

Transportation & Infrastructure Subcommittee

Tuesday, February 4, 2020
12:00 PM – 3:00 PM
Reed Hall (102 HOB)

Jose R. Oliva
Speaker

Brad Drake
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Transportation & Infrastructure Subcommittee

Start Date and Time: Tuesday, February 04, 2020 12:00 pm

End Date and Time: Tuesday, February 04, 2020 03:00 pm

Location: Reed Hall (102 HOB)

Duration: 3.00 hrs

Consideration of the following bill(s):

HB 377 Motor Vehicle Rentals by Latvala
HB 435 Department of Highway Safety and Motor Vehicles by Valdés
HB 503 Tampa Bay Area Regional Transit Authority Governing Board by Diamond
HB 533 Child Restraint Requirements by Beltran
HB 951 Assaults on Specified Persons by Beltran
HB 977 Motor Vehicle Dealers by Rommel
HB 1315 Transportation by Fetterhoff
HB 1383 Motor Vehicle Manufacturers and Dealers by Latvala
HB 1441 Contracted Airport Projects by Maggard
HB 6083 Traffic Infraction Detectors by Rodriguez, A., Ingoglia

NOTICE FINALIZED on 01/31/2020 4:03PM by Denson.Tori

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 377 Motor Vehicle Rentals
SPONSOR(S): Latvala and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 478

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee		Roth	Vickers
2) Ways & Means Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Car owners interested in sharing their vehicles can register as a host on a peer-to-peer (P2P) sharing site. These sites require photos of the car and help the owner determine a rental fee based on the location and type of car. The host then specifies the car's availability. The host may choose to have the car picked up at his or her house, deliver the vehicle, or have it picked up at an airport.

A $2 surcharge is imposed on any day or part of a day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers, regardless of whether the vehicle is licensed in Florida. The surcharge is included in the lease or rental price on which sales tax is computed and must be listed separately on the invoice. Businesses that collect the rental car surcharge are required to report surcharge collections according to the county to which the surcharge was attributed. The surcharge is subject to all applicable taxes imposed in Chapter 212, F.S.

The bill establishes statutory requirements for P2P vehicle-sharing, including the liabilities and insurance obligations among participants in a vehicle-sharing agreement. In summary, the bill:

- Defines terms, including “peer-to-peer vehicle sharing”, which is the authorized use of a P2P vehicle by an individual other than the P2P vehicle owner through a P2P vehicle-sharing program.
- Establishes insurance requirements for each party involved in vehicle sharing. During the period that the owner is sharing the car to another driver, the vehicle-sharing program is responsible for providing motor vehicle insurance at or above the statutory minimums for private passenger motor vehicles. It coordinates coverage if there are multiple insurance policies involved and depending on the circumstances. If the owner’s or driver’s policy lapses or is inadequate, the program is responsible for the insurance requirements.
- Authorizes motor vehicle insurers insuring the shared vehicle owner to exclude coverage for use of the vehicle in car sharing.
- Extends the current surcharge and subsequent sales tax on the lease or rental of a motor vehicle to P2P vehicle-sharing programs.
- Specifies recordkeeping requirements and retention periods.
- Includes requirements for consumer protection notifications.
- Addresses the repair, use, and non-use of motor vehicles under a safety recall notice.

The bill will likely have an indeterminate fiscal impact on state and local governments. *See* Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

For-Hire Vehicles

With certain exceptions, offering for lease or rent any motor vehicle in the State of Florida qualifies the vehicle as a "for-hire vehicle." A "for-hire vehicle" is a motor vehicle used for transporting persons or goods for compensation. 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 considered "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".[1]

Florida law provides specific financial responsibility requirements to for-hire vehicles. For-hire vehicles, such as taxis and limousines must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, $250,000 per incident for bodily injury, and $50,000 for property damage.[2] The owner or operator of a for-hire vehicle may also prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy issued by an insurance carrier, which is a member of the Florida Insurance Guaranty Association, or by providing a certificate of self-insurance.[3]

For counties, to the extent not inconsistent with general or special law, the legislative and governing body of a county has the power to carry on county government, including, but not restricted to, the power to license and regulate taxis, jitneys, and limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county.[4]

Peer-to-Peer Car-Sharing

Car owners interested in sharing their vehicles can register as a host on a peer-to-peer (P2P) sharing site.[5] Sites require photos of the car and help the owner determine a rental fee based on the location and type of car. The host then specifies the car's availability. The host may choose to have the car picked up at his or her house, deliver the vehicle, or have it picked up at an airport. Hosts typically receive between 65 and 75 percent of the fees. Payments are typically through direct deposit.[6]

Guests also register with the P2P site. The site will conduct a background check and review the guests' driving records before approving them. The process involves choosing an available car, reserving a pick-up date and time, and providing credit card information if it is not already on file. At the end of the sharing period, the guest replaces any consumed fuel before returning the car to its pickup location.[7]

One P2P sharing website reports that its company has users in 56 countries in over 5,500 cities across the world. It also has over 850 makes and models of vehicles and offers up to $1 million in liability insurance.[8] In Florida, the same P2P company has over 611,000 residents signed up as guests and 23,000 hosts (of which 95 percent share two or fewer cars).[9] The average trip duration is 4.4 days and the average host earns $300 per month.[10]

---

[1] Section 320.01(15)(a), F.S.
[2] Section 324.032(1), F.S.
[3] Section 324.031, F.S.
[4] Section 125.01(1)(n), F.S.
[5] Turo, Getaround, and Drift are examples of P2P car-sharing services.
[6] Russ Heaps, *The Good, Bad and Ugly of Peer-to-Peer Car Sharing*, Autotrader, (February 2015), available at https://www.autotrader.com/car-shopping/good-bad-and-ugly-peer-peer-car-sharing-234961 (last visited January 14, 2020).
[7] *Id.*
[8] Turo, *About Turo*, available at https://turo.com/about (last visited January 14, 2020).
[9] Turo, *Florida Fast Facts* (on file with the Transportation & Infrastructure Subcommittee).
[10] *Id.*

Car-Sharing Service

"Car-sharing service" is a membership-based organization or business that requires the payment of an application or membership fee and provides member access to motor vehicles:

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

The lease, rental, or usage of a motor vehicle for a location-owned, operated, or leased by or for the benefit of an airport or airport authority is not eligible for the imposition of the surcharge for car-sharing services in lieu of the standard rental car surcharge.[11]

Rental Car Surcharge

A $2 surcharge is imposed on any day or part of a day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers, regardless of whether the vehicle is licensed in Florida.[12] The surcharge is included in the lease or rental price on which sales tax is computed and must be listed separately on the invoice. Businesses that collect the rental car surcharge are required to report surcharge collections according to the county to which the surcharge was attributed. The surcharge is subject to all applicable taxes imposed in Chapter 212, F.S.

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

Section 212.0606(2), F.S., provides that if a member of a car-sharing service uses a motor vehicle pursuant to an agreement with a car-sharing service for less than 24 hours, in lieu of the daily rental car surcharge,[13] a surcharge of $1.00 per use is imposed. If a member of a car-sharing service uses the same motor vehicle for 24 consecutive hours or more, the surcharge of $2 per day or any part of a day shall be imposed.

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

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

The proceeds of the rental car surcharge are deposited into the State Transportation Trust Fund and are allocated to each Department of Transportation district for transportation projects, based on the amount of proceeds collected in the counties within each respective district.[14]

Revenue from Rental Car Surcharge for Fiscal Years 2013-2020[15]

[11] Section 212.0606(2), F.S.
[12] Section 212.0606(1), F.S.
[13] This surcharge is imposed pursuant to s. 212.0606(1), F.S.
[14] Section 212.0606(3), F.S.
[15] Florida Revenue Estimating Conference, *2019 Florida Tax Handbook*, at 154, available at http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf (last visited January 14, 2020).

Fiscal Year	Total** Collections	Annual Change %	State Transportation Trust Fund	Tourism Promotional Trust Fund	Florida International Trade and Promotion Trust Fund
2019-20	182,800,000	2.58%	146,200,000	28,800,000	7,800,000
2018-19*	178,200,000	3.02%	142,500,000	28,100,000	7,600,000
2017-18*	172,700,000	-0.96%	138,200,000	27,200,000	7,300,000
2016-17	174,367,779	-0.93%	139,492,736	27,464,097	7,410,947
2015-16	176,001,151	6.37%	140,800,921	27,731,681	7,468,549
2014-15	165,464,220	6.41%	132,371,376	26,060,615	7,032,229
2013-14	155,492,431	7.58%	124,393,945	24,490,058	6,608,428

** Estimate ** Excluding administrative fees and service charge*

Motor Vehicle Insurance Requirements

Chapter 324, F.S., is the Financial Responsibility Law of 1955.[16] Florida's Financial Responsibility Law requires proof of ability to pay monetary damages for bodily injury (BI) and property damage (PD) liability arising out of a motor vehicle accident or serious traffic violation.[17] The owner or operator of a motor vehicle is not required to provide proof of BI coverage at the time of vehicle registration. Motorcycle owners also are not required to provide proof of BI coverage at the time of registration. Proof of such coverage is only required after an accident.[18] At that time, a driver proves financial responsibility by furnishing an active motor vehicle liability policy, a certificate showing a qualifying security deposit with the Department of Highway Safety and Motor Vehicles (DHSMV), or proof of qualifying self-insurance.[19]

The required minimum amounts of BI insurance coverages are $10,000, in the event of bodily injury to, or death of, one person, and $20,000, in the event of bodily injury to, or death of, two or more persons.[20] The required minimum amount of PD insurance coverage is $10,000, in the event of damage to property of others, or $30,000 combined for both BI and PD coverage.[21] Some refer to these coverage amounts in a summary manner, i.e., $10,000/$20,000/$10,000 or 10/20/10.

A driver's license and vehicle registration are subject to suspension for failure to comply with the PD coverage requirement.[22] One may obtain a driver's license and registration reinstatement by obtaining a liability policy and by paying a fee to DHSMV.[23]

Financial responsibility requirements are common. All states have financial responsibility laws that require persons involved in auto accidents (or serious traffic infractions) to furnish proof of BI and PD liability insurance. The minimum coverage amounts vary among the states.

[16] Section 324.251, F.S.
[17] Chapter 324, F.S.
[18] Sections 320.02 and 324.011, F.S.
[19] Sections 324.031, 324.061, 324.161, and 324.171, F.S. Businesses that choose to self-insure the financial responsibility requirements must deposit $30,000 per vehicle, up to a maximum of $120,000, with DHSMV and maintain excess insurance with limits of $125,000/$250,000/$300,000. Individuals that choose to self-insure must deposit $30,000 with DHSMV. Individuals and businesses can also obtain a certificate of self-insurance to satisfy the financial responsibility requirements. Individuals must have an unencumbered net worth of $40,000 and businesses must have either an unencumbered net worth of $40,000 for the first vehicle and $20,000 for each additional vehicle or a sufficient net worth determined by DHSMV by rule. Currently, the applicable rule provides that $40,000 for the first vehicle and an amount less than $20,000 for each additional vehicle is sufficient if the applicant carries excess insurance in the amounts of $25,000/$50,000/$100,000. The amount applicable to each additional vehicle is determined annually under a "Manual of Financial Responsibility Rates" (Revised 05-89) adopted by rule by the Office of Insurance Regulation. Rule 15A-3.011, F.A.C.
[20] Section 324.021(7), F.S.
[21] Section 324.022(1), F.S.
[22] Section 324.0221(2), F.S. Failure to maintain PIP coverage will also result in suspension of the driver's license and vehicle registration.
[23] Section 324.0221(3), F.S.

Florida's Motor Vehicle No-Fault Law (No-Fault Law)[24] requires motorists to carry no-fault insurance known as personal injury protection (PIP) coverage. The purpose of PIP coverage under the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to who is responsible for a motor vehicle accident. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Florida motorists are required to carry $10,000 of PIP coverage.[25] However, motorcycles are excluded from this requirement.

Effect of Proposed Changes

The bill specifies that car-sharing services, rental companies, and P2Ps are required to collect the $2 per day rental car surcharge plus applicable sales tax from the customer. However, a member of a car-sharing service who uses the vehicle for less than 24 hours will only pay a $1 surcharge and there is no surcharge imposed for the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority.

The bill moves the imbedded definition of "car-sharing service" into a stand-alone definition and creates definitions for the terms "dealer", "motor vehicle rental company", and "peer-to-peer vehicle-sharing program".

Additionally, the bill creates a new section of law for P2P vehicle-sharing programs in the insurance code and creates definitions for, "peer-to-peer vehicle", "peer-to-peer vehicle delivery period", "peer-to-peer vehicle driver", "peer-to-peer vehicle owner", "peer-to-peer vehicle sharing", "peer-to-peer vehicle-sharing period", "peer-to-peer vehicle-sharing program agreement", "peer-to-peer vehicle-sharing start time", and "peer-to-peer vehicle-sharing termination time". These definitions clarify the insurance and liability responsibilities when a car is shared on a P2P vehicle-sharing program website.

Car Sharing Insurance Requirements

The bill requires a P2P vehicle to be covered, at a minimum, by the same insurance requirements required of all car owners and rental car companies in Florida. The required minimum amounts of BI insurance coverages are $10,000, in the event of bodily injury to, or death of, one person, and $20,000, in the event of bodily injury to, or death of, two or more persons. The required minimum amount of PD insurance coverage is $10,000, in the event of damage to property of others, or $30,000 combined for both BI and PD coverage.

The bill authorizes the required insurance on the car to be satisfied by the P2P vehicle owner, the P2P vehicle driver, the P2P vehicle-sharing program, or a combination of the parties. The P2P vehicle-sharing program assumes the liability of a P2P vehicle owner for BI or PD to third parties, uninsured and underinsured motorist, or PIP losses during the P2P vehicle-sharing period in an amount stated in the P2P vehicle-sharing program. However, the P2P vehicle-sharing program does not assume liability when a P2P vehicle owner makes an intentional or fraudulent material representation or omission to the P2P vehicle-sharing program and when a P2P vehicle owner acts in concert with a P2P vehicle driver who fails to return the vehicle pursuant to the terms of the P2P vehicle-sharing program agreement.

The P2P vehicle-sharing program must ensure that during each P2P vehicle-sharing period, the P2P vehicle owner and driver are insured under a motor vehicle liability insurance policy that provides insurance coverage in amounts no less than $10,000/$20,000/$10,000. If a dispute exists as to who was in control of the P2P vehicle at the time of the loss and the P2P vehicle-sharing program does not have or provide required documents, the P2P vehicle-sharing program must assume primary liability for a claim when it is providing, in whole or in part, the required insurance.

[24] Sections 627.730-627.7405, F.S.

[25] Section 627.7275, F.S. Under Florida's Financial Responsibility Law (Ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for Bodily Injury and Property Damage liability at the time of motor vehicle accidents or when serious traffic violations occur. The Financial Responsibility Law requires $10,000, per person, and $20,000, per incident, of Bodily Injury coverage, and $10,000 of Property Damage liability coverage.

The bill requires the P2P vehicle-sharing program, at the time a vehicle owner registers a vehicle on the site and before it is rented, to notify the P2P owner that, if the car is not paid off, using it on the P2P vehicle-sharing program's site may violate the terms of the contract with the lienholder of the vehicle. Additionally, the bill clarifies that an authorized insurer may exclude coverage and the duty to defend or indemnify any claim under the P2P vehicle owner's motor vehicle liability insurance policy.

The bill requires the P2P vehicle-sharing program to collect and verify records regarding the use of vehicles on their site including times used, fees paid by the P2P vehicle driver, and revenues received by the P2P vehicle owner. The bill also requires the P2P vehicle-sharing program's records to be made available, upon the request of the P2P vehicle owner, the P2P owner's insurer, or the P2P driver's insurer if there is a claim. Records must be retained for three years.

The bill authorizes a motor vehicle insurer that defends or indemnifies a claim arising from the operation of a P2P vehicle that is excluded under the terms of the policy to seek contribution against the P2P vehicle-sharing program for claims against the P2P vehicle owner or driver during the P2P vehicle-sharing period. Lastly, the bill authorizes a P2P vehicle-sharing program to own and maintain, as the named insured, one or more auto insurance policies for liabilities assumed by the P2P vehicle-sharing program under agreement, liability of the P2P vehicle owner, damage or loss to the P2P vehicle, or liability of the P2P vehicle driver.

Consumer Protections

Each P2P vehicle-sharing program agreement must disclose to the P2P vehicle owner and the P2P vehicle driver:

- Any right of the P2P vehicle-sharing program to seek indemnification from the P2P vehicle owner or the P2P vehicle driver for economic loss resulting from a breach of the terms and conditions of the P2P vehicle-sharing program agreement;
- That a motor vehicle insurance policy issued to the P2P vehicle owner for the P2P vehicle or to the P2P vehicle driver does not provide a defense or indemnification for any claim asserted by the P2P vehicle-sharing program;
- That the P2P vehicle-sharing program's insurance coverage on the P2P vehicle owner and the P2P vehicle driver is in effect only during each P2P vehicle-sharing period and that, for any use of the P2P vehicle by the P2P vehicle driver after the P2P vehicle-sharing termination time, the P2P vehicle driver and the P2P vehicle owner may not have insurance coverage;
- The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the P2P vehicle owner or the P2P vehicle driver;
- That the P2P vehicle owner's motor vehicle liability insurance may exclude coverage for a P2P vehicle;
- An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries; and
- Any conditions under which a P2P vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a P2P vehicle.

Responsibility for Equipment

A P2P car sharing program has sole responsibility for any equipment that is put in or on the P2P vehicle to monitor or facilitate the P2P vehicle-sharing transaction, including a GPS system. The P2P vehicle-sharing program must indemnify and hold harmless the P2P vehicle owner for any damage to or theft of such equipment during the P2P vehicle-sharing period which is not caused by the P2P vehicle owner. The P2P vehicle-sharing program may seek indemnity from the P2P vehicle driver for any damage to or loss of such equipment which occurs outside of the P2P vehicle-sharing period.

Automobile Safety Recalls

At the time a motor vehicle owner registers as a P2P vehicle owner on a P2P vehicle-sharing program and before the P2P vehicle owner may make a P2P vehicle available for P2P car sharing on the P2P vehicle-sharing program, the P2P vehicle-sharing program must:

- Verify that the P2P vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

- Notify the P2P vehicle owner that if the P2P vehicle owner:
  - Has received an actual notice of a safety recall on the vehicle, he or she may not make a vehicle available as a P2P vehicle on the P2P vehicle-sharing program until the safety recall repair has been made;
  - Receives an actual notice of a safety recall on a P2P vehicle while the P2P vehicle is made available on the P2P vehicle-sharing program, he or she must remove the P2P vehicle's availability on the P2P vehicle-sharing program as soon as practicable after receiving the notice of the safety recall and until the safety recall repair has been made; or
  - Receives an actual notice of a safety recall while the P2P vehicle is in the possession of a P2P vehicle driver, he or she must notify the P2P vehicle-sharing program about the safety recall as soon as practicably possible after receiving the notice of the safety recall so that he or she may address the safety recall repair.

Driver License Verification and Retention

A P2P vehicle-sharing program may not enter into a P2P vehicle-sharing program agreement with a driver unless the driver:

- Holds a driver license issued under ch. 322, F.S., which authorizes the driver to drive vehicles of the class of the P2P vehicle;
- Is a nonresident who:
  - Holds a driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the P2P vehicle; and
  - Is at least the same age as that required of a resident to drive; or
  - Is otherwise specifically authorized by the Department of Highway Safety and Motor Vehicles to drive vehicles of the class of the P2P vehicle.

A P2P vehicle-sharing program must keep a record of:

- The name and address of the P2P vehicle driver;
- The driver license number of the P2P vehicle driver and of any other person who will operate the P2P vehicle; and
- The place of issuance of the driver license.

B. SECTION DIRECTORY:

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

Section 2: Creates s. 627.747, F.S., relating to peer-to-peer vehicle-sharing program.

Section 3: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may result in an increase in revenue associated with the requirement that specified entities remit the rental car surcharge. These revenues will be deposited into the State Transportation Trust Fund, the Tourism Promotional Trust Fund, and the Florida International Trade and Promotion Trust Fund.

   Additionally, the state may experience an increase in revenue from additional sales tax that is deposited into the General Revenue Fund.

2. Expenditures:

   The bill will likely have no impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Counties may experience an increase in revenue associated with additional sales taxes from motor vehicle rental companies.

2. Expenditures:

   The bill will likely have no impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

P2P vehicle-sharing programs will be required to remit the rental car surcharge and appropriate sales taxes as well as comply with insurance regulations.

D. FISCAL COMMENTS:

According to the Department of Revenue (DOR), the rental car surcharge under s. 212.0606, F.S., and sales and use taxes under s. 212.05, F.S., on rental revenue generated by participating in a "Peer-to-Peer", or other, ride-share model program, apply under current law and are currently required to be remitted to the state.[26]

The Revenue Estimating Conference (REC) met on November 12, 2019, and adopted a positive indeterminate impact for cash and recurring funds to the General Revenue Fund and State Transportation Trust Fund. REC found that it is unclear the extent to which the provisions of the bill are enforceable given the out-of-state nature of the current marketplace providers.[27]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. As such, Art. VII, s. 19 of the Florida Constitution may apply if the tax provisions in the bill are interpreted to be a new tax.

B. RULE-MAKING AUTHORITY:

DOR has stated that it will need to update Rules 12A-1.060 and 12A-1.097, as well as Chapter 12A-16, F.A.C.[28]

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Department of Revenue[29]
DOR indicated that the bill is unclear as to who is collecting the $1 or $2 surcharge. It is also unclear what the surcharge amounts are for the first 24-hour rental period and for each subsequent day. DOR finds that there is an inconsistency as to whether the surcharge is imposed after the first 30 days.

[26] Email from Debra Longman, Director of the Office of Legislative and Cabinet Services, Department of Revenue, RE: SB 1148 Questions (March 18, 2019).
[27] Revenue Estimating Conference (November 12, 2019), p. 14.
[28] Department of Revenue, Agency Analysis of 2020 House Bill 377, p. 2 (November 21, 2019).
[29] *Id.* at 4-5.

Additionally, the use of the word “facilitate” within the definition of “rental of a motor vehicle” could be misunderstood as a sales transaction and not a traditional renting of motor vehicles.

Lastly, the deletion of the language “licensed for-hire” on line 105 could potentially cause statutory interpretation problems in the future because the bill does not make a distinction as to other loans of a motor vehicle that may or may not be subject to a rental car surcharge.

Other Comments: Office of Insurance Regulation[30]

The Office of Insurance Regulation (OIR) finds that it is unclear which party’s insurance policy would have primary responsibility in an accident, in what amounts, and during which phases of the program.

Additionally, OIR noted that the bill is attempting to allow exclusions of coverage in all coverage parts for the P2P vehicle owner. These exclusions would be acceptable if some other party had responsibility for the excluded coverage, i.e., if the language of the bill clearly required that the program provide this coverage instead. If no other party is required to have the coverage excluded from the peer-to-peer vehicle owner’s policy, other issues will arise.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[30] Office of Insurance Regulation, Agency Analysis of 2020 Senate Bill 478, pp. 4-5 (December 4, 2019).

A bill to be entitled

An act relating to motor vehicle rentals; amending s. 212.0606, F.S.; defining and revising terms; requiring specified surcharges to be imposed upon the lease or rental of a certain motor vehicle if the lease or rental is facilitated by a car-sharing service, a motor vehicle rental company, or a peer-to-peer vehicle-sharing program under certain circumstances; creating s. 627.747, F.S.; defining terms; providing financial responsibility requirements for peer-to-peer vehicle-sharing programs; providing applicability; requiring specified entities to maintain certain motor vehicle liability insurance; providing certain indemnification requirements; providing construction; requiring a peer-to-peer vehicle-sharing program to give certain notice to a peer-to-peer vehicle owner relating to the implications of a lien under certain circumstances; authorizing a certain insurer to exclude coverage and the duty to defend or indemnify a vehicle owner for any claim under his or her motor vehicle liability insurance policy; providing construction; requiring a peer-to-peer vehicle-sharing program to collect, verify, and retain certain records, subject to certain requirements; requiring the program to provide the records to certain entities

under certain circumstances; authorizing a motor vehicle insurer that defends or indemnifies a claim arising from the operation of a peer-to-peer vehicle that is excluded under the terms of its policy to seek contribution against specified entities under certain circumstances; providing that a peer-to-peer vehicle-sharing program has an insurable interest in a vehicle during the sharing period; providing construction; authorizing a peer-to-peer vehicle-sharing program to own and maintain as the named insured policies of motor vehicle liability insurance which provide specified coverage; requiring each peer-to-peer vehicle-sharing program agreement made in this state to disclose specified information to the peer-to-peer vehicle owner and the peer-to-peer vehicle driver; requiring a peer-to-peer vehicle-sharing program to have sole responsibility for certain equipment; requiring the program to agree to indemnify and hold harmless the owner for any damage to or theft of such equipment under certain circumstances; authorizing the program to seek indemnity from the driver for any loss or damage to such equipment which occurs during the sharing period; requiring a peer-to-peer vehicle-sharing program to verify certain information and notify the peer-to-peer vehicle owner of certain

requirements related to safety recalls, subject to certain requirements; providing restrictions and requirements for the owner if he or she has received notice of a certain safety recall on the vehicle; prohibiting a peer-to-peer vehicle-sharing program from entering into a certain agreement with a driver unless the driver meets specified requirements related to a driver license or authorization to drive peer-to-peer vehicles; prohibiting the program from renting a motor vehicle to another until the driver license of the peer-to-peer vehicle driver has been inspected and verified as being unexpired; requiring the program to keep specified records; requiring such records to be open to inspection by specified entities; providing that, under certain circumstances, the peer-to-peer vehicle-sharing program is deemed to have met specified requirements when the program requires the driver to verify at a certain time that he or she is duly licensed and that the license is unexpired; providing an effective date.

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

Section 1. Section 212.0606, Florida Statutes, is amended to read:

212.0606 Rental car surcharge.—

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

(a) "Car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application fee or a membership fee and provides member access to motor vehicles:

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

2. Twenty-four hours per day, 7 days per week;

3. Only through automated means, including, but not limited to, a smartphone application or an electronic membership card;

4. On an hourly basis or for a shorter increment of time;

5. Without a separate fee for refueling the motor vehicle;

6. Without a separate fee for minimum financial responsibility liability insurance; and

7. Owned or controlled by the car-sharing service or its affiliates.

(b) "Dealer" means a car-sharing service, motor vehicle rental company, or peer-to-peer vehicle-sharing program.

(c) "Motor vehicle rental company" means an entity that is in the business of providing motor vehicles to the public under a rental agreement for 30 days or less for financial consideration.

(d) "Peer-to-peer vehicle-sharing program" has the same meaning as in s. 627.747.

(2)~~(1)~~ Except as provided in subsection (3) ~~(2)~~, a surcharge of $2 per day or any part of a day is imposed upon the lease or rental of a motor vehicle that is ~~licensed for hire and~~ designed to carry fewer than nine passengers, regardless of whether the motor vehicle is licensed in this state, if the lease or rental is facilitated, in person or through digital means, by a car-sharing service, a motor vehicle rental company, or a peer-to-peer vehicle-sharing program for financial consideration without transfer of the title of the motor vehicle. The surcharge applies to only the first 30 days of the term of a lease or rental. The surcharge is subject to all applicable taxes imposed by this chapter.

(3)~~(2)~~ A member of a car-sharing service who uses a motor vehicle as described in subsection (2) ~~(1)~~ for less than 24 hours pursuant to an agreement with the car-sharing service shall pay a surcharge of $1 per usage. A member of a car-sharing service who uses the same motor vehicle for 24 hours or more shall pay a surcharge of $2 per day or any part of a day as provided in subsection (2) ~~(1)~~. The surcharge imposed under this subsection does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority ~~For purposes of this subsection, the term "car-sharing service" means a~~

~~membership-based organization or business, or division thereof, which requires the payment of an application or membership fee and provides member access to motor vehicles:~~

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

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

~~(c) Only through automated means, including, but not limited to, smartphone applications or electronic membership cards;~~

~~(d) On an hourly basis or for a shorter increment of time;~~

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

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

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

~~The surcharge imposed under this subsection does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority.~~

(4)~~(3)~~(a) Notwithstanding s. 212.20, and less the costs of administration, 80 percent of the proceeds of this surcharge shall be deposited in the State Transportation Trust Fund, 15.75

percent of the proceeds of this surcharge shall be deposited in the Tourism Promotional Trust Fund created in s. 288.122, and 4.25 percent of the proceeds of this surcharge shall be deposited in the Florida International Trade and Promotion Trust Fund. For the purposes of this subsection, the term "proceeds of this surcharge" ~~of the surcharge~~ means all funds collected and received by the department under this section, including interest and penalties on delinquent surcharges. The department shall provide the Department of Transportation rental car surcharge revenue information for the previous state fiscal year by September 1 of each year.

(b) Notwithstanding any other provision of law, the proceeds deposited in the State Transportation Trust Fund shall be allocated on an annual basis in the Department of Transportation's work program to each department district, except the Turnpike District. The amount allocated to each district shall be based on the amount of proceeds attributed to the counties within each respective district.

(5)(a) ~~(4)~~ Except as provided in this section, the department shall administer, collect, and enforce the surcharge as provided in this chapter.

(b) ~~(a)~~ The department shall require a dealer ~~dealers~~ to report surcharge collections according to the county to which the surcharge was attributed. For purposes of this section, the surcharge shall be attributed to the county where the rental

agreement was entered into.

(c) ~~(b)~~ A dealer ~~Dealers~~ who collects ~~collect~~ the rental car surcharge shall report to the department all surcharge revenues attributed to the county where the rental agreement was entered into on a timely filed return for each required reporting period. The provisions of this chapter which apply to interest and penalties on delinquent taxes apply to the surcharge. The surcharge shall not be included in the calculation of estimated taxes pursuant to s. 212.11. The dealer's credit provided in s. 212.12 does not apply to any amount collected under this section.

(6) ~~(5)~~ The surcharge imposed by this section does not apply to a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

Section 2. Section 627.747, Florida Statutes, is created to read:

627.747 Peer-to-peer vehicle-sharing program.—

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

(a) "Peer-to-peer vehicle" or "vehicle" means a vehicle made available for sharing through a peer-to-peer vehicle-sharing program, used nonexclusively for peer-to-peer vehicle sharing, and used by the peer-to-peer vehicle owner for personal use outside of peer-to-peer vehicle sharing.

