

|                   |   |   |     |               |                         |                |  |
|-------------------|---|---|-----|---------------|-------------------------|----------------|--|
| <b>Tab 1</b>      | <b>SB 138 by Brandes (CO-INTRODUCERS) Rodriguez;</b> (Identical to H 00817) Electric Vehicles                             |   |     |               |                         |                |  |
| 310554            | D   | S | RCS | TR, Brandes   | Delete everything after | 03/11 02:52 PM |  |
| <b>Tab 2</b>      | <b>SB 140 by Brandes;</b> (Identical to H 00819) Fees/Electric Vehicles   |   |     |               |                         |                |  |
| 608690            | A   | S | RCS | TR, Brandes   | Delete L.47 - 50:       | 03/11 02:52 PM |  |
| <b>Tab 3</b>      | <b>SB 426 by Boyd;</b> (Similar to CS/H 00267) State Preemption of Seaport Regulations                                    |   |     |               |                         |                |  |
| 384856            | A   | S | RCS | TR, Boyd      | Delete L.66 - 96:       | 03/11 02:52 PM |  |
| <del>622662</del> | AA  | S | WD  | TR, Rodriguez | btw L.44 - 45:          | 03/11 02:52 PM |  |
| <del>559796</del> | A   | S | WD  | TR, Rodriguez | btw L.92 - 93:          | 03/11 02:52 PM |  |
| <del>955870</del> | A   | S | WD  | TR, Rodriguez | btw L.92 - 93:          | 03/11 02:52 PM |  |
| <b>Tab 4</b>      | <b>SB 684 by Brandes;</b> (Identical to H 00707) Department of Transportation   |   |     |               |                         |                |  |
| 635780            | A   | S | RCS | TR, Brandes   | Delete L.47 - 66.       | 03/11 02:52 PM |  |
| <b>Tab 5</b>      | <b>SB 1126 by Harrell;</b> (Similar to H 01385) Department of Transportation  |   |     |               |                         |                |  |
| <b>Tab 6</b>      | <b>SB 1324 by Harrell;</b> (Identical to H 01313) Digital Driver Licenses and Identification Cards                        |   |     |               |                         |                |  |
| <b>Tab 7</b>      | <b>SB 1326 by Harrell;</b> (Identical to H 01315) Public Records/Department of Highway Safety and Motor Vehicles          |   |     |               |                         |                |  |
| 252740            | A   | S | RCS | TR, Harrell   | Delete L.92:            | 03/11 02:52 PM |  |
| <b>Tab 8</b>      | <b>SB 1500 by Harrell;</b> (Compare to CS/H 00057) Transportation   |   |     |               |                         |                |  |
| 936070            | D   | S | RCS | TR, Harrell   | Delete everything after | 03/11 02:52 PM |  |
| <del>953058</del> | AA  | S | WD  | TR, Rodriguez | btw L.828 - 829:        | 03/11 02:52 PM |  |
| <b>Tab 9</b>      | <b>SB 1502 by Harrell;</b> (Similar to H 01359) Public Records/Department of Highway Safety and Motor Vehicles            |   |     |               |                         |                |  |
| 763330            | A   | S | RCS | TR, Harrell   | Delete L.143:           | 03/11 02:52 PM |  |
| <b>Tab 10</b>     | <b>SB 1620 by Brandes;</b> (Identical to H 01289) Autonomous Vehicles   |   |     |               |                         |                |  |
| <del>562206</del> | A   | S | WD  | TR, Berman    | btw L.92 - 93:          | 03/09 12:19 PM |  |
| 708324            | A   | S | RCS | TR, Brandes   | btw L.92 - 93:          | 03/11 02:52 PM |  |
| <b>Tab 11</b>     | <b>SB 1716 by Hooper;</b> (Similar to H 01329) Transportation Facility Designations/Deputy Michael J. Magli Memorial Road |   |     |               |                         |                |  |

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**TRANSPORTATION**  
**Senator Harrell, Chair**  
**Senator Perry, Vice Chair**

**MEETING DATE:** Wednesday, March 10, 2021

**TIME:** 8:00—10:00 a.m.

**PLACE:** *Toni Jennings Committee Room, 110 Senate Building*

**MEMBERS:** Senator Harrell, Chair; Senator Perry, Vice Chair; Senators Berman, Bracy, Gainer, Jones, Rodriguez, and Wright

| TAB   | BILL NO. and INTRODUCER   | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS   | COMMITTEE ACTION        |
|---|---|--|-------------------------|
| PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A1 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W. PENSACOLA STREET, TALLAHASSEE, FL 32301 |   |  |                         |
| 1   | <b>SB 138</b><br>Brandes<br>(Identical H 817, Compare H 819,<br>Linked S 140)         | Electric Vehicles; Revising the Department of Transportation's goals relating to mobility; requiring the department to establish the Electric Vehicle Infrastructure Grant Program; providing for the distribution of grants to certain entities to install electric vehicle charging infrastructure; specifying that certain rules adopted by the Department of Agriculture and Consumer Services may not require specific methods of sale for electric vehicle charging equipment used in, and services provided in, this state, etc.<br><br>TR 03/10/2021 Fav/CS<br>ATD<br>AP | Fav/CS<br>Yeas 8 Nays 0 |
| 2   | <b>SB 140</b><br>Brandes<br>(Identical H 819, Compare H 817,<br>S 1276, Linked S 138) | Fees/Electric Vehicles; Creating additional fees for electric vehicles; creating a license tax and an additional fee for plug-in hybrid electric vehicles; requiring, on specified dates, the Department of Highway Safety and Motor Vehicles to increase the additional fees, subject to certain requirements; providing that certain vehicles are exempt from specified fees, etc.<br><br>TR 03/10/2021 Fav/CS<br>ATD<br>AP  | Fav/CS<br>Yeas 7 Nays 1 |
| 3   | <b>SB 426</b><br>Boyd<br>(Similar CS/H 267)   | State Preemption of Seaport Regulations; Preempting to the state the regulation of commerce in state seaports; providing exceptions, etc.<br><br>TR 03/10/2021 Fav/CS<br>CA<br>RC  | Fav/CS<br>Yeas 6 Nays 2 |

**COMMITTEE MEETING EXPANDED AGENDA**

Transportation

Wednesday, March 10, 2021, 8:00—10:00 a.m.

| TAB | BILL NO. and INTRODUCER  | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS   | COMMITTEE ACTION           |
|-----|--|--|----------------------------|
| 4   | <b>SB 684</b><br>Brandes<br>(Identical H 707)                                  | Department of Transportation; Requiring the Department of Transportation to allow persons to purchase certain commuter passes for their motor vehicles; requiring that funds collected from the sale of the commuter passes be deposited in specified trust funds and used for the operation and maintenance of the Pinellas Bayway System; requiring the department or the enterprise, as appropriate, to use a specified portion of funds collected from the sale of commuter passes during a specified period of time for landscaping and beautification, etc.<br><br>TR 03/10/2021 Fav/CS<br>ATD<br>AP   | Fav/CS<br>Yeas 8 Nays 0    |
| 5   | <b>SB 1126</b><br>Harrell<br>(Similar H 1385)                                  | Department of Transportation; Clarifying that the Department of Revenue is responsible for a certain transfer from the State Treasury to the General Revenue Fund of a portion of documentary stamp tax distributions credited to the State Transportation Trust Fund; deleting a requirement that the department provide space and video conference capability at each of the department's district offices as an alternative to physical appearance by a person requesting a hearing before the Commercial Motor Vehicle Review Board within the department; requiring the department, when proposing any project on the State Highway System which will close or modify an existing access to an abutting property owner, to provide notice to affected property owners, municipalities, and counties at least 180 days before the design phase of the project is completed, etc.<br><br>TR 03/10/2021 Favorable<br>ATD<br>AP | Favorable<br>Yeas 7 Nays 0 |
| 6   | <b>SB 1324</b><br>Harrell<br>(Identical H 1313, Compare H 1315, Linked S 1326) | Digital Driver Licenses and Identification Cards; Requiring the Department of Highway Safety and Motor Vehicles to establish a secure and uniform system for issuing optional digital proofs of driver licenses and identification cards; authorizing the department to contract with one or more private entities to develop an electronic credentialing system; authorizing the department to enter into contracts with private entities for a specified purpose; prohibiting such private entities from storing, selling, or sharing personal information collected from scanning the digital proofs of driver licenses and identification cards, etc.<br><br>TR 03/10/2021 Favorable<br>AP<br>RC   | Favorable<br>Yeas 7 Nays 0 |

**COMMITTEE MEETING EXPANDED AGENDA**

Transportation

Wednesday, March 10, 2021, 8:00—10:00 a.m.

| TAB | BILL NO. and INTRODUCER  | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS   | COMMITTEE ACTION        |
|-----|--|--|-------------------------|
| 7   | <b>SB 1326</b><br>Harrell<br>(Identical H 1315, Compare H 1313, Linked S 1324) | Public Records/Department of Highway Safety and Motor Vehicles; Providing exemptions from public records requirements for secure login credentials, Internet protocol addresses, and geolocation data held by the Department of Highway Safety and Motor Vehicles; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc.<br><br>TR 03/10/2021 Fav/CS<br>ATD<br>AP  | Fav/CS<br>Yeas 7 Nays 0 |
| 8   | <b>SB 1500</b><br>Harrell<br>(Compare CS/H 57, H 1359, Linked S 1502)          | Transportation; Requiring drivers to change lanes when approaching a road and bridge maintenance or construction vehicle displaying warning lights on the roadside; authorizing the Department of Highway Safety and Motor Vehicles to conduct compliance reviews for a specified purpose; authorizing the department to conduct investigations and examinations relating to violations of certain laws, rules, or orders relating to motor vehicle licenses; prohibiting the Central Florida Expressway Authority from constructing any extensions, additions, or improvements to the Central Florida Expressway System in Lake County without the prior consultation, rather than consent, of the Secretary of Transportation, etc.<br><br>TR 03/10/2021 Fav/CS<br>ATD<br>AP | Fav/CS<br>Yeas 7 Nays 0 |
| 9   | <b>SB 1502</b><br>Harrell<br>(Similar H 1359, Linked S 1500)                   | Public Records/Department of Highway Safety and Motor Vehicles; Exempting from public records requirements certain information received by the Department of Highway Safety and Motor Vehicles as a result of investigations and examinations of private rebuilt inspection providers; exempting from public records requirements certain information received by the department as a result of investigations and examinations of persons suspected of violating or of having violated certain laws, rules, or orders relating to motor vehicle licenses; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc.<br><br>TR 03/10/2021 Fav/CS<br>ATD<br>AP  | Fav/CS<br>Yeas 7 Nays 0 |



**COMMITTEE MEETING EXPANDED AGENDA**

Transportation

Wednesday, March 10, 2021, 8:00—10:00 a.m.

| TAB                             | BILL NO. and INTRODUCER                         | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS   | COMMITTEE ACTION           |
|---------------------------------|---|--|----------------------------|
| 10                              | <b>SB 1620</b><br>Brandes<br>(Identical H 1289) | Autonomous Vehicles; Defining the term "low-speed autonomous delivery vehicle"; authorizing the operation of a low-speed autonomous delivery vehicle on certain streets and roads; providing construction; authorizing the operation of a low-speed autonomous delivery vehicle on streets or roads with a posted speed limit of up to 45 miles per hour under specified conditions; providing requirements for low-speed autonomous delivery vehicles; providing that certain fully autonomous vehicles are not subject to certain provisions of law or regulations, etc.<br><br>TR 03/10/2021 Fav/CS<br>CA<br>RC | Fav/CS<br>Yeas 8 Nays 0    |
| 11                              | <b>SB 1716</b><br>Hooper<br>(Similar H 1329)    | Transportation Facility Designations/Deputy Michael J. Magli Memorial Road; Providing an honorary designation of a certain transportation facility in Pinellas County; directing the Department of Transportation to erect suitable markers, etc.<br><br>TR 03/10/2021 Favorable<br>AP   | Favorable<br>Yeas 8 Nays 0 |
| Other Related Meeting Documents |   |  |                            |
|                                 |   |  |                            |

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: CS/SB 138

INTRODUCER: Senator Brandes

SUBJECT: Electric Vehicles

DATE: March 11, 2021

REVISED: \_\_\_\_\_

| ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION        |
|----------|----------------|-----------|---------------|
| 1. Price | Vickers        | TR        | <b>Fav/CS</b> |
| 2. _____ | _____          | ATD       | _____         |
| 3. _____ | _____          | AP        | _____         |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 138 directs the Florida Department of Transportation (FDOT) to establish the Electric Vehicle Infrastructure (EVI) Grant Program to provide financial assistance to encourage the installation of publicly-available electric vehicle charging infrastructure for electric vehicles, electric semi-trucks, and electric aircraft on public or private property.

The bill authorizes state agencies, public universities, public transit agencies, ports, airports, and local governments to apply to the FDOT for grants for technical assistance for the development and adoption of local or regional plans establishing charging infrastructure and for assistance with the purchase of related equipment and costs of installation. The bill sets out required matching funds and sources and authorizes an applicant to partner with a private-sector entity to install charging infrastructure on private property in the jurisdiction of the applicant.

The FDOT is directed to develop and publish criteria for prioritizing applications and maintain a prioritized list of approved grant applications; continually review emerging research, policies and standards relating to electric vehicle charging infrastructure; publish best practices relating to such infrastructure; and adopt rules to administer the new provisions.

The bill also amends current law relating to FDOT development of a required EVI Master Plan for development of electric vehicle charging station infrastructure along the State Highway System, requiring a supplemental master plan by July of 2023 and a second status report by December of 2021, following an already-issued initial status report.

