



Government Accountability Committee

February 21, 2017
10:00 AM-12:00 Noon
Morris Hall

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Accountability Committee

Start Date and Time: Tuesday, February 21, 2017 10:00 am
End Date and Time: Tuesday, February 21, 2017 12:00 pm
Location: Morris Hall (17 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 77 Sports Franchise Facilities by Avila
HB 221 Transportation Network Companies by Sprowls, Grant, J.
HB 6007 Traffic Infraction Detectors by Avila, Ingoglia

Consideration of the following proposed committee bill(s):

PCB GAC 17-01 -- Federal-aid Highway Program

NOTICE FINALIZED on 02/14/2017 4:22PM by Larson.Lisa

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 77 Sports Franchise Facilities
SPONSOR(S): Avila
TIED BILLS: IDEN./SIM. BILLS: SB 122

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Accountability Committee		Moore <i>AM</i>	Williamson <i>RAW</i>
2) Appropriations Committee			

SUMMARY ANALYSIS

Florida is home to many professional and semi-professional sports franchises. These franchises use facilities located on land leased from a local government and also have facilities on land they previously purchased from a local government.

The bill prohibits a sports franchise from constructing, reconstructing, renovating, or improving a facility on public land leased from the state or a political subdivision thereof. The bill also requires a sale of public land by the state or a political subdivision thereof for a sports franchise to construct, reconstruct, renovate, or improve a facility on such land to be at fair market value.

The bill creates the following definitions:

- "Facility" means a structure, and its adjoining parcels of land, primarily used to host games or events held by a sports franchise.
- "Sports franchise" means a professional or semi-professional sports franchise, including, but not limited to, a franchise of the National Football League, the National Hockey League, the National Basketball Association, the National League or American League of Major League Baseball, Minor League Baseball, Major League Soccer, the North American Soccer League, or the promoter of a signature event sanctioned by the National Association for Stock Car Auto Racing.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Sports and Facilities

Many professional and semi-professional sports organizations and facilities reside in Florida. With respect to professional sports, Florida is home to professional football, basketball, baseball, hockey, and soccer teams and two National Association of Stock Car Racing (NASCAR) sanctioned tracks.¹ These teams use facilities located on land leased from a local government and also have facilities on land they previously purchased from a local government. Florida also hosts professional golf, tennis, equestrian, and rodeo events. Notably, the Breeder's Cup, Players Championship, and Daytona 500 all take place in Florida, and the Professional Golf Association (PGA) and Ladies Professional Golf Association (LPGA) both are headquartered in Florida.

Additionally, 15 Major League Baseball teams come to Florida every year for spring training in the state's Grapefruit League.² The teams use 14 spring training facilities, 13 of which are constructed on publicly owned land.³ The only facility on privately owned land is the Atlanta Braves/ESPN Wide World of Sports Complex.⁴

Florida is also home to numerous minor league and semi-professional sports franchises in various sports.⁵ Florida has many Minor League Baseball teams, three Arena Football League teams,⁶ three North American Soccer League teams,⁷ and two East Coast Hockey League teams.⁸ Most of the facilities that such teams use are located on city- or county-owned land.⁹

The following table provides basic information about Florida's 10 professional sports franchises and their facilities:

Franchise	League	Inaugural Season	Home Facility	County	Facility Opened	Land Owner
Miami Dolphins	NFL	1966	Hard Rock Stadium	Miami-Dade	1987	South Florida Stadium LLC ¹⁰
Tampa Bay Buccaneers	NFL	1976	Raymond James Stadium	Hillsborough	1998	Hillsborough County ¹¹
Miami Heat	NBA	1988	American Airlines Arena	Miami-Dade	1999	Miami-Dade County ¹²
Orlando Magic	NBA	1989	Amway Center	Orange	2010	City of Orlando ¹³

¹ NASCAR website, http://www.nascar.com/en_us/NASCAR-Tracks.html (last visited Jan. 12, 2017).

² Florida Sports Foundation website, <http://www.flasports.com/spring-training> (last visited Jan. 12, 2017).

³ Telephone conversation with John Webb, President of the Florida Sports Foundation (Jan. 12, 2017).

⁴ *Id.*

⁵ Florida Sports Foundation Director and Facilities Guide, 2014-2015, p. 17-25, available at <http://www.flasports.com/sports-development/directory-and-facilities-guide> (last visited Jan. 12, 2017).

⁶ Arena League Football website, <http://www.arenafootball.com> (last visited Jan. 12, 2017).

⁷ North American Soccer League website, <http://www.nasl.com/teams> (last visited Jan. 12, 2017).

⁸ East Coast Hockey League website, <http://www.echl.com/directory> (last visited Jan. 12, 2017).

⁹ The Florida Everblades (of the East Coast Hockey League) play at the Germain Arena in Lee County, which is privately owned. Lee County Property Appraiser's Office website, <http://www.leepa.org/Display/DisplayAccount.aspx?Account=BB00285430> (last visited Jan. 12, 2017).

¹⁰ Miami-Dade County Property Appraiser's Office website, <http://www.miamidade.gov/propertysearch/#/> (last visited Jan. 12, 2017).

¹¹ Hillsborough County Property Appraiser's Office website, <http://gis.hcpafll.org/propertysearch/#/parcel/basic/18290972800000000010A> (last visited Jan. 12, 2017).

¹² Miami-Dade County Property Appraiser's Office website, <http://www.miamidade.gov/propertysearch/#/> (last visited Jan. 12, 2017).

Franchise	League	Inaugural Season	Home Facility	County	Facility Opened	Land Owner
Tampa Bay Lightning	NHL	1992	Amalie Arena	Hillsborough	1996	Hillsborough County ¹⁴
Florida Panthers	NHL	1993	BB&T Center	Broward	1998	Broward County ¹⁵
Miami Marlins	MLB	1993	Marlins Park	Miami-Dade	2012	Miami-Dade County ¹⁶
Jacksonville Jaguars	NFL	1995	EverBank Field	Duval	1995	City of Jacksonville ¹⁷
Tampa Bay Rays	MLB	1998	Tropicana Field	Pinellas	1990	St. Petersburg ¹⁸
Orlando City Soccer Club (Lions)	MLS	2015	Orlando City Stadium	Orange	N/A ¹⁹	Orlando City Soccer Club ²⁰

City and County Authority to Sell and Lease Land

Florida law provides broad authority to cities and counties to conduct governmental functions and render governmental services, except when expressly prohibited by law.²¹ Such authority includes, but is not limited to, certain statutorily enumerated powers and all implied authority necessary to effectively exercise those express powers, including the authority to contract and to purchase, lease, sell, and exchange real or personal property.²²

Counties and municipalities may also offer private entities below-market rate leases or deeds for real property for economic development purposes.²³

Effect of Proposed Changes

The bill creates s. 288.11633, F.S., and prohibits a sports franchise from constructing, reconstructing, renovating, or improving a facility on public land leased from the state or a political subdivision thereof. The bill also requires a sale of public land by the state or a political subdivision thereof for a sports franchise to construct, reconstruct, renovate, or improve a facility on such land to be at fair market value.

The bill creates the following definitions:

- "Facility" means a structure, and its adjoining parcels of land, primarily used to host games or events held by a sports franchise.
- "Sports franchise" means a professional or semi-professional sports franchise, including, but not limited to, a franchise of the National Football League, the National Hockey League, the National Basketball Association, the National League or American League of Major League Baseball, Minor League Baseball, Major League Soccer, the North American Soccer League, or

¹³ Orange County Property Appraiser's Office website, <https://www.ocpafl.org/searches/parcelsearch.aspx> (last visited Jan. 12, 2017).

¹⁴ Hillsborough County Property Appraiser's Office website,

<http://gis.hcpafl.org/propertysearch/#/parcel/basic/19291952R000010000140A> (last visited Jan. 12, 2017).

¹⁵ Broward County Property Appraiser's Office website, http://www.bcpa.net/RecInfo.asp?URL_Folio=494026070010 (last visited Jan. 12, 2017).

¹⁶ Miami-Dade County Property Appraiser's Office website, <http://www.miamidade.gov/propertysearch/#> (last visited Jan. 12, 2017).

¹⁷ Duval County Property Appraiser's Office website, http://apps.coj.net/PAO_PropertySearch/Basic/Detail.aspx?RE=1308490000 (last visited Jan. 12, 2017).

¹⁸ Stephen Nohlgren, *What is Tropicana Field worth if Tampa Bay Rays Leave? That depends*, TAMPA BAY TIMES, Feb. 6, 2015, available at <http://www.tampabay.com/news/localgovernment/what-is-tropicana-field-worth-if-rays-leave-that-depends/2216781>.

¹⁹ For more information about the Orlando City Stadium, visit <http://www.orlandocitysc.com/stadium> (last visited Jan. 12, 2017).

²⁰ Jeff Weiner, *Orlando OKs stadium-land deal with Orlando City Soccer Club*, ORLANDO SENTINEL, Jan. 25, 2016, available at <http://www.orlandosentinel.com/news/breaking-news/os-orlando-city-soccer-stadium-vote-20160125-story.html>.

²¹ See ss. 125.01 and 166.021, F.S.

²² Sections 125.01(3)(a) and 166.021(1), F.S. See also Art. VIII, s. 2, FLA. CONST.

²³ See ss. 125.045(5)(a) and 166.021(8)(e), F.S.

the promoter of a signature event sanctioned by the National Association for Stock Car Auto Racing.

B. SECTION DIRECTORY:

Section 1. creates s. 288.11633, F.S., relating to sports franchise facilities.

Section 2. provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

2. Expenditures:

The bill does not appear to impact state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The direct economic impact of the bill on the private sector is unclear.

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

2. Other:

Impairment of Contract

Both the United States and Florida Constitutions provide that legislation cannot modify or render unenforceable any existing contract or contractual right.²⁴ As drafted, the bill does not specify that its provisions do not impair any contract or contractual rights in existence prior to the bill's effective date of July 1, 2017. Thus, a reviewing court may determine that the bill modifies or renders unenforceable an existing contract or contractual right.

²⁴ Art I, s. 10, U.S. CONST.; Art I., s. 10, FLA. CONST.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Meaning of Terms

The meaning of the terms “renovate” and “improve” is unclear.

Other Comments: Laws Requiring Facility Updates

It is unclear how the bill would affect a sports franchise that is mandated by some other law or regulation to update or “improve” its facility for safety reasons.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to sports franchise facilities;
 3 creating s. 288.11633, F.S.; prohibiting a sports
 4 franchise from constructing, reconstructing,
 5 renovating, or improving a facility on leased public
 6 land; requiring that a sale of public land for a
 7 sports franchise facility be at fair market value;
 8 defining the terms "facility" and "sports franchise";
 9 providing an effective date.

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

12
 13 Section 1. Section 288.11633, Florida Statutes, is created
 14 to read:

15 288.11633 Sports franchise facilities; lease or sale of
 16 public land.-

17 (1) Notwithstanding any other provision of law:

18 (a) A sports franchise may not construct, reconstruct,
 19 renovate, or improve a facility on public land leased from the
 20 state or a political subdivision thereof.

21 (b) A sale of public land by the state or a political
 22 subdivision thereof for a sports franchise to construct,
 23 reconstruct, renovate, or improve a facility on such land must
 24 be at fair market value.

25 (2) For purposes of this section, the term:

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26 (a) "Facility" means a structure, and its adjoining
27 parcels of land, primarily used to host games or events held by
28 a sports franchise.

29 (b) "Sports franchise" means a professional or semi-
30 professional sports franchise, including, but not limited to, a
31 franchise of the National Football League, the National Hockey
32 League, the National Basketball Association, the National League
33 or American League of Major League Baseball, Minor League
34 Baseball, Major League Soccer, the North American Soccer League,
35 or the promoter of a signature event sanctioned by the National
36 Association for Stock Car Auto Racing.

37 Section 2. This act shall take effect July 1, 2017.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Accountability
 2 Committee
 3 Representative Avila offered the following:

Amendment (with title amendment)

Remove lines 25-36 and insert:

7 (2) On or after July 1, 2017, a contract or agreement, or
 8 a renewal of or an amendment to an existing contract or
 9 agreement, entered into between the state or a political
 10 subdivision and a sports franchise to fund the construction,
 11 reconstruction, renovation, or improvement of a facility must
 12 include a provision that requires the sports franchise to pay
 13 any outstanding debt incurred by the state or political
 14 subdivision to fund such construction, reconstruction,
 15 renovation, or improvement if the sports franchise permanently
 16 discontinues use of the facility.



Amendment No. 1

- 17 (3) For purposes of this section, the term:
18 (a) "Facility" means a structure, and its adjoining
19 parcels of land, primarily used to host games or events held by
20 a sports franchise.
21 (b) "Sports franchise" means a professional or semi-
22 professional sports franchise, including, but not limited to, a
23 franchise of the National Football League, the National Hockey
24 League, the National Basketball Association, the National League
25 or American League of Major League Baseball, Minor League
26 Baseball, Major League Soccer, the North American Soccer League,
27 or the promoter of a signature event sanctioned by the National
28 Association for Stock Car Auto Racing.
29 (4) Nothing in this section shall be construed to impair
30 any contract entered into before July 1, 2017, without the
31 consent of the parties.

32
33 -----
34 **T I T L E A M E N D M E N T**

35 Remove line 8 and insert:
36 providing requirements for a contract to fund the construction,
37 reconstruction, renovation, or improvement of a facility;
38 defining the terms "facility" and "sports franchise"; specifying
39 that the act does not impair contracts entered into before July
40 1, 2017;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 221 Transportation Network Companies
SPONSOR(S): Sprowls, Grant, J. and others
TIED BILLS: IDEN./SIM. BILLS: SB 340

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	14 Y, 1 N	Johnson	Vickers
2) Government Accountability Committee		Johnson <i>JAS</i>	Williamson <i>RAW</i>

SUMMARY ANALYSIS

The bill establishes a regulatory framework for transportation network companies (TNCs) in the state and it preempts to the state the regulation of TNCs. In part, the bill:

- Defines terms, including the term “transportation network company,” which it defines as an entity operating in this state using a digital network to connect a rider to a TNC driver who provides prearranged rides.
- Provides that a TNC is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service.
- Requires a TNC to maintain an agent for service of process in the state.
- Requires a TNC to disclose certain information related to the collection of fares.
- Requires a TNC’s digital network to display a photograph of the TNC driver and the license plate number of the TNC vehicle.
- Provides minimum insurance requirements for TNCs and TNC drivers.
- Provides for certain TNC and insurer disclosures and exclusions.
- Provides that TNC drivers are independent contractors if certain conditions are met, which provision is applied retroactively.
- Requires TNCs to implement a zero tolerance policy regarding the use of drugs and alcohol by its drivers.
- Establishes certain TNC driver requirements including background and driving record checks.
- Prohibits persons from being a TNC driver if they have been convicted of certain crimes or a certain number of moving violations.
- Prohibits TNC drivers from accepting rides for compensation outside of the TNC’s digital network and from soliciting or accepting street hails.
- Requires TNCs to adopt and TNC drivers to comply with policies related to nondiscrimination and disability access.
- Requires TNCs to maintain certain records relating to riders and TNC drivers.

The bill does not appear to have a fiscal impact on state government. The bill may have a negative fiscal impact on local governments currently collecting fees from TNCs; however, the fiscal impact is likely to be insignificant.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law provides for certain regulations regarding taxis, limousines, and other for-hire transportation services, including minimum insurance requirements,¹ an exception to workers' compensation insurance requirements under certain circumstances,² and an exception to child restraint requirements.³ Any additional regulation of these services is established at the local level.

For counties, to the extent not inconsistent with general or special law, the legislative and governing bodies have the power to carry on county government, including, but not restricted to, the power to license and regulate taxis, jitneys, limousines⁴ for hire, rental cars, and for-hire vehicles⁵ that operate in the unincorporated areas of the county.

Municipalities have broad home rule powers authorizing them to enact legislation concerning any subject matter upon which the state Legislature may act, except:

- The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;
- Any subject expressly prohibited by the constitution;
- Any subject expressly preempted to state or county government by the constitution or by general law; or
- Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.⁶

Since the regulation of taxis, limousines, and other for-hire vehicles has not been expressly preempted to the state or county government, municipalities may regulate these vehicles under their broad home rule powers.

Transportation Network Companies (TNCs)

For-hire vehicle services are undergoing changes with respect to business models most often associated with the provision of transportation to individuals, such as by taxi. Technological advances are resulting in new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphones. Some states and local governments have taken

¹ Section 324.032, F.S.

² Section 440.02(15)(c)10., F.S.

³ Section 316.613, F.S.

⁴ The terms "taxicab," "jitney," and "limousine" are not defined in Florida Statutes.

⁵ Section 320.01(15), F.S., defines the term "for-hire vehicle" as any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire." The following are not included a for-hire vehicle: a motor vehicle used for transporting school children to and from school under contract with school officials; a hearse or ambulance when operated by a licensed embalmer or mortician or his or her agent or employee in this state; a motor vehicle used in the transportation of agricultural or horticultural products or in transporting agricultural or horticultural supplies direct to growers or the consumers of such supplies or to associations of such growers or consumers; a motor vehicle temporarily used by a farmer for the transportation of agricultural or horticultural products from any farm or grove to a packinghouse or to a point of shipment by a transportation company; or a motor vehicle not exceeding 11/2 tons under contract with the Government of the United States to carry United States mail, provided such vehicle is not used for commercial purposes.