(b) "Peer-to-peer vehicle delivery period" or "delivery

period" means the period of time during which a peer-to-peer vehicle is being delivered to the location where the peer-to-peer vehicle-sharing start time commences, if applicable, as documented by the governing peer-to-peer vehicle-sharing program agreement.

(c) "Peer-to-peer vehicle driver" or "driver" means an individual who has been authorized to drive the peer-to-peer vehicle by the peer-to-peer vehicle owner under a peer-to-peer vehicle-sharing program agreement.

(d) "Peer-to-peer vehicle owner" or "owner" means the registered owner of a peer-to-peer vehicle made available for sharing to peer-to-peer vehicle drivers through a peer-to-peer vehicle-sharing program.

(e) "Peer-to-peer vehicle sharing" or "sharing" means the authorized use of a peer-to-peer vehicle by an individual other than the peer-to-peer vehicle owner through a peer-to-peer vehicle-sharing program.

(f) "Peer-to-peer vehicle-sharing period" or "sharing period" means the period of time that commences with the peer-to-peer vehicle delivery period or, if there is no peer-to-peer vehicle delivery period, that commences with the peer-to-peer vehicle-sharing start time and in either case ends at the peer-to-peer vehicle-sharing termination time.

(g) "Peer-to-peer vehicle-sharing program" or "program" means a business platform that connects peer-to-peer vehicle

owners with peer-to-peer vehicle drivers to enable the sharing of peer-to-peer vehicles for financial consideration.

(h) "Peer-to-peer vehicle-sharing program agreement" or "agreement" means the terms and conditions applicable to a peer-to-peer vehicle owner and a peer-to-peer vehicle driver which govern the use of a peer-to-peer vehicle through a peer-to-peer vehicle-sharing program.

(i) "Peer-to-peer vehicle-sharing start time" or "start time" means the time when the peer-to-peer vehicle becomes subject to the control of the peer-to-peer vehicle driver at or after the time the reservation of a peer-to-peer vehicle is scheduled to begin, as documented in the records of a peer-to-peer vehicle-sharing program.

(j) "Peer-to-peer vehicle-sharing termination time" or "termination time" means the earliest of the following events:

1. The expiration of the agreed-upon period of time established for the use of a peer-to-peer vehicle according to the terms of the vehicle-sharing program agreement, if the peer-to-peer vehicle is delivered to the location agreed upon in the peer-to-peer vehicle-sharing program agreement;

2. The expiration of the time period established for use of the peer-to-peer vehicle when the peer-to-peer vehicle is returned to an alternate location agreed upon by the peer-to-peer vehicle owner and the peer-to-peer vehicle driver as communicated through a peer-to-peer vehicle-sharing program; or

3. The peer-to-peer vehicle owner or the owner's authorized designee takes possession and control of the peer-to-peer vehicle.

(2) FINANCIAL RESPONSIBILITY.—

(a) A peer-to-peer vehicle-sharing program shall assume the liability of a peer-to-peer vehicle owner, except as provided in paragraph (b), for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the peer-to-peer vehicle-sharing period in an amount stated in the peer-to-peer vehicle-sharing program.

(b) The assumption of liability under paragraph (a) does not apply to any peer-to-peer vehicle owner when:

1. A peer-to-peer vehicle owner makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer vehicle-sharing program before the peer-to-peer vehicle-sharing period in which the loss occurred; or

2. A peer-to-peer vehicle owner acts in concert with a peer-to-peer vehicle driver who fails to return the vehicle pursuant to the terms of the peer-to-peer vehicle-sharing program agreement.

(c) The assumption of liability under paragraph (a) applies to bodily injury and property damage losses by damaged third parties as required under s. 324.021(7).

(d) A peer-to-peer vehicle-sharing program shall ensure

that, during each peer-to-peer vehicle-sharing period, the peer-to-peer vehicle owner and the peer-to-peer vehicle driver are insured under a motor vehicle liability insurance policy that provides insurance coverage in amounts no less than the minimum amounts provided in s. 324.021(7), and:

1. Recognizes that the peer-to-peer vehicle insured under the policy is made available and used through a peer-to-peer vehicle-sharing program; or

2. Does not exclude use of a peer-to-peer vehicle by a peer-to-peer vehicle driver.

(e) The insurance requirement under paragraph (d) may be satisfied by motor vehicle liability insurance maintained by a peer-to-peer vehicle owner; a peer-to-peer vehicle driver; a peer-to-peer vehicle-sharing program; or by a peer-to-peer vehicle owner, a peer-to-peer vehicle driver, and a peer-to-peer vehicle-sharing program.

(f) The insurance maintained under paragraph (e) which satisfies the insurance requirement under paragraph (d) must be primary during each peer-to-peer vehicle-sharing period.

(g) The peer-to-peer vehicle-sharing program must assume primary liability for a claim when it is providing, in whole or in part, the insurance required under paragraphs (d) and (e) and:

1. A dispute exists as to who was in control of the peer-to-peer vehicle at the time of the loss; and

2. The peer-to-peer vehicle-sharing program does not have available, did not retain, or fails to provide the information required in paragraph (11)(c).

(h) The peer-to-peer vehicle owner's insurer shall indemnify the peer-to-peer vehicle-sharing program to the extent of the insurer's obligation, if any, under the applicable insurance policy, if it is determined that the peer-to-peer vehicle owner was in control of the peer-to-peer vehicle at the time of the loss.

(i) If insurance maintained by a peer-to-peer vehicle owner or peer-to-peer vehicle driver in accordance with paragraph (e) lapses or does not provide the required coverage, insurance maintained by a peer-to-peer vehicle-sharing program shall provide the coverage required by paragraph (d) beginning with the first dollar of a claim and the insurer has the duty to defend such claim except under circumstances specified in paragraph (b).

(j) Coverage under a motor vehicle insurance policy maintained by the peer-to-peer vehicle-sharing program may not be dependent on another motor vehicle insurer first denying a claim.

(k) This subsection does not:

1. Limit the liability of the peer-to-peer vehicle-sharing program for any act or omission of the program itself which results in injury to any person as a result of the use of a

peer-to-peer vehicle through the peer-to-peer vehicle-sharing program; or

2. Limit the ability of the peer-to-peer vehicle-sharing program to seek indemnification, by contract, from the peer-to-peer vehicle owner or the peer-to-peer vehicle driver for economic losses the peer-to-peer vehicle-sharing program sustains which result from a breach of the terms and conditions of the peer-to-peer vehicle-sharing program agreement.

(3) NOTIFICATION OF IMPLICATIONS OF A LIEN.—At the time a peer-to-peer vehicle owner registers a vehicle for use through a peer-to-peer vehicle-sharing program and before the owner makes the vehicle available for use through the program, the program must notify the owner that, if the vehicle has a lien against it, the use of the vehicle through the program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

(4) EXCLUSIONS IN MOTOR VEHICLE LIABILITY INSURANCE POLICIES.—

(a) An authorized insurer that writes motor vehicle liability insurance in this state may exclude any coverage and the duty to defend or indemnify for any claim under the peer-to-peer vehicle owner's motor vehicle liability insurance policy, including, but not limited to:

1. Liability coverage for bodily injury and property damage;

2. Personal injury protection coverage;

3. Uninsured and underinsured motorist coverage;

4. Medical payments coverage;

5. Comprehensive physical damage coverage; and

6. Collision physical damage coverage.

(b) This subsection does not invalidate or limit an exclusion contained in a motor vehicle liability insurance policy, including any insurance policy in use or approved for use which excludes coverage for motor vehicles made available for rent, hire, or for any business use, including peer-to-peer vehicle sharing.

(5) RECORDKEEPING.—

(a) A peer-to-peer vehicle-sharing program must collect and verify records pertaining to the use of peer-to-peer vehicles, including, but not limited to, times used, fees paid by the peer-to-peer vehicle driver, and revenues received by the peer-to-peer vehicle owner.

(b) Pursuant to all applicable federal and state privacy obligations, and after receiving the informed consent of the peer-to-peer vehicle owner and the peer-to-peer vehicle driver, a peer-to-peer vehicle-sharing program must provide the information collected pursuant to paragraph (a), upon request, to the owner, the owner's insurer, and the driver's insurer to facilitate a claim investigation.

(c) The program must retain the records required in this

subsection for not less than 3 years.

(6) CONTRIBUTION AGAINST INDEMNIFICATION.—A motor vehicle insurer that defends or indemnifies a claim arising from the operation of a peer-to-peer vehicle that is excluded under the terms of its policy may seek contribution against the peer-to-peer vehicle-sharing program if the claim is made against the peer-to-peer vehicle owner or the peer-to-peer vehicle driver for loss or injury that occurs during the peer-to-peer vehicle-sharing period.

(7) INSURABLE INTEREST.—

(a) A peer-to-peer vehicle-sharing program has an insurable interest in a vehicle during the sharing period.

(b) This subsection does not impose liability on a peer-to-peer vehicle-sharing program to maintain the coverage mandated by subsection (2).

(c) A peer-to-peer vehicle-sharing program may own and maintain as the named insured one or more policies of motor vehicle liability insurance which provide coverage for:

1. Liabilities assumed by the peer-to-peer vehicle-sharing program under agreement;

2. Liability of the peer-to-peer vehicle owner;

3. Damage or loss to the vehicle; or

4. Liability of the peer-to-peer vehicle driver.

(8) CONSUMER PROTECTIONS.—

(a) Each peer-to-peer vehicle-sharing program agreement

made in this state must disclose to the peer-to-peer vehicle owner and the peer-to-peer vehicle driver:

1. Any right of a program to seek indemnification from the owner or the driver for economic losses the program sustains which result from a breach of the terms and conditions of the agreement;

2. That a motor vehicle liability insurance policy issued to the owner for the peer-to-peer vehicle or to the driver does not provide defense indemnity for any claim asserted by the program;

3. That the program's financial responsibility afforded to the owner and driver is available only during the peer-to-peer vehicle-sharing period;

4. That, for any use of the peer-to-peer vehicle by the driver after the peer-to-peer vehicle-sharing termination time, the driver and owner may not have coverage;

5. The daily rate, fees, costs, and, if applicable, any insurance or protection package costs that are charged to the owner or driver; and

6. That the peer-to-peer vehicle owner's motor vehicle liability insurance may not provide coverage for the vehicle.

(b) Each peer-to-peer vehicle-sharing program agreement made in this state must disclose to the peer-to-peer vehicle driver:

1. An emergency telephone number to contact personnel

capable of fielding roadside assistance requests and other customer service inquiries; and

2. Any conditions under which a driver must maintain a personal motor vehicle insurance policy, and any required coverage limits, on a primary basis in order to rent the peer-to-peer vehicle.

(9) RESPONSIBILITY FOR EQUIPMENT.—The peer-to-peer vehicle-sharing program has sole responsibility for any equipment that is put in or on the vehicle, such as a GPS system or other device, used to monitor or facilitate the sharing, and must agree to indemnify and hold harmless the owner for any damage to or theft of such equipment during the sharing period which is not caused by the owner. The program may seek indemnity from the driver for any loss or damage to such equipment which occurs during the sharing period.

(10) AUTOMOBILE SAFETY RECALLS.—

(a) At the time an owner registers a vehicle for use in the program, and before the owner makes the vehicle available for use, the peer-to-peer vehicle-sharing program must:

1. Verify that the vehicle does not have any safety recalls for which repairs have not been made; and

2. Notify the owner of the requirements under paragraph (c).

(b) The program must periodically, at least once in each 72-hour period, verify that any vehicle available for use

through the program is not subject to an open safety recall for which repairs have not been made.

(c) If the peer-to-peer vehicle owner has received notice of a safety recall on the vehicle, he or she may not make the vehicle available for use through a peer-to-peer vehicle-sharing program until the safety recall repair has been made. Upon receiving notice of a safety recall on the vehicle when it is available for use through the program, the owner shall remove the vehicle from availability as soon as practicable, but in no case more than 48 hours after receiving the notice of the safety recall, and until the safety recall repair has been made. Upon receiving notice of a safety recall on the vehicle, and in no case more than 48 hours after such receipt, when such vehicle is in the possession of the driver, the owner must notify the program of the safety recall so that the program may notify the driver and the vehicle can be removed from use until the owner effects the necessary safety recall repair.

(11) DRIVER LICENSE VERIFICATION AND RETENTION.—

(a) A peer-to-peer vehicle-sharing program may not enter into a peer-to-peer vehicle-sharing program agreement with a driver unless the driver who will operate the peer-to-peer vehicle:

1. Holds an unexpired driver license in this state which authorizes the driver to operate vehicles of the class of the peer-to-peer vehicle; or

2. Is a nonresident who:

a. Has an unexpired driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the peer-to-peer vehicle; and

b. Is at least the same age as that required of a resident to drive.

(b) A peer-to-peer vehicle-sharing program may not rent a motor vehicle to another until the driver license of the peer-to-peer vehicle driver has been inspected and the program has verified that the driver license is unexpired.

(c) A peer-to-peer vehicle-sharing program must keep a record of:

1. The registration number of the peer-to-peer vehicle;

2. The name and address of the peer-to-peer vehicle driver;

3. The driver license number of the peer-to-peer vehicle driver and the place where the license was issued; and

4. Each other person, if any, who will operate the peer-to-peer vehicle.

(d) Such record must be open to inspection by any police officer, or officer or employee of the Department of Law Enforcement.

(e) If a peer-to-peer vehicle-sharing program rents a peer-to-peer vehicle to a driver through digital, electronic, or

other means that allow the driver to obtain possession of the vehicle without direct contact with an agent, an employee of the peer-to-peer vehicle-sharing program, or the vehicle owner, or if the driver does not execute a peer-to-peer vehicle-sharing program agreement at the time he or she takes possession of the vehicle, the peer-to-peer vehicle-sharing program is deemed to have met all requirements of paragraphs (a) and (b) when the program, at the time the driver enrolls in a membership program, master agreement, or other means of establishing use of the program's services, or any time thereafter, requires the driver to verify that he or she is duly licensed and that the license is unexpired.

Section 3. This act shall take effect July 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Transportation & Infrastructure Subcommittee
Representative Latvala offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (c) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any

item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(c) At the rate of 6 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein; however, the following special provisions apply to the lease or rental of motor vehicles:

1. When a motor vehicle is leased or rented by a motor vehicle rental company or a peer-to-peer car-sharing program, as those terms are defined in s. 212.0606(1), for a period of less than 12 months:

a. If the motor vehicle is rented in Florida, the entire amount of such rental is taxable, even if the vehicle is dropped off in another state.

b. If the motor vehicle is rented in another state and dropped off in Florida, the rental is exempt from Florida tax.

c. If the motor vehicle is rented by a peer-to-peer car-sharing program, the peer-to-peer car-sharing program must collect and remit the applicable tax due in connection with the rental.

2. Except as provided in subparagraph 3., for the lease or rental of a motor vehicle for a period of not less than 12 months, sales tax is due on the lease or rental payments if the

vehicle is registered in this state; provided, however, that no tax shall be due if the taxpayer documents use of the motor vehicle outside this state and tax is being paid on the lease or rental payments in another state.

3. The tax imposed by this chapter does not apply to the lease or rental of a commercial motor vehicle as defined in s. 316.003(13)(a) to one lessee or rentee for a period of not less than 12 months when tax was paid on the purchase price of such vehicle by the lessor. To the extent tax was paid with respect to the purchase of such vehicle in another state, territory of the United States, or the District of Columbia, the Florida tax payable shall be reduced in accordance with the provisions of s. 212.06(7). This subparagraph shall only be available when the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to such business.

Section 2. Section 212.0606, Florida Statutes, is amended to read:

212.0606 Rental car surcharge.—

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

(a) "Car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application fee or a membership fee and provides member access to motor vehicles:

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

2. Twenty-four hours per day, 7 days per week;

3. Only through automated means, including, but not limited to, a smartphone application or an electronic membership card;

4. On an hourly basis or for a shorter increment of time;

5. Without a separate fee for refueling the motor vehicle;

6. Without a separate fee for minimum financial responsibility liability insurance; and

7. Owned or controlled by the car-sharing service or its affiliates.

(b) "Motor vehicle rental company" means an entity that is in the business of providing, for financial consideration, motor vehicles to the public under a rental agreement.

(c) "Peer-to-peer car-sharing program" has the same meaning as in s. 627.7483(1).

(2) Except as provided in subsection (3) ~~(2)~~, a surcharge of $2 per day or any part of a day is imposed upon the lease or rental by a motor vehicle rental company or a peer-to-peer car-sharing program of a motor vehicle that is licensed for hire and designed to carry fewer than nine passengers, regardless of whether the motor vehicle is licensed in this state, for financial consideration and without transfer of the

title of the motor vehicle. The surcharge is imposed regardless of whether the lease or rental occurs in person or through digital means. The surcharge applies to only the first 30 days of the term of a lease or rental and must be collected by the motor vehicle rental company or the peer-to-peer car-sharing program. The surcharge is subject to all applicable taxes imposed by this chapter.

(3) ~~(2)~~ A member of a car-sharing service who uses a motor vehicle as described in subsection (2) ~~(1)~~ for less than 24 hours pursuant to an agreement with the car-sharing service shall pay a surcharge of $1 per usage. A member of a car-sharing service who uses the same motor vehicle for 24 hours or more shall pay a surcharge of $2 per day or any part of a day as provided in subsection (2) ~~(1)~~. The car-sharing service shall collect the surcharge ~~For purposes of this subsection, the term "car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application or membership fee and provides member access to motor vehicles:~~

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

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

~~(c) Only through automated means, including, but not limited to, smartphone applications or electronic membership cards;~~

~~(d) On an hourly basis or for a shorter increment of time;~~

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

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

~~(g) Owned or controlled by the car-sharing service or its affiliates~~. The surcharge imposed under this subsection does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority.

(4)(a)~~(3)(a)~~ Notwithstanding s. 212.20, and less the costs of administration, 80 percent of the proceeds of this surcharge shall be deposited in the State Transportation Trust Fund, 15.75 percent of the proceeds of this surcharge shall be deposited in the Tourism Promotional Trust Fund created in s. 288.122, and 4.25 percent of the proceeds of this surcharge shall be deposited in the Florida International Trade and Promotion Trust Fund. For the purposes of this subsection, the term "proceeds of this surcharge" ~~of the surcharge~~ means all funds collected and received by the department under this section, including interest and penalties on delinquent surcharges. The department shall provide the Department of Transportation rental car

surcharge revenue information for the previous state fiscal year by September 1 of each year.

(b) Notwithstanding any other ~~provision of~~ law, the proceeds deposited in the State Transportation Trust Fund shall be allocated on an annual basis in the Department of Transportation's work program to each department district, except the Turnpike District. The amount allocated to each district shall be based on the amount of proceeds attributed to the counties within each respective district.

(5)(a) ~~(4)~~ Except as provided in this section, the department shall administer, collect, and enforce the surcharge as provided in this chapter.

(b) ~~(a)~~ The department shall require a dealer ~~dealers~~ to report surcharge collections according to the county to which the surcharge was attributed. For purposes of this section, the surcharge shall be attributed to the county where the rental agreement was entered into.

(c) ~~(b)~~ A dealer ~~Dealers~~ who collects ~~collect~~ the rental car surcharge shall report to the department all surcharge revenues attributed to the county where the rental agreement was entered into on a timely filed return for each required reporting period. The provisions of this chapter which apply to interest and penalties on delinquent taxes apply to the surcharge. The surcharge shall not be included in the calculation of estimated taxes pursuant to s. 212.11. The

dealer's credit provided in s. 212.12 does not apply to any amount collected under this section.

(6) ~~(5)~~ The surcharge imposed by this section does not apply to a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

Section 3. Section 627.7483, Florida Statutes, is created to read:

627.7483 Peer-to-peer car sharing; insurance requirements.—

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

(a) "Car-sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car-sharing start time, if applicable, as documented by the governing peer-to-peer car-sharing program agreement.

(b) "Car-sharing period" means the period of time that commences either at the car-sharing delivery period or, if there is no car-sharing delivery period, at the car-sharing start time and that ends at the car-sharing termination time.

(c) "Car-sharing start time" means the time when the shared vehicle is under the control of the shared vehicle driver, which time occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the records of a peer-to-peer car-sharing program.

(d) "Car-sharing termination time" means the earliest of the following events:

1. The expiration of the agreed-upon period of time established for the use of a shared vehicle according to the terms of the peer-to-peer car-sharing program agreement, if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car-sharing program agreement;

2. The time the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer car-sharing program; or

3. The time the shared vehicle owner or the shared vehicle owner's authorized designee takes possession and control of the shared vehicle.

(e) "Peer-to-peer car sharing" or "car sharing" means the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include the renting of a motor vehicle through a rental car company, the use of a for-hire vehicle as defined in s. 320.01(15), ridesharing as defined in s. 341.031(9), carpool as defined in s. 450.28(3), or the use of a motor vehicle under an agreement for a car-sharing service as defined in s. 212.0606(1).

(f) "Peer-to-peer car-sharing program" means a business platform that enables peer-to-peer car sharing by connecting

motor vehicle owners with drivers for financial consideration. For the purposes of this section, the term does not include a rental car company, a car-sharing service as defined in s. 212.0606(1), a taxicab association, or the owner of a for-hire vehicle as defined in s. 320.01(15).

(g) "Peer-to-peer car-sharing program agreement" means the terms and conditions established by the peer-to-peer car-sharing program which are applicable to a shared vehicle owner and a shared vehicle driver and which govern the use of a shared vehicle through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental agreement or an agreement for a for-hire vehicle as defined in s. 320.01(15) or for a car-sharing service as defined in s. 212.0606(1).

(h) "Shared vehicle" means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental car, a for-hire vehicle as defined in s. 320.01(15), or a motor vehicle used for ridesharing as defined in s. 341.031(9), for carpool as defined in s. 450.28(3), or for car-sharing service as defined in s. 212.0606(1).

(i) "Shared vehicle driver" means an individual who has been authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.

(j) "Shared vehicle owner" means the registered owner, or a natural person or an entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include an owner of a for-hire vehicle as defined in s. 320.01(15).

(2) INSURANCE COVERAGE REQUIREMENTS.—

(a)1. A peer-to-peer car-sharing program shall ensure that, during each car-sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle insurance policy that provides all of the following:

a. Property damage liability coverage that meets the minimum coverage amounts required under s. 324.022.

b. Bodily injury liability coverage limits as described in s. 324.021(7)(a) and (b).

c. Personal injury protection benefits that meet the minimum coverage amounts required under s. 627.736.

d. Uninsured and underinsured vehicle coverage as required under s. 627.727.

2. The peer-to-peer car-sharing program shall also ensure that the motor vehicle insurance policy under subparagraph 1.:

a. Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car-sharing program; or

b. Does not exclude the use of a shared vehicle by a shared vehicle driver.

(b)1. The insurance described under paragraph (a) may be satisfied by a motor vehicle insurance policy maintained by:

a. A shared vehicle owner;

b. A shared vehicle driver;

c. A peer-to-peer car-sharing program; or

d. A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car-sharing program.

2. The insurance policy maintained in subparagraph 1. which satisfies the insurance requirements under paragraph (a) is primary during each car-sharing period.

3.a. If the insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subparagraph 1. has lapsed or does not provide the coverage required under paragraph (a), the insurance maintained by the peer-to-peer car-sharing program must provide the coverage required under paragraph (a), beginning with the first dollar of a claim, and must defend such claim, except under circumstances as set forth in subparagraph (3)(a)2.

b. Coverage under a motor vehicle insurance policy maintained by the peer-to-peer car-sharing program must not be dependent on another motor vehicle insurer first denying a claim, and another motor vehicle insurance policy is not required to first deny a claim.

c. Notwithstanding any other law, statute, rule, or regulation to the contrary, a peer-to-peer car-sharing program has an insurable interest in a shared vehicle during the car-sharing period. This sub-subparagraph does not create liability for a peer-to-peer car-sharing program for maintaining the coverage required under paragraph (a) and under this paragraph, if applicable.

d. A peer-to-peer car-sharing program may own and maintain as the named insured one or more policies of motor vehicle insurance which provide coverage for:

(I) Liabilities assumed by the peer-to-peer car-sharing program under a peer-to-peer car-sharing program agreement;

(II) Liability of the shared vehicle owner;

(III) Liability of the shared vehicle driver;

(IV) Damage or loss to the shared motor vehicle; or

(V) Damage, loss, or injury to persons or property to satisfy the personal injury protection and uninsured and underinsured motorist coverage requirements of this section.

e. Insurance required under paragraph (a), when maintained by a peer-to-peer car-sharing program, may be provided by an insurer authorized to do business in this state which is a member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the office. A peer-to-peer car-sharing

program is not transacting in insurance when it maintains the insurance required under this section.

(3) LIABILITIES AND INSURANCE EXCLUSIONS.—

(a) *Liability.*—

1. A peer-to-peer car-sharing program shall assume liability, except as provided in subparagraph 2., of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car-sharing period in an amount stated in the peer-to-peer car-sharing program agreement, which amount may not be less than those set forth in ss. 324.021(7)(a) and (b), 324.022, 627.727, and 627.736, respectively.

2. The assumption of liability under subparagraph 1. does not apply if a shared vehicle owner:

a. Makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car-sharing program before the car-sharing period in which the loss occurs; or

b. Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the peer-to-peer car-sharing program agreement.

3. A peer-to-peer car-sharing program shall assume primary liability for a claim when it is in whole or in part providing the insurance required under paragraph (2)(a) and:

a. A dispute exists as to who was in control of the shared motor vehicle at the time of the loss; and

b. The peer-to-peer car-sharing program does not have available, did not retain, or fails to provide the information required under subsection (5).

The shared vehicle owner's insurer shall indemnify the peer-to-peer car-sharing program to the extent of the insurer's obligation, if any, under the applicable insurance policy if it is determined that the shared vehicle owner was in control of the shared motor vehicle at the time of the loss.

(b) *Vicarious liability.*—A peer-to-peer car-sharing program and a shared vehicle owner are exempt from vicarious liability consistent with 49 U.S.C. s. 30106 (2005) under any state or local law that imposes liability solely based on vehicle ownership.

(c) *Exclusions in motor vehicle insurance policies.*—An authorized insurer that writes motor vehicle liability insurance in this state may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle insurance policy, including, but not limited to:

1. Liability coverage for bodily injury and property damage;

2. Personal injury protection coverage;

3. Uninsured and underinsured motorist coverage;

4. Medical payments coverage;

5. Comprehensive physical damage coverage; and

6. Collision physical damage coverage.

This paragraph does not invalidate or limit any exclusion contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use which excludes coverage for motor vehicles made available for rent, sharing, or hire or for any business use.

(d) *Contribution against indemnification.*—A shared vehicle owner's motor vehicle insurer that defends or indemnifies a claim against a shared vehicle which is excluded under the terms of its policy has the right to seek contribution against the motor vehicle insurer of the peer-to-peer car-sharing program if the claim is:

1. Made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car-sharing period; and

2. Excluded under the terms of its policy.

(4) NOTIFICATION OF IMPLICATIONS OF LIEN.—At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing

program must notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car-sharing program, including the use without physical damage coverage, may violate the terms of the contract with the lienholder.

(5) RECORDKEEPING.—A peer-to-peer car-sharing program shall:

(a) Collect and verify records pertaining to the use of a shared vehicle, including, but not limited to, the times used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner.

(b) Retain the records in paragraph (a) for a time period not less than the applicable personal injury statute of limitations.

(c) Provide the information contained in the records in paragraph (a) upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation.

(6) CONSUMER PROTECTIONS.—

(a) *Disclosures.*—Each peer-to-peer car-sharing program agreement made in this state must disclose to the shared vehicle owner and the shared vehicle driver:

1. Any right of the peer-to-peer car-sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the

terms and conditions of the peer-to-peer car-sharing program agreement.

2. That a motor vehicle insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program.

3. That the peer-to-peer car-sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each car-sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the car-sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage.

4. The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver.

5. That the shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle.

6. An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries.

7. Any conditions under which a shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

(b) *Driver license verification and data retention.*—

1. A peer-to-peer car-sharing program may not enter into a peer-to-peer car-sharing program agreement with a driver unless the driver:

a. Holds a driver license issued under chapter 322 which authorizes the driver to drive vehicles of the class of the shared vehicle;

b. Is a nonresident who:

(I) Holds a driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle; and

(II) Is at least the same age as that required of a resident to drive; or

c. Is otherwise specifically authorized by the Department of Highway Safety and Motor Vehicles to drive vehicles of the class of the shared vehicle.

2. A peer-to-peer car-sharing program shall keep a record of:

a. The name and address of the shared vehicle driver;

b. The number of the driver license of the shared vehicle driver and each other person, if any, who will operate the shared vehicle; and

c. The place of issuance of the driver license.

(c) *Responsibility for equipment.*—A peer-to-peer car-sharing program has sole responsibility for any equipment that is put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction, including a GPS system. The peer-to-peer car-sharing program shall indemnify and hold harmless the shared vehicle owner for any damage to or theft of such equipment during the car-sharing period which is not caused by the shared vehicle owner. The peer-to-peer car-sharing program may seek indemnity from the shared vehicle driver for any damage to or loss of such equipment which occurs during the car-sharing period.

(d) *Motor vehicle safety recalls.*—At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must:

1. Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

2. Notify the shared vehicle owner that if the shared vehicle owner:

a. Has received an actual notice of a safety recall on the vehicle, he or she may not make a vehicle available as a shared

vehicle on the peer-to-peer car-sharing program until the safety recall repair has been made.

b. Receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car-sharing program, he or she shall remove the shared vehicle as available on the peer-to-peer car-sharing program as soon as practicably possible after receiving the notice of the safety recall and until the safety recall repair has been made.

c. Receives an actual notice of a safety recall while the shared vehicle is in the possession of a shared vehicle driver, he or she shall notify the peer-to-peer car-sharing program about the safety recall as soon as practicably possible after receiving the notice of the safety recall, so that he or she may address the safety recall repair.

(7) CONSTRUCTION.—This section does not limit:

(a) The liability of a peer-to-peer car-sharing program for any act or omission of the peer-to-peer car-sharing program which results in bodily injury to a person as a result of the use of a shared vehicle through peer-to-peer car sharing; or

(b) The ability of a peer-to-peer car-sharing program to seek, by contract, indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

Section 4. This act shall take effect March 1, 2021.

