior to the
 239 scheduled court appearance date. For the purposes of this
 240 subsection, proof of compliance shall consist of a valid,
 241 renewed, or reinstated driver's license or registration
 242 certificate and proper proof of maintenance of security as
 243 required by s. 316.646. Notwithstanding waiver of fine, any
 244 person establishing proof of compliance shall be assessed court
 245 costs of \$25, except that a person charged with violation of s.
 246 316.646(1)-(3) may be assessed court costs of \$8. One dollar of
 247 such costs shall be remitted to the Department of Revenue for
 248 deposit into the Child Welfare Training Trust Fund of the
 249 Department of Children and Family Services. One dollar of such
 250 costs shall be distributed to the Department of Juvenile Justice
 251 for deposit into the Juvenile Justice Training Trust Fund.
 252 Fourteen dollars of such costs shall be distributed to the

253 municipality and \$9 shall be deposited by the clerk of the court
 254 into the fine and forfeiture fund established pursuant to s.
 255 142.01, if the offense was committed within the municipality. If
 256 the offense was committed in an unincorporated area of a county
 257 or if the citation was for a violation of s. 316.646(1)-(3), the
 258 entire amount shall be deposited by the clerk of the court into
 259 the fine and forfeiture fund established pursuant to s. 142.01,
 260 except for the moneys to be deposited into the Child Welfare
 261 Training Trust Fund and the Juvenile Justice Training Trust
 262 Fund. This subsection shall not be construed to authorize the
 263 operation of a vehicle without a valid driver's license, without
 264 a valid vehicle tag and registration, or without the maintenance
 265 of required security.

266 (13)(a) A person cited for a violation of s. 316.1926
 267 shall, in addition to any other requirements provided in this
 268 section, pay a fine of \$1,000. This fine is in lieu of the fine
 269 required under s. 318.18(3)(b), if the person was cited for
 270 violation of s. 316.1926(2).

271 (b) A person cited for a second violation of s. 316.1926
 272 shall, in addition to any other requirements provided in this
 273 section, pay a fine of \$2,500. This fine is in lieu of the fine
 274 required under s. 318.18(3)(b), if the person was cited for
 275 violation of s. 316.1926(2). In addition, the court shall revoke
 276 the person's authorization and privilege to operate a motor
 277 vehicle for a period of 1 year and order the person to surrender
 278 his or her driver's license.

279 (c) A person cited for a third violation of s. 316.1926
 280 commits a felony of the third degree, punishable as provided in

281 s. 775.082, s. 775.083, or s. 775.084. Upon conviction, the
 282 court shall impose a fine of \$5,000, revoke the person's
 283 authorization and privilege to operate a motor vehicle for a
 284 period of 10 years, and order the person to surrender his or her
 285 driver's license.

286 Section 6. Paragraph (b) of subsection (1) of section
 287 320.071, Florida Statutes, is amended to read:

288 320.071 Advance registration renewal; procedures.—

289 (1)

290 (b) The owner of any apportioned motor vehicle currently
 291 registered in this state may file an application for renewal of
 292 registration with the department any time during the 3 5 months
 293 preceding the date of expiration of the registration period.

294 Section 7. Subsections (1) and (2) of section 320.0807,
 295 Florida Statutes, are amended to read:

296 320.0807 Special license plates for Governor and federal
 297 and state legislators.—

298 (1) Upon application by any member of the House of
 299 Representatives of Congress and payment of the fees prescribed
 300 by s. 320.0805, the department is authorized to issue to such
 301 Member of Congress a license plate stamped "Member of Congress"
 302 followed by the number of the appropriate congressional district
 303 and the letters "MC," or any other configuration chosen by the
 304 member which is not already in use. Upon application by a United
 305 States Senator and payment of the fees prescribed by s.
 306 320.0805, the department is authorized to issue a license plate
 307 stamped "USS," followed by the numeral II in the case of the
 308 junior senator.