The bill also:

- Allocates certain increased license tax revenues from registration of electric and hybrid vehicles to the State Transportation Trust Fund (STTF) and requires the FDOT to use the revenues to fund the EVI Grant Program for specified years.
- Prohibits rules of the Department of Agriculture and Consumer Services from adopting rules that require specific methods of sale for electric vehicle charging equipment used in, and services provide in, this state.
- Revises the FDOT's prevailing principle relating to mobility to include improvement of travel choices to ensure mobility includes planning and establishment of infrastructure for innovative technologies, including electric vehicle charging infrastructure.

In addition, the bill:

- Revises the definition of “autocycle” to require compliance with a specified Federal Motor Vehicle Safety Standard relating to antilock brakes and to replace the requirement of a steering “wheel” with a requirement for a steering “mechanism.”
- Revises the definition of “personal delivery device” (PDD) to provide that a PDD has a weight that does not exceed the maximum weight established by the FDOT and, if the FDOT establishes by rule a maximum speed for a PDD, to provide that a PDD has a speed that does not exceed that maximum.
- Authorizes the FDOT to establish rules to implement statutory provisions relating to a PDD.

Except as otherwise provided, the bill takes effect July 1, 2021.

The bill is expected to present varied but indeterminate fiscal impacts to state and local governments and to the private sector. See the “Fiscal Impact Statement” for details.

## **II. Present Situation:**

### **Electric and Hybrid Vehicles**

Electric vehicles (EVs) offer a readily available and cleaner fuel source, with higher fuel efficiency and improved air quality compared to vehicles with internal combustion engines (ICEs). Increasing interest in EV use is driven by higher gas prices and greenhouse gas emission concerns, but their relative high cost compared to conventional fuel-powered vehicles and their relative limited range have restricted the commercial viability of EVs.<sup>1</sup> However, advancements in EV-related technology are continuing, EV manufacturing is rising, and EV prices have been dropping.<sup>2</sup>

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<sup>1</sup> See the Federal Highway Administration's *FHWA NHTS Brief, Electric Vehicle Feasibility*, July 2016, pp. 1-2, available at: <http://nhts.ornl.gov/briefs/EVFeasibility20160701.pdf> (last visited March 6, 2021).

<sup>2</sup> *Id.* at p. 2.

### ***Types of EVs***

The U.S. Department of Energy’s Alternative Fuels Data Center (AFDC) uses the term, “electric-drive vehicles,” to collectively refer to hybrid electric vehicles (HEVs), plug-in hybrid electric vehicles (PHEVs), and all-electric vehicles (AEVs). According to the AFDC:

- HEVs are primarily powered by an ICE that runs on conventional or alternative fuel and an electric motor that uses energy stored in a battery. The battery is charged through regenerative braking and by the ICE and is not plugged in to charge.
- PHEVs are powered by an ICE that can run on conventional or alternative fuel and an electric motor that uses energy stored in a battery. The vehicle can be plugged in to an electric power source to charge the battery. Some can travel more than 70 miles on electricity alone, and all can operate solely on gasoline (similar to a conventional hybrid).
- AEVs use a battery to store the electric energy that powers the motor. AEV batteries are charged by plugging the vehicle in to an electric power source.<sup>3</sup> AEVs are also referred to as battery electric vehicles, or BEVs.

For purposes of vehicle registration, Florida law<sup>4</sup> currently defines the term “electric vehicle” to mean “a *motor vehicle* that is powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current.”

### ***Electric Semi-trucks***

A number of automakers reportedly have “announced or advanced ambitious plans to electrify heavy-duty big rigs, semi-trucks, box trucks, delivery vans and more.” The report details efforts at various stages of development, such as companies that are ramping up production of medium- and heavy-duty electric trucks; unveiling long-haul electric trucks; and actually delivering battery-electric trucks.<sup>5</sup>

### ***Electric Vertical Takeoff and Landing (eVTOL) Aircraft***

Electric vertical takeoff and landing aircraft, other than the familiar helicopter, are in the development stage, and the Federal Aviation Administration (FAA) is currently working with a number of companies seeking what is called a type certificate, which is the FAA’s approval of the design of the aircraft and all component parts. The certificate “signifies the design is in compliance with applicable airworthiness, noise, fuel venting, and exhaust emissions standards.”<sup>6</sup>

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<sup>3</sup> See the AFDC’s website available at: <https://www.afdc.energy.gov/vehicles/electric.html> (last visited March 6, 2021).

<sup>4</sup> Section 320.01(36), F.S. Section

<sup>5</sup> See GreenBiz, *Keep your eyes on these 9 electric truck and van companies in 2021*, available at <https://www.greenbiz.com/article/keep-your-eyes-these-9-electric-truck-and-van-companies-2021> (last visited March 20, 2021).

<sup>6</sup> See FAA, *Certification*, available at [Certification \(faa.gov\)](https://www.faa.gov/certification) (last visited March 20, 2021). Once obtained, the next step is production certification, which is the approval to manufacture duplicate products under an FAA-approved type design. Lastly is the airworthiness certification, either in the “Standard” or “Special Class,” which signifies an aircraft meets its approved type design and is in a condition for safe operation.

### III. Effect of Proposed Changes:

#### Florida EVI Master Plan Reports (Section 5)

##### *Present Situation*

The 2020 Legislature<sup>7</sup> enacted s. 339.287, F.S., directing the FDOT, in consultation with the Public Service Commission and the Office of Energy within the Department of Agriculture and Consumer Services (DACS) to develop and recommend a plan for current and future plans for the development of EV charging station infrastructure along the State Highway System. The recommended plan must be developed and submitted by July 1, 2021. As also required, the FDOT submitted a preliminary status report in December of 2020.<sup>8</sup>

Preliminary recommendations in the report contain 12 areas of focus, with potential strategies and action items categorized by potential action type (by executive order, legislative, and/or agency action) and potential lead and coordinating agencies identified.<sup>9</sup>

In accordance with the 2020 law, the report reviews emerging technologies in the electric and alternative vehicle market and sets out the following preliminary findings:

- With respect to EV technologies:
  - PHEVs have a relatively short range on a full battery (~40 miles). Once expired, the ICE automatically starts, so PHEVs are not limited in range by available electricity.
  - BEVs have a 40-300 mile range, depending on the vehicle make and model, which is a primary consideration for long-range travel and evacuations.<sup>10</sup>
- With respect to EV technology trends:
  - The trend is toward increased battery power density, increased battery lifetime (recharge cycle) and higher battery voltages.
  - BEV historical battery cost has decreased from ~\$1,175 per kWh<sup>11</sup> in 2010 to ~\$375 per kWh in 2015 and is forecasted to reduce further to ~\$160 in 2020 and to ~\$100 in 2025.
  - BEV historical range has increased from ~75 miles in 2010 to ~160 miles in 2015 and is forecasted to increase further to 250 miles in 2020 and ~450 miles in 2025.

As directed, the report also evaluates and compares EV charging stations available at present and which may become available, key findings of which are summarized in part in the below table:

| EVSE <sup>12</sup> Type | Supply Voltage           | Power Level                  | Charge Rate<br>(miles/hour) | Use cases                         |
|-------------------------|--------------------------|------------------------------|-----------------------------|-----------------------------------|
| Level 1                 | 120V (toaster)           | 1 -18 kW                     | 3 – 7                       | Home/overnight                    |
| Level 2                 | 208-240V (clothes dryer) | 3.3 – 19.2<br>7.7 kW typical | 10-60<br>26                 | Home/work<br>Destination charging |

<sup>7</sup> Ch. 2020-21, L.O.F.

<sup>8</sup> *EV Infrastructure Master Plan Status Report*, December 1, 2020 available at [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/fto/evmp-status.pdf?sfvrsn=ac348cf4\\_8](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/fto/evmp-status.pdf?sfvrsn=ac348cf4_8) (last visited March 6, 2021).

<sup>9</sup> These recommendations are set out in table form for ease of review. *Id.* at p. 15.

<sup>10</sup> *Supra* note 27 at p. 3.

<sup>11</sup> Per kilowatt hour.

<sup>12</sup> The report refers to EV charging equipment using an industry term, electric vehicle supply equipment, or EVSE.

|                    |                                |                          |                     |                                       |
|--------------------|--------------------------------|--------------------------|---------------------|---------------------------------------|
| DC Fast<br>Charger | 480V (commercial HVAC<br>unit) | 50 kW<br>150 Kw<br>350Kw | 175<br>500<br>1,200 | Roadside/travel<br>Emergency charging |
|--------------------|--------------------------------|--------------------------|---------------------|---------------------------------------|

The report indicates that Level 1 chargers are currently obsolete for commercial purposes, Level 2 chargers are currently dominant for commercial purposes, and DC fast chargers are the most applicable for long-range travel and evacuations.<sup>13</sup> Future EVSE technologies for fleet and passenger operations include higher-power charging, up to 350 kW with current standards, extreme fast charging for medium and heavy duty applications, and wireless power transfer.<sup>14</sup>

### ***Effect of Proposed Changes***

Section 5 amends s. 339.287, F.S., relating to the EVI Master Plan reports. The bill requires the FDOT to issue a supplemental master plan for development of EV charging station infrastructure along the State Highway System; leaves in place the July 1, 2021, due date for delivery of the recommended master plan; and applies to both the recommended master plan and the supplemental master plan the directive to the FDOT to include recommendations for legislation and the authority to include other recommendations as determined by the FDOT.

The bill directs the FDOT to submit the supplemental master plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2023. The supplemental plan must address innovations in EV charging infrastructure occurring since the submission of the recommended plan and the development of high-powered charging infrastructure for electric aircraft, and must make recommendations related to charging station infrastructure along the State Highway System and at airports, seaports, and other ports in light of the innovations.

The bill also directs the FDOT to file a second status report by December 1, 2021.

### **EVI Grant Program (Section 4)**

#### ***Present Situation***

The EV Master Plan Status Report also identified barriers to the use of EVs and EV charging station infrastructure for both short- and long-range EV travel. With respect to barriers to adoption of EVs:

- EV prices are generally still higher than a motor vehicle powered solely by an ICE, but cost parity with ICE vehicle is expected to occur between 2025 and 2030.
- Range anxiety is a significant factor during longer trips, as drivers worry about availability of EVSE.
- A lack of EV models exists on the market, with trucks and SUVs accounting for greater than 50 percent of vehicle registered in Florida.
- Dealerships lack the knowledge or willingness to suggest the purchase of an EV and have few available EVs.<sup>15</sup>

<sup>13</sup> *Supra* note 27 at p. 4.

<sup>14</sup> *Id.* For a map of existing publicly accessible Level 2 station locations (773), DC fast charger stations (59), and locations funded by the Florida Department of Environmental Protection from the VW Settlement (27), *see* p. 9.

<sup>15</sup> *Supra* note 27 at p. 5.

As for barriers to adoption of EVSE:

- The EV customer base is low, and the public lacks awareness of EVSE locations. A perception exists that gasoline is cheap, and the public is generally more familiar with ICE vehicles.
- EV charging speeds are a deterrent, in that charging speed is a function of power delivery of the EVSE and how much power the EV can accept.
- Service providers locate EVSE where EV adoption is highest, resulting in gaps in EVSE particularly in low-utilization, rural, and income qualified communities. In addition, a lack of site-specific utility infrastructure for DC fast charger stations exists, particularly in rural and emergency-critical areas, and additional costs are incurred when back-up power is provided for emergency-critical EVSE locations.
- Utility charges increase during peak demand periods.
- A lack of state-level public funding to deploy EVSE exists, especially in low-use areas.<sup>16</sup>

Current Florida law contains the following EV-related incentives:

- Section 163.08, F.S., authorizes a property owner to apply to a local government for funding of, or to enter into a financing agreement with the local government to finance, installation of electric vehicle charging equipment on the owner's property, subject to local government ordinance or resolution.
- Section 212.055, F.S., authorizes local governments to use proceeds from a local government infrastructure surtax to provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their property, including, but not limited to, installation of electric vehicle charging equipment, if the local government ordinance authorizing such use is approved by referendum.
- Certain hybrid vehicles and inherently low-emission vehicles may use a high-occupancy vehicle lane (HOV lane)<sup>17</sup> regardless of occupancy, and such vehicles may use any HOV lane re-designated as HOV toll lanes or express lanes without paying a toll as provided in s. 316.0741, F.S.

### ***Effect of Proposed Changes***

Section 4 of the bill creates s. 339.286, F.S., directing the FDOT to establish the EVI Grant Program to provide financial assistance to encourage the installation of electric vehicle charging infrastructure. Eligible applicants include state agencies, public universities, public transit agencies, ports, airports, and local governments, including housing authorities and libraries, which applicants may apply to the FDOT for grants to install publicly available electric vehicle charging infrastructure on public or private property.

The bill authorizes award of a grant for:

- Technical assistance for the development and adoption of:
  - A local or regional plan that establishes an electric vehicle charging infrastructure;
  - Any action plans necessary to address any infrastructure gaps; and

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<sup>16</sup> *Id.*

<sup>17</sup> Generally, a high-occupancy vehicle lane is a lane designated for use by vehicles in which there is more than one occupant. Section 316.0741(1)(a), F.S.

- Steps necessary to complete the infrastructure plan. (A plan must address actions to deploy the necessary infrastructure in high-density housing areas and low-income to moderate-income areas.)
- Assistance with the purchase of related equipment and the costs of installation of that equipment to provide electric vehicle charging. (Such equipment must be capable of collecting and reporting data, use standard connectors, and be available to the public.)

Applicants may apply for a grant for both technical assistance and equipment purchase and installation.