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

Remove everything before the enacting clause and insert: An act relating to motor vehicle rentals; amending s. 212.05, F.S.; specifying the applicable sales tax rate on motor vehicle leases and rentals by motor vehicle rental companies and peer-to-peer car-sharing programs; requiring peer-to-peer car-sharing programs to collect and remit the applicable sales tax; amending s. 212.0606, F.S.; defining terms; specifying the applicable rental car surcharge on motor vehicle leases and rentals by motor vehicle rental companies and peer-to-peer car-sharing programs; specifying applicability of the surcharge; requiring motor vehicle rental companies and peer-to-peer car-sharing programs to collect the surcharge; requiring car-sharing services to collect a certain surcharge; making technical changes; creating s. 627.7483, F.S.; defining terms; specifying insurance requirements for shared vehicle owners and shared vehicle drivers under peer-to-peer car-sharing programs; providing that a peer-to-peer car-sharing program has an insurable interest in a shared vehicle during certain periods; authorizing peer-to-peer car-sharing programs to own and

maintain certain motor vehicle insurance policies; requiring peer-to-peer car-sharing programs to assume certain liability; providing exceptions; requiring a shared vehicle owner's insurer to indemnify the peer-to-peer car-sharing program under certain circumstances; providing an exemption from vicarious liability for peer-to-peer car-sharing programs and shared vehicle owners; authorizing motor vehicle insurers to exclude coverages and a duty to defend or indemnify claims under a shared vehicle owner's policy; providing construction relating to exclusions; providing a right of contribution to a shared vehicle owner's insurer for certain claims; requiring a peer-to-peer car-sharing program to provide certain information to shared vehicle owners regarding liens; specifying recordkeeping and record sharing, disclosure, and driver license verification and data retention requirements for peer-to-peer car-sharing programs; providing that peer-to-peer car-sharing programs have sole responsibility for certain equipment in or on a shared vehicle; providing for indemnification; specifying requirements for peer-to-peer car-sharing programs relating to safety recalls on a shared vehicle; providing construction; providing an effective date.

HB 435

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 435 Department of Highway Safety and Motor Vehicles
SPONSOR(S): Valdes
TIED BILLS: HB 1007 **IDEN./SIM. BILLS:** SB 636

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee		Roth	Vickers
2) Transportation & Tourism Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Highway Safety and Motor Vehicles (DHSMV) is the agency responsible for the issuance of motor vehicle and vessel certificates of title and registrations, as well as motor vehicle driver licenses.

The bill expands the authority of DHSMV and its authorized agents to collect, share, and utilize electronic mail addresses and verified texting numbers to contact customers for reasons other than notifying them for renewal purposes. Authorized additional uses include, but are not limited to, renewal notices, appointment scheduling information, tax collector office locations, hours of operation, contact information, driving skills testing locations, and website information.

The bill provides that all records made or kept by DHSMV for vessel registration are subject to inspection and copying as provided in chapter 119, F.S.

Finally, the bill removes the Florida Fish and Wildlife Commission as the entity eligible to accept applications by electronic or telephonic means for vessel registration and titling.

The bill will likely have an indeterminate, negative fiscal impact to state and local government expenditures. *See* Fiscal Analysis for additional details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department of Highway Safety and Motor Vehicles (DHSMV) is authorized to accept applications for motor vehicle and vessel certificates of title and motor vehicle registration by electronic or telephonic means, and may issue an electronic certificate of title in lieu of printing a paper title.[1] DHSMV is also authorized to collect electronic mail addresses and use electronic mail in lieu of the United States Postal Service (USPS) as a method of notification for motor vehicle and vessel certificates of title and motor vehicle renewal notices for registration.[2] However, for motor vehicle certificates of title, notices regarding the potential forfeiture or foreclosure of an interest in property must be sent by USPS rather than electronic mail.[3] DHSMV may also collect electronic mail addresses and use electronic mail, in lieu of USPS, for the purpose of providing motor vehicle driver license and identification card renewal notices.[4]

The Fish and Wildlife Conservation Commission is identified in s. 328.80, F.S., as the agency authorized to accept applications for vessel registration by electronic or telephonic means; however, DHSMV is the agency responsible for vessel registrations.[5]

Proposed Changes

The bill authorizes DHSMV and its authorized agents to collect electronic mail addresses from customers and use them not only as a method of notification for motor vehicle certificates of title, but also for any statutorily authorized use related to motor vehicle certificates of title. All electronic mail addresses must be made available to DHSMV or its authorized agents upon request.

The bill authorizes DHSMV and its authorized agents to collect electronic mail addresses and verified texting numbers from customers for purposes of e-mailing or texting (in lieu of the USPS) certain motor vehicle registration, driver license, and identification card information. The information that can be e-mailed or texted includes, but is not limited to, renewal notices, appointment-scheduling information, tax collector office locations, hours of operation, contact information, driving skills testing locations, and website information. All electronic mail addresses and verified texting numbers must be made available to DHSMV or its authorized agent upon request.

The bill authorizes DHSMV and its authorized agents to collect electronic mail addresses and verified texting numbers from customers for purposes of e-mailing or texting (in lieu of the USPS) certain vessel certificate of title and registration information. The information that can be e-mailed or texted includes, but is not limited to, renewal notices, appointment scheduling information, tax collector office locations, hours of operation, contact information, and website information. All electronic mail addresses and verified texting numbers must be made available to DHSMV or its authorized agent upon request.

Additionally, the bill corrects obsolete language referring to the vessel registration duties of the Fish and Wildlife Conservation Commission and replaces it with DHSMV, which is the agency responsible for vessel registration.

[1] Sections 319.40, 320.95, and 328.30, F.S.
[2] Sections 319.40, 320.95, and 328.30, F.S.
[3] Section 319.40(3), F.S.
[4] Section 322.08(10), F.S.
[5] In 1999, the Legislature transferred responsibility for the registration of vessels from the Department of Environmental Protection (DEP) to DHSMV (Ch. 99-289, L.O.F.). During the same 1999 regular session, the Legislature transferred other duties of DEP to the Fish and Wildlife Conservation Commission (Ch. 99-245, L.O.F.).

Lastly, the bill clarifies that all records made or kept by DHSMV for the administration of vessel registration and titling are subject to inspection and copying as provided in Chapter 119, F.S., relating to public records.

B. SECTION DIRECTORY:

Section 1: Amends s. 319.40, F.S., relating to transactions by electronic or telephonic means.

Section 2: Amends s. 320.95, F.S., relating to transactions by electronic or telephonic means.

Section 3: Amends s. 322.08, F.S., relating to application for license; requirements for license and identification card forms.

Section 4: Amends s. 328.30, F.S., relating to transactions by electronic or telephonic means.

Section 5: Amends s. 328.40, F.S., relating to administration of vessel registration and titling laws; records.

Section 6: Amends s. 328.80, F.S., relating to transactions by electronic or telephonic means.

Section 7: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill will likely have no impact on state government revenues.

2. Expenditures:

   DHSMV will likely incur indeterminate, but insignificant, programming costs related to modifying the existing systems to enable the capture of verified texting numbers.[6]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill will likely have no impact on local government revenues.

2. Expenditures:

   Local governments may incur indeterminate expenditures relating to information technology programming costs.[7]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

[6] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2020 House Bill 435, p. 4 (December 16, 2019).
[7] *Id*.

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:

   HB 1007, which this bill is linked to, creates public records exemptions for information similar to the information contained in this bill. HB 1007 uses different terminology to provide public records exemptions for “e-mail addresses” and “cellular phone numbers”.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Verified Texting Number
The bill authorizes DHSMV and its authorized agents to collect and use “verified texting numbers”; however, there is no definition for “verified texting numbers”.

Drafting Issues:
The bill requires that all electronic mail addresses and verified texting numbers be made available to DHSMV or its authorized agents “upon request”. This language may be interpreted to create a mandatory duty of every person or entity seeking applicable services to provide an electronic mail address and verified texting number upon the request of DHSMV or its authorized agent.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Department of Highway Safety and Motor Vehicles; amending s. 319.40, F.S.; authorizing the Department of Highway Safety and Motor Vehicles or its authorized agents to collect electronic mail addresses and use electronic mail for certain purposes; requiring that all electronic mail addresses be made available to the department or its authorized agents upon request; amending ss. 320.95 and 322.08, F.S.; authorizing the department or its authorized agents to collect electronic mail addresses or verified texting numbers and use electronic mail or text messages in lieu of the United States Postal Service for certain purposes; requiring that all electronic mail addresses and verified texting numbers be made available to the department or its authorized agents upon request; amending s. 328.30, F.S.; limiting the applications the department may accept by electronic or telephonic means; authorizing the department or its authorized agents to collect electronic mail addresses or verified texting numbers and use electronic mail or text messages in lieu of the United States Postal Service for certain purposes; requiring that all electronic mail addresses and verified texting numbers be made available to the

department or its authorized agents upon request; amending s. 328.40, F.S.; requiring that certain records made or kept by the department be subject to inspection and copying; amending s. 328.80, F.S.; authorizing the department, instead of the Fish and Wildlife Conservation Commission, to accept certain applications by electronic or telephonic means; authorizing the department or its authorized agents to collect electronic mail addresses or verified texting numbers and use electronic mail or text messages in lieu of the United States Postal Service for certain purposes; requiring that all electronic mail addresses and verified texting numbers be made available to the department or its authorized agents upon request; providing an effective date.

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

Section 1. Subsection (3) of section 319.40, Florida Statutes, is amended to read:

319.40 Transactions by electronic or telephonic means.—

(3) The department or its authorized agents may collect electronic mail addresses and use electronic mail for purposes of this chapter, including, but not limited to, use of electronic mail in lieu of the United States Postal Service as a

method of notification. All electronic mail addresses shall be made available to the department or its authorized agents upon request. However, any notice regarding the potential forfeiture or foreclosure of an interest in property must be sent via the United States Postal Service.

Section 2. Subsection (2) of section 320.95, Florida Statutes, is amended to read:

320.95 Transactions by electronic or telephonic means.—

(2) The department or its authorized agents may collect electronic mail addresses or verified texting numbers and use electronic mail or text messages in lieu of the United States Postal Service for the purpose of providing information, including, but not limited to, renewal notices, appointment scheduling information, tax collector office locations, hours of operation, contact information, driving skills testing locations, and website information. All electronic mail addresses and verified texting numbers shall be made available to the department or its authorized agents upon request ~~renewal notices~~.

Section 3. Subsection (10) of section 322.08, Florida Statutes, is amended to read:

322.08 Application for license; requirements for license and identification card forms.—

(10) The department or its authorized agents may collect electronic mail addresses or verified texting numbers and use

electronic mail or text messages in lieu of the United States Postal Service for the purpose of providing information, including, but not limited to, renewal notices, appointment scheduling information, tax collector office locations, hours of operation, contact information, driving skills testing locations, and website information. All electronic mail addresses and verified texting numbers shall be made available to the department or its authorized agents upon request ~~renewal notices~~.

Section 4. Section 328.30, Florida Statutes, is amended to read:

328.30 Transactions by electronic or telephonic means.—

(1) The Department of Highway Safety and Motor Vehicles may accept any application provided for under this part ~~chapter~~ by electronic or telephonic means.

(2) The department may issue an electronic certificate of title in lieu of printing a paper title.

(3) The department or its authorized agents may collect electronic mail addresses or verified texting numbers and use electronic mail or text messages in lieu of the United States Postal Service for the purpose of providing information, including, but not limited to, renewal notices, appointment scheduling information, tax collector office locations, hours of operation, contact information, and website information. All electronic mail addresses and verified texting numbers shall be

made available to the department or its authorized agents upon request ~~renewal notices~~.

Section 5. Subsection (3) of section 328.40, Florida Statutes, is amended to read:

328.40 Administration of vessel registration and titling laws; records.—

(3) All records made or kept by the Department of Highway Safety and Motor Vehicles under this part are subject to inspection and copying as provided in chapter 119 ~~law are public records except for confidential reports~~.

Section 6. Section 328.80, Florida Statutes, is amended to read:

328.80 Transactions by electronic or telephonic means.—

(1) The Department of Highway Safety and Motor Vehicles may ~~commission is authorized to~~ accept any application provided for under this part ~~chapter~~ by electronic or telephonic means.

(2) The department or its authorized agents may collect electronic mail addresses or verified texting numbers and use electronic mail or text messages in lieu of the United States Postal Service for the purpose of providing information under this part, including, but not limited to, renewal notices, appointment scheduling information, tax collector office locations, hours of operation, contact information, and website information. All electronic mail addresses and verified texting numbers shall be made available to the department or its

authorized agents upon request.

Section 7. This act shall take effect July 1, 2020.

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

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Transportation & Infrastructure Subcommittee
Representative Valdés offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (3) of section 319.40, Florida Statutes, is amended to read:

319.40 Transactions by electronic or telephonic means.—

(3) The department or its authorized agent tax collectors may collect electronic mail addresses and use electronic mail for purposes of this chapter, including, but not limited to, use of electronic mail in lieu of the United States Postal Service as a method of notification. All electronic mail addresses shall be mutually shared between the department and its authorized agent tax collectors upon request. However, any notice regarding

the potential forfeiture or foreclosure of an interest in property must be sent via the United States Postal Service.

Section 2. Subsection (2) of section 320.95, Florida Statutes, is amended to read:

320.95 Transactions by electronic or telephonic means.—

(2) The department or its authorized agent tax collectors may collect electronic mail addresses or telephone numbers and use electronic mail or text messages in lieu of the United States Postal Service for the purpose of providing information, including, but not limited to, information about the issuance of titles, registrations, disabled parking permits, driver licenses, and identification cards; renewal notices; or the tax collector's office locations, hours of operation, contact information, driving skills testing locations, appointment scheduling information, or website information. All electronic mail addresses and telephone numbers shall be mutually shared between the department and its authorized agent tax collectors upon request ~~renewal notices~~.

Section 3. Subsection (10) of section 322.08, Florida Statutes, is amended to read:

322.08 Application for license; requirements for license and identification card forms.—

(10) The department or its authorized agent tax collectors may collect electronic mail addresses or telephone numbers and use electronic mail or text messages in lieu of the United

States Postal Service for the purpose of providing information, including, but not limited to, information about the issuance of titles, registrations, disabled parking permits, driver licenses, and identification cards; renewal notices; or the tax collector's office locations, hours of operation, contact information, driving skills testing locations, appointment scheduling information, or website information. All electronic mail addresses and telephone numbers shall be mutually shared between the department and its authorized agent tax collectors upon request ~~renewal notices~~.

Section 4. Section 328.30, Florida Statutes, is amended to read:

328.30 Transactions by electronic or telephonic means.—

(1) The Department of Highway Safety and Motor Vehicles may accept any application provided for under this part ~~chapter~~ by electronic or telephonic means.

(2) The department may issue an electronic certificate of title in lieu of printing a paper title.

(3) The department or its authorized agent tax collectors may collect electronic mail addresses or telephone numbers and use electronic mail or text messages in lieu of the United States Postal Service for the purpose of providing information, including, but not limited to, information about the issuance of titles, registrations, disabled parking permits, driver licenses, and identification cards; renewal notices; or the tax

collector's office locations, hours of operation, contact information, driving skills testing locations, appointment scheduling information, or website information. All electronic mail addresses and telephone numbers shall be mutually shared between the department and its authorized agent tax collectors upon request ~~renewal notices~~.

Section 5. Subsection (3) of section 328.40, Florida Statutes, is amended to read:

328.40 Administration of vessel registration and titling laws; records.—

(3) All records made or kept by the Department of Highway Safety and Motor Vehicles under this part are subject to inspection and copying as provided in chapter 119 ~~law are public records except for confidential reports~~.

Section 6. Section 328.80, Florida Statutes, is amended to read:

328.80 Transactions by electronic or telephonic means.—

(1) The Department of Highway Safety and Motor Vehicles may ~~commission is authorized to~~ accept any application provided for under this part ~~chapter~~ by electronic or telephonic means.

(2) The department or its authorized agent tax collectors may collect electronic mail addresses or telephone numbers and use electronic mail or text messages in lieu of the United States Postal Service for the purpose of providing information under this part, including, but not limited to, information

about the issuance of titles, registrations, disabled parking permits, driver licenses, and identification cards; renewal notices; or the tax collector's office locations, hours of operation, contact information, driving skills testing locations, appointment scheduling information, or website information. All electronic mail addresses and telephone numbers shall be mutually shared between the department and its authorized agent tax collectors upon request.

Section 7. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to electronic notification by tax collectors; amending s. 319.40, F.S.; authorizing the Department of Highway Safety and Motor Vehicles or its authorized agent tax collectors to collect electronic mail addresses and use electronic mail for certain purposes; requiring that all electronic mail addresses be mutually shared between the department and its authorized agent tax collectors upon request; amending ss. 320.95 and 322.08, F.S.; authorizing the department or its authorized agent tax collectors to collect electronic mail addresses or telephone numbers

and use electronic mail or text messages in lieu of the United States Postal Service for certain purposes; requiring that all electronic mail addresses and telephone numbers be mutually shared between the department and its authorized agent tax collectors upon request; amending s. 328.30, F.S.; limiting the applications the department may accept by electronic or telephonic means; authorizing the department or its authorized agent tax collectors to collect electronic mail addresses or telephone numbers and use electronic mail or text messages in lieu of the United States Postal Service for certain purposes; requiring that all electronic mail addresses and telephone numbers be mutually shared between the department and its authorized agent tax collectors upon request; amending s. 328.40, F.S.; requiring that certain records made or kept by the department be subject to inspection and copying; amending s. 328.80, F.S.; authorizing the department, instead of the Fish and Wildlife Conservation Commission, to accept certain applications by electronic or telephonic means; authorizing the department or its authorized agent tax collectors to collect electronic mail addresses or telephone numbers and use electronic mail or text messages in lieu of the United States Postal Service

for certain purposes; requiring that all electronic mail addresses and telephone numbers be mutually shared between the department and its authorized agent tax collectors upon request; providing an effective date.

HB 503

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 503 Tampa Bay Area Regional Transit Authority Governing Board
SPONSOR(S): Diamond
TIED BILLS: **IDEN./SIM. BILLS:** SB 368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee		Johnson	Vickers
2) State Affairs Committee			

SUMMARY ANALYSIS

The Tampa Bay Area Regional Transit Authority (TBARTA) is a body politic and agency of the state, covering Hernando, Hillsborough, Manatee, Pasco, and Pinellas counties, whose purpose is to plan, develop, fund, implement, and operate a regional transit system in the Tampa Bay area.

TBARTA's governing board consists of 13 voting members and two non-voting advisors. The 13 voting board members include:

- One county commissioner from each of its five member counties.
- The mayors of the largest municipalities, by population, within the service area of each of the following independent transit agencies: Pinellas Suncoast Transit Authority (St. Petersburg) and Hillsborough Area Regional Transit Authority (Tampa).
- One member of the governing board from the following transit agencies: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority.
- Four members from the regional business community.

The bill authorizes the two mayors serving on TBARTA's board to designate an alternate who must be an elected official of said municipality. If the mayor is unable to attend the board meeting, the alternate must attend the board meeting on the mayor's behalf and have the full right to vote.

The bill also authorizes the attendance at a board meeting either telephonically, or electronically in order to meet quorum requirements. However, a member of the board may only attend meetings telephonically or electronically if his or her physical absence is due to extraordinary circumstances and he or she has obtained prior written approval from the chair.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Tampa Bay Area Regional Transit Authority

Part V of Ch. 343, F.S., creates the Tampa Bay Area Regional Transit Authority (TBARTA),[1] as a body politic and corporate and agency of the state, covering Hernando, Hillsborough, Manatee, Pasco, and Pinellas counties and any other contiguous county that is party to an agreement of participation.[2]

TBARTA's purpose is to plan, develop, fund, implement, and operate a regional transit system in the Tampa Bay area.[3] Under current law, TBARTA is required to produce a regional transit development plan, integrating the transit development plans of participant counties, with priority assigned to regionally significant transit projects and facilities.[4] This plan is currently under development.[5]

TBARTA's governing board consists of 13 voting members and two non-voting advisors. The secretary of the Department of Transportation (DOT) appoints two non-voting advisors to the board who are the district secretaries for the two DOT districts within TBARTA's designated area. The 13 voting members of the board are as follows:

- The county commissions of Hernando, Hillsborough, Manatee, Pasco, and Pinellas counties each appoint one county commissioner to the board.
- Two members of the board are the mayors of the municipalities with the largest populations[6] within the service area of each of the following independent transit agencies: Pinellas Suncoast Transit Authority (St. Petersburg) and Hillsborough Area Regional Transit Authority (Tampa).
- The following independent transit agencies each appoint from the membership of their governing bodies one member to the board: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority.
- The Governor appoints four members from the regional business community, each of whom must reside in one of the counties governed by the authority and may not be an elected official.[7]

Seven members of the board constitutes a quorum, and the vote of seven members is necessary for the authority to take any action. The authority may meet upon the constitution of a quorum. A vacancy does not impair the right of a quorum of the board to exercise all rights and the ability to perform all duties of the authority.[8]

Telephonic and Electronic Participation in Meetings

Article 1, section 24(b) of the Florida Constitution states that "[a]ll meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution."

State Agency Meeting via Communications Media Technology

Section 120.54(5)(b)2, F.S., requires the Administration Commission to adopt uniform rules state agencies providing procedures for conducting public meetings in person and by means of

[1] Prior to 2017, TBARTA was named the Tampa Bay Area Regional Transportation Authority.
[2] Sections 343.90 and 343.91(1)(a), F.S.
[3] Section 343.922(1), F.S.
[4] Section 343.922(3), F.S.
[5] Tampa Bay Area Regional Transit Authority Website, https://www.tbarta.com/en/about/about-tbarta/ (last visited Jan. 30, 2020).
[6] The municipality with the largest population is determined by the most recent decennial census.
[7] Section 343.92(2), F.S.
[8] Section 343.82(8), F.S.

communications media technology.[9] These rules are codified in rule 28-109, F.A.C., and provides procedures for agencies to conduct proceedings using communications media technology. The rules also provide that nothing in Rule 28-109, F.A.C., may be construed to permit the agency to conduct any proceeding otherwise subject to s. 286.011, F.S., exclusively by means of communications media technology without making provision for the attendance of any member of the public who desires to attend.[10]

A 1998 Attorney General's Opinion concluded that s. 120.54(5)(b)2., F.S., authorizes *state* boards to conduct public meetings via entirely electronic means provided that the board complies with Administration Commission's adopted uniform rules of procedure.[11] Based upon the definition of the term "agency" for purposes of the Ch. 120, F.S., the Administrative Procedures Act, TBARTA is not considered an agency for purposes of Ch. 120, F.S.[12]

Local Meetings via Communications Media Technology
In addition to agencies subject to Ch. 120, F.S., s. 163.01(18), F.S., authorizes any separate legal entity created by interlocal agreement which has member public agencies located in at least five counties, of which at least three are not contiguous, to conduct public meetings by means of communications media technology.[13] The participation by member public agency in a meeting or workshop conducted through communications media technology constitutes that member's presence at such meeting.

While state agencies and certain entities created by an interlocal agreement may conduct meetings and vote by means of communications media technology, there has been a question over whether or not local boards or agencies may conduct meetings in the same manner.[14] The Office of Attorney General rejected a school board's request to conduct board meetings via electronic means.[15] The Attorney General reasoned that s. 120.54(5)(b)2, F.S., limits its terms only to uniform rules applicable state agencies.[16] The Attorney General explained that "allowing state agencies and their boards and commissions to conduct meetings via communications media technology under specific guidelines recognizes the practicality of members from throughout the state participating in meetings of the board or commission."[17] The Attorney General reasoned that a similar rationale is not applicable to local boards and commissions even though it may be convenient and save money since the representation on these boards and commissions are local, thus "such factors would not by themselves appear to justify or allow the use of electronic media technology in order to assemble the members for a meeting."[18] However, if a quorum of a local board is physically present at the public meeting, a board may allow a member who is unavailable to physically attend the meeting due to extraordinary circumstances such as illness, to participate and vote at the meeting via communications media technology.[19]

Effect of the Bill

The bill authorizes the mayors of the largest municipalities within the service areas of the Pinellas Suncoast Transit Authority (St. Petersburg) and the Hillsborough Regional Transit Authority (Tampa) to designate alternates who must be elected members of the municipality's city council. In the event that

[9] Section 120.54(5)(b)2., F.S., defines the term , "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.
[10] Rule 28-109.004(1), F.A.C.
[11] 98-28 Fla. Op. Att'y Gen. (1998).
[12] The definition of the term agency in s. 120.52(1), F.S., specifically excludes transportation authorities created pursuant to CH. 343, F.S., which includes TBARTA.
[13] As used in s. 163.01(18), F.S., the term "communications media technology" means conference telephone, video conference, or other communications technology by which all persons attending a public meeting or workshop may audibly communicate.
[14] Robert Eschenfelder, *Modern Sunshine: Attending Public Meetings in the Digital Age*, 84 Fla. B.J. 28 (2010).
[15] 98-28 Fla. Op. Att'y Gen. (1998).
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*

the mayor is unable to attend a TBARTA board meeting, the mayor's designated alternate must attend the meeting on the mayor's behalf and has the full right to vote.

The bill revises the quorum requirements for TBARTA's board meeting. While seven members of the board are still required for a quorum, the bill authorizes board members to physically, telephonically, or electronically attend the meeting. However, a board member may not attend a meeting telephonically or electronically unless his or her physical absence from the meeting is due to extraordinary circumstances and he or she has received prior written approval from the chair.

B. SECTION DIRECTORY:

Section 1 amends s. 343.92, F.S., relating to the Tampa Bay Area Regional Transit Authority.

Section 2 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state revenues.

2. Expenditures:

The bill does not appear to impact state 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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None

A bill to be entitled

An act relating to the Tampa Bay Area Regional Transit Authority governing board; amending s. 343.92, F.S.; authorizing a mayor's designated alternate to serve as a member of the board; providing membership requirements; specifying the designated alternate's right to vote; authorizing members to attend a meeting physically, telephonically, or electronically in order to constitute a quorum; providing requirements for telephonic or electronic attendance; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) and subsection (8) of section 343.92, Florida Statutes, are amended to read:

343.92 Tampa Bay Area Regional Transit Authority.—

(2) The governing board of the authority shall consist of 13 voting members appointed no later than 45 days after the creation of the authority.

(b) The 13 voting members of the board shall be as follows:

1. The county commissions of Hernando, Hillsborough, Manatee, Pasco, and Pinellas Counties shall each appoint one county commissioner to the board. Members appointed under this

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

subparagraph shall serve 2-year terms with not more than three consecutive terms being served by any person. If a member under this subparagraph leaves elected office, a vacancy exists on the board to be filled as provided in this subparagraph within 90 days.

2.a. Two members of the board shall be the mayor, or the mayor's designated alternate, of the largest municipality within the service area of each of the following independent transit agencies or their legislatively created successor agencies: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority. The largest municipality is that municipality with the largest population as determined by the most recent United States Decennial Census.

b. The mayor's designated alternate must be an elected member of the municipality's city council. In the event the mayor is unable to attend a meeting, the mayor's designated alternate shall attend the meeting on the mayor's behalf and shall have full right to vote.

3. The following independent transit agencies or their legislatively created successor agencies shall each appoint from the membership of their governing bodies one member to the board: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority. Each member appointed under this subparagraph shall serve a 2-year term with not more than three consecutive terms being served by any person. If a member no

longer meets the transit authority's criteria for appointment, a vacancy exists on the board, which must be filled as provided in this subparagraph within 90 days.

4. The Governor shall appoint to the board four members from the regional business community, each of whom must reside in one of the counties governed by the authority and may not be an elected official. Of the members initially appointed under this subparagraph, one shall serve a 1-year term, two shall serve 2-year terms, and one shall serve a term as the initial chair as provided in subsection (5). Thereafter, a member appointed under this subparagraph shall serve a 2-year term with not more than three consecutive terms being served by any person.

Appointments may be staggered to avoid mass turnover at the end of any 2-year or 4-year period. A vacancy during a term shall be filled within 90 days in the same manner as the original appointment for the remainder of the unexpired term.

(8)(a) Seven members of the board, whether in attendance at a meeting physically, telephonically, or electronically, shall constitute a quorum, and the vote of seven members is necessary for any action to be taken by the authority. The authority may meet upon the constitution of a quorum. A vacancy does not impair the right of a quorum of the board to exercise all rights and the ability to perform all duties of the

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

authority.

(b) A member of the board may not attend a meeting telephonically or electronically unless his or her physical absence from the meeting is due to extraordinary circumstances and he or she has received the prior written approval of the chair.

Section 2. This act shall take effect July 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ____ (Y/N)

ADOPTED AS AMENDED ____ (Y/N)

ADOPTED W/O OBJECTION ____ (Y/N)

FAILED TO ADOPT ____ (Y/N)

WITHDRAWN ____ (Y/N)

OTHER

Committee/Subcommittee hearing bill: Transportation & Infrastructure Subcommittee

Representative Diamond offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (i) of subsection (6) of section 339.175, Florida Statutes, is amended to read

339.175 Metropolitan planning organization.—

(6) POWERS, DUTIES, AND RESPONSIBILITIES.—The powers, privileges, and authority of an M.P.O. are those specified in this section or incorporated in an interlocal agreement authorized under s. 163.01. Each M.P.O. shall perform all acts required by federal or state laws or rules, now and subsequently applicable, which are necessary to qualify for federal aid. It is the intent of this section that each M.P.O. shall be involved

in the planning and programming of transportation facilities, including, but not limited to, airports, intercity and high-speed rail lines, seaports, and intermodal facilities, to the extent permitted by state or federal law.

(i) There is created the ~~Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization~~ Chairs Coordinating Committee ~~is created within the Tampa Bay Area Regional Transit Authority~~, composed of the M.P.O.'s serving Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties. ~~The authority shall provide administrative support and direction to the committee.~~ The committee must, at a minimum:

1. Coordinate transportation projects deemed to be regionally significant by the committee.

2. Review the impact of regionally significant land use decisions on the region.

3. Review all proposed regionally significant transportation projects in the respective transportation improvement programs which affect more than one of the M.P.O.'s represented on the committee.

4. Institute a conflict resolution process to address any conflict that may arise in the planning and programming of such regionally significant projects.

Section 2. Paragraph (b) of subsection (2) and subsections (8) and (9) of section 343.92, Florida Statutes, are amended to read

343.92 Tampa Bay Area Regional Transit Authority.—

(2) The governing board of the authority shall consist of 13 voting members appointed no later than 45 days after the creation of the authority.

(b) The 13 voting members of the board shall be as follows:

1. The county commissions of Hernando, Hillsborough, Manatee, Pasco, and Pinellas Counties shall each appoint one county commissioner to the board. Members appointed under this subparagraph shall serve 2-year terms with not more than three consecutive terms being served by any person. If a member under this subparagraph leaves elected office, a vacancy exists on the board to be filled as provided in this subparagraph within 90 days.