⁶ Section 166.021(3), F.S.

steps to recognize and regulate companies using these new technologies, which describe themselves as “transportation network companies” and not for-hire vehicles.

Currently, Florida law does not recognize TNCs, but some local governments are in various stages of imposing regulations on TNCs and these regulations vary by jurisdiction.

Background Check Databases

Many different databases exist to conduct background checks and different databases are used for different types of background checks. However, there does not appear to be a single government database that contains complete and up-to-date records regarding a person’s criminal history.⁷

The National Sex Offender Public Website

The National Sex Offender Public Website (NSOPW) contains public information regarding individuals who are required to register through a state’s sex offender registry, and consists of the individual registries and public registry websites operated by all 50 states, the District of Columbia, four of the principal United States territories, as well as over 70 federally-recognized Indian Tribes. The NSOPW contains information on those who have committed sexually violent offenses against adults and children, as well as certain sexual contact and other crimes against victims who are minors. Information about individuals who appear on these lists depends on the individual states’ registry requirements. The NSOPW is administered through the U.S. Department of Justice.⁸

Proposed Changes

State Regulation

The bill creates s. 316.68, F.S., which establishes a regulatory framework for TNCs in the state. It also preempts to the state the regulation of TNCs. Specifically, a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

- Impose a tax on or require a license for a TNC, TNC driver, or TNC vehicle if such tax or license relates to providing prearranged rides or subjects a TNC, TNC driver, or TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or
- Require a TNC or TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity’s jurisdiction.

The bill does not prohibit an airport from charging reasonable pickup fees consistent with any pickup fees charged to taxicab companies at that airport for their use of the airport’s facilities or prohibit the airport from designating locations for staging, pickup, and other similar operations at the airport.

General Provisions

The bill defines a “TNC” as an entity operating in this state that uses a digital network to connect a rider⁹ to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association or for-hire vehicle owner. It defines a “TNC driver” as an individual who receives connections to potential riders and related services from a TNC and in return for compensation, uses a TNC vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network. The bill specifies that a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service.

⁷ See NAPBS, *The Facts about Background Checks*, available at: <http://pubs.napbs.com/pub.cfm?id=0822433E-CAEA-32D3-A1F2-C4970C002321> (last visited January 31, 2017).

⁸ U.S. Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), <https://www.nsopw.gov/en/Home/About> (last visited January 30, 2017).

⁹ The bill defines the term “rider” to mean an individual who uses a digital network to connect with a TNC driver in order to obtain a prearranged ride in the TNC driver’s TNC vehicle between points chosen by the rider.

The bill defines a “TNC vehicle” as a vehicle that is used by a TNC driver to offer or provide a prearranged ride and that is owned, leased, or otherwise authorized to be used by the TNC driver. A vehicle that is let or rented to another for consideration may be used as a TNC vehicle. The bill specifies that a taxicab, jitney, limousine, or for-hire vehicle is not a TNC vehicle.

The bill also defines the term “prearranged ride” as the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network¹⁰ controlled by a TNC, continuing while the TNC driver transports the requesting rider, and ending when the last requesting rider departs from the TNC vehicle. The term does not include a taxicab, for-hire vehicle, or street hail¹¹ service and does not include ridesharing,¹² carpool,¹³ or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

The bill provides that a TNC driver is not required to register a TNC vehicle as a commercial motor vehicle or a for-hire vehicle. It requires the TNC's digital network to display the TNC driver's photograph and the TNC vehicle's license plate number before the rider enters the TNC vehicle.

If a fare is collected from a rider, the bill requires the TNC to disclose the fare or fare calculation method on its website or within the online-enabled technology application service before beginning the prearranged ride. If the fare is not disclosed, the rider must have the option to receive an estimated fare before beginning the prearranged ride. In addition, the bill requires a TNC to transmit to the rider an electronic receipt within a reasonable period of time after the completion of a ride. The receipt must list the origin and destination of the ride, total time and distance of the ride, and total fare paid.

The bill requires a TNC to designate and maintain an agent for service of process in this state.¹⁴

Insurance Requirements

Beginning July 1, 2017, a TNC driver, or a TNC on behalf of the TNC driver, must maintain primary automobile insurance that:

- Recognizes that the TNC driver is a TNC driver or otherwise uses a vehicle to transport riders for compensation; and
- Covers the TNC driver while the TNC driver is logged on to the TNC's digital network or while the TNC driver is engaged in a prearranged ride.

While a TNC driver is logged on to the digital network but is not engaged in a prearranged ride, the TNC or TNC driver must have automobile insurance that provides:

- Primary automobile liability coverage of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required under the Florida Motor Vehicle No-Fault Law.¹⁵ The amount of insurance required is \$10,000 for

¹⁰ The bill defines the term “digital network” as any online-enabled technology application service, website, or system offered or used by a TNC which enables the prearrangement of riders with TNC drivers.

¹¹ The bill defines the term “street hail” as an immediate arrangement on a street with a driver by a person using any method other than a digital network to seek immediate transportation.

¹² Section 341.031(9)(a), F.S., defines “ridesharing” as an “arrangement between persons with a common destination, or destinations, within the same proximity, to share the use of a motor vehicle on a recurring basis for round-trip transportation to and from their place of employment or other common destination. For purposes of ridesharing, employment shall be deemed to commence when an employee arrives at the employer's place of employment to report for work and shall be deemed to terminate when the employee leaves the employer's place of employment, excluding areas not under the control of the employer. However, an employee shall be deemed to be within the course of employment when the employee is engaged in the performance of duties assigned or directed by the employer, or acting in the furtherance of the business of the employer, irrespective of location.”

¹³ Section 450.28(3), F.S., defines “carpool” as “an arrangement made by the workers using one worker's own vehicle for transportation to and from work and for which the driver or owner of the vehicle is not paid by any third person other than the members of the carpool.”

¹⁴ Section 48.091, F.S., requires any corporation doing business in the state to have a registered agent and registered office in the state.

emergency medical disability, \$2,500 non-emergency medical, and \$5,000 for death.¹⁶ It is notable that no-fault coverage is for the named insured (TNC driver), relatives residing in the same household, persons operating the insured motor vehicle, riders in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle.¹⁷

When a TNC driver is engaged in a prearranged ride, the automobile insurance must provide:

- Primary automobile liability coverage of at least \$1 million for death, bodily injury, and property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under the Florida Motor Vehicle No-Fault Law. Pursuant to s. 627.733(1)(a), F.S., limousines are exempt from the Florida Motor Vehicle No-Fault Law. However, if the Legislature removes this exemption or makes certain parts of the Florida Motor Vehicle No-Fault Law applicable to limousines, the changes in that law would also apply to TNCs and their drivers.

The coverage requirements may be satisfied by an automobile insurance policy maintained by the TNC driver, an automobile insurance policy maintained by the TNC, or a combination of automobile insurance policies maintained by the TNC driver and the TNC.

For purposes of comparison, s. 324.32, F.S., requires for-hire passenger transportation vehicles to carry limits of \$125,000/\$250,000 for bodily injury and \$50,000 for property damage.¹⁸ The bill requires less coverage than required for for-hire passenger transportation vehicles when a driver is logged onto the TNCs digital network, but is not engaged in TNC service. However, the bill requires more coverage than required for for-hire passenger transportation vehicles when a driver is engaged in providing TNC service.

The bill provides that if the TNC driver's insurance policy has lapsed or does not provide the required coverage, the insurance maintained by the TNC must provide the required coverage, beginning with the first dollar of a claim, and have the duty to defend such claim.

Coverage under an automobile insurance policy maintained by the TNC must not be dependent on a personal automobile insurer first denying a claim, and a personal automobile insurance policy is not required to first deny a claim.

The required insurance must be provided by an insurer authorized to do business in this state which is a member of the Florida Insurance Guaranty Association¹⁹ or an eligible surplus lines²⁰ insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation.

Insurance satisfying the above requirements is deemed to satisfy the financial responsibility requirement for a motor vehicle under the Financial Responsibility Law of 1955²¹ and the security required under s. 627.733, F.S.²²

¹⁵ Sections 627.730-627.7405, F.S.

¹⁶ Section 627.736, F.S.

¹⁷ Section 627.736(1), F.S.

¹⁸ Section 324.032(1)(a), F.S.

¹⁹ The Florida Insurance Guaranty Association, which was created by legislation, handles the claims of insolvent property and casualty insurance companies. Its membership is composed of all Florida direct writers of property and casualty insurance.

<http://www.figafacts.com/> (Last visited January 30, 2017).

²⁰ "Surplus Lines" is "property/casualty insurance coverage that isn't available from insurers licensed in the state, called admitted companies, and must be purchased from a non-admitted carrier. Examples include risks of an unusual nature that require greater flexibility in policy terms and conditions than exist in standard forms or where the highest rates allowed by state regulators are considered inadequate by admitted companies. Laws governing surplus lines vary by state." <http://www.iii.org/services/glossary/s/> (Last visited January 30, 2017).

²¹ Chapter 324, F.S.

A TNC driver is required to carry proof of insurance coverage with him or her at all times while using a TNC vehicle in connection with a digital network. In the event of an accident, a TNC driver must provide this insurance coverage information to directly interested parties, automobile insurers, and investigating police officers. Proof of financial responsibility may be presented through an electronic device, such as a digital phone application.²³ Upon request, a TNC driver must also disclose to directly interested parties, automobile insurers, and investigating police officers whether the driver was logged on to a digital network or was engaged in a prearranged ride at the time of the accident.

If a TNC's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the TNC must cause its insurer to issue the payment directly to the business repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle.

Before a TNC driver can accept a request for a prearranged ride on the digital network, the bill requires the TNC to disclose in writing to the TNC driver:

- The insurance coverage, including the types of coverage and the limits for each coverage, which the TNC provides while the TNC driver uses a TNC vehicle in connection with the TNC's digital network;
- That the TNC driver's own automobile insurance policy might not provide any coverage while the TNC driver is logged on to the digital network or is engaged in a prearranged ride depending on the terms of the TNC driver's own automobile insurance policy; and
- That the provision of rides for compensation that are not prearranged rides subjects the TNC driver to the coverage requirements imposed under s. 324.032(1), F.S.,²⁴ and that failure to meet such coverage requirements subjects the TNC driver to penalties provided in s. 324.221, F.S.,²⁵ up to and including a misdemeanor of the second degree.²⁶

An insurer that provides an automobile liability insurance policy under part XI of Ch. 627, F.S.,²⁷ may exclude any and all coverage afforded under the policy issued to an owner or operator of a TNC vehicle for any loss or injury that occurs while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy, including, but not limited to:

- Liability coverage for bodily injury and property damage;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage;
- Collision physical damage coverage; and
- Personal injury protection.

The exclusions apply notwithstanding any requirement under the Financial Responsibility Law of 1955.²⁸

The bill does not require a personal automobile insurance policy to provide coverage while the TNC driver is logged on to a digital network, while the TNC driver is engaged in a prearranged ride, or while the TNC driver otherwise uses a vehicle to transport riders for compensation.

²² Section 627.733, F.S., provides that required security under the Florida Motor Vehicle No-Fault Law.

²³ Section 316.646, F.S., authorizes the display of proof of automobile insurance in a digital format.

²⁴ Section 324.032(1), F.S., provides insurance requirements for taxicabs, limousines, and other for-hire passenger transportation.

²⁵ Section 324.221, F.S., provides penalties related to the Financial Responsibility Law of 1955.

²⁶ A misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days and a fine not to exceed \$500.

Sections 775.082(4)(b) and 775.083(1)(e), F.S.

²⁷ Part XI of Ch. 627, F.S., relates to motor vehicle and casualty insurance contracts.

²⁸ Chapter 324, F.S.,

The bill's insurance provisions must not be construed to require an insurer to use any particular policy language or reference the above statutes in order to exclude any and all coverage for any loss or injury that occurs while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. The bill does not preclude an insurer from providing primary or excess coverage for the TNC driver's vehicle by contract or endorsement.

An automobile insurer that excludes the coverage described above does not have a duty to defend or indemnify any claim expressly excluded thereunder. The bill does not invalidate or limit an exclusion contained in a policy for vehicles used to carry persons or property for a charge or available for hire by the public, including a policy in use or approved for use in this state before July 1, 2017.

An automobile insurer that defends or indemnifies a claim against a TNC driver, which is excluded under the terms of the policy, has a right of contribution against other insurers that provide automobile insurance to the same TNC driver in satisfaction of the coverage requirements of s. 316.68(7), F.S., at the time of loss.

In a claims coverage investigation and upon request by a directly involved party or any insurer of the TNC driver, a TNC must immediately provide the precise times that the TNC driver logged on and off the digital network in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident. Upon request by any other insurer involved in the particular claim, an insurer providing coverage pursuant to s. 316.68, F.S., must disclose, the applicable coverages, exclusions, and limits provided under any automobile insurance maintained in order to satisfy the bill's insurance requirements.

TNC Drivers

The bill provides that a TNC driver is an independent contractor and not an employee of the TNC if all of the following conditions are met:

- The TNC does not unilaterally prescribe specific hours during which the TNC driver must be logged on to the TNC's digital network;
- The TNC does not prohibit the TNC driver from using digital networks from other TNCs;
- The TNC does not restrict the TNC driver from engaging in any other occupation or business; and
- The TNC and TNC driver agree in writing that the TNC driver is an independent contractor with respect to the TNC.

The above provision applies retroactively to any TNC driver who has ever operated in this state.

Before an individual is authorized to accept a ride request through a digital network, the bill requires the:

- Individual to submit an application to the TNC that includes information regarding his or her address, age, driver license, motor vehicle registration, and other information required by the TNC;
- TNC to conduct, or have a third party conduct, a local and national criminal background check that includes a search of the Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial nationwide database with validation of any records through a primary source search and NSOPW; and
- TNC to obtain and review, or have a third party obtain and review, a driving history research report for the applicant.

The bill requires the TNC to conduct the required background check for a TNC driver every three years.

The TNC may not authorize an individual to act as a TNC driver on its digital network if the driving history research report reveals that the individual has had more than three moving violations in the prior three-year period. The TNC may not authorize an individual to act as a TNC driver on its digital network if the initial background check or any subsequent background check reveals that the individual:

- Has been convicted within the past five years of a felony; misdemeanor for driving under the influence of drugs or alcohol, reckless driving, hit and run, or fleeing or attempting to elude a law enforcement officer; or misdemeanor for a violent offense, sexual battery, or crime of lewdness or indecent exposure;²⁹
- Has been convicted within the past three years of driving with a suspended or revoked license;
- Is a match in the NSOPW;
- Does not possess a valid driver license; or
- Does not possess proof of registration for the motor vehicle used to provide prearranged rides.

The bill prohibits a TNC driver from accepting a ride for compensation other than by a rider arranged through a digital network and soliciting or accepting street hails.

Zero-tolerance Policy

The bill requires TNCs to implement a zero-tolerance policy regarding the activities of its drivers while accessing the digital network. The zero-tolerance policy must address the use of drugs or alcohol while a TNC driver is providing a prearranged ride or is logged on to the digital network. The TNC must provide notice of the policy on its website, as well as procedures to report a complaint about a TNC driver a rider reasonably suspects was under the influence of drugs or alcohol during the course of the ride.

Upon receiving a rider's complaint alleging a violation of the zero-tolerance policy, the TNC must suspend a TNC driver's ability to accept ride requests through the TNC's digital network as soon as possible and conduct an investigation into the reported incident. The TNC driver's suspension must last the duration of the investigation.

Nondiscrimination Policy

The bill requires a TNC to adopt a policy of nondiscrimination with respect to riders and potential riders and is required to notify TNC drivers of its nondiscrimination policy. The TNC driver must comply with the TNC's nondiscrimination policy and all applicable laws regarding nondiscrimination against riders and potential riders and relating to accommodation of service animals. A TNC may not impose additional charges for providing services to a person who has a physical disability because of the person's disability.

Records

The bill requires a TNC to maintain individual ride records for at least one year after the date on which each ride is provided, and individual records of TNC drivers for at least one year after the date on which the TNC driver's relationship with the TNC ends.

B. SECTION DIRECTORY:

Section 1 creates s. 316.68, F.S., relating to transportation network companies.

Section 2 provides an effective date of July 1, 2017.

²⁹ This is pursuant to Ch. 800, F.S.
STORAGE NAME: h0221b.GAC.DOCX
DATE: 2/14/2017

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:

The bill preempts to the state the regulation of TNCs. To the extent municipalities, counties, and other governmental entities are imposing fees on TNCs, they will experience an indeterminate, but likely insignificant, negative fiscal impact.

The bill does not prohibit airports from charging TNCs reasonable pickup fees as long as they are consistent with those charged to taxicab companies. This may provide a positive fiscal impact to airports, but the total fiscal impact is unknown at this time.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

TNCs may see a reduction in costs associated with uniform regulation throughout the state.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill reduces the ability of a county or municipality to raise revenue; however, an exception may apply since the bill is expected to have an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

On lines 164, 165, 177, and 178, the word "policy" appears to be missing between the words "insurance" and "maintained."