For a technical assistance grant, a minimum match of funds from the applicant of 30 percent of the grant award is required, but no match is required for an applicant located in a fiscally constrained county.<sup>18</sup>

For an equipment purchase and installation grant, a minimum match of 60 percent of the total project cost is required for alternating-current, Level 2 charging infrastructure 20 percent for direct-current, fast charging infrastructure; or 20 percent for high-powered charging infrastructure for electric aircraft, including, but not limited to, eVTOL aircraft and electric semi-trucks.

Matching funds must be from non-state sources but may include private funds provided through a partnership with a private entity or in-kind contributions such as donation of equipment, services, or land or use of land for establishment of EV charging infrastructure.

Grant funds may not subsidize the cost for the use of electricity. Twenty percent of the funds available under the grant program must be reserved for applicants or projects in fiscally constrained counties. An applicant is authorized to partner with a private-sector entity to install charging infrastructure on private property in the same county or local jurisdiction as the applicant.

The bill directs the FDOT to continually review emerging research, policies, and standards related to EV infrastructure and innovations in the use of EVs. Using such information, the FDOT must publish best practices for the establishment of EV charging infrastructure, model infrastructure plan development and components, and other significant information for the implementation and use of EV charging infrastructure. The bill authorizes the FDOT to develop a model plan that state agencies, public universities, public universities, public transit agencies, ports, airports, and local governments may use to establish an EV charging infrastructure plan. The bill directs the FDOT to adopt rules to administer the new section of law.

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<sup>18</sup> As defined by s. 218.67(1), F.S., which provides that “Each county that is entirely within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1, shall be considered a fiscally constrained county.”



## Allocation of Increased License Tax Revenues (Section 3)

### *Present Situation*

Currently, an electric vehicle pays the same motor vehicle license tax as non-electric vehicles.<sup>19</sup> Generally, registration fees differ based on factors such as the type of vehicle and its weight, with fees ranging, for example, between \$14.50 and \$32.50 annually for light-duty vehicles and from \$60.75 to \$1,322 for heavy trucks and truck tractors.<sup>20</sup>

The EV Master Plan Status Report includes:

- A required projection of the increase in the use of EVs in this state over the next 20 years, which in part provides data<sup>21</sup> on existing EV market adoption in Florida. The report concludes that BEVs (44,068) and PHEVs (22,617) currently total just 0.41 percent of the 16,529,219 total light-duty vehicle registrations in Florida.<sup>22</sup>
- Conservative, moderate, and aggressive growth scenarios for light-duty vehicle sales, projecting a respective 10, 20, and 35 percent growth in sales by 2040.<sup>23</sup>
- Respective of the growth scenarios, projections of *negative* net revenue loss to the STTF of 8.4, 16.6, and 30 percent by the same year.<sup>24</sup>

Among the most common potential strategies for mitigation of revenue loss from increased EV use in other states, the report notes a fee in addition to any existing registration fee, which may or may not be tied to inflation, and concludes that 26 states impose such a fee with a range in cost of \$32.50 to \$213.88 annually.<sup>25</sup>

### Related Legislation

CS/SB 140, linked to this bill, imposes fees in addition to those above as follows:

- For “electric vehicles” weighing less than 10,000 pounds, a flat fee of \$135 beginning July 1, 2021, increasing to \$150 beginning January 1, 2025.
- For “electric vehicles” weighing 10,000 pounds or more, \$235 beginning July 1, 2021, increasing to \$250 beginning January 1, 2025.
- For “plug-in hybrid electric vehicles,” a \$35 flat fee beginning July 1, 2021, increasing to \$50 beginning January 1, 2025.

CS/SB 140 requires these fees to be deposited into the STTF, to be used to fund the EVI Grant Program beginning in the 2023-2024 fiscal year.<sup>26</sup>

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<sup>19</sup> Section 320.08001, F.S.

<sup>20</sup> Section 320.08, F.S.

<sup>21</sup> The source is vehicle registration data as of July 28, 2020, provided to the FDOT by the Florida Department of Highway Safety & Motor Vehicles. *Supra* note 6 at p. 6.

<sup>22</sup> *Supra* note 27 at p. 6. HEVs are not included as part of the 0.41 percent of the total light-duty vehicle registrations. HEVs do not plug in to an electric power source to charge batteries, using regenerative braking instead.

<sup>23</sup> *Id.*

<sup>24</sup> *Supra* note 27 at p. 7.

<sup>25</sup> *Id.*

<sup>26</sup> See the Senate Transportation Committee Staff Analysis for CS/SB 140 for details, available at <https://www.flsenate.gov/Session/Bill/2021/140>, “Analyses” tab (last visited March 11, 2021).

### ***Effect of Proposed Changes***

Section 3 of *this* bill, contingent upon passage of CS/SB 140, creates s. 339.0802, F.S., requiring that funds resulting from increased revenues to the STTF from the additional fees imposed on EVs by CS/SB 140 must be used to fund the EVI Grant Program beginning in the 2023-2024 fiscal year.

The new s. 339.0802, F.S., expires on December 31, 2030, which is the same date that the additional fees imposed on certain EVs by CS/SB 140 expire. The EVI Grant Program would not expire and could continue should future funding resources become available.

### **Regulatory Structure to Deliver Electricity to EVs and EV Infrastructure (Section 6)**

#### ***Present Situation***

The EV Master Plan Status Report notes that in Florida, a traditionally regulated state, public electric utilities serving exclusive service territories are under Public Service Commission (PSC) jurisdiction pursuant to chapters 350 and 366, F.S. As described in the report:

The PSC exercises its regulatory authority through rate setting, oversight of bulk power grid planning, safety inspections, and ensuring the provision of reliable service. The PSC has full regulatory authority over five investor-owned utilities in Florida. Rates are set for public utilities based on the cost of service.

The PSC does not regulate the rates and service quality of municipal or rural cooperative electric utilities, but does have jurisdiction regarding rate structure, safety, territorial boundaries, and bulk power supply planning.

Since the current regulatory structure of electric utilities in Florida includes exclusive service territories, the sale of electricity to retail, or end-use customers by a third party is not permitted. However, in 2012 the Florida Legislature created an exemption for electric vehicle charging.<sup>27</sup>

The report also notes initial observations formulated following a PSC request for comment relating to the types of regulatory structure necessary for the delivery of electricity to EV charging infrastructure and participation of public utilities in the marketplace, including:

- A general consensus exists among stakeholders that Florida’s current regulatory structure is appropriate for the delivery of electricity to charging station infrastructure.
- Participation by public utilities in the EV charging marketplace involves two considerations: electrical infrastructure deployment and rates, and utility-owned/operated EVSE.<sup>28</sup>

The report notes, however, that “A focus on flexibility should be maintained in order to adopt different models of utility and third-party ownership/operation based upon site-specific circumstances. In addition, prematurely and narrowly defining the role of public utilities should

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<sup>27</sup> Section 366.94(4), F.S., which provides that the “provisions of electric vehicle charging to the public by a nonutility is not the retail sale of electricity...”

<sup>28</sup> *Supra* note 27 at p. 9.

be discouraged given the nascence of the market and the urgent need to address gaps in charging infrastructure.”<sup>29</sup>

### Methods of Sale

Section 366.94, F.S., currently requires DACS to adopt rules relating to electric vehicle charging stations to allow for consistency for consumers and the industry, including but not limited to methods of sale. The DACS Rule 5J-22.003, F.A.C., adopts by reference the 2017 Edition of the National Institute of Standards and Technology Handbook 130, including a section on the “Uniform Regulation for the Method of Sale of Commodities.” Section 2.34.2 provides:

Method of Sale. – All electrical energy kept, offered, or exposed for sale and sold at retail as a vehicle fuel shall be in units in terms of the megajoule (MJ) or kilowatt-hour (kWh). In addition to the fee assessed for the quantity of electrical energy sold, fees may be assessed for other services; such fees may be based on time measurement and/or a fixed fee.

### ***Effect of Proposed Changes***

Section 6 amends s. 366.94(2), F.S., prohibiting rules implemented under the DACS rulemaking requirement from requiring specific methods of sale for EV charging equipment used in, and services provided in, this state.

The current DACS rule appears to be in conflict with this provision and, therefore, may require revision.<sup>30</sup>

## **FDOT Mobility Goals (Section 2)**

### ***Present Situation***

Section 334.046, F.S., sets out the FDOT’s mission, goals, and objectives. That section requires the FDOT’s goals to address the prevailing principles of preservation, economic competitiveness, and mobility. With respect to the prevailing principle of mobility to be addressed by the FDOT’s goals, that section specifies ensuring a cost-effective, statewide, interconnected transportation system.

### ***Effect of Proposed Changes***

Section 2 amends s. 334.046(2), F.S., relating to the prevailing principle of mobility. The bill adds to the principle “improvement of travel choices to ensure mobility includes planning and establishment of infrastructure for innovative technologies, including electric vehicle charging infrastructure.”

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<sup>29</sup> *Id.*

<sup>30</sup> See the DACS analysis of SB 138 dated December 9, 2020 (on file in the Senate Transportation Committee).

## **Autocycles (Section 1)**

### ***Present Situation***

According to the National Conference of State Legislatures, the National Highway Traffic Safety Administration (NHTSA) does not currently have a vehicle classification for autocycles. At the federal level, autocycles fall under the definition of “motorcycle” and must generally comply with applicable motorcycle manufacturing and safety standards. States are making efforts to define “autocycles,” address safety requirements and passenger restrictions, and regulate operator licensing and operation of autocycles on roadways.<sup>31</sup>

Current Florida law defines the term “autocycle” to mean “a three-wheeled motorcycle<sup>32</sup> that has two wheels in the front and one wheel in the back; is equipped with a roll cage or roll hoops, a seat belt for each occupant, antilock brakes, a steering *wheel*, and seating that does not require the operator to straddle or sit astride it; and is manufactured in accordance with the applicable federal motor vehicle safety standards in 49 C.F.R. part 571 by a manufacturer registered with [NHTSA].”

### ***Effect of Proposed Changes***

Section 1 amends s. 316.003(2), F.S., to revise the definition of “autocycle” by clarifying that the required antilock brakes must meet the requirements of Federal Motor Vehicle Safety Standard No. 122 relating to such brakes, and to revise the requirement for a steering “wheel” to a steering “mechanism.”

## **Personal Delivery Devices (Section 1)**

### ***Present Situation***

A personal delivery device (PDD) is an electrically-powered device that:

- Is operated on sidewalks and crosswalks and intended primarily for transporting property;
- Weighs less than 80 pounds, excluding cargo;
- Has a maximum speed of 10 miles per hour; and
- Is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.

A PDD is not considered a vehicle unless expressly defined by law as a vehicle.<sup>33</sup>

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<sup>31</sup> See National Conference of State Legislatures, *Transportation Review: Autocycles*, Lambert, S. and Shinkle, D., April 2017, available at <https://www.ncsl.org/research/transportation/transportation-review-autocycles.aspx#:~:text=Its%20law%20defines%20an%20autocycle,in%20contact%20with%20the%20roadway>. (last visited March 6, 2021).

<sup>32</sup> “Motorcycle” is defined in s. 316.003(45), F.S., to mean “Any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground. The term includes an autocycle, but does not include a tractor, a moped, an electric bicycle, or any vehicle in which the operator is enclosed by a cabin unless it meets the requirements set forth by the National Highway Traffic Safety Administration for a motorcycle.

<sup>33</sup> Section 316.003(56), F.S.

A PDD may operate on sidewalks and crosswalks and has all the rights and duties applicable to a pedestrian, except that a PDD may not unreasonably interfere with pedestrians or traffic and must yield the right-of-way to pedestrians on a sidewalk or crosswalk.<sup>34</sup>

A PDD must obey all traffic and pedestrian control signals and devices, include identifying information on the PDD, and be equipped with a braking system that, when activated or engaged, enables the PDD to come to a controlled stop.<sup>35</sup> A PDD may not:

- Operate on a public highway except to the extent necessary to cross a crosswalk.
- Operate on a sidewalk or crosswalk unless the personal delivery device operator is actively controlling or monitoring the navigation and operation of the personal delivery device or a mobile carrier owner remains within 25 feet of the mobile carrier.
- Transport hazardous materials.<sup>36</sup>

A person who owns and operates a PDD in this state must maintain an insurance policy, on behalf of himself or herself and his or her agents, which provides general liability coverage of at least \$100,000 for damages arising from the combined operations of PDDs under the entity's or agent's control.

A PDD may be operated on sidewalks and crosswalks within a county or municipality when such use is permissible under federal law, but a county or a municipality is not prohibited from otherwise adopting regulations for the safe operation of PDDs. A PDD may not be operated on the Florida Shared-Use Nonmotorized Trail Network or components of the Florida Greenways and Trails System.<sup>37</sup>

### ***Effect of Proposed Changes***

Section 1 amends s. 316.003(56), F.S., revising the definition of the term “personal delivery device.” The bill:

- Strikes the current part of the definition requiring a PDD to weigh less than 80 pounds, excluding cargo, and revises the definition to require that a PDD has a weight that does not exceed the maximum weight established by FDOT rule.
- Revises the current part of the definition requiring a PDD to have a maximum speed of 10 miles per hour by including an alternative: If the FDOT establishes by rule a maximum speed, a PDD must have a speed that does not exceed the maximum of the rule.

Under the bill, the FDOT is required to establish by rule a maximum weight for a PDD. PDDs will be required to comply with the maximum weight requirement to comply with Florida law and, if the FDOT establishes by rule a maximum speed, will be required to comply with that established maximum speed to comply with Florida law.

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<sup>34</sup> Section 316.2071(1), F.S.

<sup>35</sup> Section 316.2071(2), F.S.

<sup>36</sup> Section 316.2071(3), F.S.