2.a. Two members of the board shall be the mayor, or the mayor's designated alternate, of the largest municipality within the service area of each of the following independent transit agencies or their legislatively created successor agencies: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority. The largest municipality is that municipality with the largest population as determined by the most recent United States Decennial Census.

b. The mayor's designated alternate must be an elected member of the municipality's city council and approved as the mayor's designated alternate by the municipality's city council.

In the event the mayor is unable to attend a meeting, the mayor's designated alternate shall attend the meeting on the mayor's behalf and has the full right to vote.

3. The following independent transit agencies or their legislatively created successor agencies shall each appoint from the membership of their governing bodies one member to the board: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority. Each member appointed under this subparagraph shall serve a 2-year term with not more than three consecutive terms being served by any person. If a member no longer meets the transit authority's criteria for appointment, a vacancy exists on the board, which must be filled as provided in this subparagraph within 90 days.

4. The Governor shall appoint to the board four members from the regional business community, each of whom must reside in one of the counties governed by the authority and may not be an elected official. Of the members initially appointed under this subparagraph, one shall serve a 1-year term, two shall serve 2-year terms, and one shall serve a term as the initial chair as provided in subsection (5). Thereafter, a member appointed under this subparagraph shall serve a 2-year term with not more than three consecutive terms being served by any person.

Appointments may be staggered to avoid mass turnover at the end of any 2-year or 4-year period. A vacancy during a term shall be filled within 90 days in the same manner as the original appointment for the remainder of the unexpired term.

(8) A simple majority ~~Seven members~~ of the board shall constitute a quorum, and a simple majority of the voting members present shall be necessary for any action to be taken by the board ~~the vote of seven members is necessary for any action to be taken by the authority~~. The authority may meet upon the constitution of a quorum. A vacancy does not impair the right of a quorum of the board to exercise all rights and the ability to perform all duties of the authority.

~~(9) Beginning July 1, 2017, the board must evaluate the abolishment, continuance, modification, or establishment of the following committees:~~

~~(a) Planning committee.~~

~~(b) Policy committee.~~

~~(c) Finance committee.~~

~~(d) Citizens advisory committee.~~

~~(e) Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee.~~

~~(f) Transit management committee.~~

~~(g) Technical advisory committee.~~

~~The board must submit its recommendations for abolishment, continuance, modification, or establishment of the committees to the President of the Senate and the Speaker of the House of Representatives before the beginning of the 2018 Regular Session.~~

Section 3. Paragraphs (e), (f), and (g) of subsection (3) of section 343.922, Florida Statutes, are amended to read

343.922 Powers and duties.—

(3)

(e) The authority shall present the original regional transit development plan and updates to the governing bodies of the counties within the designated region, ~~to the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee,~~ and to the legislative delegation members representing those counties within 90 days after adoption.

~~(f) The authority shall coordinate plans and projects with the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee, to the extent practicable, and participate in the regional M.P.O. planning process to ensure regional comprehension of the authority's mission, goals, and objectives.~~

~~(g) The authority shall provide administrative support and direction to the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee as provided in s. 339.175(6)(i).~~

Section 4. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:
An act relating to the Tampa Bay Area Regional Transit Authority; amending s. 339.175, F.S.; renaming the Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee; deleting a requirement that the authority provide the committee with administrative support and direction; amending s. 343.92, F.S.; authorizing a mayor's designated alternate to serve as a member of the board; providing membership requirements; specifying the designated alternates right to vote; providing quorum requirements; repealing obsolete provisions; amending s. 343.922, F.S.; making conforming changes; repealing powers and duties of the authority relating to the Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 533 Child Restraint Requirements
SPONSOR(S): Beltran and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 158

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee		Roth	Vickers
2) Children, Families & Seniors Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Florida law requires every operator of a motor vehicle operated on the roadways, streets, or highways of this state to provide for protection of a child who is five years of age or younger by properly using a crash-tested, federally approved child restraint device as follows:

- For children through three years of age, the device must be a separate carrier or a vehicle manufacturer's integrated child seat.
- For children aged four through five years, a separate carrier, an integrated child seat, or a child booster seat may be used.

The bill increases from five years of age or younger, to six years of age or younger, the requirement to provide for protection of a child by properly using a crash-tested, federally approved child restraint device.

The bill also increases from age four through five years, to age four through six years, the authorization to use a separate carrier, an integrated child seat, or a child booster seat.

To the extent there is an increase in the number of traffic citations issued because of the change in child safety restraint requirements, state and local governments may realize a positive fiscal impact from these additional revenues. *See* Fiscal Analysis for additional details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Child Passenger Safety

Motor vehicle injuries are a leading cause of death among children in the United States.[1] However, use of a car seat reduces the risk of death to children by 71 to 82 percent, when compared with seat belt use alone.[2] Additionally, the use of a booster seat reduces the risk of serious injury by 45 percent for children aged 4-8 years.[3]

A study of five states that increased the age requirement to 7 or 8 years for car seat and booster seat use found that the rate of children using car seats and booster seats increased nearly three times, and the rate of children who sustained fatal or incapacitating injuries decreased by 17 percent.[4]

The National Highway Traffic Safety Administration (NHTSA), the Center for Disease Control Prevention, and the American Academy of Pediatrics (AAP) have produced guidelines for parents and caregivers to make sure their children are secured appropriately for their age, height, and weight. For instance, AAP's guidelines are:

- All infants and toddlers should ride in a rear-facing car safety seat (CSS) until they are 2 years of age or until they reach the highest weight or height allowed by the manufacturer of their CSS.
- All children 2 years or older, or those younger than 2 years who have outgrown the rear-facing weight or height limit for their CSS, should use a forward-facing CSS with a harness for as long as possible, up to the highest weight or height allowed by the manufacturer of their CSS.
- All children whose weight or height is above the forward-facing limit for their CSS should use a belt-positioning booster seat until the vehicle lap-and-shoulder seat belt fits properly, typically when they have reached 4 feet 9 inches in height and are between 8 and 12 years of age.
- When children are old enough and large enough to use the vehicle seat belt alone, they should always use lap-and-shoulder seat belts for optimal protection.
- All children younger than 13 years should be restrained in the rear seats of vehicles for optimal protection.[5]

Car seats available on the market offer a variety of choices. The best choice, according to NHTSA, is a selection based on a given child's age and size, which complies with the specific car seat manufacturer's instructions for height and weight limits, and is properly installed in accordance with the vehicle's owner's manual.[6] Car seats are generally available in three types, with variations in each type:

- Rear-facing car seats have a harness and, in a crash, cradles and moves with a child to reduce the stress to the child's neck and spinal cord;
- Forward-facing car seats have a harness and tether that limits a child's forward movement during a crash; and
- Booster seats position the seat belt so that it fits properly over the stronger parts of a child's body.[7]

---

[1] Centers for Disease Control and Prevention, *Child Passenger Safety: Get the Facts*, available at http://www.cdc.gov/motorvehiclesafety/child_passenger_safety/cps-factsheet.html (last visited October 16, 2019).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] American Academy of Pediatrics, *Child Passenger Safety*, April 2011, available at https://pediatrics.aappublications.org/content/127/4/788 (last visited October 18, 2019).
[6] National Highway Traffic Safety Administration, *Car Seats and Booster Seats*, available at https://www.nhtsa.gov/equipment/car-seats-and-booster-seats#age-size-rec (last viewed October 18, 2019).
[7] *Id.*

Florida Law

Child Restraint Requirements

Florida law requires every operator of a motor vehicle[8] operated on the roadways, streets, or highways of this state to provide for protection of a child who is five years of age or younger by properly using a crash-tested, federally approved child restraint device:

- For children through three years of age, the device must be a separate carrier or a vehicle manufacturer's integrated child seat.
- For children aged four through five years, a separate carrier, an integrated child seat, or a child booster seat may be used. However, the requirement does not apply when a safety belt is used as required in s. 316.614(4)(a), F.S., and the child:
    - Is being transported gratuitously by an operator who is not a member of the child's immediate family;
    - Is being transported in a medical emergency situation involving the child; or
    - Has a medical condition that necessitates an exception as evidenced by appropriate documentation from a health care professional.[9]

A person who violates Florida's child restraint requirements, commits a moving violation punishable by a penalty of $60 plus any applicable local court costs.[10] In addition, the violator will have three points assessed against his or her driver license.[11] In lieu of the monetary penalty and the assessment of points, a violator may elect to participate in a child restraint safety program, with the approval of the court with jurisdiction over the violation. After completing the program, the court may waive the monetary penalty, and must waive the assessment of points.[12]

Safety Belt Use Under 18

Florida law prohibits a person from operating a motor vehicle or autocycle in this state unless each passenger and the operator of the vehicle or autocycle under the age of 18 years are restrained by a safety belt or by a child restraint device, if applicable.[13]

School Buses

Florida law requires each school bus[14] purchased new after December 31, 2000, and used to transport students in grades pre-K through 12, be equipped with safety belts or with any other federally approved restraint system in a number sufficient to allow each student being transported to use a separate safety belt or restraint system.[15] Enacted in 1999, the statute requires each school district to prioritize the allocation of buses equipped with safety belts or restraint systems to children in elementary schools.[16]

---

[8] Section 316.003(42), F.S., defines "motor vehicle," except for purposes of the payment of tolls, as "a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped." As used in s. 316.613, F.S., the term "motor vehicle" does not include:

- A school bus as defined in s. 316.003, F.S.
- A bus used for the transportation of persons for compensation, other than a bus regularly used to transport children to or from school, as defined in s. 316.615(1)(b), F.S., or in conjunction with school activities.
- A farm tractor or implement of husbandry.
- A truck having a gross vehicle weight rating of more than 26,000 pounds.
- A motorcycle, moped, or bicycle.

[9] Section 316.613, F.S.

[10] Section 318.18(3)(a), F.S.

[11] Section 322.27(3)(d)7., F.S.

[12] Section 316.613(5), F.S.

[13] Section 316.614(4)(a), F.S.

[14] As used in that section, "school bus" means one that is owned, leased, operated, or contracted by a school district.

[15] Section 316.6145, F.S.

[16] Section 1006.25(2), F.S., requires each school bus regularly used for the transportation of prekindergarten disability program and K-12 public school students to and from school or to and from school activities, and owned, operated, rented, contracted, or leased by any district school board to comply with the applicable federal motor vehicle safety standards. Subsection (4) of that section requires students be transported only in designated seating positions, except in specified emergency situations, and use the occupant crash protection system provided by the manufacturer. The Department of Education posts on its website guidelines providing "clarification and interpretation of the NHTSA Guidelines, and additional background and Department of Education recommendations regarding technical and operational issues associated with transporting pre-school age students." *See* Florida Department of Education, *Florida*

However, the provisions of s. 316.613, F.S., relating to child safety restraints, do not apply to school buses, as they are excluded from the definition of "motor vehicle" for purposes of that section.[17]

Child Care Facility Vehicles

Florida law requires the Florida Department of Children and Families (DCF) to establish licensing standards that each licensed child care facility must meet regardless of the origin or source of the fees used to operate the facility or the type of children served.[18] Section 402.305(10), F.S., requires the minimum standards, among other items, to include requirements for child restraints or seat belts in vehicles used by child care facilities[19] and large family child care homes[20] to transport children.

Pursuant to that direction, DCF's Florida Administrative Code Rule 65C-22.001(6)(e) requires each child transported in a child care facility vehicle or a large family child care home vehicle to be in an individual, factory-installed seat belt or a federally approved child restraint.

Child Restraint Requirements in Other States

The 50 states and the District of Columbia all have laws requiring some type of child restraint seats for children under a certain age, height, or weight. The majority of states require child restraint seats until age six or seven.[21] Additionally, many states require rear facing child restraint seats for children under a certain age and weight.[22]

For example, the state of Connecticut requires children under the age of two or under thirty pounds to ride rear facing in a child restraint system equipped with a five-point harness. Children under the age of five, but not under the age of two, or under forty pounds, but not under thirty pounds, are required to be in a forward facing child restraint system equipped with a five-point harness. All children under age eight and under sixty pounds must be in some type of child restraint seat including a booster seat.[23]

Tennessee requires children under the age of one, or weighing less than twenty pounds, to ride rear-facing in a child restraint system that meets federal motor vehicle safety standards. Children age one through three years old and weighing more than twenty pounds are required to ride in a child safety restraint system (rear facing or forward facing) that meets federal motor vehicle safety standards. Children age four through eight years of age and measuring less than four feet nine inches in height, are required to be in a child restraint seat, including a belt positioning booster seat system, that meets the federal motor vehicle safety standards.[24]

Effect of Proposed Changes

The bill amends s. 316.613, F.S., by increasing from five years of age or younger, to six years of age or younger, the requirement to provide for protection of a child by properly using a crash-tested, federally approved child restraint device.

Guidelines for Seating of Pre-school Age Children in School Buses, available at http://www.fldoe.org/schools/healthy-schools/transportation/ (last viewed October 22, 2019).

[17] Section 316.613(2)(a), F.S.

[18] Section 402.305(1), F.S.

[19] Section 402.302(1), F.S., defines "child care" to mean "the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care." Subsection (2) of that section defines "child care facility" to include "any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit."

[20] Section 402.302, F.S., defines "large family child care home" to mean "an occupied resident in which child care is regularly provided for children from at least two unrelated families, which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit, and which has at least two full-time child care personnel on the premises during the hours of operation, with one of the two personnel being the owner or occupant of the residence."

[21] AAA Digest of Motor Laws, *Child Passenger Safety*, available at https://drivinglaws.aaa.com/tag/child-passenger-safety/ (last visited October 21, 2019).

[22] *Id.*

[23] Conn. Gen. Stat. § 14-100a (2019)

[24] Tenn. Code Ann. § 55-9-602 (2019)

The bill also increases from age four through five years, to age four through six years, the authorization to use a separate carrier, an integrated child seat, or a child booster seat. Children being transported in a child restraint device in compliance with the current provisions of s. 316.613(1) and (1)(a)2., F.S., must be kept in that (or another) compliant device for one additional year.

B. SECTION DIRECTORY:

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

Section 2: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

To the extent there is an increase in the number of traffic citations issued due to the new child safety restraint requirements, the state may realize additional revenues. However, the fiscal impact cannot be quantified and is indeterminate.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

To the extent there is an increase in the number of traffic citations issued due to the new child safety restraint requirements, local governments may realize additional revenues. However, the fiscal impact cannot be quantified and is indeterminate.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The change in child safety restraint requirements may result in more motorists being assessed traffic fines, and may require motorists to purchase new child safety restraint seats.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have

to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

There is no rulemaking authority granted in the bill, nor is there a need for rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to child restraint requirements; amending s. 316.613, F.S.; increasing the age of children for whom operators of motor vehicles must provide protection by using a crash-tested, federally approved child restraint device; increasing the age of children for whom a separate carrier, an integrated child seat, or a child booster seat may be used; providing an effective date.

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

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

316.613 Child restraint requirements.—

(1)(a) Every operator of a motor vehicle as defined in this section, while transporting a child in a motor vehicle operated on the roadways, streets, or highways of this state, shall, if the child is 6 ~~5~~ years of age or younger, provide for protection of the child by properly using a crash-tested, federally approved child restraint device.

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

2. For children aged 4 through 6 ~~5~~ years, a separate

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

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

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

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

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

Section 2. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 951 Assaults on Specified Persons
SPONSOR(S): Beltran and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1416

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee		Johnson	Vickers
2) Justice Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Transportation has adopted rules establishing equipment and operational safety standards for bus transit systems. These standards do not currently require assault mitigation infrastructure and technology to be installed on buses.

The bill requires every public transit provider operating regularly scheduled transit service for the general public to post at the entrance of each public transit vehicle a sign containing the following statement:

> "ATTENTION: ASSAULTING A TRANSIT WORKER IS A FELONY PUNISHABLE BY UP TO 5 YEARS IN PRISON."

Additionally, each public transit provider must create and implement a risk reduction program. At a minimum, each risk reduction program must include the deployment of assault mitigation infrastructure (including barriers to restrict the unwanted entry of individuals and objects into the transit operator's workstation) and conflict de-escalation training for transit operators.

The bill provides that an assault against a transit operator is reclassified from a second degree misdemeanor to a third degree felony. The effect of this change is that the maximum penalty increases from up to a year in county jail to up to five years in state prison.

The bill is expected to have a significant impact to state expenditures associated with an increase in the required number of prison beds. *See* Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Transit Worker Safety

Section 341.031, F.S., defines the term "public transit provider" as a public agency providing public transit service, including rail authorities created in Ch. 343, F.S.[1] The term "public transit" is defined as the transporting of people by conveyances, or systems of conveyances, traveling on land or water, local or regional in nature, and available for use by the public. Public transit systems may be either governmentally owned or privately owned.[2]

Rule 14-90, F.A.C., provides the Department of Transportation's rules for equipment and operational safety standards for bus transit systems,[3] including minimum equipment safety standards for buses. Currently, these standards do not require assault mitigation infrastructure and technology to be installed on buses.[4]

Assault on Specified Persons

Assault, which is classified as a second degree misdemeanor, is defined as an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.[5]

Section 784.07(2), F.S., reclassifies the misdemeanor or felony degree of assault, aggravated assault, battery, and aggravated battery when a person is charged with knowingly committing any of these offenses upon the following specified persons while he or she is engaged in the lawful performance of his or her duties:

- A law enforcement officer;
- A firefighter;
- An emergency medical care provider;
- A railroad special officer;
- A traffic accident investigation officer;
- A nonsworn law enforcement agency employee;
- A law enforcement explorer;
- A traffic infraction enforcement officer;
- A parking enforcement specialist;
- A uniformed licensed security officer;
- A security officer employed by the board of trustees of a community college; or
- A public transit employee or agent.[6]

The reclassification of the degree of the offense is as follows:

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor;

[1] Section 341.031(1), F.S.
[2] Section 341.031(6), F.S.
[3] Rule 14-90.002(2), F.A.C., defines the term "bus transit system" means a community transportation coordinator; a public transit provider; or a private contract transit provider which owns, operates, leases, or controls buses or taxicabs where such transportation consists of continuous or recurring transportation under the same contract; or a privately owned or operated transit provider that receives operational or capital funding from the Department and owns, operates, leases, or controls buses, other than nonpublic sector buses that provides transportation services available for use by the general riding public.
[4] Rule 14-90.007, F.A.C.
[5] Section 784.011(1) and (2), F.S.
[6] Section 784.07(1)(e), F.S., defines the term "public transit employees or agents" as bus operators, train operators, revenue collectors, security personnel, equipment maintenance personnel, or field supervisors, who are employees or agents of a transit agency as described in s. 812.015(1)(l), F.S.

- In the case of battery, from a first degree misdemeanor to a third degree felony;
- In the case of aggravated assault, from a third degree felony to a second degree felony, and any person convicted of aggravated assault upon a law enforcement officer is subject to a mandatory three-year minimum term of imprisonment; and
- In the case of aggravated battery, from a second degree felony to a first degree felony, and any person convicted of aggravated battery of a law enforcement officer is subject to a mandatory five-year minimum term of imprisonment.

Reclassifying an offense has the effect of increasing the maximum sentence that may be imposed for an offense. The maximum sentence that may be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony:

- Sixty days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- Fifteen years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.[7]

Effect of the Bill

Requirements for Public Transit Providers

The bill requires that, by January 1, 2021, every public transit provider operating regularly scheduled transit service for the general public must post in at least one conspicuous place at the entrance of each public transit vehicle a yellow sign with black, bold type font no smaller than 48 point containing the following statement:

> "ATTENTION: ASSAULTING A TRANSIT WORKER IS A FELONY PUNISHABLE BY UP TO 5 YEARS IN PRISON."

By July 1, 2021, each public transit provider must create and implement a risk reduction program. At a minimum, each risk reduction program must include the deployment of assault mitigation infrastructure and technology on public transit (including barriers to restrict the unwanted entry of individuals and objects into transit operator's workstations) and conflict de-escalation training for transit operators.

Revision of the Degree Designation of Assault

The bill reclassifies the felony or misdemeanor degree of assaults on specified persons providing that that an assault against any of these specified persons is reclassified from a second degree misdemeanor to a third degree felony. Currently, such an assault is reclassified from a second degree misdemeanor to a first degree misdemeanor. The effect of this change is that an assault reclassified to a third-degree felony has a maximum penalty of five years in state prison; in contrast, the maximum penalty for an assault currently reclassified as a first-degree misdemeanor is a year in county jail.

B. SECTION DIRECTORY:

Section 1 creates s. 341.0611, F.S., relating to transit worker safety.

Section 2 amends s. 784.07, F.S., relating to assault or battery of specified officers.

Section 3 provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[7] Section 775.082, F.S. (maximum penalties). Fines may also be imposed, and those fines escalate based on the degree of the offense. Section 775.082, F.S., provides the following maximum fines: $500 for a second degree misdemeanor; $1,000 for a first degree misdemeanor; $5,000 for a third degree felony; and $10,000 for a second degree felony and a first degree felony.

1. Revenues:

   The bill does not appear to impact state revenues.

2. Expenditures:

   The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet published the impacts of this bill. The Office of Economic and Demographic Research preliminarily estimates that the bill will have a "positive significant" prison bed impact (an increase of more than 25 prison beds).[8]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to impact local government revenues.

2. Expenditures:

   Indeterminate. Local governments will likely incur significant expenditures associated with installing signs on each public transit vehicle and the implementation of a risk reduction program, including the installation of barriers protecting transit operator workstations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires public transit agency to install signs and barriers in public transit vehicles; however, an exception may apply since similarly situated persons are all required to comply.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

This bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

While s. 784.07, F.S., appears to apply when the victim is a public transit employee or agent, there is no specific reference in the statute to a public transit employee or agent in the list of officers and employees referenced as being subject to an assault or battery, which triggers the reclassification if the assault or battery occurs while the officer or employee is engaged in his or her lawful duties. To provide greater clarity that s. 784.07, F.S., applies to an assault or battery on a public transit employee or agent, the bill's sponsor may wish to include specific reference to a public transit employee or agent in the list of officers or employees who have been assaulted or battered (as charged).

[8] The EDR's preliminary estimate is on file with the Transportation & Infrastructure Subcommittee.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to assaults on specified persons; creating s. 341.0611, F.S.; requiring public transit providers to post a specified sign concerning assaulting a transit operator; requiring public transit providers to create and implement a risk reduction program; specifying requirements for such a program; amending s. 784.07, F.S.; revising the reclassification of the offense of assault on specified persons; providing an effective date.

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

Section 1. Section 341.0611, Florida Statutes, is created to read:

341.0611 Transit worker safety.—

(1) By January 1, 2021, every public transit provider operating regularly scheduled transit service for the general public shall post in at least one conspicuous place at the entrance of each public transit vehicle a yellow sign with black, bold type font no smaller than 48 point containing the following statement:

"ATTENTION: ASSAULTING A TRANSIT WORKER IS A FELONY PUNISHABLE BY UP TO 5 YEARS IN PRISON."

(2) By July 1, 2021, every public transit provider

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

operating regularly scheduled transit service for the general public shall create and implement a risk reduction program. At a minimum, each risk reduction program shall include:

(a) The deployment of assault mitigation infrastructure and technology on public transit, including barriers to restrict the unwanted entry of individuals and objects into transit operator's workstations.

(b) Conflict de-escalation training for transit operators.

Section 2. Paragraph (a) of subsection (2) of section 784.07, Florida Statutes, is amended to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a railroad special officer, a traffic accident investigation officer as described in s. 316.640, a nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a law enforcement explorer, a traffic infraction enforcement officer as described in s. 316.640, a parking

enforcement specialist as defined in s. 316.640, a person licensed as a security officer as defined in s. 493.6101 and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college, while the officer, firefighter, emergency medical care provider, railroad special officer, traffic accident investigation officer, traffic infraction enforcement officer, inspector, analyst, operator, law enforcement explorer, parking enforcement specialist, public transit employee or agent, or security officer is engaged in the lawful performance of his or her duties, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a felony ~~misdemeanor~~ of the third ~~first~~ degree.

Section 3. This act shall take effect October 1, 2020.

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

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Transportation & Infrastructure Subcommittee
Representative Beltran offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

341.0611 Transit worker safety.—

(1) By January 1, 2021, every public transit provider operating regularly scheduled transit service for the general public shall post in at least one conspicuous place at the entrance of each public transit vehicle a yellow sign with black, bold type font no smaller than 48 point containing the following statement:

"ATTENTION: ASSAULTING A TRANSIT WORKER IS A FELONY PUNISHABLE BY UP TO 5 YEARS IN PRISON."

(2) By July 1, 2021, every public transit provider operating regularly scheduled transit service for the general public shall create and implement a risk reduction program. Each risk reduction program shall include conflict de-escalation training for transit operators. The risk reduction program may include the deployment of assault mitigation infrastructure and technology on public transit vehicles, including barriers to restrict the unwanted entry of individuals and objects into transit operator's workstations.

Section 2. Subsection (2) of section 784.07, Florida Statutes, is amended to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a railroad special officer, a traffic accident investigation officer as described in s. 316.640, a nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a law enforcement explorer, a traffic infraction

enforcement officer as described in s. 316.640, a parking enforcement specialist as defined in s. 316.640, a public transit employee or agent, a person licensed as a security officer as defined in s. 493.6101 and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college, while the officer, firefighter, emergency medical care provider, railroad special officer, traffic accident investigation officer, traffic infraction enforcement officer, inspector, analyst, operator, law enforcement explorer, parking enforcement specialist, public transit employee or agent, or security officer is engaged in the lawful performance of his or her duties, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a felony ~~misdemeanor~~ of the third ~~first~~ degree.

(b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(c) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.

Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of 3 years.

(d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years.

Section 3. The Legislature finds and declares that this act fulfills an important state interest.

Section 4. This act shall take effect October 1, 2020

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

Remove everything before the enacting clause and insert:

An act relating to assault on specified persons; creating s. 341.0611, F.S., requiring public transit providers to post a specified sign concerning assaulting a transit operator; requiring public transit providers to create and implement a risk reduction program; specifying requirements for such a program; authorizing public transit providers to deploy assault mitigation infrastructure; amending s. 784.07, F.S., providing a specific reference to assault and battery on a public transit employee or agent; revising the reclassification of the offense of assault on specified persons; providing a declaration of important state interest; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 977 Motor Vehicle Dealers
SPONSOR(S): Rommel and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1738

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee		Roth	Vickers
2) Judiciary Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

In 2005, Congress passed 49 U.S.C. § 30106, commonly known as the Graves Amendment, to prohibit states from imposing vicarious liability on car rental companies. In 2011, the Florida Supreme Court held that as it relates to rental car companies the Graves Amendment specifically preempts Florida law and relieves rental car companies, while engaged in the trade or business of renting or leasing motor vehicles, from vicarious liability for harm caused by the driver. In 2019, the Fourth District Court of Appeal, relying on the Supreme Court's analysis, held that the Graves Amendment applies to a motor vehicle dealer that provides a customer with a temporary replacement vehicle.

The bill finds that subjecting motor vehicle dealers and their leasing and rental affiliates to vicarious liability under the dangerous instrumentality doctrine is both unfair and economically disadvantageous to motor vehicle dealers, their leasing and rental affiliates, and state consumers in that it causes dealers and their affiliates to suffer higher insurance costs, which are then passed on to consumers.

Additionally, the bill provides that a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides a temporary replacement vehicle to a customer whose vehicle is being repaired, serviced, or adjusted by the dealer is immune from vicarious liability in a civil or criminal proceeding. The motor vehicle dealer or affiliate is granted immunity as long as there is no negligent or criminal wrongdoing on the part of the dealer or affiliate. The bill provides that a motor vehicle dealer or affiliate must obtain a copy of the vehicle operator's driver license and insurance information in order to qualify for the immunity granted in the bill.

The bill will likely have no fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The court-created dangerous instrumentality doctrine holds an owner strictly liable for injuries caused by another person's negligent use of the owner's property. Specifically, when the owner entrusts a dangerous instrumentality to another person, the owner is responsible for damages caused by the other person. Whether the owner was negligent or at fault is irrelevant. The rationale for holding an innocent person responsible for such damages is that the owner of an instrumentality capable of causing death or destruction should be liable for damages caused by anyone operating it with the owner's consent.[1]

The dangerous instrumentality doctrine originated in English common law and was adopted by the Florida Supreme Court in 1920 in *Southern Cotton Oil Company v. Anderson*, 86 So. 629 (1920).[2] The Court acknowledged the doctrine was originally limited to fire, water, and poisons, but had expanded over time:

> It is true that, in the early development of this very salutary doctrine, the dangerous agencies consisted largely of fire, flood, water, and poisons. In Dixon v. Bell . . . Lord Ellenborough extended the doctrine to include loaded firearms. With the discovery of high explosives, they were put in the same class. As conditions changed it was extended to include other objects that common knowledge and common experience proved to be as potent sources of danger as those embraced in the earlier classifications. The underlying principle was not changed, but other agencies were included in the classification. Among them are locomotives, push cars, street cars, etc., and it is now well settled that these come within the class of dangerous agencies, and the liability of the master is determined by the rule applicable to them. The reasons for putting these agencies in the class of dangerous instrumentalities apply with equal, if not greater, force to automobiles.[3]

In a 1990 Florida Supreme Court case, a man leased a car from a lessor and then loaned the leased car to a friend. The friend caused a motor vehicle crash in the leased car, killing another person. The victim's estate sued the lessor of the car directly. The Court held that the lessor was liable for the death of the victim under the dangerous instrumentality doctrine, even though the lessor did not cause the accident. The Court acknowledged that the dangerous instrumentality doctrine was "unique to Florida" but justified the doctrine as necessary "to provide greater financial responsibility to pay for the carnage on our roads."[4]

The Second District Court of Appeal has acknowledged that the dangerous instrumentality doctrine creates "real and perceived inequities" and "has drawn its fair share of criticism."[5] Once a court decides that an item is a dangerous instrumentality, an owner of such instrumentality is liable for damages the instrumentality causes, even if the owner was not in control of the instrumentality at the time.

[1] *Roman v. Bogle*, 113 So. 3d 1011, 1016 (Fla. 5th DCA 2013).
[2] *Id.* at 1014.
[3] *S. Cotton Oil Company v. Anderson*, 86 So. 629, 631 (Fla. 1920).
[4] *Kraemer v. General Motors Acceptance Corp.*, 572 So. 2d 1363, 1365 (Fla. 1990).
[5] *Fischer v. Alessandrini*, 907 So. 2d 569, 570 (Fla. 2d DCA 2005).