Lines 180 through 184 provide that if the TNC driver's insurance has lapsed or does not provide the required coverage, the insurance maintained by the TNC must provide the required coverage, beginning with the first dollar of a claim, "and have the duty to defend such claim." As drafted, the bill appears to require the insurance to defend the claim. The sponsor may wish to consider an amendment clarifying that the insurer must defend the claim.

On line 331, the word "number" appears to be missing after the words driver license.

Other Comments: Workers' Compensation Insurance

The bill does not specifically address the workers' compensation status of TNC drivers to either include them or exclude them from workers' compensation coverage requirements. Section 440.02(15)(d)1., F.S., provides that non-construction industry independent contractors are not "employees" and then specifies two tests to determine if the person is an independent contractor for the purposes of workers' compensation coverage requirements. The bill does not address whether the independent contractor provision in the bill or in the workers' compensation law will determine whether the TNC is required to or relieved from providing workers' compensation coverage to the TNC driver.

Absent an express provision in the bill specifying that the TNC driver is or is not an employee for workers' compensation coverage purposes, the courts, especially the First District Court of Appeal, will interpret the statute to determine the outcome.³⁰ To date, no Florida court has ruled on whether a TNC driver is an employee of a TNC for workers' compensation purposes.³¹ However, on February 1, 2017, the Third District Court of Appeal (3rd DCA) issued an opinion finding that a driver is not Uber's employee for purposes of reemployment assistance under Ch. 443, F.S.³² In this case, the 3rd DCA considered the terms of the contract between Uber and the driver, the elements of the common law governing independent contractor status as opposed to a master-servant relationship, and the relevant facts illustrating how Uber and the driver acted in this regard. While this case is distinguishable from a workers' compensation analysis since there is a specific statutory test for determining independent contractor status under the workers' compensation law,³³ it is persuasive authority regarding the employment relationship between Uber and the drivers once it becomes final.

It is not clear that the bill will determine the workers' compensation status of a TNC driver and the outcome before the courts may be inconsistent with the intent of the bill.

Other Comments: Background Checks

The Florida Department of Law Enforcement (FDLE) submitted a bill analysis regarding the bill's background check provisions. In its analysis, FDLE raised concerns that the bill allows TNCs to use third-party background check providers, while Florida law requires FDLE to perform any background check required by state law.³⁴

³⁰ Workers' compensation claim disputes are handled by the Office of the Judges of Compensation Claims (OJCC). S. 440.192, F.S. The First District Court of Appeal has exclusive jurisdiction over matters originating before the OJCC. S. 440.271, F.S. The Department of Financial Services, Division of Workers' Compensation is responsible for regulatory administration of the workers' compensation system, including enforcing employer compliance with the coverage requirements of the Workers' Compensation Law, Ch. 440, F.S. S. 440.107, F.S. Contested agency actions of the Department, including employer compliance efforts, are subject to the Administrative Procedures Act, Ch. 120, F.S. S. 440.107(13), F.S. The First District Court of Appeal has jurisdiction of appeals regarding final agency actions of the Department.

³¹ According to the web site of the OJCCs, a number of Petitions for Benefits have been filed against Uber and Lyft. Except for two still pending outcome, all have been voluntarily dismissed. <https://www.jcc.state.fl.us/JCC/searchJCC/searchCases.asp>

³² *McGillis v. Dept. of Economic Opportunity and Rasier, LLC, d/b/a UBER*, Case No. 3D15-2758 (Fla. 3d DCA 2017), not final until disposition of timely filed motion for rehearing.

³³ Section 440.02(15)(d), F.S.

³⁴ FDLE HB 221 Bill Analysis, page 5.

Other Comments: Enforcement

While the bill creates a regulatory framework regarding TNCs, the bill does not contain enforcement provisions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to transportation network companies;
 3 creating s. 316.68, F.S.; defining terms; providing
 4 for construction; providing that a transportation
 5 network company (TNC) driver is not required to
 6 register certain vehicles as commercial motor vehicles
 7 or for-hire vehicles; requiring a TNC to designate and
 8 maintain an agent for service of process in this
 9 state; providing fare requirements; providing
 10 requirements for a TNC's digital network; providing
 11 for an electronic receipt, subject to certain
 12 requirements; providing automobile insurance
 13 requirements for a TNC and a TNC driver; providing
 14 requirements for specified proof of coverage for a TNC
 15 driver under certain circumstances; providing certain
 16 disclosure requirements for a TNC driver in the event
 17 of an accident; requiring a TNC to cause its insurer
 18 to issue certain payments directly to certain parties;
 19 requiring a TNC to make specified disclosures in
 20 writing to TNC drivers under certain circumstances;
 21 authorizing specified insurers to exclude certain
 22 coverage; providing that the right to exclude coverage
 23 applies to any coverage included in an automobile
 24 insurance policy; providing applicability; providing
 25 for construction; providing that specified automobile

26 insurers have a right of contribution against other
 27 insurers that provide automobile insurance to the same
 28 TNC drivers in satisfaction of certain coverage
 29 requirements under certain circumstances; requiring a
 30 TNC to provide specified information upon request by
 31 certain parties during a claims coverage
 32 investigation; requiring certain insurers to disclose
 33 specified information upon request by any other
 34 insurer involved in the particular claim; providing
 35 that TNC drivers are independent contractors if
 36 specified conditions are met; providing retroactive
 37 applicability; requiring a TNC to implement a zero-
 38 tolerance policy for drug or alcohol use; providing
 39 TNC driver requirements; requiring a TNC to conduct a
 40 certain background check for a TNC driver after a
 41 specified period; prohibiting a TNC driver from
 42 accepting certain rides or soliciting or accepting
 43 street hails; requiring a TNC to adopt a policy of
 44 nondiscrimination with respect to riders and potential
 45 riders and to notify TNC drivers of such policy;
 46 requiring TNC drivers to comply with the
 47 nondiscrimination policy and certain applicable laws
 48 regarding nondiscrimination and accommodation of
 49 service animals; prohibiting a TNC from imposing
 50 additional charges for providing services to persons

51 who have physical disabilities; requiring a TNC to
 52 maintain specified records; providing legislative
 53 intent; specifying that TNCs, TNC drivers, and TNC
 54 vehicles are governed exclusively by state law;
 55 prohibiting local governmental entities and
 56 subdivisions from taking specified actions; providing
 57 construction; providing an effective date.

58

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

60

61 Section 1. Section 316.68, Florida Statutes, is created to
 62 read:

63 316.68 Transportation network companies.-

64 (1) DEFINITIONS.-As used in this section, the term:

65 (a) "Digital network" means any online-enabled technology
 66 application service, website, or system offered or used by a
 67 transportation network company which enables the prearrangement
 68 of rides with transportation network company drivers.

69 (b) "Prearranged ride" means the provision of
 70 transportation by a TNC driver to a rider, beginning when a TNC
 71 driver accepts a ride requested by a rider through a digital
 72 network controlled by a transportation network company,
 73 continuing while the TNC driver transports the requesting rider,
 74 and ending when the last requesting rider departs from the TNC
 75 vehicle. The term does not include a taxicab, for-hire vehicle,

76 or street hail service and does not include ridesharing as
 77 defined in s. 341.031, carpool as defined s. 450.28, or any
 78 other type of service in which the driver receives a fee that
 79 does not exceed the driver's cost to provide the ride.

80 (c) "Rider" means an individual who uses a digital network
 81 to connect with a TNC driver in order to obtain a prearranged
 82 ride in the TNC driver's TNC vehicle between points chosen by
 83 the rider.

84 (d) "Street hail" means an immediate arrangement on a
 85 street with a driver by a person using any method other than a
 86 digital network to seek immediate transportation.

87 (e) "Transportation network company" or "TNC" means an
 88 entity operating in this state pursuant to this section using a
 89 digital network to connect a rider to a TNC driver, who provides
 90 prearranged rides. A TNC is not deemed to own, control, operate,
 91 direct, or manage the TNC vehicles or TNC drivers that connect
 92 to its digital network, except where agreed to by written
 93 contract, and is not a taxicab association or for-hire vehicle
 94 owner.

95 (f) "Transportation network company driver" or "TNC
 96 driver" means an individual who:

97 1. Receives connections to potential riders and related
 98 services from a transportation network company; and

99 2. In return for compensation, uses a TNC vehicle to offer
 100 or provide a prearranged ride to a rider upon connection through

101 a digital network.

102 (g) "Transportation network company vehicle" or "TNC
 103 vehicle" means a vehicle that is not a taxicab, jitney,
 104 limousine, or for-hire vehicle as defined in s. 320.01(15) and
 105 that is:

106 1. Used by a TNC driver to offer or provide a prearranged
 107 ride; and

108 2. Owned, leased, or otherwise authorized to be used by
 109 the TNC driver.

110
 111 Notwithstanding any other provision of law, a vehicle that is
 112 let or rented to another for consideration may be used as a TNC
 113 vehicle.

114 (2) NOT OTHER CARRIERS.—A TNC or TNC driver is not a
 115 common carrier, contract carrier, or motor carrier and does not
 116 provide taxicab or for-hire vehicle service. In addition, a TNC
 117 driver is not required to register the vehicle that the TNC
 118 driver uses to provide prearranged rides as a commercial motor
 119 vehicle or a for-hire vehicle.

120 (3) AGENT.—A TNC must designate and maintain an agent for
 121 service of process in this state.

122 (4) FARE TRANSPARENCY.—If a fare is collected from a
 123 rider, the TNC must disclose to the rider the fare or fare
 124 calculation method on its website or within the online-enabled
 125 technology application service before the beginning of the

126 prearranged ride. If the fare is not disclosed to the rider
 127 before the beginning of the prearranged ride, the rider must
 128 have the option to receive an estimated fare before the
 129 beginning of the prearranged ride.

130 (5) IDENTIFICATION OF TNC VEHICLES AND DRIVERS.—The TNC's
 131 digital network must display a photograph of the TNC driver and
 132 the license plate number of the TNC vehicle used for providing
 133 the prearranged ride before the rider enters the TNC driver's
 134 vehicle.

135 (6) ELECTRONIC RECEIPT.—Within a reasonable period after
 136 the completion of a ride, a TNC shall transmit an electronic
 137 receipt to the rider on behalf of the TNC driver which lists:

- 138 (a) The origin and destination of the ride;
- 139 (b) The total time and distance of the ride; and
- 140 (c) The total fare paid.

141 (7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER
 142 INSURANCE REQUIREMENTS.—

143 (a) Beginning July 1, 2017, a TNC driver or a TNC on
 144 behalf of the TNC driver shall maintain primary automobile
 145 insurance that:

- 146 1. Recognizes that the TNC driver is a TNC driver or
 147 otherwise uses a vehicle to transport riders for compensation;
 148 and
- 149 2. Covers the TNC driver while the TNC driver is logged on
 150 to the digital network of the TNC or while the TNC driver is

151 engaged in a prearranged ride.

152 (b) The following automobile insurance requirements apply

153 while a participating TNC driver is logged on to the digital

154 network but is not engaged in a prearranged ride:

155 1. Automobile insurance that provides:

156 a. A primary automobile liability coverage of at least

157 \$50,000 for death and bodily injury per person, \$100,000 for

158 death and bodily injury per incident, and \$25,000 for property

159 damage; and

160 b. Personal injury protection benefits that meet the

161 minimum coverage amounts required under ss. 627.730-627.7405.

162 2. The coverage requirements of this paragraph may be

163 satisfied by any of the following:

164 a. An automobile insurance maintained by the TNC driver;

165 b. An automobile insurance maintained by the TNC; or

166 c. A combination of sub-subparagraphs a. and b.

167 (c) The following automobile insurance requirements apply

168 while a TNC driver is engaged in a prearranged ride:

169 1. Automobile insurance that provides:

170 a. A primary automobile liability coverage of at least \$1

171 million for death, bodily injury, and property damage; and

172 b. Personal injury protection benefits that meet the

173 minimum coverage amounts required of a limousine under ss.

174 627.730-627.7405.

175 2. The coverage requirements of this paragraph may be

176 satisfied by any of the following:
 177 a. An automobile insurance maintained by the TNC driver;
 178 b. An automobile insurance maintained by the TNC; or
 179 c. A combination of sub-subparagraphs a. and b.
 180 (d) If the TNC driver's insurance under paragraph (b) or
 181 paragraph (c) has lapsed or does not provide the required
 182 coverage, the insurance maintained by the TNC must provide the
 183 coverage required under this subsection, beginning with the
 184 first dollar of a claim, and have the duty to defend such claim.
 185 (e) Coverage under an automobile insurance policy
 186 maintained by the TNC must not be dependent on a personal
 187 automobile insurer first denying a claim, and a personal
 188 automobile insurance policy is not required to first deny a
 189 claim.
 190 (f) Insurance required under this subsection must be
 191 provided by an insurer authorized to do business in this state
 192 which is a member of the Florida Insurance Guaranty Association
 193 or an eligible surplus lines insurer that has a superior,
 194 excellent, exceptional, or equivalent financial strength rating
 195 by a rating agency acceptable to the Office of Insurance
 196 Regulation of the Financial Services Commission.
 197 (g) Insurance satisfying the requirements under this
 198 subsection is deemed to satisfy the financial responsibility
 199 requirement for a motor vehicle under chapter 324 and the
 200 security required under s. 627.733.

201 (h) A TNC driver shall carry proof of coverage satisfying
 202 paragraphs (b) and (c) with him or her at all times during his
 203 or her use of a TNC vehicle in connection with a digital
 204 network. In the event of an accident, a TNC driver shall provide
 205 this insurance coverage information to directly interested
 206 parties, automobile insurers, and investigating police officers.
 207 Proof of financial responsibility may be presented through an
 208 electronic device, such as a digital phone application, under s.
 209 316.646. Upon request, a TNC driver shall also disclose to
 210 directly interested parties, automobile insurers, and
 211 investigating police officers whether he or she was logged on to
 212 a digital network or was engaged in a prearranged ride at the
 213 time of the accident.

214 (i) If a TNC's insurer makes a payment for a claim covered
 215 under comprehensive coverage or collision coverage, the TNC
 216 shall cause its insurer to issue the payment directly to the
 217 business repairing the vehicle or jointly to the owner of the
 218 vehicle and the primary lienholder on the covered vehicle.

219 (8) TRANSPORTATION NETWORK COMPANY AND INSURER;
 220 DISCLOSURE; EXCLUSIONS.-

221 (a) Before a TNC driver is allowed to accept a request for
 222 a prearranged ride on the digital network, the TNC must disclose
 223 in writing to the TNC driver:

224 1. The insurance coverage, including the types of coverage
 225 and the limits for each coverage, which the TNC provides while

226 the TNC driver uses a TNC vehicle in connection with the TNC's
 227 digital network.

228 2. That the TNC driver's own automobile insurance policy
 229 might not provide any coverage while the TNC driver is logged on
 230 to the digital network or is engaged in a prearranged ride,
 231 depending on the terms of the TNC driver's own automobile
 232 insurance policy.

233 3. That the provision of rides for compensation which are
 234 not prearranged rides subjects the driver to the coverage
 235 requirements imposed under s. 324.032(1) and that failure to
 236 meet such coverage requirements subjects the TNC driver to
 237 penalties provided in s. 324.221, up to and including a
 238 misdemeanor of the second degree.

239 (b)1. An insurer that provides an automobile liability
 240 insurance policy under part XI of chapter 627 may exclude any
 241 and all coverage afforded under the policy issued to an owner or
 242 operator of a TNC vehicle for any loss or injury that occurs
 243 while a TNC driver is logged on to a digital network or while a
 244 TNC driver provides a prearranged ride. This right to exclude
 245 all coverage may apply to any coverage included in an automobile
 246 insurance policy, including, but not limited to:

247 a. Liability coverage for bodily injury and property
 248 damage;

249 b. Uninsured and underinsured motorist coverage;

250 c. Medical payments coverage;

- 251 d. Comprehensive physical damage coverage;
- 252 e. Collision physical damage coverage; and
- 253 f. Personal injury protection.

254 2. The exclusions described in subparagraph 1. apply
 255 notwithstanding any requirement under chapter 324. This section
 256 does not require that a personal automobile insurance policy
 257 provide coverage while the TNC driver is logged on to a digital
 258 network, while the TNC driver is engaged in a prearranged ride,
 259 or while the TNC driver otherwise uses a vehicle to transport
 260 riders for compensation.

261 3. This section must not be construed to require an
 262 insurer to use any particular policy language or reference to
 263 this section in order to exclude any and all coverage for any
 264 loss or injury that occurs while a TNC driver is logged on to a
 265 digital network or while a TNC driver provides a prearranged
 266 ride.

267 4. This section does not preclude an insurer from
 268 providing primary or excess coverage for the TNC driver's
 269 vehicle by contract or endorsement.

270 (c)1. An automobile insurer that excludes the coverage
 271 described in subparagraph (b)1. does not have a duty to defend
 272 or indemnify any claim expressly excluded thereunder. This
 273 section does not invalidate or limit an exclusion contained in a
 274 policy, including a policy in use or approved for use in this
 275 state before July 1, 2017, which excludes coverage for vehicles

276 used to carry persons or property for a charge or available for
 277 hire by the public.