<sup>37</sup> Section 316.008(7)(b), F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None. This bill does not impose or increase any tax or fee. It does allocate the new fees imposed on certain EVs in the linked CS/SB 140, which fees are to be used to fund the EVI Grant Program.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None. This bill does not impose or increase any tax or fee. It does allocate the new fees imposed on certain EVs in the linked CS/SB 140, which fees are to be used to fund the EVI Grant Program.

**B. Private Sector Impact:**

Private entities may experience positive fiscal impacts through receipt of grant funds.

Vendors may experience indeterminate positive fiscal impacts associated with providing the related technology, services, and equipment for EV charging infrastructure.

Citizens may experience generally positive impacts associated with increased availability of publicly available EV charging stations. However, those subjected to the fees imposed by CS/SB 140 may object to use of the fees for electric aircraft purposes, as no fees are imposed by that bill on aircraft of any kind.

**C. Government Sector Impact:**

The FDOT will incur indeterminate expenses associated with:

- Establishing by rule a required maximum weight for a PDD.
- Adopting by rule a maximum speed for a PDD, if the FDOT chooses to do so.

- Establishing and staffing the EVI Grant Program and continually reviewing emerging research, policies, and standards relating to EV charging infrastructure. (The FDOT notes it is unknown how many FTEs will be needed to administer the program, and the FDOT “will need to determine what the implications are to funding based on this requirement.”<sup>38</sup>)
- Developing and publishing criteria for prioritizing EVI grant applications and maintaining the required list of approved grant applications.
- Publishing best practices for establishing charging infrastructure, model infrastructure plan development and components, and other information for implementation and use of charging infrastructure.
- Developing a model plan for use by the specified entities, if the FDOT chooses to do so.
- Adopting rules to implement the EVI Grant Program.

The DACS advises it may need to amend its existing rule relating to methods of sale.<sup>39</sup> The cost is expected to be absorbed within existing resources.

The DHSMV advises the bill will require modification of its existing procedures, website, driver license handbook, and communications to specific stakeholders, including tax collectors, but the bill “has minimal impact to the Division of Motorist Services.”<sup>40</sup>

The bill presents an indeterminate positive fiscal impact to local governments (and other eligible public entities) in the form of grant awards for the establishment of EV charging infrastructure, and an indeterminate negative impact due to the match requirements.

## VI. Technical Deficiencies:

Florida law currently defines the term “electric vehicle” for purposes of vehicle registration under Chapter 320, F.S., to mean “a motor vehicle that is powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current.” This definition appears to be ambiguous. For example, the definition does not require that a motor vehicle be *solely* powered by an electric motor, which would mean that only BEVs would meet the definition. PHEVs and HEVs would be excluded because they both have ICEs. However, if the definition requires that a motor vehicle be *partially* powered by an electric motor, BEVs, PHEVs, and HEVs would meet the definition. Florida law does not currently define “plug-in hybrid electric vehicle.” An amendment to clarify the potential ambiguity consistent with intent may be appropriate.

The FDOT notes the bill provides no date by which it must publish the required prioritization criteria or best practices.

<sup>38</sup> See the FDOT bill analysis for SB 138 at p. 8 (on file in the Senate Transportation Committee).

<sup>39</sup> *Supra* note 29.

<sup>40</sup> See the DHSMV bill analysis for SB 138 at p. 3 (on file in the Senate Transportation Committee).

**VII. Related Issues:**

Individuals subjected to the fees imposed by CS/SB 140 may object to use of the fees for electric aircraft purposes, as no fees are imposed by that bill on aircraft of any kind.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 316.003, 334.046, 339.287, and 366.94.

This bill creates the following sections of the Florida Statutes: 339.0802 and 339.286.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Transportation on March 10, 2021:**

- Adds high-powered charging infrastructure for electric aircraft and semi-trucks as eligible for potential grant awards under the EVI Grant Program.
- Revises law relating to development of a currently required EVI Master Plan for development of electric vehicle charging station infrastructure along the State Highway System, requiring a supplemental master plan by July of 2023 and a second status report by December of 2021.
- Requires all of the additional flat fees for vehicle registration imposed on electric and plug-in hybrid electric vehicles by CS/SB 140 to be used to fund the EVI Grant Program beginning in fiscal year 2023-2024.
- Removes the \$5 million appropriation in non-recurring funds from the STTF to the FDOT to implement the EVI Grant Program.

**B. Amendments:**

None.





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LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 03/11/2021 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Transportation (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (2) and (56) of section 316.003,  
Florida Statutes, 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:



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(2) AUTOCYCLE.—A three-wheeled motorcycle that has two wheels in the front and one wheel in the back; is equipped with a roll cage or roll hoops, a seat belt for each occupant, antilock brakes that meet the requirements of Federal Motor Vehicle Safety Standard No. 122, a steering mechanism ~~wheel~~, and seating that does not require the operator to straddle or sit astride it; and is manufactured in accordance with the applicable federal motorcycle safety standards in 49 C.F.R. part 571 by a manufacturer registered with the National Highway Traffic Safety Administration.

(56) PERSONAL DELIVERY DEVICE.—An electrically powered device that:

(a) Is operated on sidewalks and crosswalks and intended primarily for transporting property;

(b) Has a weight that does not exceed the maximum weight established by Department of Transportation rule ~~weighs less than 80 pounds, excluding cargo~~;

(c) Has a maximum speed of 10 miles per hour or, if the Department of Transportation establishes by rule a maximum speed, has a speed that does not exceed that maximum; and

(d) Is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.

A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle. A mobile carrier is not considered a personal delivery device. The Department of Transportation may adopt rules to implement this subsection.

Section 2. Paragraph (c) of subsection (4) of section



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334.046, Florida Statutes, is amended to read:

334.046 Department mission, goals, and objectives.—

(4) At a minimum, the department's goals shall address the following prevailing principles.

(c) *Mobility*.—Ensuring a cost-effective, statewide, interconnected transportation system. Improvement of travel choices to ensure mobility includes planning and establishment of infrastructure for innovative technologies, including electric vehicle charging infrastructure.

Section 3. Effective upon SB 140 or other similar legislation being enacted in the 2021 Regular Session or an extension thereof and becoming a law, section 339.0802, Florida Statutes, is created to read:

339.0802 Allocation of increased license tax revenues from licensure of electric and hybrid vehicles.—Funds that result from increased revenues to the State Transportation Trust Fund derived under s. 320.08001(2) and (3) must be used as set forth in this section, notwithstanding any other provision of law. Beginning in the 2023-2024 fiscal year, all increased revenues must be used to fund the Electric Vehicle Infrastructure Grant Program created by s. 339.286. This section expires on December 31, 2030.

Section 4. Section 339.286, Florida Statutes, is created to read:

339.286 Electric Vehicle Infrastructure Grant Program.—

(1) The department shall establish the Electric Vehicle Infrastructure Grant Program. The purpose of the program is to provide financial assistance to encourage the installation of electric vehicle charging infrastructure.



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(2) State agencies, public universities, public transit agencies, ports, airports, and local governments, including local housing authorities and libraries, may apply to the department for grants for the purpose of installing publicly available electric vehicle charging infrastructure on public or private property.

(3) A grant may be awarded for:

(a) Technical assistance for the development and adoption of:

1. A local or regional plan that establishes an electric vehicle charging infrastructure;

2. Any action plans necessary to address any infrastructure gaps; and

3. Steps necessary to complete the infrastructure plan.

A plan must address actions to deploy the necessary infrastructure in high-density housing areas and low-income to moderate-income areas.

(b) Assistance with the purchase of related equipment and the costs of installation of that equipment to provide electric vehicle charging. Such equipment must be capable of collecting and reporting data, use standard connectors, and be available to the public.

(4) (a) An applicant may apply for a grant for both technical assistance and equipment purchase and installation. A grant for technical assistance requires a minimum match of funds from the applicant of 30 percent of the grant award, but such match is not required for an applicant that is located in a fiscally constrained county as described in s. 218.67(1). A



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grant for equipment purchase and installation requires a minimum match of funds from the applicant in the amount of 60 percent of the total project cost for alternating-current, Level 2 charging infrastructure; 20 percent of the total project cost for direct-current, fast-charging infrastructure; or 20 percent of the total project cost for high-powered charging infrastructure for electric aircraft, including, but not limited to, electric vertical takeoff and landing aircraft, and semi-trucks. The matching funds must be from nonstate resources, but may include private funds provided through a partnership with a private entity or in-kind contributions such as the donation of equipment, services, or land or use of land for establishment of the electric vehicle charging infrastructure. Grant funds may not subsidize the cost for the use of electricity. Twenty percent of the funds available under the grant program must be reserved for applicants or projects in fiscally constrained counties as described in s. 218.67(1). An applicant may partner with a private sector entity to install charging infrastructure on private property in the same county or local jurisdiction as the applicant.

(b) The department shall develop and publish criteria for prioritizing the grant applications and shall maintain a prioritized list of approved grant applications. The prioritized list must include recommended funding levels for each application and, if staged implementation is appropriate, must provide funding requirements for each stage. Grants must be prioritized based on the extent to which the activities of the grant will encourage growth in the use of electric vehicles and increase the availability of charging locations along evacuation



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routes. A grant for equipment purchase and installation that  
will immediately and most effectively serve those who currently  
own or operate electric vehicles may receive priority.

(5) The department shall continually review emerging  
research, policies, and standards related to electric vehicle  
infrastructure and innovations in the use of electric vehicles.  
Using such information, the department shall publish best  
practices for the establishment of electric vehicle charging  
infrastructure, model infrastructure plan development and  
components, and other significant information for the  
implementation and use of electric vehicle charging  
infrastructure. The department may develop a model plan that  
state agencies, public universities, public transit agencies,  
ports, airports, and local governments may use as a guide to  
establish an electric vehicle charging infrastructure plan.

(6) The department shall adopt rules to administer this  
section.

Section 5. Subsection (2) of section 339.287, Florida  
Statutes, is amended to read:

339.287 Electric vehicle charging stations; infrastructure  
plan development.—

(2)(a) The department shall coordinate, develop, and  
recommend a master plan and a supplemental master plan for  
current and future plans for the development of electric vehicle  
charging station infrastructure along the State Highway System,  
as defined in s. 334.03(24). The plans must include  
recommendations for legislation and may include other  
recommendations as determined by the department.

1. The department shall ~~develop the recommended master plan~~



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~~and submit the recommended master plan it to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2021. The plan must include recommendations for legislation and may include other recommendations as determined by the department.~~

2. The department shall submit the recommended supplemental master plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2023. The supplemental master plan must address innovations in electric vehicle charging station infrastructure occurring since the submission of the recommended master plan and the development of high-powered charging infrastructure for electric aircraft. The supplemental master plan also must make recommendations related to charging station infrastructure along the State Highway System and at airports, seaports, and other ports in light of these innovations.

(b) The department, in consultation with the Public Service Commission and the Office of Energy within the Department of Agriculture and Consumer Services, and any other public or private entities as necessary or appropriate, shall be primarily responsible for the following goals and objectives in developing the plans ~~plan~~:

1. Identifying the types or characteristics of possible locations for electric vehicle charging station infrastructure along the State Highway System to support a supply of electric vehicle charging stations that will:

- a. Accomplish the goals and objectives of this section;
- b. Support both short-range and long-range electric vehicle travel;



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c. Encourage the expansion of electric vehicle use in this state; and

d. Adequately serve evacuation routes in this state.

2. Identifying any barriers to the use of electric vehicles and electric vehicle charging station infrastructure both for short-range and long-range electric vehicle travel along the State Highway System.

3. Identifying an implementation strategy for expanding electric vehicle and charging station infrastructure use in this state.

4. Quantifying the loss of revenue to the State Transportation Trust Fund due to the current and projected future use of electric vehicles in this state and summarizing efforts of other states to address such revenue loss.

(c) The Public Service Commission, in consultation with the department and the Office of Energy within the Department of Agriculture and Consumer Services, and any other public or private entities as necessary or appropriate, shall be primarily responsible for the following goals and objectives in developing the plans ~~plan~~:

1. Projecting the increase in the use of electric vehicles in this state over the next 20 years and determining how to ensure an adequate supply of reliable electric vehicle charging stations to support and encourage this growth in a manner supporting a competitive market with ample consumer choice.

2. Evaluating and comparing the types of electric vehicle charging stations available at present and which may become available in the future, including the technology and infrastructure incorporated in such stations, along with the





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circumstances within which each type of station and infrastructure is typically used, including fleet charging, for the purpose of identifying any advantages to developing particular types or uses of these stations.

3. Considering strategies to develop this supply of charging stations, including, but not limited to, methods of building partnerships with local governments, other state and federal entities, electric utilities, the business community, and the public in support of electric vehicle charging stations.

4. Identifying the type of regulatory structure necessary for the delivery of electricity to electric vehicles and charging station infrastructure, including competitive neutral policies and the participation of public utilities in the marketplace.

(d) The Public Service Commission, in consultation with the Office of Energy within the Department of Agriculture and Consumer Services, shall review emerging technologies in the electric and alternative vehicle market, including alternative fuel sources.

(e) The department, the Public Service Commission, and the Office of Energy within the Department of Agriculture and Consumer Services may agree to explore other issues deemed necessary or appropriate for purposes of the plans ~~report~~ required by ~~in~~ paragraph (a).

(f) By December 1, 2021 ~~December 1, 2020~~, the department shall file a second status report with the Governor, the President of the Senate, and the Speaker of the House of Representatives containing any preliminary recommendations, including recommendations for legislation.



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Section 6. Section 366.94, Florida Statutes, is amended to read:

366.94 Electric vehicle charging stations.—

(1) The provision of electric vehicle charging to the public by a nonutility is not the retail sale of electricity for the purposes of this chapter. The rates, terms, and conditions of electric vehicle charging services by a nonutility are not subject to regulation under this chapter. This section does not affect the ability of individuals, businesses, or governmental entities to acquire, install, or use an electric vehicle charger for their own vehicles.