Whether an item is a dangerous instrumentality is a question of law depending on several factors, none of which alone is dispositive, including:

- Whether the instrumentality is a motor vehicle.[6]
- Whether the instrumentality is frequently operated near the public, regardless of whether the incident at issue occurred on public property.
- The instrumentality's peculiar dangers relative to other objects that courts have found to be dangerous instrumentalities.
- The extent to which the Legislature has regulated the instrumentality.[7]

If the court decides an item is a dangerous instrumentality, the owner is liable regardless of the facts of the particular case. Over time, Florida courts have expanded the applicability of the doctrine to include automobiles,[8] trucks, buses,[9] tow-motors,[10] golf carts, and other motorized vehicles.[11]

The Florida Legislature has limited the dangerous instrumentality doctrine by providing that a motor vehicle dealer or rental car company that provides a temporary replacement vehicle to a customer for up to 10 days acts as the operator of the vehicle and is liable for damages up to $100,000 per person and $300,000 per incident for bodily injury and up to $50,000 for property damage.[12] If the driver of the vehicle is uninsured or has insurance limits of less than $500,000 combined property damage and bodily injury liability, the motor vehicle dealer or car rental company is liable for up to an additional $500,000 in economic damages arising out of the use of the vehicle.[13]

In 2005, Congress passed 49 U.S.C. § 30106, commonly known as the Graves Amendment, to prohibit states from imposing vicarious liability on car rental companies.[14] Vicarious liability is “liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate (such as an employee) based on the relationship between the two parties.”[15] To benefit from the Graves Amendment, the “owner” must be “engaged in the business of renting or leasing motor vehicles.” A vehicle “owner” may be the titleholder, lessee, or bailee of the vehicle.[16]

The Graves Amendment, however, does not protect a rental company from its own negligence or criminal wrongdoing. If an injury is caused by a rental company’s negligent or criminal act, the rental company could still be directly liable for its actions or inactions, even if an accident occurs while a renter is driving the vehicle.[17] Federal law supersedes Florida's dangerous instrumentality doctrine when a rental car company rents a car to a driver who negligently injures another person.[18]

In 2011, the Florida Supreme Court held that as it relates to rental car companies the Graves Amendment specifically preempts Florida law[19] and relieves rental car companies, while engaged in the trade or business of renting or leasing motor vehicles, from vicarious liability for harm caused by the driver.[20]

---

[6] A motor vehicle is a "wheeled conveyance that does not run on rails and is self-propelled, especially one powered by an internal combustion engine, a battery or fuel-cell, or a combination of these." *Newton v. Caterpillar Financial Servs. Corp.*, 253 So. 3d 1054, 1056 (Fla. 2018) (quoting Black's Law Dictionary (10th ed. 2014)).
[7] *Newton*, 253 So. 3d at 1056.
[8] *S. Cotton Oil*, 86 So. at 629, supra at FN 3.
[9] *Meister v. Fisher*, 462 So. 2d 1071, 1072 (Fla. 1984).
[10] *Eagle Stevedores, Inc. v. Thomas*, 145 So. 2d 551 (Fla. 3d DCA 1962) (where plaintiff was struck in a dock area by a "tow-motor," a small motor-operated vehicle, dangerous instrumentality doctrine applied).
[11] *Meister*, 462 So. 2d at 1072.
[12] Section 324.021(9)(b)2. & (c)1., F.S.
[13] Section 324.021(9)(b)2. & (c)1., F.S.
[14] Auto Rental News, The Graves Amendment: Challenges, Interpretations, Answers, https://www.autorentalnews.com/156611/the-graves-amendment-challenges-interpretations-and-answers (last visited Apr. 30, 2019).
[15] Black’s Law Dictionary 427 (3rd pocket ed. 2006).
[16] Auto Rental News, *supra* at FN 14.
[17] *Id.*
[18] 49 U.S.C. § 30106.
[19] Section 324.021(9)(b)2., F.S.
[20] *Vargas v. Enterprise Leasing Co.*, 60 So.3d 1037 (Fla. 2011).

In 2019, the Fourth District Court of Appeal, relying on the Supreme Court's analysis in *Vargas*, held that the Graves Amendment applies to a motor vehicle dealer that provides a customer with a temporary replacement vehicle.[21]

Effect of Proposed Changes

The bill provides the following legislative findings:

> The Legislature finds that although the federal Graves Amendment, 49 U.S.C. s. 30106, has eliminated vicarious liability claims against motor vehicle rental and leasing companies for damages or injuries caused by customers during a rental or lease, motor vehicle dealers and their leasing and rental affiliates in the state are still subjected to suits for damages or injuries caused by customers during the customers' operation of temporary replacement vehicles owned, but not being operated, by the motor vehicle dealers and their leasing and rental affiliates. Absent negligence or criminal conduct by a motor vehicle dealer or its leasing or rental affiliates, the Legislature finds that subjecting motor vehicle dealers and their leasing and rental affiliates to this vicarious liability under the dangerous instrumentality doctrine is both unfair and economically disadvantageous to motor vehicle dealers, their leasing and rental affiliates, and state consumers in that it causes dealers and their affiliates to suffer higher insurance costs, which are then passed on to consumers. Vicarious liability in such cases often serves to relieve the actual tortfeasor from liability.

Additionally, the bill provides that a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides a temporary replacement vehicle to a customer whose vehicle is being repaired, serviced, or adjusted by the dealer is immune from vicarious liability in a civil or criminal proceeding. The motor vehicle dealer or affiliate is granted immunity as long as there is no negligent or criminal wrongdoing on the part of the dealer or affiliate. The bill requires that a motor vehicle dealer or affiliate obtain a copy of the vehicle operator's driver's license and insurance information.

B. SECTION DIRECTORY:

Section 1: Provides legislative findings.

Section 2: Amends s. 324.021, F.S., relating to definitions; minimum insurance required.

Section 3: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill will likely have no fiscal impact on state government revenues.

2. Expenditures:

   The bill will likely have no fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill will likely have no fiscal impact on local government revenues.

[21] *Collins v. Auto Partners V, LLC*, 276 So.3d 817 (Fla. 4th DCA 2019).

2. Expenditures:

The bill will likely have no fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Motor vehicle dealers will likely see a reduction in insurance premiums and the cost of litigation. These savings may be passed onto consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to motor vehicle dealers; providing legislative findings; amending s. 324.021, F.S.; revising the definition of the term "rental company" to include motor vehicle dealers without limitation and their leasing and rental affiliates, for the purpose of minimum insurance coverage requirements; providing that motor vehicle dealers and their affiliates are immune to causes of action and not vicariously liable for harm to persons or property under certain circumstances; providing that motor vehicle dealers and their affiliates are not adjudged liable in civil proceedings or guilty in criminal proceedings under certain circumstances; providing exceptions; providing an effective date.

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

Section 1. The Legislature finds that although the federal Graves Amendment, 49 U.S.C. s. 30106, has eliminated vicarious liability claims against motor vehicle rental and leasing companies for damages or injuries caused by customers during a rental or lease, motor vehicle dealers and their leasing and rental affiliates in the state are still subjected to suits for damages or injuries caused by customers during the customers'

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

operation of temporary replacement vehicles owned, but not being operated, by the motor vehicle dealers and their leasing and rental affiliates. Absent negligence or criminal conduct by a motor vehicle dealer or its leasing or rental affiliates, the Legislature finds that subjecting motor vehicle dealers and their leasing and rental affiliates to this vicarious liability under the dangerous instrumentality doctrine is both unfair and economically disadvantageous to motor vehicle dealers, their leasing and rental affiliates, and state consumers in that it causes dealers and their affiliates to suffer higher insurance costs, which are then passed on to consumers. Vicarious liability in such cases often serves to relieve the actual tortfeasor from liability.

Section 2. Paragraph (c) of subsection (9) of section 324.021, Florida Statutes, is amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(9) OWNER; OWNER/LESSOR.—

(c) Application.—

1. The limits on liability in subparagraphs (b)2. and 3. do not apply to an owner of motor vehicles that are used for commercial activity in the owner's ordinary course of business,

other than a rental company that rents or leases motor vehicles. For purposes of this paragraph, the term "rental company" includes:

a. ~~only~~ An entity that is engaged in the business of renting or leasing motor vehicles to the general public and that rents or leases a majority of its motor vehicles to persons with no direct or indirect affiliation with the rental company.

b. ~~The term also includes~~ A motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides temporary replacement vehicles to its customers ~~for up to 10 days~~. ~~The term "rental company" also includes:~~

c.~~a.~~ A related rental or leasing company that is a subsidiary of the same parent company as that of the renting or leasing company that rented or leased the vehicle.

d.~~b.~~ The holder of a motor vehicle title or an equity interest in a motor vehicle title if the title or equity interest is held pursuant to or to facilitate an asset-backed securitization of a fleet of motor vehicles used solely in the business of renting or leasing motor vehicles to the general public and under the dominion and control of a rental company, as described in this subparagraph, in the operation of such rental company's business.

2. ~~Furthermore,~~ With respect to commercial motor vehicles as defined in s. 627.732, the limits on liability in subparagraphs (b)2. and 3. do not apply if, at the time of the

incident, the commercial motor vehicle is being used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., and that is required pursuant to such act to carry placards warning others of the hazardous cargo, unless at the time of lease or rental either:

a. The lessee indicates in writing that the vehicle will not be used to transport materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

b. The lessee or other operator of the commercial motor vehicle has in effect insurance with limits of at least $5,000,000 combined property damage and bodily injury liability.

3. A motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides a temporary replacement vehicle at no charge or at a reasonable daily charge to a service customer whose vehicle is being repaired, serviced, or adjusted by the motor vehicle dealer is immune from any cause of action and is not liable, vicariously or otherwise, under general law by reason of being the owner of the temporary replacement vehicle, for harm to persons or property that arises out of the ownership, use, operation, control, or possession of the temporary replacement vehicle during the period the temporary replacement vehicle is in the use, operation, control,

or possession of the motor vehicle dealer's service customer, or such customer's designee, if there is no negligence or criminal wrongdoing on the part of the motor vehicle owner, or its leasing or rental affiliate. For purposes of this section, and notwithstanding any other provision of general law or existing case law, a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that gives possession, control, or use of a temporary replacement vehicle to a motor vehicle dealer's service customer may not be adjudged liable in a civil proceeding, or guilty in a criminal proceeding, if the motor vehicle dealer or the motor vehicle dealer's leasing or rental affiliate obtains from the service customer or the customer's designee a copy of the customer's driver license and information on the required minimum motor vehicle insurance coverage in the state. Any subsequent determination that the driver license or insurance information provided to the motor vehicle dealer, or the motor vehicle dealer's leasing or rental affiliate, was in any way false, fraudulent, misleading, nonexistent, canceled, not in effect, or invalid does not alter or diminish the protections provided by this section, unless the motor vehicle dealer, or the motor vehicle dealer's leasing or rental affiliate, had actual knowledge thereof at the time possession of the temporary replacement vehicle was provided to the customer.

Section 3. This act shall take effect July 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Transportation & Infrastructure Subcommittee

Representative Rommel offered the following:

Amendment

Remove everything after the enacting clause and insert:

Section 1. The Legislature finds that absent negligence or criminal conduct by a motor vehicle dealer, or its leasing or rental affiliates, subjecting motor vehicle dealers and their leasing and rental affiliates to vicarious liability under the dangerous instrumentality doctrine when a temporary replacement vehicle is provided to a consumer violates the federal Graves Amendment and is both unfair and economically disadvantageous in that it causes dealers and their affiliates to suffer higher insurance costs, which are then passed on to consumers. Additionally, application of the vicarious liability doctrine in

such cases often serves to relieve the actual tortfeasor from liability.

Section 2. Paragraph (c) of subsection (9) of section 324.021, Florida Statutes, is amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(9) OWNER; OWNER/LESSOR.—

(c) Application.—

1. The limits on liability in subparagraphs (b)2. and 3. do not apply to an owner of motor vehicles that are used for commercial activity in the owner's ordinary course of business, other than a rental company that rents or leases motor vehicles. For purposes of this paragraph, the term "rental company" includes only an entity that is engaged in the business of renting or leasing motor vehicles to the general public and that rents or leases a majority of its motor vehicles to persons with no direct or indirect affiliation with the rental company. ~~The term also includes a motor vehicle dealer that provides temporary replacement vehicles to its customers for up to 10 days.~~ The term "rental company" also includes:

a. A related rental or leasing company that is a subsidiary of the same parent company as that of the renting or leasing company that rented or leased the vehicle.

b. The holder of a motor vehicle title or an equity interest in a motor vehicle title if the title or equity interest is held pursuant to or to facilitate an asset-backed securitization of a fleet of motor vehicles used solely in the business of renting or leasing motor vehicles to the general public and under the dominion and control of a rental company, as described in this subparagraph, in the operation of such rental company's business.

2. Furthermore, with respect to commercial motor vehicles as defined in s. 627.732, the limits on liability in subparagraphs (b)2. and 3. do not apply if, at the time of the incident, the commercial motor vehicle is being used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., and that is required pursuant to such act to carry placards warning others of the hazardous cargo, unless at the time of lease or rental either:

a. The lessee indicates in writing that the vehicle will not be used to transport materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

b. The lessee or other operator of the commercial motor vehicle has in effect insurance with limits of at least $5,000,000 combined property damage and bodily injury liability.

3. A motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides a temporary replacement vehicle at no charge or at a reasonable daily charge to a service customer whose vehicle is being held for repair, service, or adjustment by the motor vehicle dealer is immune from any cause of action and is not liable, vicariously or directly, under general law by reason of being the owner of the temporary replacement vehicle, for harm to persons or property that arises out of the use, or operation, of the temporary replacement vehicle by any person during the period the temporary replacement vehicle has been entrusted to the motor vehicle dealer's service customer if there is no negligence or criminal wrongdoing on the part of the motor vehicle owner, or its leasing or rental affiliate. For purposes of this section, and notwithstanding any other provision of general law or existing case law, a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that gives possession, control, or use of a temporary replacement vehicle to a motor vehicle dealer's service customer may not be adjudged liable in a civil proceeding, or guilty in a criminal proceeding, if the motor vehicle dealer or the motor vehicle dealer's leasing or rental affiliate obtains from the person receiving the temporary

replacement vehicle a copy of the person's driver license and insurance information reflecting at least the minimum motor vehicle insurance coverage required in the state. Any subsequent determination that the driver license or insurance information provided to the motor vehicle dealer, or the motor vehicle dealer's leasing or rental affiliate, was in any way false, fraudulent, misleading, nonexistent, canceled, not in effect, or invalid does not alter or diminish the protections provided by this section, unless the motor vehicle dealer, or the motor vehicle dealer's leasing or rental affiliate, had actual knowledge thereof at the time possession of the temporary replacement vehicle was provided.

Section 3. This act shall take effect July 1, 2020.

HB 1315

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1315 Transportation
SPONSOR(S): Fetterhoff
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee		Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill amends various statutes relating to transportation. In summary, the bill:

- Authorizes the Secretary of Transportation to designate an entity to coordinate efforts to enhance passenger rail safety;
- Eliminates the $275 million debt service cap on Right-of-Way Acquisition and Bridge Construction Bonds;
- Removes obsolete references to the General Revenue service charge for transportation-related revenues;
- Increases the time frame when certain disclosures must be made in some eminent domain proceedings, and authorizes new methods for providing certain notices;
- Makes permanent the funding for the Intermodal Logistics Center Infrastructure Support Program;
- Adds road and bridge maintenance or construction vehicles to the Move Over Law if certain conditions are met;
- Conforms specified airport zoning regulations to federal requirements;
- Advances the deadline for the metropolitan planning organizations list of project priorities to be submitted to the Department of Transportation (DOT);
- Makes permanent the authorization for the chair and vice chair of the Legislative Budget Commission to approve certain DOT work program amendments;
- Requires DOT to coordinate the development of rail safety and the operation of publicly funded passenger rail;
- Increases the state's liability insurance cap for passenger rail to $295 million, consistent with Federal limits;
- Authorizes documentary stamp tax revenues allocated to the Florida Rail Enterprise to be expended on rail safety programs; and
- Repeals the Economic Development Transportation Fund.

There may be a fiscal impact to state and local governments associated with including road and bridge construction or maintenance vehicles into the list of vehicles subject to the Move Over Law. *See* Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Transportation's Rail Program

Present Situation

The Department of Transportation (DOT) is required develop and implement a rail program designed to ensure its proper maintenance, safety, revitalization, and expansion, to assure its continued and increased availability, and to respond to statewide mobility needs. DOT's statutory rail requirements include:

- Providing the overall leadership, coordination, and financial and technical assistance necessary to assure the effective responses of the state's rail system to mobility needs.
- Promoting and facilitating the implementation of advanced rail systems.
- Developing and administering state standards concerning the safety and performance of rail systems.[1]

In 2009, the Legislature created the Florida Rail Enterprise (FRE) within DOT. The FRE was modeled after the existing Florida Turnpike Enterprise. The FRE is headed by an executive director, appointed by the Secretary of Transportation.[2] The FRE's headquarters must be in Leon County.[3]

The Secretary of Transportation must delegate the responsibility for developing and operating the high-speed and passenger rail systems, directing funding for passenger rail systems, and coordinating publicly funded passenger rail operations, including freight rail interoperability issues to the FRE's executive director. The FRE operates pursuant to the Florida Rail Enterprise Act.[4]

For Fiscal Year 2019-2020, the FRE was authorized one position and appropriated $267 million,[5] including $50 million from documentary stamp tax collections.[6]

The department, through the FRE, is authorized to use funds allocated to the FRE from documentary stamp collections to fund:

- Up to 50 percent of the nonfederal share of the costs of any eligible passenger rail capital improvement project.
- Up to 100 percent of planning and development costs related to the provision of a passenger rail system.
- The high-speed rail system.
- Projects necessary to identify or address anticipated impacts of increased freight rail traffic resulting from the implementation of passenger rail systems.[7]

In December 2019, due to the number of rail-related accidents in this state, the Secretary of Transportation directed DOT to implement a number of rail safety measures and to launch a statewide education initiative. The goal of the directive is to prevent additional fatalities on or near rail crossings on state roads and state owned land crossings. The directive included the following actions:

- Implementing "dynamic envelopes"[8] at every existing DOT roadway and state-owned land rail crossing.

[1] Section 341.302, F.S.
[2] The Secretary of Transportation is the agency head for the Department of Transportation.
[3] Section 20.23(4)(a), F.S.
[4] Section 20.23(4)(f)1, F.S.
[5] Chapter 2019-115, L.O.F. Specific appropriations 1953-1961.
[6] Section 201.15(4)(a)4., F.S.
[7] Section 341.303(5), F.S.
[8] A dynamic envelope is the area a vehicle should never stop in when it is crossing railroad tracks. Pavement markings and signage are provided around a rail crossing to emphasize the area and make drivers aware of the area they should never stop in. Email from John

- Requiring the inclusion of a dynamic envelope in the standard design of any future railroad crossings on DOT roadways or state-owned land rail crossings.
- Launching a data-driven statewide rail safety education initiative in conjunction with rail partners.
- Partnering with state and local law enforcement agencies to help enforce rail safety laws.
- Continuing to partner with local and private rail partners by sharing DOT rail safety design standards and framework and encouraging their participation and implementation of the safety and engineering efforts.[9]

Effect of the Bill

The bill removes the statutory references to the FRE in s. 20.23, F.S., which creates DOT, including references to its executive director, FRE's headquarters, and the FRE's exemption from certain DOT policies, procedures, and standards. In its place, the bill authorizes the Secretary of Transportation to delegate to a departmental entity various passenger rail and high-speed rail responsibilities, and adds rail safety to those responsibilities.

The bill revises DOT's statutory duties and responsibilities for rail programs, removing a requirement that DOT promote and facilitate the implementation of advanced rail systems, including high-speed rail and magnetic levitation systems. This requirement is replaced with a requirement that DOT coordinate the development, general rail safety, and operation of public funded passenger rail systems.

The bill authorizes DOT to use documentary stamp tax proceeds currently allocated to the FRE for projects necessary to identify or address needed or desired safety improvements to passenger rail systems. However, the bill does not change the reference to the FRE in the documentary stamp statute.

The bill does not repeal or amend the Florida Rail Enterprise Act.

DOT Debt Service Cap

Present Situation

DOT is authorized to issue Right of Way Acquisition and Bridge Construction bonds to finance or refinance the cost of acquiring real property for state roads, or to finance or refinance the cost of state bridge construction. Except for bonds issued to refinance previously issued bonds, bonds must be authorized by the Legislature and must be issued pursuant to the State Bond Act.[10, 11]

Section 206.46, F.S., authorizes DOT to transfer of up to seven percent of the revenues deposited into the State Transportation Trust Fund (STTF) in each fiscal year to Right-of-Way Acquisition and Bridge Construction Trust Fund, to meet the requirements to meet outstanding or proposed bond obligations. However, notwithstanding this authorized annual transfer, the annual amount transferred may not exceed an amount necessary to provide the required debt service coverage levels for a maximum debt service of $275 million.[12]

Section 339.139, F.S., requires DOT to manage all levels of debt to ensure that no more than 20 percent of total projected available state and federal revenues from the STTF, together with any local funds committed to DOT projects, are committed to certain obligations in any year. Right of Way Acquisition and Bridge Construction Bonds are included in DOT's overall debt assessment.[13]

Kotyk, Deputy Director Legislative Affairs, Department of Transportation, RE. HB 1315-Rail Safety, Jan. 24, 2020. (Copy on file with Transportation & Infrastructure Subcommittee).

[9] Department of Transportation, Press Release: *FDOT Secretary Directs Unprecedented Rail Safety Measures, Launches Statewide Education Statewide Education Initiative.* Dec. 5, 2019. Available at: https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/info/co/news/newsreleases/12052019-rail-safety.pdf?sfvrsn=f58dd329_2 (Last visited Jan. 23, 2020).

[10] Sections 215.57 through 215.83, F.S.

[11] Section. 215.605, F.S.

[12] Section 206.46(2), F.S.

[13] DOT Legislative Concepts, Change the Right-of-Way Acquisition and Bridge Construction Bonds Debt Service Cap.(Copy on file with Transportation & Infrastructure Subcommittee).

According to DOT, the Right of Way Acquisition and Bridge Construction Bond program's debt service limit has not been adjusted since in 2007. Based on DOT's most recent bond sale and Revenue Estimating Conference projections, the limit on debt service based on the seven percent of revenues threshold would have been $286.9 million in Fiscal Year 2018-2019, and grow to $350 million in Fiscal Year 2027-2018.[14]

Effect of the Bill
The bill removes the $275 million cap on funds to be transferred from the STTF to the Right-of-Way Acquisition and Bridge Construction Trust Fund. However, the seven percent cap on the amount to be transferred remains. The removal of the debt service cap will provide DOT with additional bonding capacity, offering it more flexibility in financing certain projects.

Obsolete General Revenue Surcharge References

Present Situation
Section 215.20(1), F.S., establishes an eight percent service charge to the General Revenue Fund from all revenues deposited into most state trust funds,[15] representing the estimated pro rata share of the cost of general government.

Section 215.211, F.S., eliminates or reduces the general revenue service charge for specified proceeds. Effective July 1, 2002, the service charge for taxes distributed under s. 206.606(1), F.S., relating the distribution of motor fuel taxes, s. 212.051(6), F.S., relating to taxes on diesel fuel for business purposes, and s. 319.32(5), F.S., providing for the disposition of fees from certificate of title transactions were eliminated.[16] Additionally, the service charge was eliminated, beginning July 1, 2001, on taxes distributed under s. 206.68, F.S., relating to the State Comprehensive Enhanced Transportation System Tax.[17] While the service charge has been eliminated, references to the service charge remains in the statutes creating each of the above taxes or fees.[18]

Effect of the Bill
The bill removes obsolete references to the General Revenue service charge in ss. 216.606(1), 206.608, 212.051(6) and 319.32(5), F.S.

Real Property Conveyed to a Public Agency

Present Situation
In most cases, any person or entity holding real property in any form of representative capacity, before entering into a contract in which said property is conveyed to the state or local governmental entity, must make a written public disclosure stating his or her name and address and the name and address of every person having a beneficial interest in the real property. This written disclosure must be made to the chief officer, or to his or her designee, of the state or local governmental entity with which the transaction is made at least 10 days prior to the time of closing. However, in an eminent domain taking, this disclosure must be within 48 hours the required sum is deposited in with court.[19]

The state or local governmental unit must send written notice by registered mail to the person required to make disclosures, prior to the time when such disclosures are required to be made.[20]

Effect of the Bill

[14] *Id.*
[15] Exceptions are enumerated in s. 215.22, F.S
[16] Section 215.211(1), F.S.
[17] Section 215.211(2), F.S.
[18] DOT Legislative Proposal, Remove Obsolete Language Relating to Service Charge. (Copy on file with Transportation & Infrastructure Subcommittee.
[19] Section 286.23(1), F.S.
[20] Section 286.23(2), F.S.

The bill changes the timelines governing written disclosures in eminent domain proceedings, from 48 hours to five business days after the time the required sum is deposited in the registry of the court where the written disclosure must be made.

The bill also authorizes the required written notices, in addition to registered mail, to be delivered by certified mail, by alternative delivery service providing verification of receipt, or by electronic delivery after receipt of the person's notarized authorization to use such method.

Intermodal Logistics Center Infrastructure Support Program

Present Situation
An intermodal logistics center is a facility serving as a point of intermodal transfer of freight in a specific area physically separated from a seaport where activities relating to transport, logistics, goods distribution, consolidation, or value-added activities are carried out, and whose activities and services are designed to support or be supported by conveyance or shipping through one or more seaports.[21]

The Intermodal Logistics Center Infrastructure Support Program provides funds for roads, rail facilities, or other means for the conveyance or shipment of goods through a seaport. DOT may provide funds to assist with local government projects or projects,[22] and may provide up to 50 percent of project costs for eligible projects.[23]

The statute provides criteria that DOT must consider when evaluating projects, including the ability for a project to serve a strategic state interest, the ability of the project to facilitate the cost effective and efficient movement of goods, the extent the project contributes to economic activity, and certain financial and business commitments related to the project.[24]

At least $5 million per year must be made available from the STTF for the Intermodal Logistics Center and Infrastructure Support Program. This minimum funding requirement expires on July 1, 2020.[25] According to DOT, this program has leveraged local and private funding to complete 12 unique, geographically-distributed projects across the state.[26]

Effect of the Bill
The bill makes permanent the $5 million minimum annual funding for the Intermodal Logistics Center Infrastructure Support Program from the STTF.

Move Over Law

Present Situation
Under Florida's Move Over Law, if an emergency vehicle, a sanitation vehicle, a utility service vehicle, or a wrecker is working along the side of the road, every other driver must vacate the lane closest to vehicle when driving on a highway with two or more lanes traveling in the direction of the vehicle. If such movement cannot be safely accomplished, the driver must reduce speed to a speed that is 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater; or travel at 5 miles per hour when the posted speed limit is 20 miles per hour or less, when driving on a two-lane road.[27] The purpose of the Move Over Law is to protect these workers while stopped along the road performing their jobs.[28]

[21] Section 311.101(2), F.S.
[22] Section 311.101(1), F.S.
[23] Section 311.101(6), F.S.
[24] Section 311.101(3), F.S.
[25] Section 311.101(7), F.S.
[26] DOT Legislative Proposal, ILC Support Program. (Copy on file with Transportation & Infrastructure Subcommittee).
[27] Section 316.126(1)(b), F.S.
[28] Florida Driver Handbook, 2019, p. 44. Available at https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf (Last visited Jan. 31, 2020).

A violation of the Move Over Law is a noncriminal traffic infraction, punishable as a moving violation.[29] The statutory base fine for a moving violation is $60, but with additional fees assessed by the state and local governments, the total fine increases to $158.[30]

According to DOT, for the safety of both workers and the public, temporary traffic control[31] is required for maintenance and construction activities. However, due to the risks associated with setting up traffic controls, for short duration work activities, such as fence repair, ditch repair, or tree trimming, such controls may be omitted. This puts road and bridge maintenance or construction vehicles in situations similar to vehicles currently identified in the Move Over Law,[32] where they are working along the road without any protection from on-coming traffic.

Effect of the Bill
The bill adds road and bridge maintenance or construction vehicles displaying warning lights on the roadside without advance signs and channelizing devices, such as traffic cones or barricades, to the list of vehicles subject to the Move Over Law. This will require drivers to move over to a different lane or decrease speed when road and bridge maintenance or construction vehicles are displaying warning lights on the roadside.

Airport Zoning

Present Situation
Florida's airport zoning laws[33] require every political subdivision having an airport hazard area[34] within its territorial limits to adopt, administer, and enforce airport protection zoning regulations for such area. The statute contains minimum requirements for airport protection zoning regulations, including the requirement for documentation showing compliance with the federal requirement for notification of proposed construction or alteration of structures and a valid aeronautical study submitted by each person applying for a permit.[35]

Effect of the Bill
The bill revises the minimum requirements for airport protection zoning regulations to require a final valid determination from the Federal Aviation Administration, instead of the currently required aeronautical study. This will conform state statutes to federal requirements.[36]

Work Program Deadline

Present Situation
As part of its budgeting process, DOT prepares a tentative work program, based on the district work programs.[37] Each district's work program is developed cooperatively with the state's metropolitan planning organizations (MPOs)[38] and includes, to the maximum extent feasible, the project priorities of

[29] Section 316.126(6), F.S.
[30] Florida Court Clerks and Comptrollers Association, *2019 Distribution of Court Related Filing Fees, Service Charges, and Fines,* Available at:
https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2019/19bull053_Attach_1_2019_Dist.pdf (Last visited Jan. 13, 2019).
[31] Temporary traffic control is considered the devises and personnel that change road conditions for a work zone or following and incident. Email from John Kotyk, Deputy Director Legislative Affairs, Department of Transportation, Questions, January 31, 2020 (Copy on file with Transportation & Infrastructure Subcommittee)
[32] DOT Legislative Proposal, Move Over Law (Copy on file with Transportation & Infrastructure Subcommittee).
[33] Chapter 333, F.S.
[34] Section 333.03(1)(a), F.S. Section 333.01(4), F.S., defines the term "airport hazard area" as any area of land or water upon which an airport hazard might be established.
[35] Section 333.03(1)(c)3., F.S.
[36] DOT Legislative Proposal, Airport Determination Terminology. (Copy on file with Transportation & Infrastructure Subcommittee.
[37] Section 339.135(4)(b)1, F.S.
[38] Metropolitan Planning Organizations (MPOs), are federally-required regional transportation planning entities in urbanized areas with populations of 50,000 or more persons.