278 2. An automobile insurer that defends or indemnifies a
 279 claim against a TNC driver which is excluded under the terms of
 280 its policy has a right of contribution against other insurers
 281 that provide automobile insurance to the same TNC driver in
 282 satisfaction of the coverage requirements of subsection (7) at
 283 the time of loss.

284 (d) In a claims coverage investigation, a TNC shall
 285 immediately provide, upon request by a directly involved party
 286 or any insurer of the TNC driver, if applicable, the precise
 287 times that the TNC driver logged on and off the digital network
 288 in the 12-hour period immediately preceding and in the 12-hour
 289 period immediately following the accident. An insurer providing
 290 coverage under subsection (7) shall disclose, upon request by
 291 any other insurer involved in the particular claim, the
 292 applicable coverages, exclusions, and limits provided under any
 293 automobile insurance maintained in order to satisfy the
 294 requirements of subsection (7).

295 (9) LIMITATION ON TRANSPORTATION NETWORK COMPANIES.—A TNC
 296 driver is an independent contractor and not an employee of the
 297 TNC if all of the following conditions are met:

298 (a) The TNC does not unilaterally prescribe specific hours
 299 during which the TNC driver must be logged on to the TNC's
 300 digital network.

301 (b) The TNC does not prohibit the TNC driver from using
 302 digital networks from other TNCs.

303 (c) The TNC does not restrict the TNC driver from engaging
 304 in any other occupation or business.

305 (d) The TNC and TNC driver agree in writing that the TNC
 306 driver is an independent contractor with respect to the TNC.

307
 308 This subsection applies retroactively to any TNC driver who has
 309 ever operated in this state.

310 (10) ZERO TOLERANCE FOR DRUG OR ALCOHOL USE.—

311 (a) The TNC shall implement a zero-tolerance policy
 312 regarding a TNC driver's activities while accessing the TNC's
 313 digital network. The zero-tolerance policy must address the use
 314 of drugs or alcohol while a TNC driver is providing a
 315 prearranged ride or is logged on to the digital network.

316 (b) The TNC shall provide notice of this policy on its
 317 website, as well as procedures to report a complaint about a TNC
 318 driver who a rider reasonably suspects was under the influence
 319 of drugs or alcohol during the course of the ride.

320 (c) Upon receipt of a rider's complaint alleging a
 321 violation of the zero-tolerance policy, the TNC shall suspend a
 322 TNC driver's ability to accept any ride request through the
 323 TNC's digital network as soon as possible and shall conduct an
 324 investigation into the reported incident. The suspension must
 325 last the duration of the investigation.

326 (11) TRANSPORTATION NETWORK COMPANY DRIVER REQUIREMENTS.-

327 (a) Before an individual is authorized to accept a ride
 328 request through a digital network:

329 1. The individual must submit an application to the TNC
 330 which includes information regarding his or her address, age,
 331 driver license, motor vehicle registration, and other
 332 information required by the TNC;

333 2. The TNC must conduct, or have a third party conduct, a
 334 local and national criminal background check that includes:

335 a. A search of the Multi-State/Multi-Jurisdiction Criminal
 336 Records Locator or other similar commercial nationwide database
 337 with validation of any records through primary source search;
 338 and

339 b. A search of the National Sex Offender Public Website
 340 maintained by the United States Department of Justice; and

341 3. The TNC must obtain and review, or have a third party
 342 obtain and review, a driving history research report for the
 343 applicant.

344 (b) The TNC shall conduct the background check required
 345 under paragraph (a) for a TNC driver every 3 years.

346 (c) The TNC may not authorize an individual to act as a
 347 TNC driver on its digital network if the driving history
 348 research report conducted when the individual first seeks access
 349 to the digital network reveals that the individual has had more
 350 than three moving violations in the prior 3-year period.

351 (d) The TNC may not authorize an individual to act as a
 352 TNC driver on its digital network if the background check
 353 conducted when the individual first seeks access to the digital
 354 network or any subsequent background check required under
 355 paragraph (b) reveals that the individual:

- 356 1. Has been convicted, within the past 5 years, of:
- 357 a. A felony;
- 358 b. A misdemeanor for driving under the influence of drugs
 359 or alcohol, for reckless driving, for hit and run, or for
 360 fleeing or attempting to elude a law enforcement officer; or
- 361 c. A misdemeanor for a violent offense or sexual battery,
 362 or a crime of lewdness or indecent exposure under chapter 800;
- 363 2. Has been convicted, within the past 3 years, of driving
 364 with a suspended or revoked license;
- 365 3. Is a match in the National Sex Offender Public Website
 366 maintained by the United States Department of Justice;
- 367 4. Does not possess a valid driver license; or
- 368 5. Does not possess proof of registration for the motor
 369 vehicle used to provide prearranged rides.

370 (12) PROHIBITED CONDUCT.—

371 (a) A TNC driver may not accept a ride for compensation
 372 other than by a rider arranged through a digital network.

373 (b) A TNC driver may not solicit or accept street hails.

374 (13) NONDISCRIMINATION; ACCESSIBILITY.—

375 (a) A TNC shall adopt a policy of nondiscrimination with

376 respect to riders and potential riders and shall notify TNC
 377 drivers of such policy.

378 (b) A TNC driver shall comply with the TNC's
 379 nondiscrimination policy.

380 (c) A TNC driver shall comply with all applicable laws
 381 regarding nondiscrimination against riders and potential riders.

382 (d) A TNC driver shall comply with all applicable laws
 383 relating to accommodation of service animals.

384 (e) A TNC may not impose additional charges for providing
 385 services to a person who has a physical disability because of
 386 the person's disability.

387 (14) RECORDS.—A TNC shall maintain the following records:

388 (a) Individual ride records for at least 1 year after the
 389 date on which each ride is provided; and

390 (b) Individual records of TNC drivers for at least 1 year
 391 after the date on which the TNC driver's relationship with the
 392 TNC ends.

393 (15) PREEMPTION.—

394 (a) It is the intent of the Legislature to provide for
 395 uniformity of laws governing TNCs, TNC drivers, and TNC vehicles
 396 throughout the state. TNCs, TNC drivers, and TNC vehicles are
 397 governed exclusively by state law, including in any locality or
 398 other jurisdiction that enacted a law or created rules governing
 399 TNCs, TNC drivers, or TNC vehicles before July 1, 2017. A
 400 county, municipality, special district, airport authority, port

401 authority, or other local governmental entity or subdivision may
 402 not:

403 1. Impose a tax on, or require a license for, a TNC, a TNC
 404 driver, or a TNC vehicle if such tax or license relates to
 405 providing prearranged rides or subjects a TNC, a TNC driver, or
 406 a TNC vehicle to any rate, entry, operation, or other
 407 requirement of the county, municipality, special district,
 408 airport authority, port authority, or other local governmental
 409 entity or subdivision; or

410 2. Require a TNC or a TNC driver to obtain a business
 411 license or any other type of similar authorization to operate
 412 within the local governmental entity's jurisdiction.

413 (b) This subsection does not prohibit an airport from
 414 charging reasonable pickup fees consistent with any pickup fees
 415 charged to taxicab companies at that airport for their use of
 416 the airport's facilities or prohibit the airport from
 417 designating locations for staging, pickup, and other similar
 418 operations at the airport.

419 Section 2. This act shall take effect July 1, 2017.



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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Accountability
 2 Committee

3 Representative Sprowls offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:
 7 Section 1. Section 316.68, Florida Statutes, is created to
 8 read:

9 316.68 Transportation network companies.-

10 (1) DEFINITIONS.-As used in this section, the term:

11 (a) "Digital network" means any online-enabled technology
 12 application service, website, or system offered or used by a
 13 transportation network company which enables the prearrangement
 14 of rides with transportation network company drivers.

15 (b) "Prearranged ride" means the provision of
 16 transportation by a TNC driver to a rider, beginning when a TNC



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17 driver accepts a ride requested by a rider through a digital
18 network controlled by a transportation network company,
19 continuing while the TNC driver transports the requesting rider,
20 and ending when the last requesting rider departs from the TNC
21 vehicle. The term does not include a taxicab, for-hire vehicle,
22 or street hail service and does not include ridesharing as
23 defined in s. 341.031, carpool as defined s. 450.28, or any
24 other type of service in which the driver receives a fee that
25 does not exceed the driver's cost to provide the ride.

26 (c) "Rider" means an individual who uses a digital network
27 to connect with a TNC driver in order to obtain a prearranged
28 ride in the TNC driver's TNC vehicle between points chosen by
29 the rider.

30 (d) "Street hail" means an immediate arrangement on a
31 street with a driver by a person using any method other than a
32 digital network to seek immediate transportation.

33 (e) "Transportation network company" or "TNC" means an
34 entity operating in this state pursuant to this section using a
35 digital network to connect a rider to a TNC driver, who provides
36 prearranged rides. A TNC is not deemed to own, control, operate,
37 direct, or manage the TNC vehicles or TNC drivers that connect
38 to its digital network, except where agreed to by written
39 contract, and is not a taxicab association or for-hire vehicle
40 owner. The term does not include an individual, corporation,
41 partnership, sole proprietorship, or other entity arranging

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42 nonemergency medical transportation for individuals who qualify
43 for Medicaid or Medicare pursuant to a contract with the state
44 or a managed care organization.

45 (f) "Transportation network company driver" or "TNC
46 driver" means an individual who:

47 1. Receives connections to potential riders and related
48 services from a transportation network company; and

49 2. In return for compensation, uses a TNC vehicle to offer
50 or provide a prearranged ride to a rider upon connection through
51 a digital network.

52 (g) "Transportation network company vehicle" or "TNC
53 vehicle" means a vehicle that is not a taxicab, jitney,
54 limousine, or for-hire vehicle as defined in s. 320.01(15) and
55 that is:

56 1. Used by a TNC driver to offer or provide a prearranged
57 ride; and

58 2. Owned, leased, or otherwise authorized to be used by
59 the TNC driver.

60
61 Notwithstanding any other provision of law, a vehicle that is
62 let or rented to another for consideration may be used as a TNC
63 vehicle.

64 (2) NOT OTHER CARRIERS.—A TNC or TNC driver is not a
65 common carrier, contract carrier, or motor carrier and does not
66 provide taxicab or for-hire vehicle service. In addition, a TNC

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67 driver is not required to register the vehicle that the TNC
68 driver uses to provide prearranged rides as a commercial motor
69 vehicle or a for-hire vehicle.

70 (3) AGENT.—A TNC must designate and maintain an agent for
71 service of process in this state.

72 (4) FARE TRANSPARENCY.—If a fare is collected from a
73 rider, the TNC must disclose to the rider the fare or fare
74 calculation method on its website or within the online-enabled
75 technology application service before the beginning of the
76 prearranged ride. If the fare is not disclosed to the rider
77 before the beginning of the prearranged ride, the rider must
78 have the option to receive an estimated fare before the
79 beginning of the prearranged ride.

80 (5) IDENTIFICATION OF TNC VEHICLES AND DRIVERS.—The TNC's
81 digital network must display a photograph of the TNC driver and
82 the license plate number of the TNC vehicle used for providing
83 the prearranged ride before the rider enters the TNC driver's
84 vehicle.

85 (6) ELECTRONIC RECEIPT.—Within a reasonable period after
86 the completion of a ride, a TNC shall transmit an electronic
87 receipt to the rider on behalf of the TNC driver which lists:

- 88 (a) The origin and destination of the ride;
89 (b) The total time and distance of the ride; and
90 (c) The total fare paid.



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91 (7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER
92 INSURANCE REQUIREMENTS.-

93 (a) Beginning July 1, 2017, a TNC driver or a TNC on
94 behalf of the TNC driver shall maintain primary automobile
95 insurance that:

96 1. Recognizes that the TNC driver is a TNC driver or
97 otherwise uses a vehicle to transport riders for compensation;
98 and

99 2. Covers the TNC driver while the TNC driver is logged on
100 to the digital network of the TNC or while the TNC driver is
101 engaged in a prearranged ride.

102 (b) The following automobile insurance requirements apply
103 while a participating TNC driver is logged on to the digital
104 network but is not engaged in a prearranged ride:

105 1. Automobile insurance that provides:

106 a. A primary automobile liability coverage of at least
107 \$50,000 for death and bodily injury per person, \$100,000 for
108 death and bodily injury per incident, and \$25,000 for property
109 damage; and

110 b. Personal injury protection benefits that meet the
111 minimum coverage amounts required under ss. 627.730-627.7405.

112 2. The coverage requirements of this paragraph may be
113 satisfied by any of the following:

114 a. Automobile insurance maintained by the TNC driver;

115 b. Automobile insurance maintained by the TNC; or



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116 c. A combination of sub-subparagraphs a. and b.

117 (c) The following automobile insurance requirements apply
118 while a TNC driver is engaged in a prearranged ride:

119 1. Automobile insurance that provides:

120 a. A primary automobile liability coverage of at least \$1
121 million for death, bodily injury, and property damage; and

122 b. Personal injury protection benefits that meet the
123 minimum coverage amounts required of a limousine under ss.
124 627.730-627.7405.

125 2. The coverage requirements of this paragraph may be
126 satisfied by any of the following:

127 a. Automobile insurance maintained by the TNC driver;

128 b. Automobile insurance maintained by the TNC; or

129 c. A combination of sub-subparagraphs a. and b.

130 (d) If the TNC driver's insurance under paragraph (b) or
131 paragraph (c) has lapsed or does not provide the required
132 coverage, the insurance maintained by the TNC must provide the
133 coverage required under this subsection, beginning with the
134 first dollar of a claim, and have the duty to defend such claim.

135 (e) Coverage under an automobile insurance policy
136 maintained by the TNC must not be dependent on a personal
137 automobile insurer first denying a claim, and a personal
138 automobile insurance policy is not required to first deny a
139 claim.

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140 (f) Insurance required under this subsection must be
141 provided by an insurer authorized to do business in this state
142 which is a member of the Florida Insurance Guaranty Association
143 or an eligible surplus lines insurer that has a superior,
144 excellent, exceptional, or equivalent financial strength rating
145 by a rating agency acceptable to the Office of Insurance
146 Regulation of the Financial Services Commission.

147 (g) Insurance satisfying the requirements under this
148 subsection is deemed to satisfy the financial responsibility
149 requirement for a motor vehicle under chapter 324 and the
150 security required under s. 627.733.

151 (h) A TNC driver shall carry proof of coverage satisfying
152 paragraphs (b) and (c) with him or her at all times during his
153 or her use of a TNC vehicle in connection with a digital
154 network. In the event of an accident, a TNC driver shall provide
155 this insurance coverage information to any party directly
156 involved in the accident or their designated representative,
157 automobile insurers, and investigating police officers. Proof of
158 financial responsibility may be presented through an electronic
159 device, such as a digital phone application, under s. 316.646.
160 Upon request, a TNC driver shall also disclose to any party
161 directly involved in the accident or their designated
162 representative, automobile insurers, and investigating police
163 officers whether he or she was logged on to a digital network or
164 was engaged in a prearranged ride at the time of the accident.

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165 (i) If a TNC's insurer makes a payment for a claim covered
166 under comprehensive coverage or collision coverage, the TNC
167 shall cause its insurer to issue the payment directly to the
168 business repairing the vehicle or jointly to the owner of the
169 vehicle and the primary lienholder on the covered vehicle.

170 (8) TRANSPORTATION NETWORK COMPANY AND INSURER;
171 DISCLOSURE; EXCLUSIONS.-

172 (a) Before a TNC driver is allowed to accept a request for
173 a prearranged ride on the digital network, the TNC must disclose
174 in writing to the TNC driver:

175 1. The insurance coverage, including the types of coverage
176 and the limits for each coverage, which the TNC provides while
177 the TNC driver uses a TNC vehicle in connection with the TNC's
178 digital network.

179 2. That the TNC driver's own automobile insurance policy
180 might not provide any coverage while the TNC driver is logged on
181 to the digital network or is engaged in a prearranged ride,
182 depending on the terms of the TNC driver's own automobile
183 insurance policy.

184 3. That the provision of rides for compensation which are
185 not prearranged rides subjects the driver to the coverage
186 requirements imposed under s. 324.032(1) and that failure to
187 meet such coverage requirements subjects the TNC driver to
188 penalties provided in s. 324.221, up to and including a
189 misdemeanor of the second degree.

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190 (b)1. An insurer that provides an automobile liability
191 insurance policy under part XI of chapter 627 may exclude any
192 and all coverage afforded under the policy issued to an owner or
193 operator of a TNC vehicle for any loss or injury that occurs
194 while a TNC driver is logged on to a digital network or while a
195 TNC driver provides a prearranged ride. This right to exclude
196 all coverage may apply to any coverage included in an automobile
197 insurance policy, including, but not limited to:

198 a. Liability coverage for bodily injury and property
199 damage;

200 b. Uninsured and underinsured motorist coverage;

201 c. Medical payments coverage;

202 d. Comprehensive physical damage coverage;

203 e. Collision physical damage coverage; and

204 f. Personal injury protection.

205 2. The exclusions described in subparagraph 1. apply
206 notwithstanding any requirement under chapter 324. This section
207 does not require that a personal automobile insurance policy
208 provide coverage while the TNC driver is logged on to a digital
209 network, while the TNC driver is engaged in a prearranged ride,
210 or while the TNC driver otherwise uses a vehicle to transport
211 riders for compensation.