309 (2) Upon application by any member of the state House of
 310 Representatives and payment of the fees prescribed by s.
 311 320.0805, the department is authorized to issue such state
 312 representative license plates stamped in bold letters "State
 313 Legislator," followed by the number of the appropriate House of
 314 Representatives district and the letters "HR," or any other
 315 configuration chosen by the member which is not already in use
 316 ~~on one plate; the numbers of the other plates will be assigned~~
 317 ~~by the department.~~ Upon application by a state senator and
 318 payment of the fees prescribed by s. 320.0805, the department is
 319 authorized to issue license plates stamped in bold letters
 320 "State Senator," followed by the number of the appropriate
 321 Senate district and the letters "SS," or any other configuration
 322 chosen by the member which is not already in use ~~on one plate;~~
 323 ~~the numbers of the other plates will be assigned by the~~
 324 ~~department.~~

325 Section 8. Subsection (4) of section 320.084, Florida
 326 Statutes, is amended to read:

327 320.084 Free motor vehicle license plate to certain
 328 disabled veterans.—

329 (4) (a) With the issuance of each new permanent "DV"
 330 numerical motor vehicle license plate, the department shall
 331 initially issue, without cost to the applicant, a validation
 332 sticker reflecting the owner's birth month and a serially
 333 numbered validation sticker reflecting the year of expiration.
 334 The initial sticker reflecting the year of expiration may not
 335 exceed 27 ~~15~~ months.

336 (b) There shall be a service charge in accordance with the

PCS for HB 971

ORIGINAL

2010

337 provisions of s. 320.04 for each initial application or renewal
 338 of registration and an additional sum of 50 cents on each
 339 license plate and validation sticker as provided in s.
 340 320.06(3)(b).

341 (c) Registration under this section shall be renewed
 342 annually or biennially during the applicable renewal period on
 343 forms prescribed by the department, which shall include, in
 344 addition to any other information required by the department, a
 345 certified statement as to the continued eligibility of the
 346 applicant to receive the special "DV" license plate. Any
 347 applicant who falsely or fraudulently submits to the department
 348 the certified statement required by this paragraph is guilty of
 349 a noncriminal violation and is subject to a civil penalty of
 350 \$50.

351 Section 9. Section 321.03, Florida Statutes, is amended to
 352 read:

353 321.03 Imitations prohibited; penalty.—Unless specifically
 354 authorized by the Florida Highway Patrol, it shall be unlawful
 355 ~~for any a person or persons~~ in the state shall not ~~to~~ color or
 356 cause to be colored any motor vehicle or motorcycle the same or
 357 similar color as the color or colors so prescribed for the
 358 Florida Highway Patrol. A Any person who violates ~~violating any~~
 359 ~~of the provisions of~~ this section or s. 321.02 with respect to
 360 uniforms, emblems, motor vehicles and motorcycles commits ~~shall~~
 361 ~~be guilty of~~ a misdemeanor of the first degree, punishable as
 362 provided in s. 775.082 or s. 775.083. The Department of Highway
 363 Safety and Motor Vehicles shall employ such clerical help and
 364 mechanics as may be necessary for the economical and efficient

365 operation of such department.

366 Section 10. Section 321.05, Florida Statutes, is amended
 367 to read:

368 321.05 Duties, functions, and powers of patrol officers.—
 369 The members of the Florida Highway Patrol are hereby declared to
 370 be conservators of the peace and law enforcement officers of the
 371 state, with the common-law right to arrest a person who, in the
 372 presence of the arresting officer, commits a felony or commits
 373 an affray or breach of the peace constituting a misdemeanor,
 374 with full power to bear arms; and they shall apprehend, without
 375 warrant, any person in the unlawful commission of any of the
 376 acts over which the members of the Florida Highway Patrol are
 377 given jurisdiction as hereinafter set out and deliver him or her
 378 to the sheriff of the county that further proceedings may be had
 379 against him or her according to law. In the performance of any
 380 of the powers, duties, and functions authorized by law, members
 381 of the Florida Highway Patrol ~~shall~~ have the same protections
 382 and immunities afforded other peace officers, which shall be
 383 recognized by all courts having jurisdiction over offenses
 384 against the laws of this state, and ~~shall~~ have authority to
 385 apply for, serve, and execute search warrants, arrest warrants,
 386 ~~capias, and other process of the court in these matters in which~~
 387 ~~patrol officers have primary responsibility as set forth in~~
 388 ~~subsection (1).~~ The patrol officers under the direction and
 389 supervision of the Department of Highway Safety and Motor
 390 Vehicles shall perform and exercise throughout the state the
 391 following duties, functions, and powers:

392 (1) To patrol the state highways and regulate, control,

393 and direct the movement of traffic thereon; to maintain the
 394 public peace by preventing violence on highways; to apprehend
 395 fugitives from justice; to enforce all laws now in effect
 396 regulating and governing traffic, travel, and public safety upon
 397 the public highways and providing for the protection of the
 398 public highways and public property thereon; to make arrests
 399 without warrant for the violation of any state law committed in
 400 their presence in accordance with the laws of this state;
 401 providing that no search shall be made unless it is incident to
 402 a lawful arrest, to regulate and direct traffic concentrations
 403 and congestions; to enforce laws governing the operation,
 404 licensing, and taxing and limiting the size, weight, width,
 405 length, and speed of vehicles and licensing and controlling the
 406 operations of drivers and operators of vehicles; to cooperate
 407 with officials designated by law to collect all state fees and
 408 revenues levied as an incident to the use or right to use the
 409 highways for any purpose; to require the drivers of vehicles to
 410 stop and exhibit their driver's licenses, registration cards, or
 411 documents required by law to be carried by such vehicles; to
 412 investigate traffic accidents, secure testimony of witnesses and
 413 of persons involved, and make report thereof with copy, when
 414 requested in writing, to any person in interest or his or her
 415 attorney; to investigate reported thefts of vehicles and to
 416 seize contraband or stolen property on or being transported on
 417 the highways. Each law enforcement officer is subject to and
 418 have the same arrest and other authority provided for law
 419 enforcement officers generally in chapter 901 and have statewide
 420 jurisdiction. Each officer shall also have arrest authority as

421 provided for state law enforcement officers in s. 901.15. This
 422 section is shall not be construed as being in conflict with, but
 423 is supplemental to, chapter 933.

424 (2) To assist other constituted law enforcement officers
 425 of the state to quell mobs and riots, guard prisoners, and
 426 police disaster areas.

427 (3) (a) To make arrests while in fresh pursuit of a person
 428 believed to have violated the traffic and other laws.

429 (b) To make arrest of a person wanted for a felony or
 430 against whom a warrant has been issued on any charge in
 431 violation of federal, state, or county laws or municipal
 432 ordinances.

433 (4) (a) All fines and costs and the proceeds of the
 434 forfeiture of bail bonds and recognizances resulting from the
 435 enforcement of this chapter by patrol officers shall be paid
 436 into the fine and forfeiture fund established pursuant to s.
 437 142.01 of the county where the offense is committed. In all
 438 cases of arrest by patrol officers, the person arrested shall be
 439 delivered forthwith by the ~~said~~ officer to the sheriff of the
 440 county, or he or she shall obtain from the ~~such~~ person arrested
 441 a recognizance or, if deemed necessary, a cash bond or other
 442 sufficient security conditioned for his or her appearance before
 443 the proper tribunal of the ~~such~~ county to answer the charge for
 444 which he or she has been arrested; and all fees accruing shall
 445 be taxed against the party arrested, which fees are hereby
 446 declared to be part of the compensation of the ~~said~~ sheriffs
 447 authorized to be fixed by the Legislature under s. 5(c), Art. II
 448 of the State Constitution, to be paid such sheriffs in the same

449 manner as fees are paid for like services in other criminal
 450 cases. All patrol officers are hereby directed to deliver all
 451 bonds accepted and approved by them to the sheriff of the county
 452 in which the offense is alleged to have been committed. However,
 453 a ~~no~~ sheriff shall not be paid any arrest fee for the arrest of
 454 a person for violation of any section of chapter 316 when the
 455 arresting officer was transported in a Florida Highway Patrol
 456 car to the vicinity where the arrest was made; and a ~~no~~ sheriff
 457 shall not be paid any fee for mileage for himself or herself or
 458 a prisoner for miles traveled in a Florida Highway Patrol car. A
 459 ~~No~~ patrol officer is not ~~shall be~~ entitled to any fee or mileage
 460 cost except when responding to a subpoena in a civil cause or
 461 except when the ~~such~~ patrol officer is appearing as an official
 462 witness to testify at any hearing or law action in any court of
 463 this state as a direct result of his or her employment as a
 464 patrol officer during time not compensated as a part of his or
 465 her normal duties. Nothing herein shall be construed as limiting
 466 the power to locate and to take from any person under arrest or
 467 about to be arrested deadly weapons. ~~Nothing contained in This~~
 468 section is not ~~shall be construed as~~ a limitation upon existing
 469 powers and duties of sheriffs or police officers.