MPOs which have been submitted to the district by October 1 of each year.[39] However, DOT and a MPO may agree, in writing, to vary this submittal date.[40]

Prior to submitting the district work program to the central office, each district holds public hearings and makes a presentation to each MPO to determine the necessity of making any changes to the district work program.[41] Following submission of each district's work program to the central office, DOT develops its tentative work program based on the district work programs.[42]

DOT's central office submits a preliminary copy of its tentative work program to the Executive Office of the Governor, the legislative appropriations committees, the Florida Transportation Commission, and the Department of Economic Opportunity at least 14 days prior to the convening of the regular legislative session.[43] Following a public hearing and evaluation by the Florida Transportation Commission, DOT submits the tentative work program to the Executive Office of the Governor and the legislative appropriations committees no later than 14 days after the regular legislative session begins.[44]

According to DOT, since the Legislature meets in January in even-numbered years, the statutory time frame for DOT to complete its work program process has accelerated. In the past, DOT has requested the MPOs submit their project priorities lists by August 1, in order for DOT to have ample time to complete its required processes.[45]

Effect of the Bill
The bill changes from October 1 to August 1 the deadline for the MPOs to submit their project priorities to DOT, providing DOT with additional time to complete its work program process prior to the beginning of the annual legislative session.

Work Program Amendments

Present Situation
Florida law authorizes DOT to amend its adopted work program and provides procedures for such amendments.[46] However, any work program amendment which transfers fixed capital outlay appropriations between categories or increases an appropriation category is subject to Legislative Budget Commission (LBC) approval. Prior to 2016, if a meeting of the LBC could not be held within 30 days after DOT submitted an amendment, the chair and vice chair of the LBC could authorize such amendment to be approved.[47]

In 2016, the Legislature repealed the authorization for the chair and vice chair of the LBC to approve certain work program amendments if the LBC could not meet.[48] In 2019, in the implementing bill to the General Appropriations act, this authorization was reinstated, with an expiration date of July 1, 2020.[49]

Effect of the Bill
The bill permanently authorizes the chair and vice chair of the LBC to approve certain DOT work program amendments if an LBC meeting cannot be held within 30 days.

Passenger Rail Insurance Limits

[39] This is pursuant to s. 339.175(8)(b), F.S.
[40] Section 339.135(4)(c)2., F.S.
[41] Section 339.135(4)(d), F.S.
[42] Section 339.135(4)(e), F.S.
[43] Section 339.135(4)(f), F.S.
[44] Section 339.135(4)(h), F.S.
[45] DOT Legislative Proposal, Advance MPO Deadline to Submit Project Priorities (Copy on file with Transportation & Infrastructure Subcommittee)
[46] Section 339.135(7), F.S.
[47] Section 339.135(7)(g), F.S., (2015) This approval is pursuant to s. 216.17, F.S.
[48] Chapter 2016-181, L.O.F., Section 16.
[49] Chapter 2019-116, L.O.F., Section 101.

Present Situation
Florida law authorizes DOT to purchase liability insurance for its rail program, which amount may not exceed $200 million. This liability insurance may include coverage for DOT, certain freight rail operators, the National Railroad Passenger Corporation,[50] commuter rail service providers, governmental entities, or any ancillary development.[51]

In 1997, Federal law set the limit on its passenger rail liability at $200 million.[52] In 2015, the federal government required its liability cap to be adjusted to reflect changes to the consumer price index and required the liability cap to be adjusted to the consumer price index every five years.[53] In 2016, the federal rail passenger liability cap was increased to $294.3 million.[54]

Effect of the Bill
The bill increases the liability insurance cap for DOT's passenger rail systems from $200 to $295 million, consistent with the federal rail liability cap.

Economic Development Transportation Projects

Present Situation
The Economic Development Transportation Fund is an economic incentive program intended to encourage specific businesses to locate, expand, or remain in the state.[55]

Under this program, DOT in consultation with the Department of Economic Opportunity (DEO) and Enterprise Florida, Inc., may make and approve expenditures and contract with the appropriate governmental body[56] for the direct costs of eligible transportation projects.[57]

DOT, in consultation with DEO, reviews each transportation project for approval and funding, and DOT must approve a project for it to be eligible for funding. Criteria DOT must consider in reviewing projects include: the cost per job created or retained, average wages for jobs created, capital investment by the business, local commitment, and local unemployment and poverty rates.[58]

This program is appropriated on a non-recurring basis in the STTF.[59] According to DOT, this budget category has not been used for several years. In its work program, DOT has continued funding and financing the program. However, in recent years, the Legislature has utilized a unique budget category for local projects.[60]

Effect of the Bill

[50] The National Railroad Passenger Corporation is also known an AMTRAK.
[51] Section 341.302(17)(b), F.S.
[52] 49 U.S.C. 28103
[53] Email from John Kotyk, Deputy Director of Legislative Affairs, Department of Transportation, Rail Liability Adjustment. Jan. 23, 2020. (Copy on file with Transportation & Infrastructure Subcommittee). *See* Pub. L. 114-94, div. A, title XI, s. 11415(b), Dec. 4, 2015.
[54] Federal Register Document No. 2016-00301, Filed January 8, 2016. Available at: https://www.federalregister.gov/documents/2016/01/11/2016-00301/adjustment-to-rail-passenger-transportation-liability-cap (Last visited Jan. 23. 2020).
[55] DOT Legislative Proposal, Deletion of Road Fund. (Copy on file with Transportation & Infrastructure Subcommittee). Chapter 2012-128, L.O.F.
[56] Section 339.2821(1)(b)1, F.S., defines the term "governmental body" as an instrumentality of the state or a county, municipality, district, authority, board, or commission, or an agency thereof, within which jurisdiction the transportation project is located and which is responsible to the department for the transportation project.
[57] Section 339.2821(1)(b)2., F.S., defines the term "transportation project" as a transportation facility which the department, in consultation with the Department of Economic Opportunity, deems necessary to facilitate the economic development and growth of the state.
[58] Section 339.2821(2), F.S.
[59] DOT, Economic Development Transportation Fund Fact Sheet (Copy on file with Transportation & Infrastructure Subcommittee)
[60] DOT Legislative Proposal, Deletion of Road Fund (Copy on file with Transportation & Infrastructure Subcommittee).

The bill repeals s. 339.2821, F.S., repealing the economic development transportation program. Repealing this program will release DOT from having to program $5 million in associated projects into its work program. Without appropriations these projects have to be deferred or deleted, causing a disruption to DOT's work program.[61]

The bill also makes conforming changes to s. 288.0656, F.S., relating to the Rural Economic Development Initiative, s. 339.18, F.S., relating to the use of moneys in the STTF, and s. 337.809, F.S., relating to the Energy Economic Zone Pilot Program.

B. SECTION DIRECTORY:

Section 1 amends s. 20.23, F.S., relating to the Department of Transportation.

Section 2 amends s. 206.46, F.S., relating to the State Transportation Trust Fund.

Section 3 amends s. 206.606, F.S., relating to the distribution of certain proceeds.

Section 4 amends s. 206.606, F.S., relating to the State Comprehensive Transportation System Tax.

Section 5 amends s. 212.0501, F.S., relating to the tax on diesel fuel for business purposes.

Section 6 amend s. 286.26, F.S., relating to real property conveyed to public agency.

Section 7 amends s 311.101, F.S., relating to the Intermodal Logistics Center Infrastructure Support Program.

Section 8 amends s. 316.136, F.S., relating to the operation of vehicles and actions of pedestrians on approach of an authorized emergency, sanitation, or utility service vehicle.

Section 9 amends s. 319.32, F.S., relating to fees; service charges; disposition.

Section 10 amends s. 333.03, F.S., relating to requirements to adopt airport zoning regulations.

Section 11 amends s. 339.135, F.S., relating to the work program.

Section 12 amends s. 339.175, F.S., relating to metropolitan planning organizations.

Section 13 amends s. 341.302, F.S., relating to the rail program; duties and responsibilities of DOT.

Section 14 amends s. 341.303, F.S., relating to funding authorization and appropriations; eligibility and participation.

Section 15 repeals s. 339.2821, F.S., relating to economic development transportation projects.

Sections 16 through 18 amends ss. 288.0656, 339.08, and 377.807, F.S., to conform.

Section 19 provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[61] *Id.*

Including road and bridge construction or maintenance vehicles to the list of vehicles subject to the Move Over Law may increase the state's revenues associated with penalties for violations. However, the impact is indeterminate.

2. Expenditures:

DHSMV may incur expenditures associated with enforcement and public education regarding changes to the Move Over Law.[62] The amount is indeterminate, but likely to be insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Including road and bridge construction or maintenance vehicles to the list of vehicles subject to the Move Over Law may increase local government revenues associated with penalties for violations. However, the impact is indeterminate.

2. Expenditures:

This bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Permanent funding of the Intermodal Logistics Center Infrastructure Support Program may provide for additional intermodal logistics center projects in the state.

The bill repeals Economic Development Transportation Projects program, which targets economic development. While this program has not been used in several years, lack of program funding may hinder the development of new or relocation of existing businesses to Florida.[63]

D. FISCAL COMMENTS:

Removing the $275 million debt cap on Right-of-Way and Bridge Construction Bonds will give DOT the flexibility to utilize that program to meet future bridge replacement needs with minimal disruption to capacity projects in DOT's work program.[64]

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:

Single Subject
Article III, Section 6, of the state constitution, in its relevant part: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." The bill is an act relating to transportation. The bill amends s. 286.23, F.S., relating to the conveyance of real property to a public agency, which applies to both the state and local governments and appears to broader in scope than transportation.

[62] Section 316.126(1)(c), F.S., requires DHSMV to provide an educational awareness campaign regarding the Move Over Law and to provide information about the act in all newly printed driver license educational materials.
[63] DOT Legislative Proposal, Deletion of Road Fund
[64] DOT Legislative Proposal, Change in Right-of-Way Acquisition and Bridge Construction Bond Debt Service Cap.

B. RULE-MAKING AUTHORITY:

This bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to transportation; amending s. 20.23, F.S.; revising the organization of the Department of Transportation; revising and providing for the delegation of certain responsibilities; revising provisions relating to the operation of a rail enterprise; amending s. 206.46, F.S.; removing a limitation on an annual transfer from the State Transportation Trust Fund to the Right-of-Way Acquisition and Bridge Construction Trust Fund; amending ss. 206.606, 206.608, and 212.0501, F.S.; removing a requirement for deduction of certain service charges before distributing certain moneys; amending s. 286.23, F.S.; revising the time period within which a disclosure of beneficial interests must be submitted to the state or any local governmental unit to which certain property is to be conveyed; authorizing notice by the state or such governmental unit to the person required to make certain disclosures to be delivered by certified mail, an alternative delivery service, or electronically under certain circumstances; amending s. 311.101, F.S.; deleting the scheduled repeal of funding for the Intermodal Logistics Center Infrastructure Support Program; amending s. 316.126, F.S.; requiring the

operator of a motor vehicle to take certain actions under certain circumstances when a road and bridge maintenance or construction vehicle is on the roadside; amending s. 319.32, F.S.; removing a requirement for deduction of certain service charges before depositing fees for a certificate of title into the State Transportation Trust Fund; amending s. 333.03, F.S.; requiring airport protection zoning regulations to require certain permit applicants to submit a final valid determination from the Federal Aviation Administration; amending s. 339.135, F.S.; conforming provisions to changes made by the act; deleting the scheduled repeal of provisions relating to approval of amendments submitted to the Legislative Budget Commission by the department; amending s. 339.175, F.S.; revising the date by which a metropolitan planning organization must submit a list of project priorities to the appropriate department district; amending s. 341.302, F.S.; revising department responsibilities regarding rail systems; revising the maximum amount of liability insurance the department may purchase; amending s. 341.303, F.S.; revising department funding authority regarding rail systems; repealing s. 339.2821, F.S., relating to economic development transportation projects; amending

ss. 288.0656, 339.08, and 377.809, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraphs (a) and (f) of subsection (4) of section 20.23, Florida Statutes, are amended to read:

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

(4)(a) The operations of the department shall be organized into seven districts, each headed by a district secretary, and a turnpike enterprise ~~and a rail enterprise, each enterprise~~ headed by an executive director. The district secretaries and the executive director ~~directors~~ shall be registered professional engineers in accordance with ~~the provisions of~~ chapter 471 or the laws of another state, or, in lieu of professional engineer registration, a district secretary or the executive director may hold an advanced degree in an appropriate related discipline, such as a Master of Business Administration. The headquarters of the districts shall be located in Polk, Columbia, Washington, Broward, Volusia, Miami-Dade, and Hillsborough Counties. The headquarters of the turnpike enterprise shall be located in Orange County. ~~The headquarters~~

~~of the rail enterprise shall be located in Leon County.~~ In order to provide for efficient operations and to expedite the decisionmaking process, the department shall provide for maximum decentralization to the districts.

(f)~~1.~~ The responsibility for developing and operating the high-speed and passenger rail systems established in chapter 341, directing funding for passenger rail systems under s. 341.303, general rail safety, coordinating efforts to enhance passenger rail safety in the state, and coordinating publicly funded passenger rail operations in the state, including freight rail interoperability issues, shall be delegated to a departmental entity to be named by the secretary ~~to the executive director of the rail enterprise, who shall serve at the pleasure of the secretary. The executive director shall report directly to the secretary, and the rail enterprise shall operate pursuant to ss. 341.8201-341.842~~.

~~2. To facilitate the most efficient and effective management of the rail enterprise, including the use of best business practices employed by the private sector, the rail enterprise, except as provided in s. 287.055, shall be exempt from departmental policies, procedures, and standards, subject to the secretary having the authority to apply any such policies, procedures, and standards to the rail enterprise from time to time as deemed appropriate.~~

Section 2. Subsection (2) of section 206.46, Florida

Statutes, is amended to read:

206.46 State Transportation Trust Fund.—

(2) Notwithstanding any other provision ~~provisions~~ of law, from the revenues deposited into the State Transportation Trust Fund, up to ~~a maximum of~~ 7 percent in each fiscal year shall be transferred into the Right-of-Way Acquisition and Bridge Construction Trust Fund created in s. 215.605~~,~~ as needed to meet the requirements of the documents authorizing the bonds issued or proposed to be issued under ss. 215.605 and 337.276 or at a minimum amount sufficient to pay for the debt service coverage requirements of outstanding bonds. ~~Notwithstanding the 7 percent annual transfer authorized in this subsection, the annual amount transferred under this subsection shall not exceed an amount necessary to provide the required debt service coverage levels for a maximum debt service not to exceed $275 million.~~ Such transfer shall be payable primarily from the motor and diesel fuel taxes transferred to the State Transportation Trust Fund from the Fuel Tax Collection Trust Fund.

Section 3. Subsection (1) of section 206.606, Florida Statutes, is amended to read:

206.606 Distribution of certain proceeds.—

(1) Moneys collected pursuant to ss. 206.41(1)(g) and 206.87(1)(e) shall be deposited in the Fuel Tax Collection Trust Fund. Such moneys, after deducting ~~the service charges imposed by s. 215.20,~~ the refunds granted pursuant to s. 206.41~~,~~ and the

administrative costs incurred by the department in collecting, administering, enforcing, and distributing the tax, which administrative costs may not exceed 2 percent of collections, shall be distributed monthly to the State Transportation Trust Fund, except that:

(a) Each fiscal year, $6.3 ~~$6.30~~ million shall be transferred to the Fish and Wildlife Conservation Commission ~~in each fiscal year~~ and deposited in the Invasive Plant Control Trust Fund to be used for aquatic plant management, including nonchemical control of aquatic weeds, research into nonchemical controls, and enforcement activities. The commission shall allocate at least $1 million of such funds to the eradication of melaleuca.

(b) Annually, $2.5 million shall be transferred to the State Game Trust Fund in the Fish and Wildlife Conservation Commission and used for recreational boating activities and freshwater fisheries management and research. The transfers must be made in equal monthly amounts beginning on July 1 of each fiscal year. The commission shall annually determine where unmet needs exist for boating-related activities~~,~~ and may fund such activities in counties where, due to the number of vessel registrations, sufficient financial resources are unavailable.

1. A minimum of $1.25 million shall be used to fund local projects to provide recreational channel marking and other uniform waterway markers, public boat ramps, lifts, and hoists,

marine railways, and other public launching facilities, derelict vessel removal, and other local boating-related activities. In funding the projects, the commission shall give priority consideration to:

a. Unmet needs in counties having populations of 100,000 or fewer.

b. Unmet needs in coastal counties having a high level of boating-related activities from individuals residing in other counties.

2. The remaining $1.25 million may be used for recreational boating activities and freshwater fisheries management and research.

3. The commission may adopt rules to administer a Florida Boating Improvement Program.

The commission shall prepare and make available on its ~~Internet~~ website an annual report outlining the status of its Florida Boating Improvement Program, including the projects funded, and a list of counties the ~~whose~~ needs of which are unmet due to insufficient financial resources from vessel registration fees.

(c) ~~0.65 percent~~ Of the moneys collected pursuant to s. 206.41(1)(g), 0.65 percent shall be transferred to the Agricultural Emergency Eradication Trust Fund.

(d) Each fiscal year, $13.4 million ~~in fiscal year 2007-2008 and each fiscal year thereafter~~ of the moneys attributable

to the sale of motor and diesel fuel at marinas shall be transferred from the Fuel Tax Collection Trust Fund to the Marine Resources Conservation Trust Fund in the Fish and Wildlife Conservation Commission.

Section 4. Section 206.608, Florida Statutes, is amended to read:

206.608 State Comprehensive Enhanced Transportation System Tax; deposit of proceeds; distribution.—Moneys received pursuant to ss. 206.41(1)(f) and 206.87(1)(d) shall be deposited in the Fuel Tax Collection Trust Fund~~,~~ and, after deducting the ~~service charge imposed in chapter 215 and~~ administrative costs incurred by the department in collecting, administering, enforcing, and distributing the tax, which administrative costs may not exceed 2 percent of collections, shall be distributed as follows:

(1) ~~0.65 percent~~ Of the proceeds of the tax levied pursuant to s. 206.41(1)(f), 0.65 percent shall be transferred to the Agricultural Emergency Eradication Trust Fund.

(2) The remaining proceeds of the tax levied pursuant to s. 206.41(1)(f) and all of the proceeds from the tax imposed by s. 206.87(1)(d) shall be transferred into the State Transportation Trust Fund~~,~~ and may be used only for projects in the adopted work program in the district in which the tax proceeds are collected, and~~,~~ to the maximum extent feasible, such moneys shall be programmed for use in the county where collected. However, ~~no~~ revenue from the taxes imposed pursuant

to ss. 206.41(1)(f) and 206.87(1)(d) in a county may not ~~shall~~ be expended unless the projects funded with such revenues have been included in the work program adopted pursuant to s. 339.135.

Section 5. Subsection (6) of section 212.0501, Florida Statutes, is amended to read:

212.0501 Tax on diesel fuel for business purposes; purchase, storage, and use.—

(6) All taxes required to be paid on fuel used in self-propelled off-road equipment shall be deposited in the Fuel Tax Collection Trust Fund~~,~~ to be distributed~~, after deduction of the general revenue service charge pursuant to s. 215.20,~~ to the State Transportation Trust Fund. The department shall, each month, make a transfer, from general revenue collections, equal to such use tax reported on dealers' sales and use tax returns.

Section 6. Subsections (1) and (2) of section 286.23, Florida Statutes, are amended to read:

286.23 Real property conveyed to public agency; disclosure of beneficial interests; notice; exemptions.—

(1) A ~~Any~~ person or entity holding real property in the form of a partnership, limited partnership, corporation, trust, or any form of representative capacity whatsoever for others, except as otherwise provided in this section, shall, before entering into a ~~any~~ contract whereby such real property held in representative capacity is sold, leased, taken by eminent

domain, or otherwise conveyed to the state or any local governmental unit, or an agency of either, make a public disclosure in writing, under oath and subject to the penalties prescribed for perjury, which shall state his or her name and address and the name and address of every person having a beneficial interest in the real property, however small or minimal. This written disclosure shall be made to the chief officer, or to his or her officially designated representative, of the state, the local governmental unit, or the agency of either, with which the transaction is made at least 10 days before ~~prior to~~ the time of closing or, in the case of an eminent domain taking, within 5 business days ~~48 hours~~ after the time when the required sum is deposited in the registry of the court. Notice of the deposit shall be made to the person or entity by registered or certified mail before the 5-business-day ~~48-hour~~ period begins.

(2) The state or local governmental unit, or an agency of either, shall send written notice to the person required to make disclosures under this section by registered or certified mail, by an alternative delivery service that provides verification of receipt, or by electronic delivery after receipt of the person's notarized authorization to use such method. Notification shall be made before ~~to the person required to make disclosures under this section, prior to~~ the time when such disclosures are required to be made. The~~, which~~ written notice ~~request~~ shall

also inform the person required to make such disclosure that such disclosure must be made under oath, subject to the penalties prescribed for perjury.

Section 7. Subsection (7) of section 311.101, Florida Statutes, is amended to read:

311.101 Intermodal Logistics Center Infrastructure Support Program.—

(7) ~~Beginning in fiscal year 2014-2015,~~ At least $5 million per fiscal year shall be made available from the State Transportation Trust Fund for the program. The Department of Transportation shall include projects proposed to be funded under this section in the tentative work program developed pursuant to s. 339.135(4). ~~This subsection expires on July 1, 2020.~~

Section 8. Paragraph (b) of subsection (1) of section 316.126, Florida Statutes, is amended to read:

316.126 Operation of vehicles and actions of pedestrians on approach of an authorized emergency, sanitation, or utility service vehicle.—

(1)

(b) If an authorized emergency vehicle displaying any visual signals is parked on the roadside, a sanitation vehicle is performing a task related to the provision of sanitation services on the roadside, a utility service vehicle is performing a task related to the provision of utility services

on the roadside, ~~or~~ a wrecker displaying amber rotating or flashing lights is performing a recovery or loading on the roadside, or a road and bridge maintenance or construction vehicle displaying warning lights is on the roadside without advance signs and channelizing devices, the driver of every other vehicle, as soon as it is safe:

1. Shall vacate the lane closest to the emergency vehicle, sanitation vehicle, utility service vehicle, ~~or~~ wrecker, or road and bridge maintenance or construction vehicle when driving on an interstate highway or other highway with two or more lanes traveling in the direction of the emergency vehicle, sanitation vehicle, utility service vehicle, ~~or~~ wrecker, or road and bridge maintenance or construction vehicle, except when otherwise directed by a law enforcement officer. If such movement cannot be safely accomplished, the driver shall reduce speed as provided in subparagraph 2.

2. Shall slow to a speed that is 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater; or travel at 5 miles per hour when the posted speed limit is 20 miles per hour or less, when driving on a two-lane road, except when otherwise directed by a law enforcement officer.

Section 9. Subsection (5) of section 319.32, Florida Statutes, is amended to read:

319.32 Fees; service charges; disposition.—

(5)(a) Forty-seven dollars of each fee collected, except for fees charged on a certificate of title for a motor vehicle for hire registered under s. 320.08(6), for each applicable original certificate of title and each applicable duplicate copy of a certificate of title~~, after deducting the service charges imposed by s. 215.20,~~ shall be deposited into the State Transportation Trust Fund. Deposits to the State Transportation Trust Fund pursuant to this paragraph may not exceed $200 million in any fiscal year, and any collections in excess of that amount during the fiscal year shall be paid into the General Revenue Fund.

(b) All fees collected pursuant to subsection (3) shall be paid into the Nongame Wildlife Trust Fund. Twenty-one dollars of each fee, except for fees charged on a certificate of title for a motor vehicle for hire registered under s. 320.08(6), for each applicable original certificate of title and each applicable duplicate copy of a certificate of title~~, after deducting the service charges imposed by s. 215.20,~~ shall be deposited into the State Transportation Trust Fund. All other fees collected by the department under this chapter shall be paid into the General Revenue Fund.

Section 10. Paragraph (c) of subsection (1) of section 333.03, Florida Statutes, is amended to read:

333.03 Requirement to adopt airport zoning regulations.—

(1)

(c) Airport protection zoning regulations adopted under paragraph (a) must, at a minimum, require:

1. A permit for the construction or alteration of any obstruction.~~;~~

2. Obstruction marking and lighting for obstructions.~~;~~

3. Documentation showing compliance with the federal requirement for notification of proposed construction or alteration of structures and a final valid determination from the Federal Aviation Administration ~~aeronautical study~~ submitted by each person applying for a permit.~~;~~

4. Consideration of the criteria in s. 333.025(6)~~,~~ when determining whether to issue or deny a permit.~~; and~~

5. That approval of a permit not be based solely on the determination by the Federal Aviation Administration that the proposed structure is not an airport hazard.

Section 11. Paragraph (c) of subsection (4) and paragraph (g) of subsection (7) of section 339.135, Florida Statutes, are amended to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.—

(4) FUNDING AND DEVELOPING A TENTATIVE WORK PROGRAM.—

(c)1. For purposes of this section, the board of county commissioners shall serve as the metropolitan planning organization in those counties that ~~which~~ are not located in a metropolitan planning organization and shall be involved in the

development of the district work program to the same extent as a metropolitan planning organization.

2. The district work program shall be developed cooperatively from the outset with the various metropolitan planning organizations of the state and include, to the maximum extent feasible, the project priorities of metropolitan planning organizations which have been submitted to the district by August ~~October~~ 1 of each year pursuant to s. 339.175(8)(b); however, the department and a metropolitan planning organization may, in writing, cooperatively agree to vary this submittal date. To assist the metropolitan planning organizations in developing their lists of project priorities, the district shall disclose to each metropolitan planning organization any anticipated changes in the allocation or programming of state and federal funds which may affect the inclusion of metropolitan planning organization project priorities in the district work program.

3. Before ~~Prior to~~ submittal of the district work program to the central office, the district shall provide the affected metropolitan planning organization with written justification for any project proposed to be rescheduled or deleted from the district work program which project is part of the metropolitan planning organization's transportation improvement program and is contained in the last 4 years of the previous adopted work program. By no later than 14 days after submittal of the

district work program to the central office, the affected metropolitan planning organization may file an objection to such rescheduling or deletion. When an objection is filed with the secretary, the rescheduling or deletion may not be included in the district work program unless the inclusion of such rescheduling or deletion is specifically approved by the secretary. The Florida Transportation Commission shall include such objections in its evaluation of the tentative work program only when the secretary has approved the rescheduling or deletion.

(7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—

(g)1. A ~~Any~~ work program amendment that ~~which~~ also requires the transfer of fixed capital outlay appropriations between categories within the department or the increase of an appropriation category is subject to the approval of the Legislative Budget Commission.

2. If a meeting of the Legislative Budget Commission cannot be held within 30 days after the department submits an amendment to the Legislative Budget Commission, the chair and vice chair of the Legislative Budget Commission may authorize such amendment to be approved pursuant to s. 216.177. ~~This subparagraph expires July 1, 2020.~~

Section 12. Paragraph (b) of subsection (8) of section 339.175, Florida Statutes, is amended to read:

339.175 Metropolitan planning organization.—

(8) TRANSPORTATION IMPROVEMENT PROGRAM.—Each M.P.O. shall, in cooperation with the state and affected public transportation operators, develop a transportation improvement program for the area within the jurisdiction of the M.P.O. In the development of the transportation improvement program, each M.P.O. must provide the public, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the proposed transportation improvement program.

(b) Each M.P.O. annually shall prepare a list of project priorities and shall submit the list to the appropriate district of the department by August ~~October~~ 1 of each year; however, the department and a metropolitan planning organization may, in writing, agree to vary this submittal date. Where more than one M.P.O. exists in an urbanized area, the M.P.O.'s shall coordinate in the development of regionally significant project priorities. The list of project priorities must be formally reviewed by the technical and citizens' advisory committees, and approved by the M.P.O., before it is transmitted to the district. The approved list of project priorities must be used by the district in developing the district work program and must be used by the M.P.O. in developing its transportation improvement program. The annual list of project priorities must

be based upon project selection criteria that, at a minimum, consider the following:

1. The approved M.P.O. long-range transportation plan.~~;~~

2. The Strategic Intermodal System Plan developed under s. 339.64.

3. The priorities developed pursuant to s. 339.2819(4).

4. The results of the transportation management systems.~~;~~ ~~and~~

5. The M.P.O.'s public-involvement procedures.

Section 13. Section 341.302, Florida Statutes, is amended to read:

341.302 Rail program; duties and responsibilities of the department.—The department, in conjunction with other governmental entities~~, including the rail enterprise~~ and the private sector, shall develop and implement a rail program of statewide application designed to ensure the proper maintenance, safety, revitalization, and expansion of the rail system to assure its continued and increased availability to respond to statewide mobility needs. Within the resources provided pursuant to chapter 216, and as authorized under federal law, the department shall:

(1) Provide the overall leadership, coordination, and financial and technical assistance necessary to ensure ~~assure~~ the effective responses of the state's rail system to current and anticipated mobility needs.

(2) Coordinate the development, general rail safety, and operation of publicly funded passenger ~~Promote and facilitate the implementation of advanced~~ rail systems in this state~~, including high-speed rail and magnetic levitation systems~~.

(3) Develop and periodically update the rail system plan~~,~~ on the basis of an analysis of statewide transportation needs.

(a) The plan may contain detailed regional components, consistent with regional transportation plans, as needed to ensure connectivity within the state's regions, and it shall be consistent with the Florida Transportation Plan developed pursuant to s. 339.155. The rail system plan shall include an identification of priorities, programs, and funding levels required to meet statewide and regional needs. The rail system plan shall be developed in a manner that will ensure ~~assure~~ the maximum use of existing facilities and the optimum integration and coordination of the various modes of transportation, public and private, in the most cost-effective manner possible. The rail system plan shall be updated no later than January 1, 2011, and at least every 5 years thereafter, and include plans for both passenger rail service and freight rail service, accompanied by a report to the Legislature regarding the status of the plan.

(b) In recognition of the department's role in the enhancement of the state's rail system to improve freight and passenger mobility, the department shall:

1. Work closely with all affected communities along an impacted freight rail corridor to identify and address anticipated impacts associated with an increase in freight rail traffic due to implementation of passenger rail.