212 3. This section must not be construed to require an
213 insurer to use any particular policy language or reference to
214 this section in order to exclude any and all coverage for any

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215 loss or injury that occurs while a TNC driver is logged on to a
216 digital network or while a TNC driver provides a prearranged
217 ride.

218 4. This section does not preclude an insurer from
219 providing primary or excess coverage for the TNC driver's
220 vehicle by contract or endorsement.

221 (c)1. An automobile insurer that excludes the coverage
222 described in subparagraph (b)1. does not have a duty to defend
223 or indemnify any claim expressly excluded thereunder. This
224 section does not invalidate or limit an exclusion contained in a
225 policy, including a policy in use or approved for use in this
226 state before July 1, 2017, which excludes coverage for vehicles
227 used to carry persons or property for a charge or available for
228 hire by the public.

229 2. An automobile insurer that defends or indemnifies a
230 claim against a TNC driver which is excluded under the terms of
231 its policy has a right of contribution against other insurers
232 that provide automobile insurance to the same TNC driver in
233 satisfaction of the coverage requirements of subsection (7) at
234 the time of loss.

235 (d) In a claims coverage investigation, a TNC shall
236 immediately provide, upon request by a directly involved party
237 or any insurer of the TNC driver, if applicable, the precise
238 times that the TNC driver logged on and off the digital network
239 in the 12-hour period immediately preceding and in the 12-hour

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240 period immediately following the accident. An insurer providing
241 coverage under subsection (7) shall disclose, upon request by
242 any other insurer involved in the particular claim, the
243 applicable coverages, exclusions, and limits provided under any
244 automobile insurance maintained in order to satisfy the
245 requirements of subsection (7).

246 (9) LIMITATION ON TRANSPORTATION NETWORK COMPANIES.—A TNC
247 driver is an independent contractor and not an employee of the
248 TNC if all of the following conditions are met:

249 (a) The TNC does not unilaterally prescribe specific hours
250 during which the TNC driver must be logged on to the TNC's
251 digital network.

252 (b) The TNC does not prohibit the TNC driver from using
253 digital networks from other TNCs.

254 (c) The TNC does not restrict the TNC driver from engaging
255 in any other occupation or business.

256 (d) The TNC and TNC driver agree in writing that the TNC
257 driver is an independent contractor with respect to the TNC.

258
259 This subsection applies retroactively to any TNC driver who has
260 ever operated in this state.

261 (10) ZERO TOLERANCE FOR DRUG OR ALCOHOL USE.—

262 (a) The TNC shall implement a zero-tolerance policy
263 regarding a TNC driver's activities while accessing the TNC's
264 digital network. The zero-tolerance policy must address the use

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265 of drugs or alcohol while a TNC driver is providing a
266 prearranged ride or is logged on to the digital network.

267 (b) The TNC shall provide notice of this policy on its
268 website, as well as procedures to report a complaint about a TNC
269 driver who a rider reasonably suspects was under the influence
270 of drugs or alcohol during the course of the ride.

271 (c) Upon receipt of a rider's complaint alleging a
272 violation of the zero-tolerance policy, the TNC shall suspend a
273 TNC driver's ability to accept any ride request through the
274 TNC's digital network as soon as possible and shall conduct an
275 investigation into the reported incident. The suspension must
276 last the duration of the investigation.

277 (11) TRANSPORTATION NETWORK COMPANY DRIVER REQUIREMENTS.-

278 (a) Before an individual is authorized to accept a ride
279 request through a digital network:

280 1. The individual must submit an application to the TNC
281 which includes information regarding his or her address, age,
282 driver license, motor vehicle registration, and other
283 information required by the TNC;

284 2. The TNC must conduct, or have a third party conduct, a
285 local and national criminal background check that includes:

286 a. A search of the Multi-State/Multi-Jurisdiction Criminal
287 Records Locator or other similar commercial nationwide database
288 with validation of any records through primary source search;
289 and

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290 b. A search of the National Sex Offender Public Website
291 maintained by the United States Department of Justice; and

292 3. The TNC must obtain and review, or have a third party
293 obtain and review, a driving history research report for the
294 applicant.

295 (b) The TNC shall conduct the background check required
296 under paragraph (a) for a TNC driver every 3 years.

297 (c) The TNC may not authorize an individual to act as a
298 TNC driver on its digital network if the driving history
299 research report conducted when the individual first seeks access
300 to the digital network reveals that the individual has had more
301 than three moving violations in the prior 3-year period.

302 (d) The TNC may not authorize an individual to act as a
303 TNC driver on its digital network if the background check
304 conducted when the individual first seeks access to the digital
305 network or any subsequent background check required under
306 paragraph (b) reveals that the individual:

307 1. Has been convicted, within the past 5 years, of:

308 a. A felony;

309 b. A misdemeanor for driving under the influence of drugs
310 or alcohol, for reckless driving, for hit and run, or for
311 fleeing or attempting to elude a law enforcement officer; or

312 c. A misdemeanor for a violent offense or sexual battery,
313 or a crime of lewdness or indecent exposure under chapter 800;



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314 2. Has been convicted, within the past 3 years, of driving
315 with a suspended or revoked license;

316 3. Is a match in the National Sex Offender Public Website
317 maintained by the United States Department of Justice;

318 4. Does not possess a valid driver license; or

319 5. Does not possess proof of registration for the motor
320 vehicle used to provide prearranged rides.

321 (e) No more than once every 3 years, the Department of
322 Financial Services may direct a TNC to submit to the department
323 an agreed-upon procedures report prepared by an independent
324 certified public accountant for the sole purpose of verifying
325 that the TNC is in compliance with this subsection. The report
326 must be prepared in accordance with applicable attestation
327 standards established by the American Institute of Certified
328 Public Accountants. The TNC shall bear all costs associated with
329 the preparation and submission of the report.

330 (f) Upon receipt of the report pursuant to paragraph (e),
331 the Department of Financial Services may direct a TNC to address
332 any noncompliance with this subsection identified in the report
333 within a timeframe prescribed by the department. The department
334 may seek injunctive relief against a TNC that fails to comply
335 with the department's direction under this paragraph and that
336 poses an imminent threat to public safety as a result of such
337 noncompliance.

338 (12) PROHIBITED CONDUCT.-

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- 339 (a) A TNC driver may not accept a ride for compensation
340 other than by a rider arranged through a digital network.
- 341 (b) A TNC driver may not solicit or accept street hails.
- 342 (13) NONDISCRIMINATION; ACCESSIBILITY.-
- 343 (a) A TNC shall adopt a policy of nondiscrimination with
344 respect to riders and potential riders and shall notify TNC
345 drivers of such policy.
- 346 (b) A TNC driver shall comply with the TNC's
347 nondiscrimination policy.
- 348 (c) A TNC driver shall comply with all applicable laws
349 regarding nondiscrimination against riders and potential riders.
- 350 (d) A TNC driver shall comply with all applicable laws
351 relating to accommodation of service animals.
- 352 (e) A TNC may not impose additional charges for providing
353 services to a person who has a physical disability because of
354 the person's disability.
- 355 (f) A TNC that contracts with a governmental entity to
356 provide paratransit services must comply with all applicable
357 state and federal laws related to individuals with disabilities.
- 358 (g) A TNC shall reevaluate any decision to remove a TNC
359 driver's authorization to access its digital network due to a
360 low quality rating if the TNC driver alleges that the low
361 quality rating by riders was because of a characteristic
362 identified in the company's nondiscrimination policy and there
363 is a plausible basis for such allegation.

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364 (14) RECORDS.—A TNC shall maintain the following records:

365 (a) Individual ride records for at least 1 year after the
366 date on which each ride is provided; and

367 (b) Individual records of TNC drivers for at least 1 year
368 after the date on which the TNC driver's relationship with the
369 TNC ends.

370 (15) PREEMPTION.—

371 (a) It is the intent of the Legislature to provide for
372 uniformity of laws governing TNCs, TNC drivers, and TNC vehicles
373 throughout the state. TNCs, TNC drivers, and TNC vehicles are
374 governed exclusively by state law, including in any locality or
375 other jurisdiction that enacted a law or created rules governing
376 TNCs, TNC drivers, or TNC vehicles before July 1, 2017. A
377 county, municipality, special district, airport authority, port
378 authority, or other local governmental entity or subdivision may
379 not:

380 1. Impose a tax on, or require a license for, a TNC, a TNC
381 driver, or a TNC vehicle if such tax or license relates to
382 providing prearranged rides;

383 2. Subject a TNC, a TNC driver, or a TNC vehicle to any
384 rate, entry, operation, or other requirement of the county,
385 municipality, special district, airport authority, port
386 authority, or other local governmental entity or subdivision; or



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387 3. Require a TNC or a TNC driver to obtain a business
388 license or any other type of similar authorization to operate
389 within the local governmental entity's jurisdiction.

390 (b) This subsection does not prohibit an airport from
391 charging reasonable pickup fees consistent with any pickup fees
392 charged to taxicab companies at that airport for their use of
393 the airport's facilities or prohibit the airport from
394 designating locations for staging, pickup, and other similar
395 operations at the airport.

396 Section 2. This act shall take effect July 1, 2017.

397

398 -----

399

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

400

Remove everything before the enacting clause and insert:

401

A bill to be entitled

402

An act relating to transportation network companies; creating s.

403

316.68, F.S.; defining terms; providing for construction;

404

providing that a transportation network company (TNC) driver is

405

not required to register certain vehicles as commercial motor

406

vehicles or for-hire vehicles; requiring a TNC to designate and

407

maintain an agent for service of process in this state;

408

providing fare requirements; providing requirements for a TNC's

409

digital network; providing for an electronic receipt, subject to

410

certain requirements; providing automobile insurance

411

requirements for a TNC and a TNC driver; providing requirements

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Amendment No. 1

412 for specified proof of coverage for a TNC driver under certain
413 circumstances; providing certain disclosure requirements for a
414 TNC driver in the event of an accident; requiring a TNC to cause
415 its insurer to issue certain payments directly to certain
416 parties; requiring a TNC to make specified disclosures in
417 writing to TNC drivers under certain circumstances; authorizing
418 specified insurers to exclude certain coverage; providing that
419 the right to exclude coverage applies to any coverage included
420 in an automobile insurance policy; providing applicability;
421 providing for construction; providing that specified automobile
422 insurers have a right of contribution against other insurers
423 that provide automobile insurance to the same TNC drivers in
424 satisfaction of certain coverage requirements under certain
425 circumstances; requiring a TNC to provide specified information
426 upon request by certain parties during a claims coverage
427 investigation; requiring certain insurers to disclose specified
428 information upon request by any other insurer involved in the
429 particular claim; providing that TNC drivers are independent
430 contractors if specified conditions are met; providing
431 retroactive applicability; requiring a TNC to implement a zero-
432 tolerance policy for drug or alcohol use; providing TNC driver
433 requirements; requiring a TNC to conduct a certain background
434 check for a TNC driver after a specified period; authorizing the
435 Department of Financial Services to require a procedures report
436 prepared by a certified public accountant; authorizing

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Amendment No. 1

437 injunctive relief under certain circumstances; prohibiting a TNC
438 driver from accepting certain rides or soliciting or accepting
439 street hails; requiring a TNC to adopt a policy of
440 nondiscrimination with respect to riders and potential riders
441 and to notify TNC drivers of such policy; requiring TNC drivers
442 to comply with the nondiscrimination policy and certain
443 applicable laws regarding nondiscrimination and accommodation of
444 service animals; prohibiting a TNC from imposing additional
445 charges for providing services to persons who have physical
446 disabilities; requiring a TNC that contracts with a governmental
447 entity to provide paratransit services to comply with certain
448 applicable state and federal laws; requiring a TNC to reevaluate
449 a decision to remove a TNC driver's authorization to access its
450 digital network in certain instances; requiring a TNC to
451 maintain specified records; providing legislative intent;
452 specifying that TNCs, TNC drivers, and TNC vehicles are governed
453 exclusively by state law; prohibiting local governmental
454 entities and subdivisions from taking specified actions;
455 providing construction; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6007 Traffic Infraction Detectors
SPONSOR(S): Avila, Ingoglia and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 178, SB 630

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	13 Y, 1 N	Johnson	Vickers
2) Appropriations Committee	20 Y, 7 N	Cobb	Leznoff
3) Government Accountability Committee		Johnson <i>SAS</i>	Williamson <i>RAW</i>

SUMMARY ANALYSIS

The regulation and use of red light cameras for the purpose of enforcing the Florida Uniform Traffic Control law is preempted to the state. The Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities are authorized to employ red light camera programs.

Effective July 1, 2020, the bill removes the authorization for the DHSMV and local governments to install and maintain red light cameras. The bill maintains s. 316.0076, F.S., which expressly preempts to the state regulation of the use of cameras for enforcing the Florida Uniform Traffic Control law. This means local governments will no longer have the authority to implement red light camera programs by local ordinance.

The bill also makes conforming changes.

The bill has a negative recurring impact even though it does not take effect until 2020. This is because revenues are considered nonrecurring until the effective date, given the prospective repeal of the law. Therefore, although there is no immediate loss of revenue, the accounting of those revenues as being temporary or time limited occurs immediately. The Revenue Estimating Conference met on January 27, 2017, and estimated that the bill has a recurring annual impact of \$62.6 million to general revenue, \$12.0 million to state trust funds, and \$72.6 million to local government revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Red Light Cameras, Generally

Traffic infraction detectors,¹ more commonly known as “red light cameras,” are used to document traffic law violations by automatically photographing vehicles whose drivers have failed to yield at red lights. The cameras are connected to the traffic signal and to sensors that monitor traffic flow at the crosswalk or stop line. The system photographs vehicles that enter the intersection above a pre-set minimum speed after the signal has turned red; a second photograph typically shows the vehicle in the intersection. In some cases, video cameras are used. Red light cameras also record the license plate number, date and time of day, time elapsed since the beginning of the red signal, and the vehicle’s speed.

Red Light Cameras in Florida

The regulation and use of red light cameras for the purpose of enforcing Ch. 316, F.S., which is the Florida Uniform Traffic Control Law, is preempted to the state.² The Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities are authorized to employ red light camera programs.³

Red light cameras are allowed on state roads if permitted by the Department of Transportation (DOT), and are allowed on streets and highways under the jurisdiction of counties or municipalities. However, the placement and installation of red light cameras on state roads, streets, and highways must meet placement and installation specifications developed by DOT.⁴

If DHSMV, a county, or a municipality installs a red light camera at an intersection, the respective governmental entity must notify the public that a camera is in use at that intersection, including specific notification of enforcement of right-on-red violations. The signage must meet specifications adopted by DOT pursuant to s. 316.0745, F.S.⁵

Notices and Citations

Current law allows DHSMV, a county, or a municipality to authorize a traffic infraction enforcement officer to issue a traffic citation for certain traffic infractions. If a red light camera captures an image of a vehicle running a red light, the visual information is reviewed by a traffic infraction enforcement officer. A notice of violation must be sent by first-class mail to the registered owner of the vehicle within 30 days of the alleged violation.⁶ The notice must specify the remedies available and must include a statement informing the owner of his or her right to review the photographic or video evidence upon which the violation is based, as well as the time and place or Internet location where the evidence may be reviewed.⁷

¹ Section 316.003(87), F.S., defines the term “traffic infraction detector” as a vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light. Any notification under s. 316.0083(1)(b), F.S., or traffic citation issued by the use of a traffic infraction detector must include a photograph or other recorded image showing both the license tag of the offending vehicle and the traffic control device being violated.

² Section 316.0076, F.S.

³ See s. 316.0083, F.S.

⁴ Section 316.0776(1), F.S.

⁵ Section 316.0776(2)(a), F.S.

⁶ Section 316.0083(1)(b)1.a., F.S.

⁷ Section 316.0083(1)(b)1.b., F.S.

Violations may not be issued if the vehicle is making a right-hand turn in a “careful and prudent manner”⁸ or if the vehicle comes to a complete stop⁹ before making a permissible right turn.

A person who receives a red light camera notice of violation may request a hearing within 60 days following the date of the notice or pay the penalty. No payment or fee may be required in order to receive the hearing.¹⁰ If a person elects to receive a hearing, the person waives his or her right to challenge delivery of the notice of violation.¹¹ If the notice of violation is upheld, the local hearing officer must require the petitioner to pay the \$158 penalty and may also require the petitioner to pay county or municipal costs, not to exceed \$250.¹²

If the registered owner of the vehicle does not pay the violation within 60 days following the date of notification, the traffic infraction enforcement officer must issue a uniform traffic citation (UTC) to the owner. The UTC must be sent by certified mail and, like the notice of violation, it must include the same statements described above regarding review of the photographic or video evidence.¹³

The images provided by a red light camera are admissible in court and provide a rebuttable presumption the vehicle was used to commit the violation.¹⁴

A traffic infraction enforcement officer must provide by electronic transmission a replica of the citation data to the court having jurisdiction over the alleged offense or its traffic violations bureau within five days after the issuance date of a UTC to the violator.¹⁵

Defenses

The registered owner of the motor vehicle involved in a red light camera violation is responsible for paying the UTC unless the owner can establish that the:

- Motor vehicle passed through the intersection in order to yield right-of-way to an emergency vehicle or as part of a funeral procession;
- Motor vehicle passed through the intersection at the direction of a law enforcement officer;
- Motor vehicle was, at the time of the violation, in the care, custody, or control of another person;
- Driver received a UTC issued by a law enforcement officer for the alleged violation; or
- Motor vehicle's owner was deceased on or before the date that the UTC was issued.¹⁶

Current law provides certain requirements that must be met when establishing one of the defenses, including furnishing an affidavit to the appropriate governmental entity that provides detailed information supporting the defense.¹⁷

Penalties

Red light camera citations carry a \$158 penalty. When the \$158 penalty is the result of local government enforcement, \$75 is retained by the local government and \$83 is deposited with the Department of Revenue (DOR). DOR subsequently distributes the penalty by depositing \$70 in the General Revenue Fund, \$10 in the Department of Health (DOH) Administrative Trust Fund, and \$3 in the Brain and Spinal Cord Injury Trust Fund.¹⁸

⁸ Section 316.0083(2), F.S.