470 (b) Any person so arrested and released on his or her own
 471 recognizance by an officer and who fails ~~shall fail~~ to appear or
 472 respond to a notice to appear shall, in addition to the traffic
 473 violation charge, commits ~~be guilty of~~ a noncriminal traffic
 474 infraction subject to the penalty provided in s. 318.18(2).

475 (5) The department may employ or assign some fit and
 476 suitable person with experience in the field of public relations

477 who shall ~~have the duty to~~ promote, coordinate, and publicize
 478 the traffic safety activities in the state and assign such
 479 person to the office of the Governor at a salary to be fixed by
 480 the department. The person so assigned or employed shall be a
 481 member of the uniform division of the Florida Highway Patrol,
 482 and he or she shall have the pay and rank of lieutenant while on
 483 such assignment.

484 (6) The Division of Florida Highway Patrol is authorized
 485 to adopt ~~promulgate~~ rules and ~~regulations~~ which may be necessary
 486 to implement the provisions of chapter 316.

487 Section 11. Section 322.121, Florida Statutes, is amended
 488 to read:

489 322.121 Periodic reexamination of all drivers.-

490 (1) It is the intent of the Legislature that all licensed
 491 drivers in Florida be reexamined upon renewal of their licenses.
 492 Because only a small percentage of drivers in the state are
 493 categorized as problem drivers, the Legislature intends that
 494 renewals ~~the large number of drivers who have not had any~~
 495 ~~convictions for the 3 years preceding renewal and whose driving~~
 496 ~~privilege in this state has not been revoked, disqualified, or~~
 497 ~~suspended at any time during the 7 years preceding renewal~~ be
 498 processed expeditiously upon renewal of their licenses by
 499 examinations of the licensee's ~~their~~ eyesight and hearing only
 500 and ~~that all other licensees be tested, in addition to the~~
 501 ~~eyesight and hearing examinations, with respect to their ability~~
 502 ~~to read and understand highway signs regulating, warning, and~~
 503 ~~directing traffic.~~

504 ~~(2) Each licensee must pass a reexamination at the time of~~

505 ~~renewal, except as otherwise provided in this chapter. For each~~
 506 ~~licensee whose driving record does not show any convictions for~~
 507 ~~the preceding 3 years or any revocations, disqualifications, or~~
 508 ~~suspensions for the preceding 7 years; and who, at the time of~~
 509 ~~renewal, presents a renewal notice verifying such safe driving~~
 510 ~~record, the reexamination shall consist of tests of the~~
 511 ~~licensee's eyesight and hearing. For all other licensees, in~~
 512 ~~addition to the eyesight and hearing tests, the reexamination~~
 513 ~~must include tests of the ability to read and understand highway~~
 514 ~~signs and pavement markings regulating, warning, and directing~~
 515 ~~traffic.~~

516 (2)~~(3)~~ For each licensee whose driving record does not
 517 show any revocations, disqualifications, or suspensions for the
 518 preceding 7 years or any convictions for the preceding 3 years
 519 except for convictions of the following nonmoving violations:

520 (a) Failure to exhibit a vehicle registration certificate,
 521 rental agreement, or cab card pursuant to s. 320.0605;

522 (b) Failure to renew a motor vehicle or mobile home
 523 registration that has been expired for 4 months or less pursuant
 524 to s. 320.07(3)(a);

525 (c) Operating a motor vehicle with an expired license that
 526 has been expired for 4 months or less pursuant to s. 322.065;

527 (d) Failure to carry or exhibit a license pursuant to s.
 528 322.15(1); or

529 (e) Failure to notify the department of a change of
 530 address or name within 10 days pursuant to s. 322.19,

531

532 the department shall cause such licensee's license to be

533 prominently marked with the notation "Safe Driver."

534 (3)~~(4)~~ Eyesight examinations must be administered as
535 provided in s. 322.12.

536 (4)~~(5)~~ An examination fee may not be assessed for
537 reexamination required by this section.