2. In coordination with the affected local governments and CSX Transportation, Inc., finalize all viable alternatives from the department's Rail Traffic Evaluation Study to identify and develop an alternative route for through freight rail traffic moving through Central Florida, including the counties of Polk and Hillsborough, which would address, to the extent practicable, the effects of commuter rail.

3. Provide technical assistance to a coalition of local governments in Central Florida, including the counties of Brevard, Citrus, Hernando, Hillsborough, Lake, Marion, Orange, Osceola, Pasco, Pinellas, Polk, Manatee, Sarasota, Seminole, Sumter, and Volusia, and the municipalities within those counties, to develop a regional rail system plan that addresses passenger and freight opportunities in the region, is consistent with the Florida Rail System Plan, and incorporates appropriate elements of the Tampa Bay Area Regional Authority Master Plan, the Metroplan Orlando Regional Transit System Concept Plan, including the SunRail project, and the Florida Department of Transportation Alternate Rail Traffic Evaluation.

(4) As part of the work program of the department, formulate a specific program of projects and financing to

respond to identified railroad needs.

(5) Provide technical and financial assistance to units of local government to address identified rail transportation needs.

(6) Secure and administer federal grants, loans, and apportionments for rail projects within this state when necessary to further the statewide program.

(7) Develop and administer state standards concerning the safety and performance of rail systems, hazardous material handling, and operations. Such standards shall be developed jointly with representatives of affected rail systems, with full consideration given to nationwide industry norms, and shall define the minimum acceptable standards for safety and performance.

(8) Conduct, at a minimum, inspections of track and rolling stock; train signals and related equipment; hazardous materials transportation, including the loading, unloading, and labeling of hazardous materials at shippers', receivers', and transfer points; and train operating practices to determine adherence to state and federal standards. Department personnel may enforce any safety regulation issued under the Federal Government's preemptive authority over interstate commerce.

(9) Assess penalties, in accordance with the applicable federal regulations, for the failure to adhere to the state standards.

(10) Administer rail operating and construction programs, which programs shall include the regulation of maximum ~~maxi-mum~~ train operating speeds, the opening and closing of public grade crossings, the construction and rehabilitation of public grade crossings, and the installation of traffic control devices at public grade crossings, the administering of the programs by the department including participation in the cost of the programs.

(11) Coordinate and facilitate the relocation of railroads from congested urban areas to nonurban areas when relocation has been determined feasible and desirable from the standpoint of safety, operational efficiency, and economics.

(12) Implement a program of branch line continuance projects when an analysis of the industrial and economic potential of the line indicates that public involvement is required to preserve essential rail service and facilities.

(13) Provide new rail service and equipment when:

(a) Pursuant to the transportation planning process, a public need has been determined to exist;

(b) The cost of providing such service does not exceed the sum of revenues from fares charged to users, services purchased by other public agencies, local fund participation, and specific legislative appropriation for this purpose; and

(c) Service cannot be reasonably provided by other governmental or privately owned rail systems.

The department may own, lease, and otherwise encumber facilities, equipment, and appurtenances thereto~~,~~ as necessary to provide new rail services~~,~~ ~~:~~ or the department may provide such service by contracts with privately owned service providers.

(14) Furnish required emergency rail transportation service if no other private or public rail transportation operation is available to supply the required service and such service is clearly in the best interest of the people in the communities being served. Such emergency service may be furnished through contractual arrangement, actual operation of state-owned equipment and facilities, or any other means determined appropriate by the secretary.

(15) Assist in the development and implementation of marketing programs for rail services and of information systems directed toward assisting rail systems users.

(16) Conduct research into innovative or potentially effective rail technologies and methods and maintain expertise in state-of-the-art rail developments.

(17) In conjunction with the acquisition, ownership, construction, operation, maintenance, and management of a rail corridor, have the authority to:

(a) Assume obligations pursuant to the following:

1.a. The department may assume the obligation by contract to forever protect, defend, indemnify, and hold harmless the

freight rail operator, or its successors, from whom the department has acquired a real property interest in the rail corridor, and that freight rail operator's officers, agents, and employees, from and against any liability, cost, and expense, including, but not limited to, commuter rail passengers and rail corridor invitees in the rail corridor, regardless of whether the loss, damage, destruction, injury, or death giving rise to any such liability, cost, or expense is caused in whole or in part, and to whatever nature or degree, by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of such freight rail operator, its successors, or its officers, agents, and employees, or any other person or persons whomsoever; or

b. The department may assume the obligation by contract to forever protect, defend, indemnify, and hold harmless National Railroad Passenger Corporation, or its successors, and officers, agents, and employees of National Railroad Passenger Corporation, from and against any liability, cost, and expense, including, but not limited to, commuter rail passengers and rail corridor invitees in the rail corridor, regardless of whether the loss, damage, destruction, injury, or death giving rise to any such liability, cost, or expense is caused in whole or in part, and to whatever nature or degree, by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of National Railroad Passenger Corporation, its successors, or its officers, agents, and employees, or any other person or persons

whomsoever.

2. The assumption of liability of the department by contract pursuant to sub-subparagraph 1.a. or sub-subparagraph 1.b. may not in any instance exceed the following parameters of allocation of risk:

a. The department may be solely responsible for any loss, injury, or damage to commuter rail passengers, ~~or~~ rail corridor invitees, or trespassers, regardless of circumstances or cause, subject to sub-subparagraph b. and subparagraphs 3., 4., 5., and 6.

b.(I) In the event of a limited covered accident, the authority of the department to protect, defend, and indemnify the freight operator for all liability, cost, and expense, including punitive or exemplary damages, in excess of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident exists only if the freight operator agrees, with respect to the limited covered accident, to protect, defend, and indemnify the department for the amount of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident.

(II) In the event of a limited covered accident, the authority of the department to protect, defend, and indemnify National Railroad Passenger Corporation for all liability, cost,

and expense, including punitive or exemplary damages, in excess of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident exists only if National Railroad Passenger Corporation agrees, with respect to the limited covered accident, to protect, defend, and indemnify the department for the amount of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident.

3. When only one train is involved in an incident, the department may be solely responsible for any loss, injury, or damage if the train is a department train or other train pursuant to subparagraph 4., but only if:

a. When an incident occurs with only a freight train involved, including incidents with trespassers or at grade crossings, the freight rail operator is solely responsible for any loss, injury, or damage, except for commuter rail passengers and rail corridor invitees; or

b. When an incident occurs with only a National Railroad Passenger Corporation train involved, including incidents with trespassers or at grade crossings, National Railroad Passenger Corporation is solely responsible for any loss, injury, or damage, except for commuter rail passengers and rail corridor invitees.

4. For the purposes of this subsection:

a. Any train involved in an incident that is neither the department's train nor the freight rail operator's train, hereinafter referred to in this subsection as an "other train," may be treated as a department train, solely for purposes of any allocation of liability between the department and the freight rail operator only, but only if the department and the freight rail operator share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both a department train and a freight rail operator train, and the allocation as between the department and the freight rail operator, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; or

b. Any train involved in an incident that is neither the department's train nor the National Railroad Passenger Corporation's train, hereinafter referred to in this subsection as an "other train," may be treated as a department train, solely for purposes of any allocation of liability between the department and National Railroad Passenger Corporation only, but only if the department and National Railroad Passenger

Corporation share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both a department train and a National Railroad Passenger Corporation train, and the allocation as between the department and National Railroad Passenger Corporation, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

5. When more than one train is involved in an incident:

a.(I) If only a department train and freight rail operator's train, or only an other train as described in sub-subparagraph 4.a. and a freight rail operator's train, are involved in an incident, the department may be responsible for its property and all of its people, all commuter rail passengers, and rail corridor invitees, but only if the freight rail operator is responsible for its property and all of its people, and the department and the freight rail operator each share one-half responsibility as to trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; or

(II) If only a department train and a National Railroad

Passenger Corporation train, or only an other train as described in sub-subparagraph 4.b. and a National Railroad Passenger Corporation train, are involved in an incident, the department may be responsible for its property and all of its people, all commuter rail passengers, and rail corridor invitees, but only if National Railroad Passenger Corporation is responsible for its property and all of its people, all National Railroad Passenger Corporation's rail passengers, and the department and National Railroad Passenger Corporation each share one-half responsibility as to trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

b.(I) If a department train, a freight rail operator train, and any other train are involved in an incident, the allocation of liability between the department and the freight rail operator, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; the involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; and, if the owner, operator, or insurer of the other train makes any payment to injured third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident, the allocation of

credit between the department and the freight rail operator as to such payment shall not in any case reduce the freight rail operator's third-party-sharing allocation of one-half under this paragraph to less than one-third of the total third party liability; or

(II) If a department train, a National Railroad Passenger Corporation train, and any other train are involved in an incident, the allocation of liability between the department and National Railroad Passenger Corporation, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; the involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; and, if the owner, operator, or insurer of the other train makes any payment to injured third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident, the allocation of credit between the department and National Railroad Passenger Corporation as to such payment shall not in any case reduce National Railroad Passenger Corporation's third-party-sharing allocation of one-half under this sub-subparagraph to less than one-third of the total third party liability.

6. Any such contractual duty to protect, defend,

indemnify, and hold harmless such a freight rail operator or National Railroad Passenger Corporation shall expressly include a specific cap on the amount of the contractual duty, which amount shall not exceed $200 million without prior legislative approval, and the department to purchase liability insurance and establish a self-insurance retention fund in the amount of the specific cap established under this subparagraph, provided that:

a. No such contractual duty shall in any case be effective nor otherwise extend the department's liability in scope and effect beyond the contractual liability insurance and self-insurance retention fund required pursuant to this paragraph; and

b.(I) The freight rail operator's compensation to the department for future use of the department's rail corridor shall include a monetary contribution to the cost of such liability coverage for the sole benefit of the freight rail operator.

(II) National Railroad Passenger Corporation's compensation to the department for future use of the department's rail corridor shall include a monetary contribution to the cost of such liability coverage for the sole benefit of National Railroad Passenger Corporation.

(b) Purchase liability insurance, which amount shall not exceed $295 ~~$200~~ million, and establish a self-insurance retention fund for the purpose of paying the deductible limit

established in the insurance policies it may obtain, including coverage for the department, any freight rail operator as described in paragraph (a), National Railroad Passenger Corporation, commuter rail service providers, governmental entities, or any ancillary development, which self-insurance retention fund or deductible shall not exceed $10 million. The insureds shall pay a reasonable monetary contribution to the cost of such liability coverage for the sole benefit of the insured. Such insurance and self-insurance retention fund may provide coverage for all damages, including, but not limited to, compensatory, special, and exemplary, and be maintained to provide an adequate fund to cover claims and liabilities for loss, injury, or damage arising out of or connected with the ownership, operation, maintenance, and management of a rail corridor.

(c) Incur expenses for the purchase of advertisements, marketing, and promotional items.

(d) Without altering any of the rights granted to the department under this section, agree to assume the obligations to indemnify and insure, pursuant to s. 343.545, freight rail service, intercity passenger rail service, and commuter rail service on a department-owned rail corridor, whether ownership is in fee or by easement, or on a rail corridor where the department has the right to operate.

Neither the assumption by contract to protect, defend, indemnify, and hold harmless; the purchase of insurance; nor the establishment of a self-insurance retention fund shall be deemed to be a waiver of any defense of sovereign immunity for torts nor deemed to increase the limits of the department's or the governmental entity's liability for torts as provided in s. 768.28. The requirements of s. 287.022(1) shall not apply to the purchase of any insurance under this subsection. ~~The provisions of~~ This subsection shall apply and inure fully as to any other governmental entity providing commuter rail service and constructing, operating, maintaining, or managing a rail corridor on publicly owned right-of-way under contract by the governmental entity with the department or a governmental entity designated by the department. Notwithstanding any law to the contrary, procurement for the construction, operation, maintenance, and management of any rail corridor described in this subsection, whether by the department, a governmental entity under contract with the department, or a governmental entity designated by the department, shall be pursuant to s. 287.057 and shall include, but not be limited to, criteria for the consideration of qualifications, technical aspects of the proposal, and price. Further, any such contract for design-build shall be procured pursuant to the criteria in s. 337.11(7).

(18) Exercise such other functions, powers, and duties in connection with the rail system plan as are necessary to develop

a safe, efficient, and effective statewide transportation system.

Section 14. Subsection (5) of section 341.303, Florida Statutes, is amended to read:

341.303 Funding authorization and appropriations; eligibility and participation.—

(5) FUND PARTICIPATION~~; FLORIDA RAIL ENTERPRISE~~.—The department may~~, through the Florida Rail Enterprise, is authorized to~~ use funds provided pursuant to s. 201.15(4)(a)4. to fund:

(a) Up to 50 percent of the nonfederal share of the costs of any eligible passenger rail capital improvement project.

(b) Up to 100 percent of planning and development costs related to the provision of a passenger rail system, including, but not limited to, preliminary engineering, revenue studies, environmental impact studies, financial advisory services, engineering design, and other appropriate professional services.

(c) The high-speed rail system.

(d) Projects necessary to identify or address anticipated impacts of increased freight rail traffic resulting from the implementation of passenger rail systems as provided in s. 341.302(3)(b).

(e) Projects necessary to identify or address needed or desirable safety improvements to passenger rail systems in this state.

Section 15. Section 339.2821, Florida Statutes, is repealed.

Section 16. Paragraph (a) of subsection (7) of section 288.0656, Florida Statutes, is amended to read:

288.0656 Rural Economic Development Initiative.—

(7)(a) REDI may recommend to the Governor up to three rural areas of opportunity. The Governor may by executive order designate up to three rural areas of opportunity which will establish these areas as priority assignments for REDI as well as to allow the Governor, acting through REDI, to waive criteria, requirements, or similar provisions of any economic development incentive. Such incentives shall include, but are not limited to, the Qualified Target Industry Tax Refund Program under s. 288.106, the Quick Response Training Program under s. 288.047, the Quick Response Training Program for participants in the welfare transition program under s. 288.047(8), ~~transportation projects under s. 339.2821,~~ the brownfield redevelopment bonus refund under s. 288.107, and the rural job tax credit program under ss. 212.098 and 220.1895.

Section 17. Paragraph (f) of subsection (1) of section 339.08, Florida Statutes, is amended to read:

339.08 Use of moneys in State Transportation Trust Fund.—

(1) The department shall expend moneys in the State Transportation Trust Fund accruing to the department, in accordance with its annual budget. The use of such moneys shall

be restricted to the following purposes:

~~(f) To pay the cost of economic development transportation projects in accordance with s. 339.2821.~~

Section 18. Paragraph (a) of subsection (4) of section 377.809, Florida Statutes, is amended to read:

377.809 Energy Economic Zone Pilot Program.—

(4)(a) Beginning July 1, 2012, all the incentives and benefits provided for enterprise zones pursuant to state law shall be available to the energy economic zones designated pursuant to this section on or before July 1, 2010. In order to provide incentives, by March 1, 2012, each local governing body that has jurisdiction over an energy economic zone must, by local ordinance, establish the boundary of the energy economic zone, specify applicable energy-efficiency standards, and determine eligibility criteria for the application of state and local incentives and benefits in the energy economic zone. However, in order to receive benefits provided under s. 288.106, a business must be a qualified target industry business under s. 288.106 for state purposes. An energy economic zone's boundary may be revised by local ordinance. Such incentives and benefits include those in ss. 212.08, 212.096, 220.181, 220.182, 220.183, 288.106, and 624.5105 and the public utility discounts provided in s. 290.007(8). The exemption provided in s. 212.08(5)(c) shall be for renewable energy as defined in s. 377.803. For purposes of this section, any applicable requirements for

employee residency for higher refund or credit thresholds must be based on employee residency in the energy economic zone or an enterprise zone. A business in an energy economic zone may also be eligible for funding under ss. 288.047 and 445.003~~, and a transportation project in an energy economic zone shall be provided priority in funding under s. 339.2821~~. Other projects shall be given priority ranking to the extent practicable for grants administered under state energy programs.

Section 19. This act shall take effect upon becoming a law.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Transportation & Infrastructure Subcommittee
Representative Fetterhoff offered the following:

Amendment (with title amendment)

Between lines 99 and 100, insert:

Section 2. Paragraph (a) of subsection (4) of section 201.15, Florida Statutes, is amended to read:

201.15 Distribution of taxes collected.—All taxes collected under this chapter are hereby pledged and shall be first made available to make payments when due on bonds issued pursuant to s. 215.618 or s. 215.619, or any other bonds authorized to be issued on a parity basis with such bonds. Such pledge and availability for the payment of these bonds shall have priority over any requirement for the payment of service charges or costs of collection and enforcement under this

section. All taxes collected under this chapter, except taxes distributed to the Land Acquisition Trust Fund pursuant to subsections (1) and (2), are subject to the service charge imposed in s. 215.20(1). Before distribution pursuant to this section, the Department of Revenue shall deduct amounts necessary to pay the costs of the collection and enforcement of the tax levied by this chapter. The costs and service charge may not be levied against any portion of taxes pledged to debt service on bonds to the extent that the costs and service charge are required to pay any amounts relating to the bonds. All of the costs of the collection and enforcement of the tax levied by this chapter and the service charge shall be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before January 1, 2017, secured by revenues distributed pursuant to this section. All taxes remaining after deduction of costs shall be distributed as follows:

(4) After the required distributions to the Land Acquisition Trust Fund pursuant to subsections (1) and (2) and deduction of the service charge imposed pursuant to s. 215.20(1), the remainder shall be distributed as follows:

(a) The lesser of 24.18442 percent of the remainder or $541.75 million in each fiscal year shall be paid into the State Treasury to the credit of the State Transportation Trust Fund. Of such funds, $75 million for each fiscal year shall be

transferred to the General Revenue Fund. Notwithstanding any other law, the remaining amount credited to the State Transportation Trust Fund shall be used for:

1. Capital funding for the New Starts Transit Program, authorized by Title 49, U.S.C. s. 5309 and specified in s. 341.051, in the amount of 10 percent of the funds;

2. The Small County Outreach Program specified in s. 339.2818, in the amount of 10 percent of the funds;

3. The Strategic Intermodal System specified in ss. 339.61, 339.62, 339.63, and 339.64, in the amount of 75 percent of the funds after deduction of the payments required pursuant to subparagraphs 1. and 2.; and

4. The Transportation Regional Incentive Program specified in s. 339.2819, in the amount of 25 percent of the funds after deduction of the payments required pursuant to subparagraphs 1. and 2. The first $60 million of the funds allocated pursuant to this subparagraph shall be allocated annually to the Department of Transportation ~~Florida Rail Enterprise~~ for the purposes established in s. 341.303(5).

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

Remove line 7 and insert:

enterprise; amending s. 201.15, F.S.; revising the dedication of specified documentary stamp tax revenues from the rail

enterprise to the department; amending s. 206.46, F.S.; removing a

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Transportation & Infrastructure Subcommittee
Representative Fetterhoff offered the following:

Amendment (with title amendment)

Remove lines 216-279 and insert:

Section 6. Subsection (7) of section 311.101, Florida Statutes, is amended to read:

311.101 Intermodal Logistics Center Infrastructure Support Program.—

(7) ~~Beginning in fiscal year 2014-2015,~~ At least $5 million per fiscal year shall be made available from the State Transportation Trust Fund for the program. The Department of Transportation shall include projects proposed to be funded under this section in the tentative work program developed pursuant to s. 339.135(4). ~~This subsection expires on July 1,~~

~~2020.~~

Section 7. Paragraph (b) of subsection (1) of section 316.126, Florida Statutes, is amended to read:

316.126 Operation of vehicles and actions of pedestrians on approach of an authorized emergency, sanitation, or utility service vehicle.—

(1)

(b) If an authorized emergency vehicle displaying any visual signals is parked on the roadside, a sanitation vehicle is performing a task related to the provision of sanitation services on the roadside, a utility service vehicle is performing a task related to the provision of utility services on the roadside, ~~or~~ a wrecker displaying amber rotating or flashing lights is performing a recovery or loading on the roadside, or a road and bridge maintenance or construction vehicle displaying warning lights as authorized in s. 316.2397(4) or (5), is on the roadside without

---

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

Remove lines 14-22 and insert:

amending s. 311.101, F.S.;

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Transportation & Infrastructure Subcommittee
Representative Fetterhoff offered the following:

Amendment (with title amendment)

Between lines 850 and 851, insert:

Section 15. Paragraph (b) of subsection (4) of section 343.58, Florida Statutes, is amended to read:

343.58 County funding for the South Florida Regional Transportation Authority.—

(4) Notwithstanding any other provision of law to the contrary and effective July 1, 2010, until as provided in paragraph (d), the department shall transfer annually from the State Transportation Trust Fund to the South Florida Regional Transportation Authority the amounts specified in subparagraph (a)1. or subparagraph (a)2.

(b) Funding required by this subsection may not be provided from the funds dedicated to the department for purposes established in s. 341.303(5) ~~Florida Rail Enterprise~~ pursuant to s. 201.15(4)(a)4.

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

Remove line 49 and insert:
systems; amending s. 343.58, F.S.; making conforming changes; repealing s. 339.2821, F.S., relating to

HB 1383

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1383 Motor Vehicle Manufacturers and Dealers
SPONSOR(S): Latvala
TIED BILLS: **IDEN./SIM. BILLS:** SB 1484

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee		Roth	Vickers
2) Commerce Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill addresses a number of issues related to contractual agreements between motor vehicle manufacturers, distributors and importers, and franchised motor vehicle dealers.

The bill creates new legislative findings that provide, among other things, that the current franchise system is necessary to promote fair and harmonious relations between manufacturers and dealers, protect competition, and protect consumers.

The bill creates a new definition for the term “line-make vehicle” and provides that a line-make model that has been the subject of a franchise agreement with a dealer may not be sold by a manufacturer other than through its franchised dealers and may not be rebadged or marketed as a new line-make unless the manufacturer offers a franchise of that new line-make to every dealer that was franchised to sell that model before rebadging.

Lastly, the bill prohibits manufacturers from competing with franchised dealers in the sale or service of vehicles, the sale of parts and products, collision repair, or any other activity related to the line-make sold by a dealer.

The bill does not appear to have a significant fiscal impact to state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida has substantially regulated motor vehicle manufacturers and motor vehicle dealers since before 1950.[1] Initially, the Florida Legislature approached the issue by implementing only consumer protections aimed at preventing consumer abuse by dealers.[2] In 1970, the Legislature passed more comprehensive legislation, embodied in ch. 320, F.S.,[3] which regulates, in part, the contractual relationship between manufacturers and franchised dealers,[4] requires the licensing of manufacturers, and regulates numerous aspects of the contracts between the manufacturers and dealers.

The current statement of intent states it is the Legislature's intent to protect the public health, safety, and welfare of the citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers.[5]

Florida Automobile Dealers Act

A licensee is a manufacturer, factory branch, distributor, or importer, and must be licensed under s. 320.61(1), F.S., to engage in business in Florida. Sections 320.60-320.70, F.S., the "Florida Automobile Dealers Act"[6] (act), primarily regulate the contractual business relationship between franchised dealers and licensees, and provide for the licensure of manufacturers, factory branches, distributors, or importers. The act specifies, in part:

- The conditions and situations under which the Department of Highway Safety and Motor Vehicles (DHSMV) may deny, suspend, or revoke a regulated license;
- The process, timing, and notice requirements for licensees who wish to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which DHSMV may deny such a request;
- The procedures a licensee must follow to add a franchised dealership in an area already served by a franchised dealer, the protest process, and DHSMV's role in these circumstances;
- The damages that can be assessed against a licensee who is in violation of Florida Statutes; and
- DHSMV's authority to adopt rules to implement these sections of law.

The act applies to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Generally, all agreements that are renewed, amended, or entered into subsequent to October 1, 1988, are governed by the act, including amendments to the act, unless the amendment specifically provides otherwise.[7]

In 2009, DHSMV held in an administrative proceeding that amendments to the act do not apply to dealers whose franchise agreements were signed prior to the effective date of various amendments to the act.[8] DHSMV has indicated that it will apply the *Motorsports* holding to every amendment to the act.

---

[1] Chapter 9157, Laws of Fla. (1923); Chapter 20236, Laws of Fla. (1941).
[2] Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058, 1064 (2002), http://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1632&context=lr (last visited January 31, 2020).
[3] *See* ch. 70-424, Laws of Fla.
[4] *See* s. 320.60(11), F.S.
[5] Section 320.605, F.S.
[6] Walter E. Forehand, *supra* FN 2 at 1065.
[7] Section 320.6992, F.S.
[8] *See Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). The DHSMV ruled that a 2006 amendment to the Florida Automobile Dealers Act does not apply to a dealer terminated in 2008 because the dealer's

This may result in different protections accruing to dealers, depending on when they signed their franchise agreements.

Grounds for Denial, Suspension, or Revocation of a License

An application for a manufacturer license may be denied, or a license may be revoked or suspended, on various grounds. Denials, suspensions, or revocations of manufacturer licenses can be based on consumer protection; however, the grounds for acting against licensees arise principally out of their dealings with motor vehicle franchised dealers with whom the licensees have a contractual relationship allowing the dealer to sell and service the licensee's new motor vehicles.[9, 10]

Currently there are 42 different criteria that may cause DHSMV to deny, suspend, or revoke the licensee's license. The criteria cross many topics, including: contractual obligations; coercion or threats; discontinuation, canceling, nonrenewing, modifying, or replacing franchise agreements; requiring changes to a dealer's sales or service facility; reducing the supply of new vehicles or parts to a franchised dealer; audits; disclosure of confidential financial information; failure to pay the dealer; and denying a warranty repair claim.[11]

Specifically, 320.64(23), F.S., provides that a licensee is prohibited from competing (with respect to any activity covered by the franchise agreement) with a franchised motor vehicle dealer of the same line-make located in this state with whom the licensee has entered into a franchise agreement.

"Line-make vehicles" are motor vehicles offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer (such as Ford, General Motors, or Honda). However, motor vehicles sold or leased under multiple brand names or marks must constitute a single line-make when they are included in a single franchise agreement and every motor vehicle dealer in this state authorized to sell or lease any such vehicles has been offered the right to sell or lease all of the multiple brand names or marks covered by the single franchise agreement.[12]

Procedure for Administrative Hearings and Adjudications

A franchised dealer who is directly and adversely affected by the action or conduct of a licensee which is alleged to be in violation of the act, may seek a declaration and adjudication of its rights by either filing a request with DHSMV for a proceeding and administrative hearing, or filing a written objection or notice of protest with DHSMV.[13]

Hearings are held no sooner than 180 days nor later than 240 days from the date a written objection or notice of protest is filed, unless extended with good cause by the administrative law judge.[14]

Civil Damages

A motor vehicle franchised dealer who can demonstrate that a violation of, or failure to comply with, any of the provisions of the act by an applicant or licensee will or can adversely and pecuniarily affect the dealer, is entitled to pursue treble damages and attorney's fees in civil court.[15] The licensee has the burden to prove that such violation did not occur upon a prima facie showing by the person bringing the action.[16] In addition, a motor vehicle franchised dealer may make an application to any circuit court of the state for a temporary or permanent injunction, or both, restraining any licensee from violating or continuing to violate any of the provisions of ss. 320.60-320.70, F.S., or from failing or refusing to comply with these statutory requirements.[17]

---

franchise agreement was entered into prior to the effective date of the amendment. This Final Order was initially appealed but was later voluntarily dismissed. *See also*, *In re Am. Suzuki Motor Corp*., 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013).

[9] Section 320.64, F.S.

[10] *See* s. 320.60(l) (defining "agreement" or "franchise agreement").

[11] Section 320.64, F.S.

[12] Section 320.60(14), F.S.

[13] Section 320.699(1), F.S.

[14] Section 320.699(2), F.S.

[15] *See* ss. 320.64, 320.694, and 320.697, F.S.

[16] Section 320.697, F.S.

[17] Section 320.695, F.S.

Effect of Proposed Changes

The bill creates a new definition for the term “line-make vehicle” which expands the current definition. The new definition includes all models and types of motor vehicles that are offered for retail sale, lease license, subscription, or any other method of distribution under a common name, trademark, service mark, or brand name of the manufacturer. Additionally, the bill prohibits licensees from selling, distributing, or marketing a line-make model or type in any way other than through the franchised motor vehicle dealer. Subsequently, a line-make may not be rebadged (the practice of applying a different brand, logo, or manufacturer’s make/model to an existing product and thereafter marketing the product as a new or distinct product) unless the licensee offers the rebadged line-make to every motor vehicle dealer that was franchised to sell that model or type before rebadging.

The bill replaces the Legislative intent with the more expansive Legislative findings below:

> The Legislature finds and declares that the distribution, marketing, sale, leasing, rental, or otherwise providing title, use, or possession to consumers and other entities of motor vehicles, replacement parts, accessories, and the servicing and repair thereof in this state vitally affects the general economy of the state and the public safety and welfare of its residents. The Legislature further finds that the motor vehicle franchise system in this state operates within a defined and highly regulated statutory scheme; assures consumers of a well-organized distribution system that supports the availability of new motor vehicles; provides tens of thousands of jobs for the residents of this state; provides a network of quality warranty, repair, and recall facilities; and provides a cost-effective method for the state to police the system through licensing and regulation of the interactions between private sector franchisors and franchisees, and that such regulation is necessary to promote fair and harmonious relations between motor vehicle manufacturers, importers, distributors, and their dealers; to protect fair competition; to protect consumers; and to provide minorities with opportunities for participation as motor vehicle dealers.

The bill amends s. 320.64(23), F.S., to prohibit the licensee from competing (or announcing its intention to compete) with one of its franchised dealers in the sale or service of vehicles; in the sale of replacement parts, accessories, or after-market products; in collision repair; or in any other motor vehicle dealer activity related to the line-make for which the dealer has a franchise agreement with the licensee.

The term “sale” includes the sale, leasing, rental, licensing, subscription, or any other transfer to a retail consumer, a wholesaler, or a broker of title, possession, or use of a motor vehicle, replacement parts, or accessories that are in the franchise agreement made with the dealer.

The bill will make it unlawful for manufacturers to sell parts to a retail consumer, a wholesaler, or a broker of title. Additionally, the language appears to prohibit the operation of vehicle subscription programs (subscription services allow consumers to pay a monthly subscription fee to have access to different vehicles, which they can change at their convenience).

B. SECTION DIRECTORY:

Section 1: Amends s. 320.60, F.S., relating to definitions for ss. 320.61-320.70.

Section 2: Provides legislative findings.

Section 3: Amends s. 320.64, F.S., relating to denial, suspension, or revocation of license; grounds.

Section 4: Provides an effective date of July 1, 2020.