⁹ Section 316.0083(1)(a), F.S.

¹⁰ Section 316.0083(1)(b)1.c., F.S.

¹¹ Section 316.0083(1)(b)1.d., F.S.

¹² Sections 316.0083(5)(e) and 318.18(22), F.S.

¹³ Section 316.0083(1)(c), F.S.

¹⁴ Section 316.0083(1)(e), F.S.

¹⁵ Section 316.650(3)(c), F.S.

¹⁶ Section 316.0083(1)(d), F.S.

¹⁷ *Id.*

¹⁸ Sections 316.0083(1)(b)3. and 318.18(15), F.S.

When the \$158 penalty is the result of enforcement by DHSMV, \$45 is retained by the local government and \$113 is deposited with DOR.¹⁹ DOR subsequently distributes the penalty by depositing \$100 in the General Revenue Fund, \$10 in the DOH Administrative Trust Fund, and \$3 in the Brain and Spinal Cord Injury Trust Fund.²⁰ DHSMV does not currently operate any red light cameras.

If a law enforcement officer cites a motorist for the same offense, the penalty is still \$158, but the revenue is distributed from the clerk of court to DOR, where \$30 is distributed to the General Revenue Fund, \$65 is distributed to the DOH Administrative Trust Fund, and \$3 is distributed to the Brain and Spinal Cord Injury Trust Fund. The remaining \$60 is distributed in small percentages to a number of funds pursuant to s. 318.21, F.S.²¹

Red light camera citations may not result in points assessed against the driver's driver license and may not be used for the purpose of setting motor vehicle insurance rates.²²

Proceeds Retained by Local Government

Local governments contract with a vendor to provide red light camera services. The contract term generally ranges from three to five years.²³ Local governments typically pay between \$4,250 and \$4,750 per camera, per month.²⁴

In a survey of local governments that operate a red light camera program, the Office of Program Policy Analysis & Governmental Accountability (OPPAGA) reported that, over a three-year period: 49 percent of the total money collected was used to pay red light camera vendors; 78 percent reported excess revenue after payments to vendors and other program expenses; and 16 percent reported difficulty generating sufficient revenue to make vendor payments and as such, had accrued outstanding balances. Of those respondents reporting excess revenue, 76 percent was allocated to general fund, 14 percent to public safety/police, and 5 percent to road repair/maintenance.²⁵

2016 Red Light Camera Program Analysis

Current law requires each county or municipality operating a red light camera program to annually self-report data to DHSMV, which includes red light camera program results over the preceding fiscal year, the procedures for enforcement, and other statistical data and information required by DHSMV.²⁶ DHSMV must compile the information and submit a summary report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.²⁷

In December 2016, DHSMV issued its report for the period between July 1, 2015, and June 30, 2016. According to the 2016 report, 59 jurisdictions responded that they had red light cameras in operation; 688 red light cameras were active, which was a reduction of 108 cameras from the previous year; and 430 intersections were equipped with red light cameras, which was a reduction of 48 from the previous year. Agencies issued 1,227,927 notices of violation and of the notices issued, 62 percent paid the fine and approximately 3.5 percent were contested and dismissed. Of those responding, 71 percent indicated they issue notices of violation for a right-on-red violation and 32 percent indicated they do not issue such notices. Six jurisdictions indicated they do not track the number of violations issued for right turns on red.²⁸

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 318.18(15), F.S.

²² Section 322.27(3)(d)6., F.S.

²³ OPPAGA Research Memorandum, *Florida Red Light Camera Programs*, (January 31, 2014) (Copy on file with the Transportation & Infrastructure Subcommittee).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Section 316.0083(4), F.S. DHSMV uses an on-line questionnaire to facilitate data collection.

²⁷ *Id.*

²⁸ DHSMV Red Light Camera Report, December 31, 2016 (Copy on file with the Transportation & Infrastructure Subcommittee).

In its 2016 report, DHSMV provided the following breakdown of the number of crashes at red light camera (RLC) intersections before and after the cameras were installed:²⁹

Crash	Before RLC Installed	After RLC Installed	Percentage Change
Total Crashes	5,107	5,625	10.14%
Angle Crashes	1,383	1,476	6.72%
Rear-End Crashes	3,724	4,149	11.41%
Non-Incapacitating Injuries	399	392	-1.75%
Incapacitating Injuries	153	194	26.80%
Fatal Crashes	5	10	100%
Crashes Involving Non-Motorists	56	45	-19.64%
Crashes Involving Running a Red Light	191	185	-3.14%
Possible Injury Crashes	964	1,054	9.34%

Litigation

In October 2014, the Fourth District Court of Appeal dismissed a red light camera citation after finding that the local government had delegated an impermissible measure of discretion and control over its red light camera program to a private third-party vendor.³⁰ Under the terms of the contract, the vendor decided which infractions would be reviewed by the city, obtained the information needed to fill out a citation, completed the citation, issued the citation, and transmitted the citation information to the court.³¹ In Florida, only traffic infraction enforcement officers and sworn law enforcement officers are authorized to issue a traffic citation.³² The case was appealed; however, the Florida Supreme Court declined to accept jurisdiction on the case.³³

In July 2016, the Third District Court of Appeal determined that Florida law allows a vendor, as the municipality's agent, to review and sort red light camera images to forward to a law enforcement officer when:

- The vendor's decisions are strictly circumstanced by contract language, municipal guidelines, and actual practice;
- Ministerial decisions are further limited by automatically passing close calls to the police for review;
- The law enforcement officer makes the actual decision as to whether probable cause exists and whether a notice and citation should be issued; and
- The officer's decision that probable cause exists and the citation issued consists of a full, professional review by an identified officer who is responsible for that decision and does not merely acquiesce to any decision by the vendor.³⁴

In its decision, the Third District Court of Appeal distinguished its decision from that of the Fourth District Court of Appeal and certified the following three questions to the Florida Supreme Court regarding the legality of red light camera programs in Florida:

1. Does the review of red light camera images authorized by s. 316.0083(1)(a), F.S. (2014), allow a municipality's vendor, as its agent, to sort images to forward to the law enforcement officer, where the controlling contract and city guidelines limit the vendor to deciding whether the images contain certain easy-to-identify characteristics and where only the law enforcement

²⁹ It should be noted that other factors may have contributed to the number of crashes.

³⁰ *City of Hollywood v. Arem*, 39 Fla. L. Weekly D2175 (Fla. 4th DCA October 15, 2014).

³¹ *Id.*

³² Sections 316.0083(1)(b)3. and 316.650(3)(c), F.S.

³³ Supreme Court of Florida, *City of Hollywood v. Arem*, Case No. SC15-236. Order Issued April 13, 2015.

³⁴ *State of Florida, by and through the City of Aventura, et.al. v. Jimenez*, Case Nos. 3D15-2303 & 3D15-2271, Opinion filed July 27, 2016.

- officer makes the determination whether probable cause exists and whether to issue a Notice of Violation and citation?
2. Is it an illegal delegation of police power for the vendor to print and mail the notices and citations, through a totally automated process without human involvement, after the law enforcement officer makes the determination that probable cause exists and to issue a Notice of Violation and citation?
 3. Does the fact that citation data is electronically transmitted to the Clerk of the Court from the vendor's server via a totally automated process without human involvement violate s. 316.650(3)(c), F.S., (2014), when it is the law enforcement officer who affirmatively authorizes the transmission process?

The Florida Supreme Court has not issued an opinion regarding the above questions.³⁵

In October 2016, the Second District Court of Appeal issued a decision that generally agreed with that of the Third District Court of Appeal.³⁶

Proposed Changes

Effective July 1, 2020, the bill removes DHSMV and local government authorization to install and maintain red light cameras. The bill maintains s. 316.0076, F.S., which expressly preempts to the state regulation of the use of cameras for enforcing Ch. 316, F.S. This means local governments will not have the authority to implement red light camera programs by local ordinance.

Because the bill removes the authority of DHSMV and local governments to install and maintain red light cameras, it makes the following changes:

- Repeals the statutory definitions of "traffic infraction detector" and "local hearing officer."
- Repeals s. 316.0083, F.S., which is the Mark Wandall Traffic Safety Program.
- Repeals s. 316.00831, F.S., which provides for the distribution of penalties collected under s. 316.0083(1)(b), F.S.
- Repeals s. 316.07456, F.S., which provides the transitional implementation for red light cameras.
- Repeals s. 316.0776, F.S., which relates to the placement and installation of red light cameras.
- Repeals s. 318.15(3), F.S., which establishes penalties associated with the failure to pay red light camera fines.
- Removes DHSMV's authority to designate employees as traffic infraction enforcement officers for purposes of enforcing red light camera violations.
- Removes provisions regarding traffic citations issued pursuant to a red light camera violation.
- Removes provisions related to penalties associated with red light camera violations.
- Repeals s. 318.18(22), F.S., relating to the payment of county and municipal costs.
- Removes provisions regarding points and insurance rates related to red light camera violations.
- Confirms cross-references.

B. SECTION DIRECTORY:

Section 1 repeals ss. 316.0083(35) and (87), F.S., defining "local hearing officer" and "traffic infraction detector."

Section 2 repeals s. 316.008(8), F.S., authorizing municipalities and counties to use traffic infraction detectors.

Section 3 repeals s. 316.0083, F.S., relating to the Mark Wandall Traffic Safety Program.

³⁵ Florida Supreme Court Case No. SC16-1976.

³⁶ *City of Oldsmar and Pamela Jo Bondi, Attorney General v. Trinh*, Case No. 2D15-4898, Opinion filed October 28, 2016.

Section 4 repeals s. 316.00831, F.S., relating to the distribution of penalties collected under the Mark Wandall Traffic Safety Program.

Section 5 repeals s. 316.07456, F.S., relating to transitional implementation.

Section 6 repeals s. 316.0776, F.S., relating to the placement and installation of traffic infraction detectors.

Section 7 repeals s. 318.15(3), F.S., relating to failure to comply with a civil penalty or to appear.

Section 8 repeals s. 321.50, F.S., relating to the authorization for DHSMV to use traffic infraction detectors.

Sections 9 through 12 amend ss. 28.37, 316.003, 316.545, and 316.613, F.S., to conform cross-references.

Section 13 amends s. 316.640, F.S., relating to the enforcement of traffic laws.

Section 14 amends s. 316.640, F.S., relating to traffic citations.

Sections 15 and 16 amend ss. 318.121 and 318.14, F.S., to conform cross-references.

Section 17 amends s. 318.18, F.S., relating to the amount of penalties for traffic infractions.

Section 18 amends s. 320.03, F.S., to conform a cross-reference.

Section 19 amends s. 322.27, F.S., relating to DHSMV's authority to suspend or revoke a driver license or identification card.

Section 20 amends s. 655.960, F.S., to conform a cross-reference.

Section 21 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On January 27, 2017, the Revenue Estimating Conference reviewed the bill. The consensus estimate for that bill was that it would result in the following negative recurring fiscal impact to state government revenues:

Fiscal Year	General Revenue	Trust Funds	Total
2017-2018	\$62.6 million	\$12.0 million	\$74.6 million
2018-2019	\$63.6 million	\$12.2 million	\$75.8 million
2019-2020	\$64.6 million	\$12.4 million	\$77.0 million
2020-2021	\$65.6 million	\$12.5 million	\$78.1 million
2021-2022	\$66.5 million	\$12.7 million	\$79.2 million

2. Expenditures:

DOR will no longer incur expenses associated with processing the payments from municipalities and counties and distributing the monies to the appropriate funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On January 27, 2017, the Revenue Estimating Conference reviewed the bill. The consensus estimate was that the bill would result in the following negative recurring fiscal impact to local government revenues:

Fiscal Year	Revenue
2017-2018	\$72.6 million
2018-2019	\$73.8 million
2019-2020	\$75.0 million
2020-2021	\$76.1 million
2021-2022	\$77.1 million

2. Expenditures:

Municipalities and counties will no longer incur expenses associated with red light cameras; however, they may incur some expenses associated with removing existing cameras.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill removes the possibility of motor vehicle operators being issued a \$158 fine for a red light camera violation.

Each jurisdiction operating red light cameras has a unique contract with a vendor to provide some, if not all, of the following services: installation, maintenance, monitoring, and citation issuance. The value of these contracts and the specific stakeholders are not clear at this time, but the impact will be significant.³⁷

D. FISCAL COMMENTS:

The bill has a negative recurring impact even though it does not take effect until 2020. This is because revenues are considered nonrecurring until the effective date, given the prospective repeal of the law. Therefore, although there is no immediate loss of revenue, the accounting of those revenues as being temporary or time limited occurs immediately. The Revenue Estimating Conference met on January 27, 2017, and estimated that the bill has a recurring annual impact of \$62.6 million to general revenue, \$12.0 million to state trust funds, and \$72.6 million to local government revenues.

According to DHSMV, the bill would eliminate the annual survey, annual red light camera report, and vendor approval process for the issuance of red light camera notices of violation. Also, it would alleviate the workload related to handling red light camera disputes and for granting access and registration stops.³⁸

The bill eliminates the need for hearings to dispute the issuance of red light camera notices of violation, which should result in a reduction in court costs.³⁹

³⁷ DHSMV bill analysis of HB 4027 (2016), which removed the authorization for DHSMV and local governments to install red light cameras.

³⁸ *Id.*

³⁹ *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Municipalities or counties may have contracts that provide for the use of red light cameras beyond July 1, 2020. To the extent that these contracts do not contain provisions regarding the termination of the contract if authorization for such cameras is repealed, the bill could raise concerns regarding impairment of contracts. According to a 2014 research memorandum by OPPAGA, the duration of red light camera contracts is typically three to five years with the option to extend for an additional term. Often a provision in the contract authorizes termination in the event the law regarding red light cameras changes.⁴⁰

B. RULE-MAKING AUTHORITY:

DHSMV indicates that the bill will require it to change some of its procedures.⁴¹

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁴⁰ OPPAGA Research Memorandum, *Florida Red Light Camera Program*, February 7, 2014.

⁴¹ DHSMV Bill Analysis HB 4027 (2016).

1 A bill to be entitled
2 An act relating to traffic infraction detectors;
3 repealing s. 316.003(35) and (87), F.S., relating to
4 the definitions of "local hearing officer" and
5 "traffic infraction detector"; repealing ss.
6 316.008(8), 316.0083, and 316.00831, F.S., relating to
7 the installation and use of traffic infraction
8 detectors to enforce specified provisions when a
9 driver fails to stop at a traffic signal, provisions
10 that authorize the Department of Highway Safety and
11 Motor Vehicles, a county, or a municipality to use
12 such detectors, and the distribution of penalties
13 collected for specified violations; repealing s.
14 316.07456, F.S., relating to transitional
15 implementation of such detectors; repealing s.
16 316.0776, F.S., relating to placement and installation
17 of traffic infraction detectors; repealing s.
18 318.15(3), F.S., relating to failure to comply with a
19 civil penalty; repealing s. 321.50, F.S., relating to
20 the authorization to use traffic infraction detectors;
21 amending ss. 28.37, 316.003, 316.545, 316.613,
22 316.640, 316.650, 318.121, 318.14, 318.18, 320.03,
23 322.27, and 655.960, F.S.; conforming cross-references
24 and provisions to changes made by the act; providing
25 an effective date.

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

Section 1. Subsections (35) and (87) of section 316.003, Florida Statutes, are repealed.

Section 2. Subsection (8) of section 316.008, Florida Statutes, is repealed.

Section 3. Section 316.0083, Florida Statutes, is repealed.

Section 4. Section 316.00831, Florida Statutes, is repealed.

Section 5. Section 316.07456, Florida Statutes, is repealed.

Section 6. Section 316.0776, Florida Statutes, is repealed.

Section 7. Subsection (3) of section 318.15, Florida Statutes, is repealed.

Section 8. Section 321.50, Florida Statutes, is repealed.

Section 9. Subsection (5) of section 28.37, Florida Statutes, is amended to read:

28.37 Fines, fees, service charges, and costs remitted to the state.—

(5) Ten percent of all court-related fines collected by the clerk, except for penalties or fines distributed to counties or municipalities under s. 318.18(15) ~~316.0083(1)(b)3. or s.~~

51 ~~318.18(15)(a)~~, shall be deposited into the clerk's Public
 52 Records Modernization Trust Fund to be used exclusively for
 53 additional clerk court-related operational needs and program
 54 enhancements.