538 (5)~~(6)~~ Members of the Armed Forces, or their dependents
539 residing with them, shall be granted an automatic extension for
540 the expiration of their licenses without reexamination while
541 serving on active duty outside this state. This extension is
542 valid for 90 days after the member of the Armed Forces is either
543 discharged or returns to this state to live.

544 (6)~~(7)~~ In addition to any other examination authorized by
545 this section, an applicant for a renewal of a commercial
546 driver's license may be required to complete successfully an
547 examination of his or her knowledge regarding state and federal
548 rules, regulations, and laws, governing the type of vehicle
549 which he or she is applying to be licensed to operate.

550 (7)~~(8)~~ In addition to any other examination authorized by
551 this section, an applicant for a renewal of an endorsement
552 issued under s. 322.57(1)(a), (b), (d), (e), or (f) may be
553 required to complete successfully an examination of his or her
554 knowledge regarding state and federal rules, regulations, and
555 laws, governing the type of vehicle which he or she is seeking
556 an endorsement to operate.

557 Section 12. Paragraph (c) is added to subsection (1) of
558 section 322.18, Florida Statutes, paragraph (a) of subsection
559 (5) and paragraph (c) of subsection (8) of that section are
560 amended, to read:

561 322.18 Original applications, licenses, and renewals;
 562 expiration of licenses; delinquent licenses.—

563 (1)

564 (c) A person who has been issued a driver's license using
 565 documentation specified in s. 322.08(2)(c)8. as proof of
 566 identity is not eligible to renew that license and must obtain
 567 an original license.

568 (5) All renewal driver's licenses may be issued after the
 569 applicant licensee has been determined to be eligible by the
 570 department.

571 (a) A licensee who is otherwise eligible for renewal and
 572 who is at least 80 years of age:

573 1. Must submit to and pass a vision test administered at
 574 any driver's license office; or

575 2. If the licensee applies for a renewal using a
 576 convenience service as provided in subsection (8), he or she
 577 must submit to a vision test administered by a physician
 578 licensed under chapter 458 or chapter 459, ~~or~~ an optometrist
 579 licensed under chapter 463, or a licensed physician at a
 580 federally established veterans hospital, must send the results
 581 of that test to the department on a form obtained from the
 582 department and signed by such health care practitioner, and must
 583 meet vision standards that are equivalent to the standards for
 584 passing the departmental vision test. The physician or
 585 optometrist may submit the results of a vision test by a
 586 department-approved electronic means.

587 (8) The department shall issue 8-year renewals using a
 588 convenience service without reexamination to drivers who have

589 | not attained 80 years of age. The department shall issue 6-year
 590 | renewals using a convenience service when the applicant has
 591 | satisfied the requirements of subsection (5).

592 | (c) The department shall issue one renewal using a
 593 | convenience service. A person who is out of this state when his
 594 | or her license expires may be issued a 90-day temporary driving
 595 | permit without reexamination. At the end of the 90-day period,
 596 | the person must either return to this state or apply for a
 597 | license where the person is located, except for a member of the
 598 | Armed Forces as provided in s. 322.121(5) ~~s. 322.121(6)~~.

599 | Section 13. Subsection (2) of section 322.2615, Florida
 600 | Statutes, is amended to read:

601 | 322.2615 Suspension of license; right to review.—

602 | (2) Except as provided in paragraph (1)(a), the law
 603 | enforcement officer shall forward to the department, within 5
 604 | days after issuing the notice of suspension, the driver's
 605 | license; an affidavit stating the officer's grounds for belief
 606 | that the person was driving or in actual physical control of a
 607 | motor vehicle while under the influence of alcoholic beverages
 608 | or chemical or controlled substances; the results of any breath
 609 | or blood test or an affidavit stating that a breath, blood, or
 610 | urine test was requested by a law enforcement officer or
 611 | correctional officer and that the person refused to submit; the
 612 | officer's description of the person's field sobriety test, if
 613 | any; and the notice of suspension; ~~and a copy of the crash~~
 614 | ~~report, if any.~~ The failure of the officer to submit materials
 615 | within the 5-day period specified in this subsection and in
 616 | subsection (1) does not affect the department's ability to

617 consider any evidence submitted at or prior to the hearing. The
 618 officer may also submit a copy of the crash report, a copy of a
 619 videotape of the field sobriety test or the attempt to
 620 administer such test. Materials submitted to the department by a
 621 law enforcement agency or correctional agency shall be
 622 considered self-authenticating and shall be in the record for
 623 consideration by the hearing officer. Notwithstanding s.
 624 316.066(7), the crash report shall be considered by the hearing
 625 officer.