(2) The Department of Agriculture and Consumer Services shall adopt rules to provide definitions, methods of sale, labeling requirements, and price-posting requirements for electric vehicle charging stations to allow for consistency for consumers and the industry. Rules implemented under this subsection may not require specific methods of sale for electric vehicle charging equipment used in, and electrical vehicle charging services provided in, this state.

(3) (a) It is unlawful for a person to stop, stand, or park a vehicle that is not capable of using an electrical recharging station within any parking space specifically designated for charging an electric vehicle.

(b) If a law enforcement officer or parking enforcement specialist finds a motor vehicle in violation of this subsection, the officer or specialist shall charge the operator or other person in charge of the vehicle in violation with a noncriminal traffic infraction, punishable as provided in s. 316.008(4) or s. 318.18.



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Section 7. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2021.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to electric vehicles; amending s.  
316.003, F.S.; revising definitions; authorizing the  
Department of Transportation to adopt rules; amending  
s. 334.046, F.S.; revising the principles relating to  
mobility which the department's goals are required to  
address; creating s. 339.0802, F.S.; requiring that  
certain funds be used for specified purposes relating  
to the Electric Vehicle Infrastructure Grant Program,  
beginning in a specified year; providing for future  
expiration; creating s. 339.286, F.S.; requiring the  
department to establish the Electric Vehicle  
Infrastructure Grant Program; providing the purpose of  
the program; providing for the distribution of grants  
to certain entities to install electric vehicle  
charging infrastructure; providing grant requirements;  
providing requirements for equipment installed using  
grant funds; requiring the department to develop and  
publish criteria for the prioritization of grant  
applications and to maintain a prioritized list of  
approved applications; requiring the department to  
continually review emerging research, policies, and



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standards; requiring the department to publish certain information; authorizing the department to develop a model plan for specified entities; requiring the department to adopt rules; amending s. 339.287, F.S.; requiring the department to coordinate, develop, and recommend a supplemental master plan to address innovations in electric vehicle charging station infrastructure and the development of high-powered charging infrastructure for electric aircraft; requiring the department to submit the plan to the Governor and the Legislature by a specified date; conforming provisions to changes made by the act; requiring the department to file a second status report with the Governor and the Legislature by a specified date; amending s. 366.94, F.S.; prohibiting certain rules adopted by the Department of Agriculture and Consumer Services from requiring specific methods of sale for electric vehicle charging equipment used and services provided in this state; providing effective dates.

By Senator Brandes

24-00281A-21

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1 A bill to be entitled  
 2 An act relating to electric vehicles; amending s.  
 3 316.003, F.S.; revising definitions; authorizing the  
 4 Department of Transportation to adopt rules; amending  
 5 s. 334.046, F.S.; revising the department's goals  
 6 relating to mobility; creating s. 339.0802, F.S.;  
 7 requiring that certain funds be used for specified  
 8 purposes relating to the Electric Vehicle  
 9 Infrastructure Grant Program, beginning in a specified  
 10 year; requiring that certain funds remain in the State  
 11 Transportation Trust Fund, beginning in a specified  
 12 year; providing for future expiration of the  
 13 requirements; creating s. 339.286, F.S.; requiring the  
 14 department to establish the Electric Vehicle  
 15 Infrastructure Grant Program; providing the purpose of  
 16 the program; providing for the distribution of grants  
 17 to certain entities to install electric vehicle  
 18 charging infrastructure; providing grant requirements;  
 19 providing requirements for equipment installed using  
 20 grant funds; requiring the department to develop and  
 21 publish criteria for the prioritization of grant  
 22 applications and to maintain a prioritized list of  
 23 approved applications; requiring the department to  
 24 continually review emerging research, policies, and  
 25 standards; requiring the department to publish certain  
 26 information; authorizing the department to develop a  
 27 model plan for local governments; requiring the  
 28 department to adopt rules; amending s. 366.94, F.S.;  
 29 specifying that certain rules adopted by the

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30 Department of Agriculture and Consumer Services may  
 31 not require specific methods of sale for electric  
 32 vehicle charging equipment used in, and services  
 33 provided in, this state; providing an appropriation;  
 34 providing effective dates.  
 35

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

38 Section 1. Subsections (2) and (56) of section 316.003,  
 39 Florida Statutes, are amended to read:

40 316.003 Definitions.—The following words and phrases, when  
 41 used in this chapter, shall have the meanings respectively  
 42 ascribed to them in this section, except where the context  
 43 otherwise requires:

44 (2) AUTOCYCLE.—A three-wheeled motorcycle that has two  
 45 wheels in the front and one wheel in the back; is equipped with  
 46 a roll cage or roll hoops, a seat belt for each occupant,  
 47 antilock brakes that meet the requirements of Federal Motor  
 48 Vehicle Safety Standard No. 122, a steering mechanism ~~wheel~~, and  
 49 seating that does not require the operator to straddle or sit  
 50 astride it; and is manufactured in accordance with the  
 51 applicable federal motorcycle safety standards in 49 C.F.R. part  
 52 571 by a manufacturer registered with the National Highway  
 53 Traffic Safety Administration.

54 (56) PERSONAL DELIVERY DEVICE.—An electrically powered  
 55 device that:

56 (a) Is operated on sidewalks and crosswalks and intended  
 57 primarily for transporting property;

58 (b) Has a weight that does not exceed the maximum weight

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established by Department of Transportation rule ~~Weighs less than 80 pounds, excluding cargo;~~

(c) Has a maximum speed of 10 miles per hour or, if the Department of Transportation establishes by rule a maximum speed, has a speed that does not exceed that maximum; and

(d) Is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.

A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle. A mobile carrier is not considered a personal delivery device. The Department of Transportation may adopt rules to implement this subsection.

Section 2. Paragraph (c) of subsection (4) of section 334.046, Florida Statutes, is amended to read:

334.046 Department mission, goals, and objectives.—

(4) At a minimum, the department's goals shall address the following prevailing principles.

(c) Mobility.—Ensuring a cost-effective, statewide, interconnected transportation system. Improvement of travel choices to ensure mobility includes planning and establishment of infrastructure for innovative technologies, including electric vehicle charging infrastructure.

Section 3. Effective upon Senate Bill \_\_\_\_ or other similar legislation being enacted in the 2021 Regular Session or an extension thereof and becoming a law, section 339.0802, Florida Statutes, is created to read:

339.0802 Allocation of increased license tax revenues from licensure of electric and hybrid vehicles.—Funds that result

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from increased revenues to the State Transportation Trust Fund derived under s. 320.08001(2) and (3) must be used as set forth in this section, notwithstanding any other provision of law.

(1) Beginning in the 2021-2022 fiscal year, and annually for 4 fiscal years thereafter, all increased revenues must be used to fund the Electric Vehicle Infrastructure Grant Program.

(2) Beginning in the 2026-2027 fiscal year, all increased revenues must remain in the State Transportation Trust Fund to be used for authorized purposes.

(3) This section expires on December 31, 2030.

Section 4. Section 339.286, Florida Statutes, is created to read:

339.286 Electric Vehicle Infrastructure Grant Program.—

(1) The department shall establish the Electric Vehicle Infrastructure Grant Program. The purpose of the program is to provide financial assistance to encourage the installation of electric vehicle charging infrastructure.

(2) State agencies, public universities, public transit agencies, ports, airports, and local governments, including local housing authorities and libraries, may apply to the department for grants for the purpose of installing publicly available electric vehicle charging infrastructure on public or private property.

(3) A grant may be awarded for:

(a) Technical assistance for the development and adoption of:

1. A local or regional plan that establishes an electric vehicle charging infrastructure;

2. Any action plans necessary to address any infrastructure

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gaps; and

3. Steps necessary to complete the infrastructure plan.

A plan must address actions to deploy the necessary infrastructure in high-density housing areas and low-income to moderate-income areas.

(b) Assistance with the purchase of related equipment and the costs of installation of that equipment to provide electric vehicle charging. Such equipment must be capable of collecting and reporting data, use standard connectors, and be available to the public.

(4) (a) An applicant may apply for a grant for both technical assistance and equipment purchase and installation. A grant for technical assistance requires a minimum match of funds from the applicant of 30 percent of the grant award, but such match is not required for an applicant that is located in a fiscally constrained county as defined in s. 218.67(1). A grant for equipment purchase and installation requires a minimum match of funds from the applicant in the amount of 60 percent of the total project cost for alternating-current, Level 2 charging infrastructure, or 20 percent of the total project cost for direct-current, fast charging infrastructure. The matching funds must be from nonstate resources, but may include private funds provided through a partnership with a private entity or in-kind contributions such as the donation of equipment, services, or land or use of land for establishment of the electric vehicle charging infrastructure. Grant funds may not subsidize the cost for the use of electricity. Twenty percent of the funds available under the grant program must be reserved for

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applicants or projects in fiscally constrained counties as defined in s. 218.67(1). An applicant may partner with a private-sector entity to install charging infrastructure on private property in the same county or local jurisdiction as the applicant.

(b) The department shall develop and publish criteria for prioritizing the grant applications and shall maintain a prioritized list of approved grant applications. The prioritized list must include recommended funding levels for each application and, if staged implementation is appropriate, provide funding requirements for each stage. Grants must be prioritized based on the extent to which the activities of the grant will encourage growth in the use of electric vehicles and increase the availability of charging locations along evacuation routes. A grant for equipment purchase and installation that will immediately and most effectively serve those who currently own or operate electric vehicles may receive priority.

(5) The department shall continually review emerging research, policies, and standards related to electric vehicle infrastructure. Using such information, the department shall publish best practices for the establishment of electric vehicle charging infrastructure, model infrastructure plan development and components, and other significant information for the implementation and use of electric vehicle charging infrastructure. The department may develop a model plan that local governments may use as a guide to establish an electric vehicle charging infrastructure plan.

(6) The department shall adopt rules to administer this section.

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175 Section 5. Section 366.94, Florida Statutes, is amended to  
 176 read:  
 177 366.94 Electric vehicle charging stations.—  
 178 (1) The provision of electric vehicle charging to the  
 179 public by a nonutility is not the retail sale of electricity for  
 180 the purposes of this chapter. The rates, terms, and conditions  
 181 of electric vehicle charging services by a nonutility are not  
 182 subject to regulation under this chapter. This section does not  
 183 affect the ability of individuals, businesses, or governmental  
 184 entities to acquire, install, or use an electric vehicle charger  
 185 for their own vehicles.  
 186 (2) The Department of Agriculture and Consumer Services  
 187 shall adopt rules to provide definitions, methods of sale,  
 188 labeling requirements, and price-posting requirements for  
 189 electric vehicle charging stations to allow for consistency for  
 190 consumers and the industry. Rules implemented under this  
 191 subsection may not require specific methods of sale for electric  
 192 vehicle charging equipment used in, and services provided in,  
 193 this state.  
 194 (3) (a) It is unlawful for a person to stop, stand, or park  
 195 a vehicle that is not capable of using an electrical recharging  
 196 station within any parking space specifically designated for  
 197 charging an electric vehicle.  
 198 (b) If a law enforcement officer or specialist finds a  
 199 motor vehicle in violation of this subsection, the officer or  
 200 specialist shall charge the operator or other person in charge  
 201 of the vehicle in violation with a noncriminal traffic  
 202 infraction, punishable as provided in s. 316.008(4) or s.  
 203 318.18.

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204 Section 6. For the 2021-2022 fiscal year, the sum of \$5  
 205 million in nonrecurring funds is appropriated from the State  
 206 Transportation Trust Fund to the Department of Transportation  
 207 for the purpose of implementing the Electric Vehicle  
 208 Infrastructure Grant Program created in s. 339.286, Florida  
 209 Statutes.  
 210 Section 7. Except as otherwise expressly provided in this  
 211 act, this act shall take effect July 1, 2021.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

09/10/21

Meeting Date

138

Bill Number (if applicable)

Topic Electric Vehicle Charging Station Grant Program

Amendment Barcode (if applicable)

Name Kevin Thibault, P.E.

Job Title Secretary

Address 605 Suwannee St.

Street

Tallahassee

City

FL

State

32399

Zip

Phone ~~850~~ 850 414-4147

Email Kevin.Thibault@dot.state.fl.us

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Department of Transportation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/10/2021  
Meeting Date

138  
Bill Number (if applicable)

Topic Electric Vehicles

Amendment Barcode (if applicable)

Name Melanie Bostick

Job Title Vice President, Liberty Partners

Address P. O. Box 390

Phone (850) 841-1726

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Tallahassee

FL

32302

City

State

Zip

Email melanie@libertypartnersfl.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Advanced Energy Economy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

3/10/21

Meeting Date

138

Bill Number (if applicable)

Topic Electric Vehicles

Amendment Barcode (if applicable)

Name David Cullen

Job Title

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32308

Email cullenasea@gmail.com

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Sierra Club Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/10/21

Meeting Date

138 ~~1111~~

Bill Number (if applicable)

Topic ELECTRIC VEHICLES

Amendment Barcode (if applicable)

Name MATTHEW ALFORD

Job Title EXEC DIRECTOR

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COCOA

City

FL

State

Zip

Phone (850) 556-6487

Email MATT.ALFORD@DRIVE  
ELECTRIC FLORIDA.ORG

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing DRIVE ELECTRIC FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/10/21

Meeting Date

138

Bill Number (if applicable)

Topic FEES / ELECTRIC VEHICLES

Amendment Barcode (if applicable)

Name LENA JUAREZ

Job Title PRESIDENT

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TALLAHASSEE FL 32302

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City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing CHARGEPOINT

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/10/21  
Meeting Date

138  
Bill Number (if applicable)

Topic Electric Vehicles

Amendment Barcode (if applicable)

Name Christopher Emmanuel

Job Title Pohay Director

Address 136 S. Bronough

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City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: CS/SB 140

INTRODUCER: Senator Brandes

SUBJECT: Fees/Electric Vehicles

DATE: March 11, 2021

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Price   | Vickers        | TR        | <b>Fav/CS</b> |
| 2. |         |                | ATD       |               |
| 3. |         |                | AP        |               |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 140 imposes flat fees by weight, in addition to existing license taxes, for electric vehicles beginning July 1, 2021, and increasing January 1, 2025. The bill likewise imposes an additional flat fee for plug-in hybrid electric vehicles, which also increases on January 1, 2025. The bill authorizes any person or entity registering an electric or plug-in hybrid electric vehicle to renew the registration biennially in accordance with current law.