55 Section 10. Subsection (55) of section 316.003, Florida
 56 Statutes, is amended to read:

57 316.003 Definitions.—The following words and phrases, when
 58 used in this chapter, shall have the meanings respectively
 59 ascribed to them in this section, except where the context
 60 otherwise requires:

61 (54)~~(55)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise
 62 provided in paragraph (76)(b) ~~(77)(b)~~, any privately owned way
 63 or place used for vehicular travel by the owner and those having
 64 express or implied permission from the owner, but not by other
 65 persons.

66 Section 11. Paragraph (b) of subsection (2) of section
 67 316.545, Florida Statutes, is amended to read:

68 316.545 Weight and load unlawful; special fuel and motor
 69 fuel tax enforcement; inspection; penalty; review.—

70 (2)

71 (b) The officer or inspector shall inspect the license
 72 plate or registration certificate of the commercial vehicle to
 73 determine whether its gross weight is in compliance with the
 74 declared gross vehicle weight. If its gross weight exceeds the
 75 declared weight, the penalty shall be 5 cents per pound on the

76 difference between such weights. In those cases when the
 77 commercial vehicle is being operated over the highways of the
 78 state with an expired registration or with no registration from
 79 this or any other jurisdiction or is not registered under the
 80 applicable provisions of chapter 320, the penalty herein shall
 81 apply on the basis of 5 cents per pound on that scaled weight
 82 which exceeds 35,000 pounds on laden truck tractor-semitrailer
 83 combinations or tandem trailer truck combinations, 10,000 pounds
 84 on laden straight trucks or straight truck-trailer combinations,
 85 or 10,000 pounds on any unladen commercial motor vehicle. A
 86 driver of a commercial motor vehicle entering the state at a
 87 designated port-of-entry location, as defined in s. 316.003
 88 ~~316.003(54)~~, or operating on designated routes to a port-of-
 89 entry location, who obtains a temporary registration permit
 90 shall be assessed a penalty limited to the difference between
 91 its gross weight and the declared gross vehicle weight at 5
 92 cents per pound. If the license plate or registration has not
 93 been expired for more than 90 days, the penalty imposed under
 94 this paragraph may not exceed \$1,000. In the case of special
 95 mobile equipment, which qualifies for the license tax provided
 96 for in s. 320.08(5)(b), being operated on the highways of the
 97 state with an expired registration or otherwise not properly
 98 registered under the applicable provisions of chapter 320, a
 99 penalty of \$75 shall apply in addition to any other penalty
 100 which may apply in accordance with this chapter. A vehicle found

101 in violation of this section may be detained until the owner or
 102 operator produces evidence that the vehicle has been properly
 103 registered. Any costs incurred by the retention of the vehicle
 104 shall be the sole responsibility of the owner. A person who has
 105 been assessed a penalty pursuant to this paragraph for failure
 106 to have a valid vehicle registration certificate pursuant to the
 107 provisions of chapter 320 is not subject to the delinquent fee
 108 authorized in s. 320.07 if such person obtains a valid
 109 registration certificate within 10 working days after such
 110 penalty was assessed.

111 Section 12. Paragraph (a) of subsection (2) of section
 112 316.613, Florida Statutes, is amended to read:

113 316.613 Child restraint requirements.—

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

118 (a) A school bus as defined in s. 316.003 ~~316.003(68)~~.

119 Section 13. Paragraph (b) of subsection (1) and paragraph
 120 (a) of subsection (5) of section 316.640, Florida Statutes, are
 121 amended to read:

122 316.640 Enforcement.—The enforcement of the traffic laws
 123 of this state is vested as follows:

124 (1) STATE.—

125 (b)1. The Department of Transportation has authority to

126 enforce on all the streets and highways of this state all laws
 127 applicable within its authority.

128 2.a. The Department of Transportation shall develop
 129 training and qualifications standards for toll enforcement
 130 officers whose sole authority is to enforce the payment of tolls
 131 pursuant to s. 316.1001. Nothing in this subparagraph shall be
 132 construed to permit the carrying of firearms or other weapons,
 133 nor shall a toll enforcement officer have arrest authority.

134 b. For the purpose of enforcing s. 316.1001, governmental
 135 entities, as defined in s. 334.03, which own or operate a toll
 136 facility may employ independent contractors or designate
 137 employees as toll enforcement officers; however, any such toll
 138 enforcement officer must successfully meet the training and
 139 qualifications standards for toll enforcement officers
 140 established by the Department of Transportation.

141 ~~3. For the purpose of enforcing s. 316.0083, the~~
 142 ~~department may designate employees as traffic infraction~~
 143 ~~enforcement officers. A traffic infraction enforcement officer~~
 144 ~~must successfully complete instruction in traffic enforcement~~
 145 ~~procedures and court presentation through the Selective Traffic~~
 146 ~~Enforcement Program as approved by the Division of Criminal~~
 147 ~~Justice Standards and Training of the Department of Law~~
 148 ~~Enforcement, or through a similar program, but may not~~
 149 ~~necessarily otherwise meet the uniform minimum standards~~
 150 ~~established by the Criminal Justice Standards and Training~~

151 ~~Commission for law enforcement officers or auxiliary law~~
 152 ~~enforcement officers under s. 943.13. This subparagraph does not~~
 153 ~~authorize the carrying of firearms or other weapons by a traffic~~
 154 ~~infraction enforcement officer and does not authorize a traffic~~
 155 ~~infraction enforcement officer to make arrests. The department's~~
 156 ~~traffic infraction enforcement officers must be physically~~
 157 ~~located in the state.~~

158 (5)(a) Any sheriff's department or police department of a
 159 municipality may employ, as a traffic infraction enforcement
 160 officer, any individual who successfully completes instruction
 161 in traffic enforcement procedures and court presentation through
 162 the Selective Traffic Enforcement Program as approved by the
 163 Division of Criminal Justice Standards and Training of the
 164 Department of Law Enforcement, or through a similar program, but
 165 who does not necessarily otherwise meet the uniform minimum
 166 standards established by the Criminal Justice Standards and
 167 Training Commission for law enforcement officers or auxiliary
 168 law enforcement officers under s. 943.13. Any such traffic
 169 infraction enforcement officer who observes the commission of a
 170 traffic infraction or, in the case of a parking infraction, who
 171 observes an illegally parked vehicle may issue a traffic
 172 citation for the infraction when, based upon personal
 173 investigation, he or she has reasonable and probable grounds to
 174 believe that an offense has been committed which constitutes a
 175 noncriminal traffic infraction as defined in s. 318.14. ~~It~~

176 ~~addition, any such traffic infraction enforcement officer may~~
 177 ~~issue a traffic citation under s. 316.0083. For purposes of~~
 178 ~~enforcing s. 316.0083, any sheriff's department or police~~
 179 ~~department of a municipality may designate employees as traffic~~
 180 ~~infraction enforcement officers.~~ The traffic infraction
 181 enforcement officers must be physically located in the county of
 182 the respective sheriff's or police department.

183 Section 14. Paragraphs (a) and (c) of subsection (3) of
 184 section 316.650, Florida Statutes, are amended to read:

185 316.650 Traffic citations.—

186 (3)(a) Except for a traffic citation issued pursuant to s.
 187 316.1001 ~~or s. 316.0083~~, each traffic enforcement officer, upon
 188 issuing a traffic citation to an alleged violator of any
 189 provision of the motor vehicle laws of this state or of any
 190 traffic ordinance of any municipality or town, shall deposit the
 191 original traffic citation or, in the case of a traffic
 192 enforcement agency that has an automated citation issuance
 193 system, the chief administrative officer shall provide by an
 194 electronic transmission a replica of the citation data to a
 195 court having jurisdiction over the alleged offense or with its
 196 traffic violations bureau within 5 days after issuance to the
 197 violator.

198 ~~(c) If a traffic citation is issued under s. 316.0083, the~~
 199 ~~traffic infraction enforcement officer shall provide by~~
 200 ~~electronic transmission a replica of the traffic citation data~~

201 ~~to the court having jurisdiction over the alleged offense or its~~
 202 ~~traffic violations bureau within 5 days after the date of~~
 203 ~~issuance of the traffic citation to the violator. If a hearing~~
 204 ~~is requested, the traffic infraction enforcement officer shall~~
 205 ~~provide a replica of the traffic notice of violation data to the~~
 206 ~~clerk for the local hearing officer having jurisdiction over the~~
 207 ~~alleged offense within 14 days.~~

208 Section 15. Section 318.121, Florida Statutes, is amended
 209 to read:

210 318.121 Preemption of additional fees, fines, surcharges,
 211 and costs.—Notwithstanding any general or special law, or
 212 municipal or county ordinance, additional fees, fines,
 213 surcharges, or costs other than the court costs and surcharges
 214 assessed under s. 318.18(11), (13), (18), and (19), ~~and (22)~~ may
 215 not be added to the civil traffic penalties assessed under this
 216 chapter.

217 Section 16. Subsection (2) of section 318.14, Florida
 218 Statutes, is amended to read:

219 318.14 Noncriminal traffic infractions; exception;
 220 procedures.—

221 (2) Except as provided in s. ss. 316.1001(2) ~~and 316.0083~~,
 222 any person cited for a violation requiring a mandatory hearing
 223 listed in s. 318.19 or any other criminal traffic violation
 224 listed in chapter 316 must sign and accept a citation indicating
 225 a promise to appear. The officer may indicate on the traffic

226 citation the time and location of the scheduled hearing and must
 227 indicate the applicable civil penalty established in s. 318.18.
 228 For all other infractions under this section, except for
 229 infractions under s. 316.1001, the officer must certify by
 230 electronic, electronic facsimile, or written signature that the
 231 citation was delivered to the person cited. This certification
 232 is prima facie evidence that the person cited was served with
 233 the citation.

234 Section 17. Subsections (15) and (22) of section 318.18,
 235 Florida Statutes, are amended to read:

236 318.18 Amount of penalties.—The penalties required for a
 237 noncriminal disposition pursuant to s. 318.14 or a criminal
 238 offense listed in s. 318.17 are as follows:

239 (15) ~~(a)1.~~ One hundred and fifty-eight dollars for a
 240 violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver
 241 has failed to stop at a traffic signal ~~and when enforced by a~~
 242 ~~law enforcement officer.~~ Sixty dollars shall be distributed as
 243 provided in s. 318.21, \$30 shall be distributed to the General
 244 Revenue Fund, \$3 shall be remitted to the Department of Revenue
 245 for deposit into the Brain and Spinal Cord Injury Trust Fund,
 246 and the remaining \$65 shall be remitted to the Department of
 247 Revenue for deposit into the Emergency Medical Services Trust
 248 Fund of the Department of Health.

249 ~~2. One hundred and fifty-eight dollars for a violation of~~
 250 ~~s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to~~

251 ~~stop at a traffic signal and when enforced by the department's~~
 252 ~~traffic infraction enforcement officer. One hundred dollars~~
 253 ~~shall be remitted to the Department of Revenue for deposit into~~
 254 ~~the General Revenue Fund, \$45 shall be distributed to the county~~
 255 ~~for any violations occurring in any unincorporated areas of the~~
 256 ~~county or to the municipality for any violations occurring in~~
 257 ~~the incorporated boundaries of the municipality in which the~~
 258 ~~infraction occurred, \$10 shall be remitted to the Department of~~
 259 ~~Revenue for deposit into the Department of Health Emergency~~
 260 ~~Medical Services Trust Fund for distribution as provided in s.~~
 261 ~~395.4036(1), and \$3 shall be remitted to the Department of~~
 262 ~~Revenue for deposit into the Brain and Spinal Cord Injury Trust~~
 263 ~~Fund.~~

264 ~~3. One hundred and fifty eight dollars for a violation of~~
 265 ~~s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to~~
 266 ~~stop at a traffic signal and when enforced by a county's or~~
 267 ~~municipality's traffic infraction enforcement officer. Seventy-~~
 268 ~~five dollars shall be distributed to the county or municipality~~
 269 ~~issuing the traffic citation, \$70 shall be remitted to the~~
 270 ~~Department of Revenue for deposit into the General Revenue Fund,~~
 271 ~~\$10 shall be remitted to the Department of Revenue for deposit~~
 272 ~~into the Department of Health Emergency Medical Services Trust~~
 273 ~~Fund for distribution as provided in s. 395.4036(1), and \$3~~
 274 ~~shall be remitted to the Department of Revenue for deposit into~~
 275 ~~the Brain and Spinal Cord Injury Trust Fund.~~

276 ~~(b)~~ Amounts deposited into the Brain and Spinal Cord
 277 Injury Trust Fund pursuant to this subsection shall be
 278 distributed quarterly to the Miami Project to Cure Paralysis and
 279 shall be used for brain and spinal cord research.

280 ~~(c)~~ If a person who is mailed a notice of violation or
 281 cited for a violation of s. 316.074(1) or s. 316.075(1)(c)1., as
 282 enforced by a traffic infraction enforcement officer under s.
 283 316.0083, presents documentation from the appropriate
 284 governmental entity that the notice of violation or traffic
 285 citation was in error, the clerk of court or clerk to the local
 286 hearing officer may dismiss the case. The clerk of court or
 287 clerk to the local hearing officer may not charge for this
 288 service.

289 ~~(d)~~ An individual may not receive a commission or per-
 290 ticket fee from any revenue collected from violations detected
 291 through the use of a traffic infraction detector. A manufacturer
 292 or vendor may not receive a fee or remuneration based upon the
 293 number of violations detected through the use of a traffic
 294 infraction detector.

295 ~~(e)~~ Funds deposited into the Department of Health
 296 Emergency Medical Services Trust Fund under this subsection
 297 shall be distributed as provided in s. 395.4036(1).

298 ~~(22)~~ In addition to the penalty prescribed under s.
 299 316.0083 for violations enforced under s. 316.0083 which are
 300 upheld, the local hearing officer may also order the payment of

301 ~~county or municipal costs, not to exceed \$250.~~

302 Section 18. Subsection (8) of section 320.03, Florida
 303 Statutes, is amended to read:

304 320.03 Registration; duties of tax collectors;
 305 International Registration Plan.—

306 (8) If the applicant's name appears on the list referred
 307 to in s. 316.1001(4), s. 316.1967(6), ~~s. 318.15(3)~~, or s.
 308 713.78(13), a license plate or revalidation sticker may not be
 309 issued until that person's name no longer appears on the list or
 310 until the person presents a receipt from the governmental entity
 311 or the clerk of court that provided the data showing that the
 312 fines outstanding have been paid. This subsection does not apply
 313 to the owner of a leased vehicle if the vehicle is registered in
 314 the name of the lessee of the vehicle. The tax collector and the
 315 clerk of the court are each entitled to receive monthly, as
 316 costs for implementing and administering this subsection, 10
 317 percent of the civil penalties and fines recovered from such
 318 persons. As used in this subsection, the term "civil penalties
 319 and fines" does not include a wrecker operator's lien as
 320 described in s. 713.78(13). If the tax collector has private tag
 321 agents, such tag agents are entitled to receive a pro rata share
 322 of the amount paid to the tax collector, based upon the
 323 percentage of license plates and revalidation stickers issued by
 324 the tag agent compared to the total issued within the county.
 325 The authority of any private agent to issue license plates shall

326 be revoked, after notice and a hearing as provided in chapter
 327 120, if he or she issues any license plate or revalidation
 328 sticker contrary to the provisions of this subsection. This
 329 section applies only to the annual renewal in the owner's birth
 330 month of a motor vehicle registration and does not apply to the
 331 transfer of a registration of a motor vehicle sold by a motor
 332 vehicle dealer licensed under this chapter, except for the
 333 transfer of registrations which includes the annual renewals.
 334 This section does not affect the issuance of the title to a
 335 motor vehicle, notwithstanding s. 319.23(8)(b).

336 Section 19. Paragraph (d) of subsection (3) of section
 337 322.27, Florida Statutes, is amended to read:

338 322.27 Authority of department to suspend or revoke driver
 339 license or identification card.—

340 (3) There is established a point system for evaluation of
 341 convictions of violations of motor vehicle laws or ordinances,
 342 and violations of applicable provisions of s. 403.413(6)(b) when
 343 such violations involve the use of motor vehicles, for the
 344 determination of the continuing qualification of any person to
 345 operate a motor vehicle. The department is authorized to suspend
 346 the license of any person upon showing of its records or other
 347 good and sufficient evidence that the licensee has been
 348 convicted of violation of motor vehicle laws or ordinances, or
 349 applicable provisions of s. 403.413(6)(b), amounting to 12 or
 350 more points as determined by the point system. The suspension

351 shall be for a period of not more than 1 year.