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:

To the extent the agreements between franchised dealers and motor vehicle manufacturers, distributors, and importers change due to compliance with statutory changes in the bill, the parties may be positively or negatively impacted.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The Federal Contracts Clause[18] provides that no state shall pass any law impairing the obligation of contracts. However, the Contracts Clause prohibition must be weighed against the state's inherent power to safeguard its people's interests. Three factors are considered when evaluating a claim that the Contracts Clause has been violated: (1) whether the law substantially impairs a contractual relationship; (2) whether there is a significant and legitimate public purpose for the law; and (3) whether the adjustments of rights and responsibilities of the contracting parties are based upon reasonable conditions and are of an appropriate nature.[19]

Some state laws regulating contracts between automobile manufacturers and franchised dealers have been found to be unconstitutional while other laws have been upheld as constitutional.[20]

[18] U.S. Const. art I § 10.
[19] *Vesta Fire Ins. Corp. v. State of Fla.*, 141 F.3d 1427, 1433 (11th Cir. 1998).
[20] *See Alliance of Auto. Mfrs., Inc. v. Currey*, 984 F. Supp. 2d 32 (D. Conn. 2013) (upholding state law that revised statutory method for calculating reasonable compensation for vehicle warranty work and prohibited manufacturers from recovering any additional cost of the new method from the dealers); *Arapahoe Motors, Inc. v. Gen. Motors Corp*., No. CIV.A. 99 N 1985, 2001 WL 36400171, at 13

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

(D. Colo. Mar. 28, 2001) (the retroactive application of state law would be unconstitutional as it would create a new obligation or impose a new duty upon General Motors).

A bill to be entitled

An act relating to motor vehicle manufacturers and dealers; amending s. 320.60, F.S.; redefining the term "line-make vehicle"; amending s. 320.605, F.S.; replacing legislative intent with legislative findings; amending s. 320.64, F.S.; revising a prohibition against certain applicants and licensees competing with franchised motor vehicle dealers in this state; defining the term "sale"; providing an effective date.

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

Section 1. Subsection (14) of section 320.60, Florida Statutes, is amended to read:

320.60 Definitions for ss. 320.61-320.70.—Whenever used in ss. 320.61-320.70, unless the context otherwise requires, the following words and terms have the following meanings:

(14) "Line-make vehicle" includes all models and types of motor vehicles, regardless of the kind of engine, power plant, or drive train they have; their design; or their intended use or classification, which are offered for retail sale, lease, license, subscription, or any other method of distribution under a common name, trademark, service mark, or brand name of the manufacturer of such vehicle. A line-make model or type that has

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

been the subject of a franchise with a motor vehicle dealer in this state may not be sold or otherwise distributed or marketed in any way by an applicant or licensee other than through its franchised motor vehicle dealer, and, thereafter, may not be rebadged or otherwise marketed as a new line-make unless the manufacturer, importer, or distributor of such new line-make offers a franchise of that new line-make to every motor vehicle dealer that was franchised to sell that model or type before rebadging ~~vehicles" are those motor vehicles which are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer of same~~. However, motor vehicles sold or leased under multiple brand names or marks ~~shall~~ constitute a single line-make when they are included in a single franchise agreement and every motor vehicle dealer in this state authorized to sell or lease any such vehicles has been offered the right to sell or lease all of the multiple brand names or marks covered by the single franchise agreement. However ~~Except~~, such multiple brand names or marks are ~~shall be~~ considered individual franchises for purposes of s. 320.64(36).

Section 2. Section 320.605, Florida Statutes, is amended to read:

320.605 Legislative findings ~~intent~~.—The Legislature finds and declares that the distribution, marketing, sale, leasing, rental, or otherwise providing title, use, or possession to

consumers and other entities of motor vehicles, replacement parts, accessories, and the servicing and repair thereof in this state vitally affects the general economy of the state and the public safety and welfare of its residents. The Legislature further finds that the motor vehicle franchise system in this state operates within a defined and highly regulated statutory scheme; assures consumers of a well-organized distribution system that supports the availability of new motor vehicles; provides tens of thousands of jobs for the residents of this state; provides a network of quality warranty, repair, and recall facilities; and provides a cost-effective method for the state to police the system through licensing and regulation of the interactions between private sector franchisors and franchisees, and that such regulation is necessary to promote fair and harmonious relations between motor vehicle manufacturers, importers, distributors, and their dealers; to protect fair competition; to protect consumers; and to provide ~~It is the intent of the Legislature to protect the public health, safety, and welfare of the citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing~~ minorities with opportunities for ~~full~~ participation as motor vehicle dealers.

Section 3. Subsection (23) of section 320.64, Florida Statutes, is amended to read:

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

320.64 Denial, suspension, or revocation of license; grounds.—A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

(23) The applicant or licensee has competed, ~~or~~ is competing, or has announced its intention to compete with one of its franchised motor vehicle dealers in the sale or service of vehicles; in the sale of replacement parts, accessories, or after-market products; in collision repair; or in any other motor vehicle dealer activity related to the line-make for which the motor vehicle dealer in this state is a party to a franchise agreement with the applicant or licensee. As used in this subsection, the term "sale" includes the sale, leasing, rental, licensing, subscription, or any other transfer to a retail consumer, a wholesaler, or a broker of title, possession, or use of a motor vehicle, replacement parts, or accessories that are the subject of, or covered in the franchise agreement with, the motor vehicle dealer ~~with respect to any activity covered by the~~

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

~~franchise agreement with a motor vehicle dealer of the same line-make located in this state with whom the applicant or licensee has entered into a franchise agreement, except as permitted in s. 320.645~~.

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with, any of the preceding provisions by an applicant or licensee will or may adversely and pecuniarily affect the complaining dealer, shall be entitled to pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697.

Section 4. This act shall take effect July 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Transportation & Infrastructure Subcommittee

Representative Latvala offered the following:

Amendment

Remove lines 88-100 and insert:

competing, or has attempted to compete with one of its franchised motor vehicle dealers in the sale or service of vehicles; in the sale of replacement parts, accessories, or after-market products; in collision repair; or in any other motor vehicle dealer activity related to the line-make for which the motor vehicle dealer in this state is a party to a franchise agreement with the applicant or licensee, except as permitted in s. 320.645. As used in this section, the term "sale" includes the sale, leasing, rental, licensing, subscription, or any other transfer to a retail consumer, a wholesaler, or a broker of

title, possession, or use of a motor vehicle, replacement parts, or accessories that are the subject of, or covered in the franchise agreement with, the motor vehicle dealer. Nothing contained in the foregoing shall prevent a common entity of an applicant or licensee from selling replacement parts, accessories, or after-market products under the common entity's brand name. ~~with respect to any activity covered by the~~

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1441 Contracted Airport Projects
SPONSOR(S): Maggard
TIED BILLS: **IDEN./SIM. BILLS:** SB 1380

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee		Johnson	Vickers
2) Business & Professions Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law provides that notwithstanding any other provision of law to the contrary, for a project wholly or partially funded by the Department of Transportation (DOT)and administered by a local governmental entity, the same entity may not perform both design services and construction engineering and inspection (CEI) services. However, this provision does not apply to qualifying seaports.

The bill creates an exemption for airports, identical to the current exemption for seaports, from the provision that for a project wholly or partially funded by DOT and administered by a local governmental entity, the same entity may not perform both design services and CEI services.

This bill does not appear have a fiscal impact on state government and may reduce expenditures for local governments operating airports. *See* Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Under current law, a contractor,[1] or his or her affiliate[2] qualified with the Department of Transportation (DOT) may not also qualify to provide testing services, construction, engineering, and inspection (CEI) services to DOT.[3] This limitation does not apply to any design-build prequalification[4] and does not apply when DOT otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the public's best interests with respect to a particular contract for testing services, and CEI services.

DOT has adopted procedures governing conflicts of interest involving professional services consultant contracts and design-build contracts. The procedure contains a set of matrixes illustrating the variety of scenarios encountered with prime or subcontractors and when DOT would consider the arrangement a conflict. [5]

In 2019, the Legislature passed HB 905,[6] which provided that for a project wholly or partially funded by DOT and administered by a local governmental entity, the same entity may not perform both design services and CEI services. That bill exempted certain seaports from that provision.

According to the Florida Airports Council, the statutory CEI requirement will increase construction costs, delay project schedules, and reduce project efficiency due to additional coordination with other consultants. Depending on the project, airports may leverage different delivery methods for CEI activities. Additionally, airports deliver more than road projects and the professional source requirements used by DOT do not always accommodate airport construction projects.[7] For example, the CEI requirement may not be appropriated for building facilities such as terminals, runways, and parking facilities.

Effect of the Bill

The bill amends s. 337.14(7), F.S., providing an exemption for airports from the requirement that for a project wholly or partially funded by DOT and administered by a local governmental entity, the same entity may not perform both design services and CEI services. This exemption is identical the one currently in place for seaports.

---

[1] Section 337.165(1)(d), F.S., defines the term "contractor" as any person who bids or applies to bid on work let by the department or any counterpart agency of any other state or of the Federal Government or who provides professional services to the department or other such agency. The term "contractor" includes the officers, directors, executives, shareholders active in management, employees, and agents of the contractor.

[2] Section 337.165(1)(a), F.S., defines the term "affiliate" as a predecessor or successor of a contractor under the same, or substantially the same, control or a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliate" includes the officers, directors, executives, shareholders active in management, employees, and agents of the affiliate. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business entity is an affiliate of another.

[3] Section 337.14, F.S.

[4] Design-build prequalification is pursuant to s. 337.11(7), F.S.

[5] Topic No.: 375-030-006-c, Conflict of Interest Procedure for Department Contracts. (Copy on file with Transportation & Infrastructure Subcommittee).

[6] Chapter 2019-153, L.O.F.

[7] Email from Darrick McGhee, Lobbyist for the Florida Airports Council, Re. HB:1441-Airport Contracts. Jan. 21, 2020. (Copy on file with Transportation & Infrastructure Subcommittee).

B. SECTION DIRECTORY:

Section 1 amends s. 337.14, F.S., relating to the application for qualification, certificate of qualification; restrictions; request for hearing.

Section 2 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to impact state government revenues.

2. Expenditures:

This bill does not appear to impact state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to impact local government revenues.

2. Expenditures:

Local governments operating airports may see a reduction in expenditure due to the exemption form the construction engineering and inspection requirements in the bill. However, the cost savings is associated with specific projects; therefore, this reduction in expenditures is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not provide a grant or rulemaking, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to contracted airport projects; amending s. 337.14, F.S.; authorizing a single entity to provide certain contracted services for airport projects wholly or partially funded by the Department of Transportation; providing an effective date.

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

Section 1. Subsection (7) of section 337.14, Florida Statutes, is amended to read:

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

(7) A "contractor" as defined in s. 337.165(1)(d) or his or her "affiliate" as defined in s. 337.165(1)(a) qualified with the department under this section may not also qualify under s. 287.055 or s. 337.105 to provide testing services, construction, engineering, and inspection services to the department. This limitation does not apply to any design-build prequalification under s. 337.11(7) and does not apply when the department otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the best interests of the public with respect to a particular contract for testing services, construction, engineering, and inspection services. This subsection does not authorize a contractor to

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

provide testing services, or provide construction, engineering, and inspection services, to the department in connection with a construction contract under which the contractor is performing any work. Notwithstanding any other provision of law to the contrary, for a project that is wholly or partially funded by the department and administered by a local governmental entity, except for a seaport listed in s. 311.09 or an airport as defined in s. 332.004, the entity performing design and construction, engineering, and inspection services may not be the same entity.

Section 2. This act shall take effect July 1, 2020.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6083 Traffic Infraction Detectors
SPONSOR(S): Rodriguez, A. and Ingoglia
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee		Roth	Vickers
2) Appropriations Committee			
3) State Affairs Committee			

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, 2023, the bill removes the authorization for DHSMV, counties, and municipalities 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 counties and municipalities 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 2023. 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 24, 2020, and found that beginning in Fiscal Year 2020-21, the bill had a recurring annual impact of $62.7 million to general revenue, $12.3 million to state trust funds, and $74.3 million to local government revenues. *See* Fiscal Analysis for details.

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

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, 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] 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 stop[9] before making a permissible right turn.

---

[1] Section 316.003(91), F.S., defines "traffic infraction detector" as a vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light. Any notification under s. 316.0083(1)(b), 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.

[8] Section 316.0083(2), F.S.

[9] Section 316.0083(1)(a), F.S.

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;
- Passed through the intersection at the direction of a law enforcement officer;
- 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
- 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]

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.

[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] Section 316.0083(1)(d), F.S.
[18] Sections 316.0083(1)(b)3. and 318.18(15), F.S.
[19] Sections 316.0083(1)(b)3. and 318.18(15), F.S.
[20] Sections 316.0083(1)(b)3. and 318.18(15), F.S.

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 the general fund, 14 percent to public safety/police, and 5 percent to road repair/maintenance.[25]

2019 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 2019, DHSMV issued its report for the period between July 1, 2018, and June 30, 2019. According to the 2019 report, 46 jurisdictions responded that they had red light cameras in operation; 508 red light cameras were active as of June 30, 2019, which was the same number of cameras from the previous year; and 307 intersections were equipped with red light cameras, which was a reduction of 3 intersections from the previous year. Agencies issued 1,054,234 notices of violation and of the notices issued, 666,427 (63%) were paid and approximately 4,143 (0.4 %) were contested and dismissed. Of those responding, 61 percent (28 of 46) of responding jurisdictions indicated they issue notices of violation for a right-on-red violation and 26 percent (12 of 46) of responding jurisdictions 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]

In its 2019 report, DHSMV provided the following breakdown of the number of crashes at red light camera intersections before and after the cameras were installed:[29, 30]

	Before Red Light Camera Installed	**After Red Light Camera Installed**

[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] Department of Highway Safety and Motor Vehicles, *Red Light Camera Summary Report,* December 20, 2019, available at https://www.flhsmv.gov/pdf/cabinetreports/redlightcameraanalysis2019.pdf (last visited January 29, 2020).
[29] It should be noted that other factors may have contributed to the number of crashes.
[30] *Id.*

Total Crashes	10,410	12,211
Angle Crashes	2,175	2,568
Rear-End Crashes	5,550	6,393
Non-Injury Crashes	7,493	9,266
Injury Crashes	2,889	2,921
Fatal Crashes	28	24
Crashes Involving Non-Motorists	279	253
Crashes Involving Running a Red Light	342	340

According to data from DHSMV red light camera reports from fiscal years 2016-17,[31] 2017-18,[32] and 2018-19,[33] the number of total crashes occurring at intersections before and after red light cameras were installed has increased since the installation of red light cameras.

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.[34] 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.[35] In Florida, only traffic infraction enforcement officers and sworn law enforcement officers are authorized to issue a traffic citation.[36] The case was appealed, but the Florida Supreme Court declined to accept jurisdiction of the case.[37]

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 and forward them 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.[38]

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

[31] Department of Highway Safety and Motor Vehicles, *Red Light Camera Summary Report*, December 29, 2017, available at https://www.flhsmv.gov/pdf/cabinetreports/redlightcameraanalysis2017.pdf (last visited January 29, 2020).
[32] Department of Highway Safety and Motor Vehicles, *Red Light Camera Summary Report*, Updated May 15, 2019, available at https://www.flhsmv.gov/pdf/cabinetreports/redlightcameraanalysis2018.pdf (last visited January 29, 2020).
[33] Department of Highway Safety and Motor Vehicles, *Red Light Camera Summary Report*, December 20, 2019, available at https://www.flhsmv.gov/pdf/cabinetreports/redlightcameraanalysis2019.pdf (last visited January 29, 2020).
[34] *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014).
[35] *Id.*
[36] Section 316.650(3)(c), F.S.
[37] *City of Hollywood v. Arem*, Case No. SC15-236 (Fla. 2015).
[38] *State of Florida, by and through the City of Aventura, et.al. v. Jimenez*, 211 So. 3d 158 (Fla. 3d DCA 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?

On May 3, 2018, the Florida Supreme Court issued its opinion on the following rephrased certified question:

> Does a local government have the authority under section 316.0083(1)(a), Florida Statutes (2014), to contract with a private third-party vendor to review and sort information from red light cameras, in accordance with written guidelines provided by the local government, before sending that information to a trained traffic enforcement officer who determines whether probable cause exists and a citation should be issued?

The Supreme Court answered the certified question in the affirmative and approved the Third District's decision that the statutes authorize local governments to contract with a private third party vendor to sort information from red light cameras, in accordance with written guidelines provided by the local government, before sending that information to a trained traffic enforcement officer, who determines whether probable cause exists and a citation should be issued.[39]

Proposed Changes

Effective July 1, 2023, 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.
- Conforms cross-references.

B. SECTION DIRECTORY:

Section 1: Repeals ss. 316.0083 and 321.50, F.S., relating to Mark Wandall Traffic Safety Program;

[39] *Luis Torres Jimenez v. State of Florida*, 246 So. 3d 219 (Fla. 2018).

administration, report; and authorization to use traffic infraction detectors.

Section 2: Amends s. 28.37, F.S., relating to fines, fees, service charges, and costs remitted to the state.

Section 3: Repeals subsection 36 and 94 of s. 316.003, F.S., relating to definitions.

Section 4: Repeals subsection 8 of s. 316.008, F.S., relating to powers of local authorities.

Section 5: Repeals ss. 316.00831, 316.07456, and 316.0776, F.S., relating to distribution of penalties collected under s. 316.0083(1)(b), transitional implementation, and traffic infraction detectors; placement and installation.

Section 6: Amends s. 316.306, F.S., relating to school and work zones; prohibition on the use of a wireless communications device in a handheld manner.

Section 7: Amends subsections 1 and 5 of s. 316.640, F.S., relating to enforcement.

Section 8: Amends subsection 3 of s. 316.650, F.S., relating to traffic citations.

Section 9: Amends s. 318.121, F.S., relating to preemption of additional fees, fines, surcharges, and costs.

Section 10: Amends s. 318.14, F.S., relating to noncriminal traffic infractions; exception; procedures.

Section 11: Repeals subsection 3 of s. 318.15, F.S., relating to failure to comply with civil penalty or to appear; penalty.

Section 12: Repeals parts of subsections 15 and 22 of s. 318.18, F.S., relating to amount of penalties.

Section 13: Amends s. 320.03, F.S., relating to registration; duties of tax collectors; International Registration Plan.

Section 14: Amends s. 322.27, F.S., relating to authority of department to suspend or revoke driver license or identification card.

Section 15: Amends s. 655.960, F.S., relating to definitions.

Section 16: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference met on January 24, 2020, and found that the bill will result in the following **negative** recurring fiscal impact to state government revenues:[40]

[40] Revenue Estimating Conference, *HB 6083 Report*, p. 299-301, available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/Impact0124.pdf (last visited January 30, 2020).

Fiscal Year	General Revenue	Trust Funds	Total
2020-2021	$62.7 million	$12.3 million	$75 million
2021-2022	$63.4 million	$12.5 million	$75.9 million
2022-2023	$64.1 million	$12.6 million	$76.7 million
2023-2024	$64.7 million	$12.7 million	$77.4 million
2024-2025	$65.3 million	$12.9 million	$78.2 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:

   The Revenue Estimating Conference met on January 24, 2020, and found that the bill will result in the following **negative** recurring fiscal impact to local government revenues:[41]

Fiscal Year	Revenue
2020-2021	$74.3 million
2021-2022	$75.1 million
2022-2023	$75.9 million
2023-2024	$76.7 million
2024-2025	$77.4 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.[42]

D. FISCAL COMMENTS:

The bill has a negative recurring impact even though it does not take effect until 2023. 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.

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. In addition, it would alleviate the workload related to handling red light camera disputes and for granting access and registration stops. Additionally, 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.[43]

[41] *Id.*
[42] DHSMV bill analysis of HB 4027 (2016), which removed the authorization for DHSMV and local governments to install red light cameras, available at http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=7418 (last visited January 30, 2020).
[43] *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, 2023. 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 camera changes.[44]

B. RULE-MAKING AUTHORITY:

DHSMV indicates that the bill will require it to change some of its procedures.[45]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[44] OPPAGA Research Memorandum, *Florida Red Light Camera Program*, (February 7, 2014), available at https://www.thenewspaper.com/rlc/docs/2014/fl-oppaga.pdf (last visited January 30, 2020).
[45] DHSMV Bill Analysis HB 4027 (2016), *supra*, at FN 42.

A bill to be entitled

An act relating to traffic infraction detectors; repealing ss. 316.0083 and 321.50, F.S., relating to the Mark Wandall Traffic Safety Program and authorization to use traffic infraction detectors, respectively; amending ss. 28.37, 316.003, and 316.008, F.S.; conforming cross-references and provisions to changes made by the act; repealing ss. 316.00831, 316.07456, and 316.0776, F.S., relating to distribution of penalties, transitional implementation, and placement and installation, respectively; amending ss. 316.306, 316.640, 316.650, 318.121, 318.14, 318.15, 318.18, 320.03, 322.27, and 655.960, F.S.; conforming cross-references and provisions to changes made by the act; providing an effective date.

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

Section 1. Sections 316.0083 and 321.50, Florida Statutes, are repealed.

Section 2. 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) ~~s. 316.0083(1)(b)3. or s. 318.18(15)(a)~~, shall be deposited into the fine and forfeiture fund to be used exclusively for clerk court-related functions, as provided in s. 28.35(3)(a).

Section 3. Subsections (37) through (93) and (95) through (104) of section 316.003, Florida Statutes, are renumbered as subsections (36) through (92) and (93) through (102), respectively, and present subsections (36), (61), and (94) of that section are amended to read:

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

~~(36) LOCAL HEARING OFFICER.—The person, designated by a department, county, or municipality that elects to authorize traffic infraction enforcement officers to issue traffic citations under s. 316.0083(1)(a), who is authorized to conduct hearings related to a notice of violation issued pursuant to s. 316.0083. The charter county, noncharter county, or municipality may use its currently appointed code enforcement board or special magistrate to serve as the local hearing officer. The department may enter into an interlocal agreement to use the local hearing officer of a county or municipality.~~

(60) ~~(61)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (82)(b) ~~(83)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

~~(94) TRAFFIC INFRACTION DETECTOR.—A vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light. Any notification under s. 316.0083(1)(b) or traffic citation issued by the use of a traffic infraction detector must include a photograph or other recorded image showing both the license tag of the offending vehicle and the traffic control device being violated.~~

Section 4. Subsection (8) of section 316.008, Florida Statutes, is amended to read:

316.008 Powers of local authorities.—

~~(8)(a) A county or municipality may use traffic infraction detectors to enforce s. 316.074(1) or s. 316.075(1)(c)1. when a driver fails to stop at a traffic signal on streets and highways under its jurisdiction under s. 316.0083. Only a municipality may install or authorize the installation of any such detectors~~

~~within the incorporated area of the municipality. Only a county may install or authorize the installation of any such detectors within the unincorporated area of the county.~~

~~(b) Pursuant to paragraph (a), a municipality may install or, by contract or interlocal agreement, authorize the installation of any such detectors only within the incorporated area of the municipality, and a county may install or, by contract or interlocal agreement, authorize the installation of any such detectors only within the unincorporated area of the county. A county may authorize installation of any such detectors by interlocal agreement on roads under its jurisdiction.~~

~~(c) Pursuant to s. 316.0083, a county or municipality may use traffic infraction detectors to enforce s. 316.074(1) or s. 316.075(1)(c)1. when a driver fails to stop at a traffic signal on state roads under the original jurisdiction of the Department of Transportation when permitted by the Department of Transportation.~~

Section 5. Sections 316.00831, 316.07456, and 316.0776, Florida Statutes, are repealed.

Section 6. Paragraph (a) of subsection (3) of section 316.306, Florida Statutes, is amended to read:

316.306 School and work zones; prohibition on the use of a wireless communications device in a handheld manner.—

(3)(a)1. A person may not operate a motor vehicle while

using a wireless communications device in a handheld manner in a designated school crossing, school zone, or work zone area as defined in s. 316.003(102) ~~s. 316.003(104)~~. This subparagraph shall only be applicable to work zone areas if construction personnel are present or are operating equipment on the road or immediately adjacent to the work zone area. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph.

2.a. During the period from October 1, 2019, through December 31, 2019, a law enforcement officer may stop motor vehicles to issue verbal or written warnings to persons who are in violation of subparagraph 1. for the purposes of informing and educating such persons of this section. This sub-subparagraph shall stand repealed on October 1, 2020.

b. Effective January 1, 2020, a law enforcement officer may stop motor vehicles and issue citations to persons who are driving while using a wireless communications device in a handheld manner in violation of subparagraph 1.

Section 7. Paragraph (b) of subsection (1) and paragraph (a) of subsection (5) of section 316.640, Florida Statutes, are amended to read:

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

(1) STATE.—

(b)1. The Department of Transportation has authority to enforce on all the streets and highways of this state all laws applicable within its authority.

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

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

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

~~established by the Criminal Justice Standards and Training Commission for law enforcement officers or auxiliary law enforcement officers under s. 943.13. This subparagraph does not authorize the carrying of firearms or other weapons by a traffic infraction enforcement officer and does not authorize a traffic infraction enforcement officer to make arrests. The department's traffic infraction enforcement officers must be physically located in the state.~~

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

noncriminal traffic infraction as defined in s. 318.14. ~~In addition, any such traffic infraction enforcement officer may issue a traffic citation under s. 316.0083. For purposes of enforcing s. 316.0083, any sheriff's department or police department of a municipality may designate employees as traffic infraction enforcement officers.~~ The traffic infraction enforcement officers must be physically located in the county of the respective sheriff's or police department.

Section 8. Paragraphs (a) and (c) of subsection (3) of section 316.650, Florida Statutes, are amended to read:

316.650 Traffic citations.—

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

~~(c) If a traffic citation is issued under s. 316.0083, the traffic infraction enforcement officer shall provide by~~

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

Section 9. Section 318.121, Florida Statutes, is amended to read:

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

Section 10. Subsection (2) of section 318.14, Florida Statutes, is amended to read:

318.14 Noncriminal traffic infractions; exception; procedures.—

(2) Except as provided in s. 316.1001(2) ~~ss. 316.1001(2) and 316.0083~~, any person cited for a violation requiring a mandatory hearing listed in s. 318.19 or any other criminal traffic violation listed in chapter 316 must sign and accept a

citation indicating a promise to appear. The officer may indicate on the traffic citation the time and location of the scheduled hearing and must indicate the applicable civil penalty established in s. 318.18. For all other infractions under this section, except for infractions under s. 316.1001, the officer must certify by electronic, electronic facsimile, or written signature that the citation was delivered to the person cited. This certification is prima facie evidence that the person cited was served with the citation.

Section 11. Subsection (3) of section 318.15, Florida Statutes, is amended to read:

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

~~(3) The clerk shall notify the department of persons who were mailed a notice of violation of s. 316.074(1) or s. 316.075(1)(c)1. pursuant to s. 316.0083 and who failed to enter into, or comply with the terms of, a penalty payment plan, or order with the clerk to the local hearing officer or failed to appear at a scheduled hearing within 10 days after such failure, and shall reference the person's driver license number, or in the case of a business entity, vehicle registration number.~~

~~(a) Upon receipt of such notice, the department, or authorized agent thereof, may not issue a license plate or revalidation sticker for any motor vehicle owned or co-owned by that person pursuant to s. 320.03(8) until the amounts assessed~~

~~have been fully paid.~~

~~(b) After the issuance of the person's license plate or revalidation sticker is withheld pursuant to paragraph (a), the person may challenge the withholding of the license plate or revalidation sticker only on the basis that the outstanding fines and civil penalties have been paid pursuant to s. 320.03(8).~~

Section 12. Subsections (15) and (22) of section 318.18, Florida Statutes, are amended to read:

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

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

~~2. One hundred and fifty-eight dollars for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by the department's~~

~~traffic infraction enforcement officer. One hundred dollars shall be remitted to the Department of Revenue for deposit into the General Revenue Fund, $45 shall be distributed to the county for any violations occurring in any unincorporated areas of the county or to the municipality for any violations occurring in the incorporated boundaries of the municipality in which the infraction occurred, $10 shall be remitted to the Department of Revenue for deposit into the Department of Health Emergency Medical Services Trust Fund for distribution as provided in s. 395.4036(1), and $3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund.~~

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

~~(b)~~ Amounts deposited into the Brain and Spinal Cord

Injury Trust Fund pursuant to this subsection shall be distributed quarterly to the Miami Project to Cure Paralysis and shall be used for brain and spinal cord research.

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

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

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

~~(22) In addition to the penalty prescribed under s. 316.0083 for violations enforced under s. 316.0083 which are upheld, the local hearing officer may also order the payment of county or municipal costs, not to exceed $250.~~

Section 13. Subsection (8) of section 320.03, Florida Statutes, is amended to read:

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

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

120, if he or she issues any license plate or revalidation sticker contrary to the provisions of this subsection. This section applies only to the annual renewal in the owner's birth month of a motor vehicle registration and does not apply to the transfer of a registration of a motor vehicle sold by a motor vehicle dealer licensed under this chapter, except for the transfer of registrations which includes the annual renewals. This section does not affect the issuance of the title to a motor vehicle, notwithstanding s. 319.23(8)(b).

Section 14. Paragraph (d) of subsection (3) of section 322.27, Florida Statutes, is amended to read:

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

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

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

1. Reckless driving, willful and wanton—4 points.

2. Leaving the scene of a crash resulting in property damage of more than $50—6 points.

3. Unlawful speed, or unlawful use of a wireless communications device, resulting in a crash—6 points.

4. Passing a stopped school bus:

a. Not causing or resulting in serious bodily injury to or death of another—4 points.

b. Causing or resulting in serious bodily injury to or death of another—6 points.

5. Unlawful speed:

a. Not in excess of 15 miles per hour of lawful or posted speed—3 points.

b. In excess of 15 miles per hour of lawful or posted speed—4 points.

6. A violation of a traffic control signal device as provided in s. 316.074(1) or s. 316.075(1)(c)1.—4 points. ~~However, no points shall be imposed for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer. In addition, a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to~~

~~stop at a traffic signal and when enforced by a traffic infraction enforcement officer may not be used for purposes of setting motor vehicle insurance rates.~~

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

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

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

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

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

Section 15. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

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

(1) "Access area" means any paved walkway or sidewalk which is within 50 feet of any automated teller machine. The

term does not include any street or highway open to the use of the public, as defined in s. 316.003(82)(a) ~~s. 316.003(83)(a)~~ or (b), including any adjacent sidewalk, as defined in s. 316.003.

Section 16. This act shall take effect July 1, 2023.