These fees are contingent upon passage of a linked bill, CS/SB 138, which in part creates the Electric Vehicle Infrastructure (EVI) Grant Program within the Florida Department of Transportation (FDOT) to provide financial assistance to encourage the installation of publicly-available electric vehicle charging infrastructure on public or private property. This bill requires the additional flat fees it imposes to be deposited into the State Transportation Trust Fund (STTF) to be used to fund the grant program.

The fees expire on December 31, 2030, but the EVI Grant Program would remain in place under CS/SB 138 and could continue should future resources become available.

The bill takes effect July 1, 2021, but only if CS/SB 138 or similar legislation is enacted.

## II. Present Situation:

### Electric and Hybrid Vehicles

Electric vehicles (EVs) offer a readily available and cleaner fuel source, with higher fuel efficiency and improved air quality compared to vehicles with internal combustion engines (ICEs). Increasing interest in EV use is driven by higher gas prices and greenhouse gas emission concerns, but their relative high cost compared to conventional fuel-powered vehicles and their relative limited range have restricted the commercial viability of EVs.<sup>1</sup> However, advancements in EV-related technology are continuing, EV manufacturing is rising, and EV prices have been dropping.<sup>2</sup>

#### *Types of EVs*

The U.S. Department of Energy's Alternative Fuels Data Center (AFDC) uses the term, "electric-drive vehicles," to collectively refer to hybrid electric vehicles (HEVs), plug-in hybrid electric vehicles (PHEVs), and all-electric vehicles (AEVs). According to the AFDC:

- HEVs are primarily powered by an ICE that runs on conventional or alternative fuel and an electric motor that uses energy stored in a battery. The battery is charged through regenerative braking and by the ICE and is not plugged in to charge.
- PHEVs are powered by an ICE that can run on conventional or alternative fuel and an electric motor that uses energy stored in a battery. The vehicle can be plugged in to an electric power source to charge the battery. Some can travel more than 70 miles on electricity alone, and all can operate solely on gasoline (similar to a conventional hybrid).
- AEVs use a battery to store the electric energy that powers the motor. AEV batteries are charged by plugging the vehicle in to an electric power source.<sup>3</sup> AEVs are also referred to as battery electric vehicles, or BEVs.

For purposes of vehicle registration, Florida law<sup>4</sup> currently defines the term "electric vehicle" to mean "a motor vehicle that is powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current."

#### *Florida EV Infrastructure Master Plan Status Report*

The 2020 Legislature<sup>5</sup> enacted s. 339.287, F.S., directing the FDOT, in consultation with the Public Service Commission and the Office of Energy within the Department of Agriculture and Consumer Services (DACS) to develop and recommend a plan for current and future plans for the development of EV charging station infrastructure along the State Highway System. The recommended plan must be developed and submitted by July 1, 2021. As also required, the FDOT submitted a preliminary status report in December of 2020.<sup>6</sup>

---

<sup>1</sup> See the Federal Highway Administration's *FHWA NHTSA Brief, Electric Vehicle Feasibility*, July 2016, pp. 1-2, available at: <http://nhts.ornl.gov/briefs/EVFeasibility20160701.pdf> (last visited March 6, 2021).

<sup>2</sup> *Id.* at p. 2.

<sup>3</sup> See the AFDC's website available at: <https://www.afdc.energy.gov/vehicles/electric.html> (last visited March 6, 2021).

<sup>4</sup> Section 320.01(36), F.S. Section

<sup>5</sup> Ch. 2020-21, L.O.F.

<sup>6</sup> *EV Infrastructure Master Plan Status Report*, December 1, 2020 available at [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/fto/evmp-status.pdf?sfvrsn=ac348cf4\\_8](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/fto/evmp-status.pdf?sfvrsn=ac348cf4_8) (last visited March 6, 2021).



Preliminary recommendations in the report contain 12 areas of focus, with potential strategies and action items categorized by potential action type (by Executive Order, Legislative, and/or Agency action) and potential lead and coordinating agencies identified.<sup>7</sup>

In accordance with the 2020 law, the report reviews emerging technologies in the electric and alternative vehicle market and sets out the following preliminary findings:

- With respect to EV technologies:
  - PHEVs have a relatively short range on a full battery (~40 miles). Once expired, the ICE automatically starts, so PHEVs are not limited in range by available electricity.
  - BEVs have a 40-300 mile range, depending on the vehicle make and model, which is a primary consideration for long-range travel and evacuations.<sup>8</sup>
- With respect to EV technology trends:
  - The trend is toward increased battery power density, increased battery lifetime (recharge cycle) and higher battery voltages.
  - BEV historical battery cost has decreased from ~\$1,175 per kWh<sup>9</sup> in 2010 to ~\$375 per kWh in 2015 and is forecasted to reduce further to ~\$160 in 2020 and to ~\$100 in 2025.
  - BEV historical range has increased from ~75 miles in 2010 to ~160 miles in 2015 and is forecasted to increase further to 250 miles in 2020 and ~450 miles in 2025.<sup>10</sup>

The EV Master Plan Status Report also identified barriers to the use of EVs and EV charging station infrastructure for both short- and long-range EV travel. With respect to barriers to adoption of EVs:

- EV prices are generally still higher than a motor vehicle powered solely by an ICE, but cost parity with ICE vehicle is expected to occur between 2025 and 2030.
- Range anxiety is a significant factor during longer trips, as drivers worry about availability of EVSE.<sup>11</sup>
- A lack of EV models exists on the market, with trucks and SUVs accounting for greater than 50 percent of vehicle registered in Florida.
- Dealerships lack the knowledge or willingness to suggest the purchase of an EV and have few available EVs.<sup>12</sup>

As for barriers to adoption of EVSE:

- The EV customer base is low, and the public lacks awareness of EVSE locations. A perception exists that gasoline is cheap, and the public is generally more familiar with ICE vehicles.
- EV charging speeds are a deterrent, in that charging speed is a function of power delivery of the EVSE and how much power the EV can accept.
- Service providers locate EVSE where EV adoption is highest, resulting in gaps in EVSE particularly in low-utilization, rural, and income qualified communities. In addition, a lack of

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<sup>7</sup> These recommendations are set out in table form for ease of review. *Id.* at p. 15.

<sup>8</sup> *Supra* note 6 at p. 3.

<sup>9</sup> Per kilowatt hour.

<sup>10</sup> *Supra* note 8.

<sup>11</sup> The report refers to EV charging infrastructure as “electric vehicle supply equipment,” or EVSE.

<sup>12</sup> *Supra* note 6 at p. 5.

site-specific utility infrastructure for DC fast charger stations exists, particularly in rural and emergency-critical areas, and additional costs are incurred when back-up power is provided for emergency-critical EVSE locations.

- Utility charges increase during peak demand periods.
- A lack of state-level public funding to deploy EVSE exists, especially in low-use areas.<sup>13</sup>

Current Florida law contains the following EV-related incentives:

- Section 163.08, F.S., authorizes a property owner to apply to a local government for funding of, or to enter into a financing agreement with the local government to finance, installation of electric vehicle charging equipment on the owner's property, subject to local government ordinance or resolution.
- Section 212.055, F.S., authorizes local governments to use proceeds from a local government infrastructure surtax to provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their property, including, but not limited to, installation of electric vehicle charging equipment, if the local government ordinance authorizing such use is approved by referendum.
- Certain hybrid vehicles and inherently low-emission vehicles may use a high-occupancy vehicle lane (HOV lane)<sup>14</sup> regardless of occupancy, and such vehicles may use any HOV lane re-designated as HOV toll lanes or express lanes without paying a toll as provided in s. 316.0741, F.S.

### **EV Registration, Market Share, and State Transportation Trust Fund Revenue Impacts**

Currently, an electric vehicle pays the same motor vehicle license tax as non-electric vehicles.<sup>15</sup> Generally, registration fees differ based on factors such as the type of vehicle and its weight, with fees ranging between \$14.50 and \$32.50 annually for light-duty vehicles and from \$60.75 to \$1,322 for heavy trucks and truck tractors.<sup>16</sup> Current law in s. 320.07(2)(b), F.S., authorizes specified motor vehicles registered under s. 320.08, F.S., to renew the registration biennially during the applicable renewal period upon payment of the two-year cumulative total of all applicable license tax amounts and additional fees required by law.

The EV Master Plan Status Report includes:

- A required projection of the increase in the use of EVs in this state over the next 20 years, which in part provides data<sup>17</sup> on existing EV market adoption in Florida. The report concludes that BEVs (44,068) and PHEVs (22,617) currently total just 0.41 percent of the 16,529,219 total light-duty vehicle registrations in Florida.<sup>18</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> Generally, a high-occupancy vehicle lane is a lane designated for use by vehicles in which there is more than one occupant. Section 316.0741(1)(a), F.S.

<sup>15</sup> Section 320.08001, F.S.

<sup>16</sup> Section 320.08, F.S.

<sup>17</sup> The source is vehicle registration data as of July 28, 2020, provided to the FDOT by the Florida Department of Highway Safety & Motor Vehicles. *Supra* note 6 at p. 6.

<sup>18</sup> *Supra* note 6 at p. 6. HEVs are not included as part of the 0.41 percent of the total light-duty vehicle registrations. HEVs do not plug in to an electric power source to charge batteries, but instead use regenerative braking.

- Conservative, moderate, and aggressive growth scenarios for light-duty vehicle sales, projecting a respective 10, 20, and 35 percent growth in sales by 2040.<sup>19</sup>
- Respective of the growth scenarios, projections of *negative* net revenue loss to the State Transportation Trust Fund (STTF) of 8.4, 16.6, and 30 percent by the same year.<sup>20</sup>

Among the most common potential strategies for mitigation of revenue loss from increased EV use in other states, the report notes a fee in addition to any existing registration fee, which may or may not be tied to inflation, and concludes that 26 states impose such a fee with a range in cost of \$32.50 to \$213.88 annually.<sup>21</sup>

### Linked Legislation

CS/SB 138, linked to this bill, directs the Florida Department of Transportation (FDOT) to establish the Electric Vehicle Infrastructure (EVI) Grant Program to provide financial assistance to encourage the installation of publicly-available electric vehicle charging infrastructure for electric vehicles, including but not limited to, electric semi-trucks and electric aircraft, on public or private property.

The bill authorizes state agencies, public universities, public transit agencies, ports, airports, and local governments to apply to the FDOT for grants for technical assistance for the development and adoption of local or regional plans establishing charging infrastructure and for assistance with the purchase of related equipment and costs of installation. The bill sets out required matching funds and sources and authorizes an applicant to partner with a private-sector entity to install charging infrastructure on private property in the jurisdiction of the applicant.

The FDOT is directed to develop and publish criteria for prioritizing applications and maintain a prioritized list of approved grant applications; continually review emerging research, policies and standards relating to electric vehicle charging infrastructure; publish best practices relating to such infrastructure; and adopt rules to administer the new provisions.

Contingent upon passage of *this* bill, CS/SB 138 creates s. 339.0802, F.S., requiring the FDOT to use the funds resulting from increased revenues to the STTF from the additional fees imposed on EVs by this bill to fund the EVI Grant Program beginning in fiscal year 2023-2024.

Under the bill, these allocations expire on December 31, 2030.

### **III. Effect of Proposed Changes:**

Section 1 amends s. 320.08001, F.S., imposing annual flat fees in addition to existing license taxes imposed by s. 320.08, F.S., as follows:

- For “electric vehicles” weighing less than 10,000 pounds, a flat fee of \$135 beginning July 1, 2021, increasing to \$150 beginning January 1, 2025.

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<sup>19</sup> *Id.*

<sup>20</sup> *Supra* note 6 at p. 7.

<sup>21</sup> *Id.*

- For “electric vehicles” weighing 10,000 pounds or more, \$235 beginning July 1, 2021, increasing to \$250 beginning January 1, 2025.
- For “plug-in hybrid electric vehicles,” a \$35 flat fee beginning July 1, 2021, increasing to \$50 beginning January 1, 2025.

The bill exempts from the fees a low-speed, electric, or plug-in hybrid electric vehicle that uses a battery storage system of up to 5 kilowatt hours. This appear to exclude vehicles such as golf carts.

The bill authorizes any person or entity registering an electric or plug-in hybrid electric vehicle to renew the registration biennially in accordance with current law.

The proceeds of the additional flat fees must be deposited into the STTF and would be allocated under CS/SB 138 to fund the EVI Grant Program.

Section 2 eliminates the fees on the same date of expiration for the allocation made in CS/SB 138, December 31, 2020.

Section 3 provides the bill takes effect July 1, 2021, but only if CS/SB 138 or similar legislation is enacted.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Not applicable.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

Article VII, s. 19, of the Florida Constitution requires that a new state tax or fee, as well as an increased state tax or fee, must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, s. 19(d)(1), of the Florida Constitution defines “fee” to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”

The bill imposes new fees for registration of the specified electric vehicles and contains no other subject. The bill requires approval by two-thirds of the membership of each house of the Legislature.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The bill imposes the specified flat fees, in addition to current license taxes, for annual registration of the identified electric vehicles.