626 Section 14. Subsection (11) is added to section 322.34,
 627 Florida Statutes, to read:

628 322.34 Driving while license suspended, revoked, canceled,
 629 or disqualified.—

630 (11) (a) A person who does not hold a commercial driver
 631 license and who is cited for an offense of knowingly driving
 632 while his or her license is suspended, revoked, or canceled for
 633 any of the underlying violations listed in paragraph (10) (a)
 634 may, in lieu of payment of fine or court appearance, elect to
 635 enter a plea of nolo contendere and provide proof of compliance
 636 to the clerk of the court, designated official or authorized
 637 operator of a traffic violations bureau. In such case,
 638 adjudication shall be withheld; however, no election shall be
 639 made under this subsection if such person has made an election
 640 under this subsection in the 12 months preceding election
 641 hereunder. A person may not make more than three elections under
 642 this subsection.

643 (b) If adjudication is withheld under paragraph (a), such
 644 action is not a conviction.

645 Section 15. Subsection (8) of section 322.61, Florida
 646 Statutes, is amended to read:

647 322.61 Disqualification from operating a commercial motor
 648 vehicle.—

649 (8) A driver who is convicted of or otherwise found to
 650 have committed a violation of an out-of-service order while
 651 driving a commercial motor vehicle is disqualified as follows:

652 (a) Not less than 180 ~~90~~ days nor more than 1 year if the
 653 driver is convicted of or otherwise found to have committed a
 654 first violation of an out-of-service order.

655 (b) Not less than 2 years ~~1 year~~ nor more than 5 years if,
 656 for offenses occurring during any 10-year period, the driver is
 657 convicted of or otherwise found to have committed two violations
 658 of out-of-service orders in separate incidents.

659 (c) Not less than 3 years nor more than 5 years if, for
 660 offenses occurring during any 10-year period, the driver is
 661 convicted of or otherwise found to have committed three or more
 662 violations of out-of-service orders in separate incidents.

663 (d) Not less than 180 days nor more than 2 years if the
 664 driver is convicted of or otherwise found to have committed a
 665 first violation of an out-of-service order while transporting
 666 hazardous materials required to be placarded under the Hazardous
 667 Materials Transportation Act, 49 U.S.C. ss. 5101 et seq., or
 668 while operating motor vehicles designed to transport more than
 669 15 passengers, including the driver. A driver is disqualified
 670 for a period of not less than 3 years nor more than 5 years if,
 671 for offenses occurring during any 10-year period, the driver is
 672 convicted of or otherwise found to have committed any subsequent

673 | violations of out-of-service orders, in separate incidents,
 674 | while transporting hazardous materials required to be placarded
 675 | under the Hazardous Materials Transportation Act, 49 U.S.C. ss.
 676 | 5101 et seq., or while operating motor vehicles designed to
 677 | transport more than 15 passengers, including the driver.

678 | Section 16. Section 488.06, Florida Statutes, is amended
 679 | to read:

680 | 488.06 Denial, revocation, or suspension of license or
 681 | certificate.—The Department of Highway Safety and Motor Vehicles
 682 | may suspend or revoke any license or certificate issued under
 683 | the provisions of this chapter if the holder of the license or
 684 | certificate, or if an instructor, agent, or employee of the
 685 | commercial driving school, has:

686 | (1) Violated the provisions of this chapter;—

687 | (2) Been convicted of, pled no contest to, or had
 688 | adjudication withheld for any felony offense or misdemeanor
 689 | offense, as shown by a criminal background check, the cost of
 690 | which must be borne by the applicant, instructor, agent, or
 691 | employee;

692 | (3) Committed of any fraud or willful misrepresentation in
 693 | applying for or obtaining a license; or

694 | (4) Solicited business on any premises, including parking
 695 | areas, used by the department or a tax collector for the purpose
 696 | of licensing drivers.