352 (d) The point system shall have as its basic element a
 353 graduated scale of points assigning relative values to
 354 convictions of the following violations:

- 355 1. Reckless driving, willful and wanton—4 points.
- 356 2. Leaving the scene of a crash resulting in property
 357 damage of more than \$50—6 points.
- 358 3. Unlawful speed, or unlawful use of a wireless
 359 communications device, resulting in a crash—6 points.
- 360 4. Passing a stopped school bus—4 points.
- 361 5. Unlawful speed:
 - 362 a. Not in excess of 15 miles per hour of lawful or posted
 363 speed—3 points.
 - 364 b. In excess of 15 miles per hour of lawful or posted
 365 speed—4 points.
- 366 6. A violation of a traffic control signal device as
 367 provided in s. 316.074(1) or s. 316.075(1)(c)1.—4 points.
 368 ~~However, no points shall be imposed for a violation of s.~~
 369 ~~316.074(1) or s. 316.075(1)(c)1. when a driver has failed to~~
 370 ~~stop at a traffic signal and when enforced by a traffic~~
 371 ~~infraction enforcement officer. In addition, a violation of s.~~
 372 ~~316.074(1) or s. 316.075(1)(c)1. when a driver has failed to~~
 373 ~~stop at a traffic signal and when enforced by a traffic~~
 374 ~~infraction enforcement officer may not be used for purposes of~~
 375 ~~setting motor vehicle insurance rates.~~

376 7. All other moving violations (including parking on a
 377 highway outside the limits of a municipality)—3 points. However,
 378 no points shall be imposed for a violation of s. 316.0741 or s.
 379 316.2065(11); and points shall be imposed for a violation of s.
 380 316.1001 only when imposed by the court after a hearing pursuant
 381 to s. 318.14(5).

382 8. Any moving violation covered in this paragraph,
 383 excluding unlawful speed and unlawful use of a wireless
 384 communications device, resulting in a crash—4 points.

385 9. Any conviction under s. 403.413(6)(b)—3 points.

386 10. Any conviction under s. 316.0775(2)—4 points.

387 11. A moving violation covered in this paragraph which is
 388 committed in conjunction with the unlawful use of a wireless
 389 communications device within a school safety zone—2 points, in
 390 addition to the points assigned for the moving violation.

391 Section 20. Subsection (1) of section 655.960, Florida
 392 Statutes, is amended to read:

393 655.960 Definitions; ss. 655.960-655.965.—As used in this
 394 section and ss. 655.961-655.965, unless the context otherwise
 395 requires:

396 (1) "Access area" means any paved walkway or sidewalk
 397 which is within 50 feet of any automated teller machine. The
 398 term does not include any street or highway open to the use of
 399 the public, as defined in s. 316.003(76)(a) ~~316.003(77)(a)~~ or
 400 (b), including any adjacent sidewalk, as defined in s. 316.003.

HB 6007

2017

401

Section 21. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAC 17-01 Federal-aid Highway Program
SPONSOR(S): Government Accountability Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Accountability Committee		Vickers <i>FW</i>	Williamson <i>RAW</i>

SUMMARY ANALYSIS

The Federal Highway Administration administers a series of transportation funding programs through the Federal-aid Highway Program. Many of these programs provide highway funds to the states using a series of formulas and provide specific guidelines for use of funds.

The memorial urges Congress to empower states to promote innovative, cost-effective solutions to address transportation problems. It also urges Congress to establish block grant funding for surface transportation systems that provide states with maximum discretionary authority and responsibility for the construction, operation and maintenance of transportation systems. The memorial specifically urges Congress to authorize the Federal-aid Highway Program be allocated to the states in the form of block grants to provide states with greater control and flexibility. Finally, the memorial demands Congress to enact a prohibition on federal mandates that incentivize states to take certain actions in order to maintain federal transportation funding eligibility.

Copies of the memorial will be sent to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Transportation Funding

Federal-aid Highway Program¹

Federal-aid highway funds are authorized by Congress to assist the states in providing for construction, reconstruction, and improvement of highways and bridges on eligible federal-aid highway routes and for other special purpose programs and projects. Most funds are apportioned to the states by formula and implementation is left primarily to state departments of transportation (DOTs). States are required to provide matching funds. Until the 1950s, each federal dollar had to be matched by an identical amount of state and local money. Currently, the federal share is 80 percent for non-Interstate System road projects and 90 percent for Interstate System projects.² Generally, federal money may be spent only on designated federal-aid highways, which make up roughly a quarter of U.S. public roads.

The Federal-aid Highway Program (FAHP) is an umbrella term for the separate highway programs administered by the Federal Highway Administration (FHWA). These programs are almost entirely focused on highway construction and generally do not support operations or routine maintenance. Each state is required to have a State Transportation Improvement Plan, which sets priorities for the state's use of FAHP funds. The FAHP generally establishes the policy priorities, while state DOTs determine which projects are funded based upon those priorities. More recently, metropolitan planning organizations (MPOs) have played a role in project decision making in urban areas, but federal project funding continues to flow through state DOTs.

Under the Fixing America's Surface Transportation Act (FAST Act),³ 92 percent of FAHP funding is distributed through five core programs, which are formula programs.⁴ For a formula program, each state's share of each program's total annual authorization is based on a mathematical calculation established in law. The remaining programs, generally referred to as discretionary programs, are administered more directly by FHWA, but the funding distribution of some of these programs is formulaic as well.

The FAHP, unlike most other federal programs, does not rely on appropriated budget authority. Instead, FHWA exercises contract authority over monies in the Highway Trust Fund (HTF) and may obligate funds for projects funded with contract authority prior to an appropriation. Once funds have been obligated, the federal government has a legal commitment to provide the funds.

Highway Trust Fund

The HTF is financed from a number of sources, including taxes on fuels, tires, truck and trailer sales, and a weight-based heavy-vehicle use tax. However, approximately 90 percent of trust fund revenue comes from excise taxes on motor fuels, 18.3 cents per gallon on gasoline and 24.3 cents per gallon on diesel.⁵ The HTF consists of two separate accounts—highway and mass transit. The highway account receives an allocation equivalent to 15.44 cents of the gasoline tax and the mass transit account

¹ See 23 U.S.C. and 23 C.F.R.

² Federal Highway Administration, *A Guide to Federal-Aid Programs and Projects*, Washington, DC, April 2016, <https://www.fhwa.dot.gov/federalaid/projects.pdf>.

³ See P.L. 114-94.

⁴ Federal Highway Administration, *Fixing America's Surface Transportation Act or "FAST Act,"* Washington, DC, July 2016, <https://www.fhwa.dot.gov/fastact/summary.cfm>.

⁵ Federal Highway Administration, *Financing Federal-aid Highways*, Washington, DC, June 2016, <https://www.fhwa.dot.gov/policy/olsp/financingfederalaid/fund.cfm>.

receives the revenue generated by 2.86 cents of the tax.⁶ Because the fuel taxes are set in terms of cents per gallon rather than as a percentage of the sale price, their revenues do not increase with inflation.

FAST Act

The FAST Act represents the first long-term comprehensive surface transportation legislation since 2005. The FAST Act authorizes federal highway, highway safety, transit, and rail funding programs for five years from federal fiscal years (FY) 2016 through 2020. It authorizes \$305 billion from both the HTF and the General Fund of the United States Treasury.⁷ It also provides \$225 billion in HTF contract authority over five years for the FAHP, increasing funding from \$41 billion in 2015 to \$47 billion in 2020.

The FAST Act includes five core programs that address specific objectives. The FAST Act does not use separate formulas to determine each state's apportionments under each core program. Instead, the act provides for a single gross apportionment to each of the states, which is then divided up among the programs. The five core programs include the National Highway Performance Program, Surface Transportation Block Grant Program, Highway Safety Improvement Program, Congestion Mitigation and Air Quality Improvement Program, and National Highway Freight Program. States receiving federal funding under the FAST Act may only use the funds as authorized by its programs.

*National Highway Performance Program (NHPP)*⁸

The NHPP is the largest of the federal-aid highway programs, with annual authorizations averaging over \$23 billion.⁹ The program supports improvement of the condition and performance of the National Highway System (NHS), which includes Interstate System highways and bridges as well as virtually all other major highways. NHPP funds projects to achieve national performance goals for improving infrastructure condition, safety, mobility, and freight movement, consistent with state and metropolitan planning; construction, reconstruction, or operational improvement of highway segments; construction, replacement, rehabilitation, and preservation of bridges, tunnels, and ferry boats and ferry facilities; inspection costs and the training of inspection personnel for bridges and tunnels; bicycle transportation infrastructure and pedestrian walkways; intelligent transportation systems; and environmental restoration, as well as natural habitat and wetlands mitigation within NHS corridors.

*Surface Transportation Block Grant Program (STBG)*¹⁰

The STBG is the federal-aid highway program with the broadest eligibility criteria. Funds can be used on any federal-aid highway, bridge projects on any public road, transit capital projects, routes for non-motorized transportation, and bridge and tunnel inspection. The FAST Act authorizes an annual average of almost \$11.7 billion for STBG.¹¹ The STBG replaces the former Surface Transportation Program. The Transportation Alternatives Program authorized under MAP-21, which funded such projects as bicycle paths and walkways, is effectively absorbed into the STBG. The FAST Act provides that \$850 million per year from the STBG apportionment be set aside for transportation alternative-like uses. States and MPOs obligating these funds are to develop a competitive process for local public entities to submit projects for funding. A portion of the set-aside is directed toward the recreational trails program, from which states may apply to opt out.¹²

⁶ Federal Highway Administration, *Fixing America's Surface Transportation Act or "FAST Act,"* Washington, DC, July 2016, <https://www.fhwa.dot.gov/fastact/summary.cfm>.

⁷ American Association of State Highway and Transportation Officials, *AASHTO Summary of the New Surface Transportation Bill,* December, 2015, http://www.dot.ca.gov/hq/transprog/map21/implementation/aashto_sum_fastact_121615v2.pdf.

⁸ See FAST Act s. 1106; 23 U.S.C. 119.

⁹ American Association of State Highway and Transportation Officials, *AASHTO Summary of the New Surface Transportation Bill,* December, 2015, http://www.dot.ca.gov/hq/transprog/map21/implementation/aashto_sum_fastact_121615v2.pdf

¹⁰ See FAST Act s. 109; 23 U.S.C. 133.

¹¹ Federal Highway Administration, *Fixing America's Surface Transportation Act or "FAST Act,"* Washington, DC, July 2016, <https://www.fhwa.dot.gov/fastact/summary.cfm>.

¹² *Id.*

*Highway Safety Improvement Program (HSIP)*¹³

The HSIP supports projects that improve the safety of road infrastructure by correcting hazardous road locations, such as dangerous intersections, or making road improvements such as adding rumble strips. Under the FAST Act, HSIP is funded at an annual average of \$2.556 billion.¹⁴ The Rail-Highway Grade Crossing Program continues as an HSIP set aside and averages \$235 million per year. The FAST Act broadened the eligibility to make vehicle-to-vehicle technology, median separations, and other infrastructure projects eligible. A smaller set aside of \$3.5 million annually is provided for discretionary safety grants.

*Congestion Mitigation and Air Quality Improvement Program (CMAQ)*¹⁵

The CMAQ was established to fund projects and programs that may reduce emissions of transportation-related pollutants. In recent years, well over \$1 billion of the annual CMAQ funding has been transferred to the Federal Transit Administration. Under the FAST Act, CMAQ's average annual authorization is \$2.4 billion.¹⁶ The act expands eligibility to include port-related freight operations or projects to reduce emissions from port-related road or non-road equipment within a nonattainment or maintenance area.

*National Highway Freight Program (NHFP)*¹⁷

The NHFP is a new program to help states and MPOs remove impediments to the movement of goods. Annual apportionments for NHFP average \$1.249 billion annually through FY 2020.¹⁸ The FAST Act requires the FHWA to establish a National Highway Freight Network (NHFN) made up of the primary highway freight system, critical rural freight corridors, critical urban freight corridors, and any Interstate System highways not so designated.

State Transportation Funding

Florida DOT's work program is developed pursuant to s. 339.135, F.S., and is based on a complete, balanced financial plan for the State Transportation Trust Fund (STTF) and other DOT managed funds. The tentative and adopted work programs set forth DOT's proposed commitments and planned expenditures classified by major program and fixed capital appropriation categories to accomplish DOT's objectives included in the Florida Transportation Plan's program and resource plan.

In general, the tentative and adopted work programs are planned to deplete each fund's estimated resources. DOT may request an emergency reserve for the purpose of performing emergency work necessary in order to prevent the stoppage of travel over any DOT transportation facility. No anticipated funds estimated to be received from various federal-aid acts of Congress are budgeted in excess of the amount that may be earned by the state funds set aside for matching federal aid. State funds set aside for matching federal-aid funds are only used for such matching purposes. Prior to preparing its tentative work program, DOT ascertains the amount of apportionments of federal-aid funds that are estimated to be available for the fiscal years for which the tentative work program is prepared, and budgets sufficient funds for matching purposes.

DOT is not required to match federal-aid funds that are allocated for use on a project that is not on the State Highway System (SHS). If an MPO allocates available federal-aid funds for a project that is not on the SHS, DOT may not provide more than 50 percent of the nonfederal share. However, DOT may

¹³ The specific provisions pertaining to the HSIP are defined in section 1112 of MAP-21.

¹⁴ Federal Highway Administration, Fixing America's Surface Transportation Act or "FAST Act," Washington, DC, July 2016, <https://www.fhwa.dot.gov/fastact/summary.cfm>.

¹⁵ See FAST Act s. 1114; 23 U.S.C. 149.

¹⁶ Federal Highway Administration, Fixing America's Surface Transportation Act or "FAST Act," Washington, DC, July 2016, <https://www.fhwa.dot.gov/fastact/summary.cfm>.

¹⁷ See FAST Act s. 1116; 23 U.S.C. 167.

¹⁸ Federal Highway Administration, Fixing America's Surface Transportation Act or "FAST Act," Washington, DC, July 2016, <https://www.fhwa.dot.gov/fastact/summary.cfm>.

provide 100 percent of the nonfederal share of a transit project or transit-related project funded under the federal Congestion Mitigation and Air Quality Attainment Program.

To assure that no district or county is penalized for local efforts to improve the SHS, DOT allocates funds for new construction to the districts, except for the Florida Turnpike Enterprise, based on equal parts of population and motor fuel tax collections. Funds for resurfacing, bridge repair and rehabilitation, bridge fender system construction or repair, public transit projects, and other programs with quantitative needs assessments are allocated based on the results of the quantitative needs assessments. DOT may not transfer any funds allocated to a district to any other district except as provided by law. DOT allocates at least 50 percent of any new discretionary highway capacity funds to the Strategic Intermodal System. Any remaining new discretionary highway capacity funds are allocated to the districts for new construction.

Effect of the Memorial

The memorial urges Congress to empower states to promote innovative, cost-effective solutions to address transportation problems. It also urges Congress to establish block grant funding for surface transportation systems that provide states with maximum discretionary authority and responsibility for the construction, operation and maintenance of transportation systems. The memorial specifically urges Congress to authorize the FAHP be allocated to the states in the form of block grants to provide states with greater control and flexibility. Finally, the memorial demands Congress to enact a prohibition on federal mandates that incentivize states to take certain actions in order to maintain federal transportation funding eligibility.

Copies of the memorial will be sent to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This memorial does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The memorial does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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House Memorial

A memorial to the Congress of the United States,
urging Congress to establish block grant funding for
the federal-aid highway program and discontinue
federal transportation mandates requiring certain
actions in order to maintain federal funding
eligibility.

WHEREAS, Americans are a highly mobile people who depend on
reliable and effective transportation infrastructure to travel
to and from work, conduct business, access affordable housing,
and participate in recreational activities in their communities,
and

WHEREAS, chronic congestion that plagues the country's
network of surface transportation infrastructure such as roads
and bridges ultimately impairs the mobility of Americans, and

WHEREAS, the Federal role in highway transportation has
gradually usurped the role of the States, and

WHEREAS, the Federal Government has used the Federal motor
fuels tax revenues to force all States to take actions that are
not necessarily appropriate for an individual State, and

WHEREAS, Federal mandates that apply to all States,
regardless of the unique conditions and needs of the States,
require the States to dedicate billions of tax dollars for

25 projects, programs, and activities that the States might not
26 otherwise undertake, and

27 WHEREAS, current Federal transportation funding programs
28 generate cross-subsidies between States and between modes of
29 transportation, and

30 WHEREAS, each State has the responsibility of providing an
31 efficient transportation network for the residents of that
32 State, and

33 WHEREAS, each State is best capable of determining the
34 needs of the State and acting on those needs, and

35 WHEREAS, the Federal Government has acknowledged the
36 benefits of empowering state transportation decision-making
37 through the creation of the Surface Transportation Block Grant
38 Program to allow more flexible funding to best address state and
39 local transportation needs, and

40 WHEREAS, the Federal Government has also recognized the
41 ability of States to assume responsibility for environmental
42 review of their transportation projects as required under the
43 National Environmental Policy Act of 1969, and

44 WHEREAS, the Florida Legislature, which is directly
45 accountable to the citizens of Florida, is the appropriate body
46 to determine transportation funding priorities that best serve
47 the transportation needs of its citizens, NOW, THEREFORE,

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49 Be It Resolved by the Legislature of the State of Florida:

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(1) That the Congress of the United States is urged to empower States to promote innovative, cost-effective solutions to address our nation's transportation problems;

(2) That in furtherance of this objective the Congress of the United States establish block grant funding for surface transportation systems that provide States with maximum discretionary authority and responsibility for the construction, operation, and maintenance of such systems;

(3) That this memorial specifically urges the Congress of the United States to authorize the Federal-aid highway program be allocated to the States in the form of block grants to provide States with greater control and flexibility; and

(4) That this memorial serves as a notice and demand for the prohibition of federal mandates that incentivize states to take certain actions in order to maintain federal transportation funding eligibility.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.