B. Private Sector Impact:

Owners of the identified electric vehicles, in addition to current license taxes, will be subject to the following fees:

- For “electric vehicles” weighing less than 10,000 pounds, a flat fee of \$135 beginning July 1, 2021, increasing to \$150 beginning January 1, 2025.
- For “electric vehicles” weighing 10,000 pounds or more, \$235 beginning July 1, 2021, increasing to \$250 beginning January 1, 2025.
- For “plug-in hybrid electric vehicles,” a \$35 flat fee beginning July 1, 2021, increasing to \$50 beginning January 1, 2025.

These additional flat fees expire on December 31, 2030.

C. Government Sector Impact:

State and local governments<sup>22</sup> are expected to experience an indeterminate, positive fiscal impact associated with increased revenues from imposition of the additional flat fees. The extent of the impact is at least in part indeterminate, as the available data does not currently distinguish between electric vehicles by weight. Additionally, the Florida Department of Highway Safety and Motor Vehicles (DHSMV) reports that the market for electric heavy trucks is unknown.<sup>23</sup>

The bill presents an indeterminate positive fiscal impact to the STTF due to the increased fees collected and deposited to fund the EVI Grant Program, offset by on-going costs of administering the EVI Grant Program established in CS/SB 138.

Local governments are expected to experience indeterminate costs associated with managing and collecting the additional fees.

The DHSMV indicates the bill would present “a significant impact on the Department’s operational resources and resources dedicated to the Motorist Modernization project. Programming would be required in the Florida Realtime Vehicle Information System (FRVIS) and Virtual Office (web-based renewal system) and renewal notices to

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<sup>22</sup> For a description of the distribution of the current base tax, see the DHSMV SB 140 bill analysis at p. 3 (on file in the Senate Transportation Committee).

<sup>23</sup> *Id.* at p. 6.

incorporate the flat fee requirements. FRVIS would have to be modified to require the mandatory collection of the fuel type for all vehicles, including electric and hybrid vehicles (the best method to gather this information is currently unknown).”<sup>24</sup>

The DHSMV further notes that the majority of the work required will be performed on its motor vehicle system, which is to be replaced as part of the Motorist Modernization Phase II project. “Additional requirements due to changes in law will result in an increase in the complexity and implementation costs.”

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 320.08001.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Transportation on March 10, 2021:**

The CS authorizes any person or entity registering an electric or plug-in hybrid electric vehicle to renew the registration biennially in accordance with current law.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>24</sup> *Id.*



608690

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 03/11/2021 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Transportation (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 47 - 50  
and insert:

(4) Any person or entity that registers a vehicle identified in subsection (2) or subsection (3) may renew the vehicle registration biennially in accordance with s. 320.07(2)(b) .

(5) The proceeds of the additional flat fees imposed under subsections (2) and (3) must be deposited into the State



608690

Transportation Trust Fund.

(6) A low-speed, electric, or plug-in hybrid electric

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

And the title is amended as follows:

Delete lines 5 - 9

and insert:

in hybrid electric vehicles; authorizing persons and  
entities to biennially renew vehicle registrations for  
electric vehicles and plug-in hybrid electric  
vehicles; providing for the distribution of proceeds  
from the additional fees;



By Senator Brandes

24-00353A-21

2021140

A bill to be entitled

An act relating to fees; amending s. 320.08001, F.S.; creating additional fees for electric vehicles; creating a license tax and an additional fee for plug-in hybrid electric vehicles; providing for the distribution of proceeds from the additional fees; requiring, on specified dates, the Department of Highway Safety and Motor Vehicles to increase the additional fees, subject to certain requirements; providing that certain vehicles are exempt from specified fees; providing for the future expiration and reversion of specified statutory text; providing a contingent effective date.

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

Section 1. Section 320.08001, Florida Statutes, is amended to read:

320.08001 Low-speed, electric, and plug-in hybrid electric vehicles; license tax.—

(1) The license tax for a ~~an electric vehicle or~~ low-speed vehicle is the same as that prescribed in s. 320.08 for a vehicle that is not electrically powered.

(2)(a) The license tax for an electric vehicle weighing less than 10,000 pounds is the same as that prescribed in s. 320.08 for a vehicle that is not electrically powered, plus an additional \$135 flat fee. Beginning on January 1, 2025, the license tax for an electric vehicle weighing less than 10,000 pounds is the same as that prescribed in s. 320.08 for a vehicle

Page 1 of 3

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

24-00353A-21

2021140

that is not electrically powered, plus an additional \$150 flat fee.

(b) The license tax for an electric vehicle weighing 10,000 pounds or more is the same as that prescribed in s. 320.08 for a vehicle that is not electrically powered, plus an additional \$235 flat fee. Beginning on January 1, 2025, the license tax for an electric vehicle weighing 10,000 pounds or more is the same as that prescribed in s. 320.08 for a vehicle that is not electrically powered, plus an additional \$250 flat fee.

(3) The license tax for a plug-in hybrid electric vehicle is the same as that prescribed in s. 320.08 for a vehicle that is not partially powered by a rechargeable energy-storage system, plus an additional \$35 flat fee. Beginning on January 1, 2025, the license tax for a plug-in hybrid electric vehicle is the same as that prescribed in s. 320.08 for a vehicle that is not partially powered by a rechargeable energy-storage system, plus an additional \$50 flat fee.

(4) The proceeds of the additional flat fees imposed under subsections (2) and (3) must be deposited into the State Transportation Trust Fund.

(5) A low-speed, electric, or plug-in hybrid electric vehicle that uses a battery storage system of up to 5 kilowatt hours is exempt from any fee imposed under this section.

Section 2. The amendments made by this act to s. 320.08001, Florida Statutes, expire on December 31, 2030, and the text of that section shall revert to that in existence on June 30, 2021, except that any amendments to such text enacted other than by this act must be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text

Page 2 of 3

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

24-00353A-21

2021140\_\_

59 which expire pursuant to this section.

60       Section 3. This act shall take effect July 1, 2021, but  
61 only if SB \_\_\_\_ or similar legislation takes effect, if such  
62 legislation is adopted in the same legislative session or an  
63 extension thereof and becomes a law.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Duplicate

3/10/21

Meeting Date

THE FLORIDA SENATE  
**APPEARANCE RECORD**

SB 140

Bill Number (if applicable)

Topic Fees/Electric Vehicles

Amendment Barcode (if applicable)

Name Vittorio Nastasi

Job Title Policy Analyst

Address 901 Riggins Road

Phone 407-618-6168

Street

Tallahassee

FL

32308

City

State

Zip

Email Vittorio.Nastasi@reason.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Reason Foundation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/10/21

Meeting Date

140

Bill Number (if applicable)

Topic

ELECTRIC VEHICLES

Amendment Barcode (if applicable)

Name

MATTHEW ACCORD

Job Title

EXECUTIVE DIRECTOR

Address

Street

COCOA

City

FL

State

32

Zip

Phone

(850) 556-6487

Email

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

DRIVE ELECTRIC FL

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/10/21

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

140

Bill Number (if applicable)

Topic ELECTRIC VEHICLES

Amendment Barcode (if applicable)

Name LENA JUAREZ

Job Title PRESIDENT

Address PO BOX 10390

Phone 850 212 8380

TALLAHASSEE FL 32302

Email lenacj@assoc.com

City State Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing CHARGE POINT

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/10/21  
Meeting Date

140  
Bill Number (if applicable)

Topic Electric Vehicles

Amendment Barcode (if applicable)

Name Christopher Emmanuel

Job Title Policy Director

Address 176 E Broadway St  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Chamber

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: CS/SB 426

INTRODUCER: Transportation Committee and Senator Boyd

SUBJECT: State Preemption of Seaport Regulations

DATE: March 11, 2021

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Price   | Vickers        | TR        | <b>Fav/CS</b> |
| 2. |         |                | CA        |               |
| 3. |         |                | RC        |               |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 426 prohibits a local ballot initiative or referendum from restricting maritime commerce in Florida's seaports. The prohibition applies, but is not limited, to restricting such commerce based on any of the following:

- Vessel type, size, number, or capacity
- Number, origin, nationality, embarkation, or disembarkation of passenger or crew or their entry into this state of any local jurisdiction.
- Source, type, loading, or unloading of cargo.
- Environmental or health records of a particular vessel or vessel line.

The bill prohibits and voids a local ballot initiative or referendum, or any local law, charter amendment, ordinance, resolution, regulation, or policy in a local ballot initiative or referendum in violation of the prohibition, adopted before, on, or after the effective date of the act.

Except for a municipality that is also a county pursuant to s. 125.011(1), F.S., (defined to mean Miami-Dade County), a municipality or political subdivision thereof, or a special district within the boundaries of a single municipality, is prohibited from restricting maritime commerce in the seaports with respect to any federally authorized passenger cruise vessel based on any of the following:

- Vessel type, size, number, or capacity, except when the port is physically unable to accommodate a passenger cruise vessel pursuant to applicable federal or state laws or regulations.

- Number, origin, nationality, embarkation, or disembarkation of passengers or crew or their entry into this state or any local jurisdiction.
- Source, type, loading, or unloading of cargo related or incidental to its use as a passenger cruise vessel.
- Environmental or health records of a particular passenger cruise vessel or cruise line.

The bill prohibits and voids any conflicting provision of a law, a charter, an ordinance, a resolution, a regulation, a policy, an initiative, or a referendum existing before, on, or after the effective date of the act.

The bill takes effect upon becoming law.

The fiscal impact to state and local governments and the private sector is indeterminate. See the “Fiscal Impact Statement” heading below.

## II. Present Situation:

### Regulation of Vessels and Maritime Commerce

Generally, federal law controls<sup>1</sup> the regulation of maritime commerce<sup>2</sup>, navigation,<sup>3</sup> seaport security<sup>4</sup>, the regulation of commercial vessels, shipping<sup>5</sup> and common carriers, vessel-related

<sup>1</sup> *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992). Where Congress has explicitly preempted state law in an area, federal law supplants all state regulation in that area. Even in the absence of express congressional intent to preempt state law, federal preemption is implied where (1) state law “actually conflicts with federal law” or (2) federal law so thoroughly occupies a legislative field “as to make reasonable the inference that Congress left no room for the States to supplement it.”

<sup>2</sup> *United States v. Locke*, 529 U.S. 89, 103 (2000). (“The existence of the treaties and agreements on standards of shipping is of relevance, of course, for these agreements give force to the longstanding rule that the enactment of a uniform federal scheme displaces state law, and the treaties indicate Congress will have demanded national uniformity regarding maritime commerce.”)

<sup>3</sup> See 33 U.S.C. §§ 1221 et seq. The Ports and Waterways Safety Act of 1972 (PWSA) authorizes the U.S. Coast Guard to establish vessel traffic service/separation schemes (VTSS) for ports, harbors, and other waters subject to congested vessel traffic. The VTSS apply to commercial ships, other than fishing vessels, weighing 300 gross tons (270 gross metric tons) or more. The Oil Pollution Act amended the PWSA to mandate that appropriate vessels must comply with the VTSS. The PWSA was amended by the Port and Tanker Safety Act (PTSA) of 1978 (Public Law 95-474). Under the PTSA, Congress found that increased supervision of vessel and port operations was necessary to reduce the possibility of vessel or cargo loss, or damage to life, property or the marine environment and ensure that the handling of dangerous articles and substances on the structures in, on, or immediately adjacent to the navigable waters of the United States is conducted in accordance with established standards and requirements. NOAA, *Ports and Waterways Safety Act*, [PortsandWaterwaysSafetyAct.pdf](https://www.noaa.gov/PortandWaterwaysSafetyAct.pdf) ([noaa.gov](https://www.noaa.gov/)) (last visited March 3, 2021).

<sup>4</sup> For example, the Maritime Transportation Security Act of 2002 created a broad range of programs to improve the security conditions at the ports and along American waterways, such as identifying and tracking vessels, assessing security preparedness, and limiting access to sensitive areas.

<sup>5</sup> See Shipping Act of 1984. 46 U.S.C. §§ 40101(1), 40101(2). One purpose of the Act is to ‘establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs.’ A second purpose is to ensure that U.S.-flag ships are on a level playing field with foreign vessels.



environmental and pollution standards,<sup>6</sup> disease and quarantine efforts,<sup>7</sup> and other aspects of admiralty law in and upon the navigable waters of the United States. The U.S. Supreme Court has consistently determined that federal supremacy principles mandate preemption of efforts of state and local governments to impose conditions on port entry that federal laws already cover.<sup>8</sup>

The United State Coast Guard (USCG) regulates all commercial vessels, including cruise vessels, calling on U.S. ports, regardless of the vessel's country of origin, and inspect each foreign-flagged cruise vessel calling on a U.S. port at least twice a year to ensure compliance with certain treaties and U.S. regulations governing safety, security, and environmental protections.<sup>9</sup>

Federal law does allow a state to regulate its ports and waterways, so long as the regulation is based on the peculiarities of local waters that call for special precautionary measures.<sup>10</sup> For example, Title I of the Ports and Waterways Safety act does not preempt a state regulation directed to local circumstances and problems, such as water depth and narrowness, idiosyncratic to a peculiar port or waterway, if the USCG has not adopted regulations on the subject or determined that regulation is unnecessary or inappropriate.<sup>11</sup> A review of relevant case law suggests, however, that clear identification of the extent of a state's authority to regulate its ports and waterways is nonetheless elusive.