697 | Section 17. This act shall take effect September 1, 2010.

**OPPAGA
PRESENTATION**

Options to Modify Harbor Pilot Oversight Could Improve Regulation and Rate Setting

A presentation to the
House Roads, Bridges and Ports
Policy Committee

March 17, 2010
Mary Alice Nye, Ph.D.
Chief Legislative Analyst

RMAIL 

Options to Modify Harbor Pilot Oversight Could Improve Regulation and Rate Setting

A PRESIDENTIAL COMMISSION ON
HOUSE ROADS, BRIDGES AND
POLICY CONGRESS

Project Scope

- How are harbor pilots regulated in Florida?
- How are harbor pilot rates established?
- What alternative regulatory and rate-setting systems for harbor piloting are used by other states and governments?
- What options could the Legislature consider for modifying harbor pilot regulation?

Background

- Harbor pilots are regulated by local, state, and federal authorities because of their role in safeguarding navigable waters and preventing damage to vessels, bridges, other structures, and the environment
- The U.S. Coast Guard regulates some harbor pilots
 - Regulates U.S. harbor pilots operating on the Great Lakes, as these lakes include international waters and Canadian ports

Background

- Florida, like most states, regulates foreign-flagged ships and U.S. flagged ships coming from foreign ports
 - In 1975 the Legislature established the Board of Pilot Commissioners
 - In 1994 the Legislature established the Pilotage Rate Review Board
 - Both Boards are administratively housed within the Department of Business and Professional Regulation

How are harbor pilots regulated in Florida?

- Licensure takes several years and requires many steps
- Board vacancies and expired terms may affect regulatory effectiveness
- There is little evidence to assess the overall effectiveness of state regulation

Lengthy Process to Become a Harbor Pilot

- Opening declared by the Board of Pilot Commissions, announced by DBPR
- Applicants who meet minimum requirements approved by board to sit for exam
- DBPR certifies as qualified those who pass
 - Secretary selects person to fill vacancy
 - Two year training program
 - State licensing exam

Board Vacancies May Affect Board Effectiveness

- Board of Pilot Commissioners
 - 1 current member, 1 vacancy, 8 members serving expired terms
 - Pilots make up 5 of 9 current positions
- Pilotage Rate Review Board
 - 4 vacancies
 - 3 members serving on expired terms
 - no CPA or member who is a Coast Guard unlimited master

There Are Few Disciplinary Actions Against Harbor Pilots

The Board of Pilot Commissioners Investigated 78 Complaints in the Last Three Fiscal Years and Took Disciplinary Action Against Three State Pilots

	Fiscal Year		
	2006-07	2007-08	2008-09
Complaints Received	28	27	23
Complaints Deemed Legally Sufficient	26	20	21
Complaints with Probable Cause Determination	2	3	2
Disciplinary Actions	2	1	0

Source: Department of Business and Professional Regulation.

How are harbor pilot rates established?

- Pilotage rates are based on ship size and vary among Florida's ports
- The Pilotage Rate Review Board considers many factors in rate change cases
- Information used to establish rates is not standardized or verified by the board

What alternative regulatory and rate-setting systems for harbor piloting are used by other states and governments?

- **Florida's system is similar to other states**
- **California uses multiple systems**
- **The U.S. Coast Guard oversees the Great Lakes and issues U.S. pilot endorsements**
- **Alternative regulation is used in some European countries**

What options could the Legislature consider for modifying harbor pilot regulation?

- Modify the current regulatory system
- Establish new regulatory and rate-setting processes

Options to Modify the Current Regulatory System

- Issue exemption certificates for certain officers of foreign-flagged vessels
- Establish a formula to determine maximum pilot fees
- Establish a formula to determine the number of pilots per port

Options to Establish New Regulatory and Rate-setting processes

- Adopt local regulation of pilot services
- Abolish state regulation and rely on federal licensure
- Create alternative rate-setting procedures

Options to Modify Harbor Pilot Oversight Could Improve
Regulation and Rate Setting, OPPAGA Report 10-21

For More Information

Contact:

Mary Alice Nye 487-9253
(nye.maryalice@oppaga.fl.gov)

Kara Collins-Gomez 487-4257
(collins-gomez.kara@oppaga.fl.gov)