As for county and municipal governments, even when a state has authority concurrent with federal law, sometimes counties and cities do not. As an example, federal law relating to marine

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<sup>6</sup> In 1973, the International Maritime Organization (IMO) adopted the International Convention for the Prevention of Pollution by Ships and subsequently modified it by Protocol in 1978. The Convention is widely known as MARPOL 73/78. Its objective is to limit ship-borne pollution by restricting operational pollution and reducing the possibility of accidental pollution. MARPOL specifies standards for stowing, handling, shipping, and transferring pollutant cargoes, as well as standards for discharge of ship-generated operational wastes. Acceptance of the convention by national government obliges them to make the requirements part of domestic law. USCG, *Office of Commercial Vessel Compliance*, <https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Commercial-Vessel-Compliance/Domestic-Compliance-Division/MARPOL/> (last visited Mar. 1, 2021).

<sup>7</sup> See John T. Oliver, *Legal and Policy Factors Governing the Imposition of Conditions on Access and Jurisdiction Over Foreign-Flag Vessels in U.S. Ports*, 5 S.C. J. Int'l. L. & Bus. 209, 2 (2009) footnotes 153 & 154. 42 U.S.C. § 267(a): "[The Surgeon General] shall from time to time select suitable sites for and establish such additional ... anchorages in the States and possessions of the United States as in his judgment are necessary to prevent the introduction of communicable diseases into the States and possessions of the United States." "It shall be the duty of the customs officers and of Coast Guard officers to aid in the enforcement of quarantine rules and regulations ..." U.S.C. § 268(b). Congress has provided statutory authority for controlling infectious diseases, including quarantining of suspect vessels and their crews and passengers. 42 U.S.C. §§ 264-272. The President regularly updates the list of communicable diseases subject to quarantine. Exec. Order No. 13,295, Apr. 4, 2003, 68 Fed. Reg. 17,255 (Apr. 9, 2003), reprinted in 42 U.S.C. § 264, as amended by Exec. Order No. 13,375, Apr. 1, 2005, 70 Fed. Reg. 17299 (Apr. 5, 2005). He has also delegated to the Secretary of Health and Human Services his authority to carry out duties under the statute.

<sup>8</sup> See *United States v. Locke*, 471 U.S. 84 (1985).

<sup>9</sup> U.S. House of Representatives, Subcommittee on Coast Guard and Maritime Transportation, *Hearing on "Commercial and Passenger Vessel Safety: Challenges and Opportunities*, p. 4 (Nov. 9 2019), available at <https://www.congress.gov/116/meeting/house/110181/documents/HHRG-116-PW07-20191114-SD001.pdf> (last visited March 3, 2021).

<sup>10</sup> Ports and Waterways Safety Act of 1972, 33 U.S.C. §1223(a) (2006). There is no pre-emption by operation of Title I of the Ports and Waterways Safety Act if the state regulation is directed to local circumstances and problems, such as water depth and narrowness, idiosyncratic to a particular port or waterway, and if the Coast Guard has not adopted regulations on the subject or determined that regulation is unnecessary or inappropriate.

<sup>11</sup> See *United State v. Locke*, 529 U.S. 89,109 (2000).

sanitation devices and discharges, 33 U.S.C. §1322(f)(A) provides that “no State or political subdivision” may adopt and enforce a statute or regulation that is more stringent than those promulgated under that section, while 33 U.S.C. §1322(f)(B) provides that “a State” may adopt and enforce a statute or regulation with respect to the design, manufacture, installation, or use of any marine sanitation device on a houseboat.

### ***Federal Preemption***

With respect to interstate commerce, the U.S. Supreme Court has discussed the historical development of and the modern test for any challenge to a state’s authority to regulate:

Modern precedents rest upon two primary principles that mark the boundaries of a State’s authority to regulate interstate commerce. First, state regulations may not discriminate against interstate commerce; and second, States may not impose undue burdens on interstate commerce. State laws that discriminate against interstate commerce face “a virtually *per se* rule of invalidity.” State laws that “regulat[e] even-handedly to effectuate a legitimate local public interest...will be upheld unless the burden imposed on such commerce *is clearly excessive in relation to the putative local benefits*.” Although subject to exceptions and variations, these two principles guide the court in adjudicating cases challenging state laws under the Commerce Clause.<sup>12</sup>

### ***State Preemption***

Municipalities and counties derive broad home rule authority from the Florida Constitution and general law. Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature “has preempted a particular subject area” or (2) the local enactment conflicts with a state statute. Where state preemption applies it precludes a local government from exercising authority in that particular area.<sup>13</sup>

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.<sup>14</sup> Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.<sup>15</sup> In cases

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<sup>12</sup> See *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080, 2091 ((2018). Citations and internal quotation marks omitted. Emphasis added.

<sup>13</sup> Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009). Historically, certain types of local action have been found to frustrate the purpose of state law, and, thus, conflict has resulted. Specifically, Florida jurisprudence makes clear that local action cannot 1) provide for more stringent regulation than the state legislation in violation of the express wording of the statute; 2) provide for a more stringent penalty than that allowed by state statute; 3) prohibit behavior otherwise allowed by state legislation; 4) allow behavior otherwise prohibited by state statute; or 5) provide for a different method for doing a particular act than the method proscribed by state legislation. Generally, a local government can pass more stringent regulations than those provided for by statute. However, if the state legislation expressly forbids a stricter regulation or if the imposition of a stricter regulation frustrates the purpose of the statute, the local government must abstain. As an example of express prohibition, current law recognizes that the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the State Legislature may act, except among other items, “Any subject expressly preempted to state or county government by the constitution or by general law.” Section 166.021(3)(c), F.S.

<sup>14</sup> See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

<sup>15</sup> *Mulligan*, 934 So. 2d at 1243.

where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.<sup>16</sup> In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.<sup>17</sup>

## **Florida Ports**

Florida is home to 15 deep-water seaports, including: Port Canaveral, Port Citrus, Port Everglades, Port of Fernandina, Port of Fort Pierce, Port of Jacksonville, Port of Key West, Port Manatee, Port of Miami, Port of Palm Beach, Port of Panama City, Port of Pensacola, and Port of Port St. Joe, Port of St. Petersburg, and Port of Tampa.<sup>18</sup>

Approximately half of Florida's deep-water ports are organized as independent or dependent special districts created by special act,<sup>19</sup> and the remainder are organized within their respective municipal or county government. Four ports (Port of Key West, Port of St. Pete, Port of Panama City, Port of Pensacola) are departments, or an agency, of the respective municipalities. The Port of Key West is the only one of the four ports that currently offers cruise ship docking and related services.

According to the Florida Ports Council, Florida seaports generate nearly 900,000 direct and indirect jobs and contribute \$117.6 billion in economic value to the state through cargo and cruise activities. Florida maritime activities account for approximately 13 percent of Florida's gross domestic product while contributing \$4.2 billion in state and local taxes.<sup>20</sup> In 2018, approximately 110,268,130 tons of cargo and 16,835,986 passengers moved through Florida's seaports.<sup>21</sup>

## **State Law Relating to Seaports**

### ***Florida Seaport Transportation and Economic Development Program***

In 1990, the Legislature created Ch. 311, F.S., authorizing the Florida Seaport Transportation and Economic Development (FSTED) Program.<sup>22</sup> The program established a collaborative relationship between the Florida Department of Transportation (DOT) and the seaports and currently codifies an annual minimum of \$25 million for a seaport grant program.<sup>23</sup> FSTED

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<sup>16</sup> *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

<sup>17</sup> See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

<sup>18</sup> For a map of Florida's deep-water seaports which indicates the primary streams of commerce (i.e. cargo, cruise passenger, other, or a combination thereof) see DOT, *Seaport System*, <https://www.fdot.gov/seaport/seamap.shtm> (last visited March 5, 2021).

<sup>19</sup> See Florida Department of Economic Opportunity, *Special District Accountability Program*, available at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited March 5, 2021).

<sup>20</sup> Florida Ports Council, *The Florida System of Seaports*, <https://flaports.org/about/the-florida-system-of-seaports/> (last visited March 5, 2021).

<sup>21</sup> FDOT, *2018 Update of Tables and Figures*, p.4, [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/seaport/pdfs/2018-update-of-tables-and-figures-florida-seaport-system-plan-717752830.pdf?sfvrsn=e1879b60\\_2](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/seaport/pdfs/2018-update-of-tables-and-figures-florida-seaport-system-plan-717752830.pdf?sfvrsn=e1879b60_2) (last visited March 5, 2021).

<sup>22</sup> Ch. 90-136, Laws Of Fla.

<sup>23</sup> Sections 311.07 and 311.09, F.S.

funds are to be used on approved projects on a 50-50 matching basis.<sup>24</sup> Funding grants under the FSTED program are limited to the following port facilities or port transportation projects:

- Transportation facilities within the jurisdiction of the port;
- The dredging or deepening of channels, turning basins, or harbors;
- The construction or rehabilitation of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, automated people mover systems, or any facilities necessary or useful in connection with the foregoing;
- The acquisition of vessel tracking systems, container cranes, or other mechanized equipment used in the movement of cargo or passengers in international commerce;
- The acquisition of land to be used for port purposes;
- The acquisition, improvement, enlargement, or extension of existing port facilities;
- Environmental protection projects: which are necessary because of requirements imposed by a state agency as a condition of a permit or other form of state approval; which are necessary for environmental mitigation required as a condition of a state, federal, or local environmental permit; which are necessary for the acquisition of spoil disposal sites; or which result from the funding of eligible projects;
- Transportation facilities which are not otherwise part of DOT's adopted Work Program.<sup>25</sup>
- Intermodal access projects;
- Construction or rehabilitation of port facilities, excluding any park or recreational facility, in ports listed in s. 311.09(1), F.S.,<sup>26</sup> with operating revenues of \$5 million or less, provided that such project creates economic development opportunities, capital improvements, and positive financial returns to such ports; and
- Seaport master plan or strategic plan development updates, including the purchase of data to support such plans or other provisions of the Community Planning Act.<sup>27</sup>

The FSTED program is managed by the FSTED Council, which consists of the port director, or director's designee of the 15 deep-water ports, the Secretary of DOT or his or her designee, and the Executive Director of the Department of Economic Opportunity or his or her designee.<sup>28</sup> In order for a project to be eligible for consideration by the FSTED Council, a project must be consistent with the port's comprehensive master plan, which is incorporated as part of the approved local government comprehensive plan.

### ***Community Planning Act***

The Community Planning Act includes four primary references to deep-water ports:

Section 163.3177(6)(b), F.S., identifies different levels of transportation analysis that must be included in a local government's comprehensive plan transportation element based on the size and location of the local government and whether it is in the metropolitan planning area of a Metropolitan Planning Organization. At a minimum, traffic circulation issues related to ports must be addressed as well as plans for port facilities. Additionally, cities greater than 50,000

<sup>24</sup> Section 311.07(3)(a), F.S.

<sup>25</sup> FDOT's Work Program is adopted pursuant to s. 339.135, F.S.

<sup>26</sup> The ports listed in s. 311.09(1), F.S., are the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.

<sup>27</sup> Part II of Ch. 163, F.S.

<sup>28</sup> Section 311.09(1), F.S.

persons and counties greater than 75,000 persons must address "Plans for port . . . and related facilities coordinated with the general circulation and transportation element." Some or all of these requirements can be addressed in the port master plan.

Section 163.3177(6)(g)8., F.S., requires that the comprehensive plan's coastal management element "Direct the orderly development, maintenance, and use of ports to facilitate deep-water commercial navigation and other related activities." This requirement can be addressed in the port master plan.

Section 163.3178(2)(k), F.S., requires that port master plans be included in the local government's coastal management element and requires that port master plans identify existing port facilities and any proposed expansions. To the extent that they are applicable, port master plans must also address the following requirements:

- Provide a land use and inventory map of existing coastal uses;
- Analyze the environmental, socioeconomic, and fiscal impact of development;
- Analyze effects of existing drainage systems on estuarine water quality;
- Outline principles for hazard mitigation and protection of human life;
- Outline principles for protecting existing beach and dune systems;
- Outline principles to eliminate inappropriate and unsafe development;
- Identify public access to shoreline areas and preservation of working waterfronts;
- Designate coastal high-hazard areas and mitigation criteria;
- Outline principles to assure that public facilities will be in place; and,
- Mitigate the threat to human life and protect the coastal environment.

Section 163.3178(3), F.S., provides that certain eligible port expansions, projects, and facilities, both on the port and within three miles of the port, cannot be designated as Developments of Regional Impact if they are consistent with an in compliance port master plan.

### ***Port Facility Financing***

Section 315.03, F.S. authorizes any county, port district,<sup>29</sup> port authority,<sup>30</sup> municipality or certain governmental units created pursuant to the Florida Interlocal Cooperation Act<sup>31</sup> that includes at least one deep-water port to:

- Exercise jurisdiction, control and supervision over any port facilities now or hereafter acquired, owned, or constructed by the local government(s).
- Operate and maintain, and to fix and collect rates, rentals, fees and other charges for any of the services and facilities provided by the port facilities now or hereafter acquired, owned or constructed by the unit excluding state bar pilots.
- Lease or rent, or contract with others for the operation of all or any part of any port facilities now or hereafter acquired, owned or constructed by the unit, on such terms and for such

<sup>29</sup> A "port district" is any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities. S. 315.02(1), F.S.

<sup>30</sup> A "port authority" is created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law. S. 315.02(2), F.S.

<sup>31</sup> S. 163.01(7)(d), F.S.

period or periods and subject to such conditions as the governing body shall determine to be in the best interests of the local government(s).

### ***Vessel Movement and Related Fees***

Section 313.22, F.S., authorizes ports to regulate vessel movements within its jurisdiction, whether involving public or private facilities or areas, by:

- Scheduling vessels for use of berths, anchorages, or other facilities at the port.
- Ordering and enforcing a vessel, at its own expense and risk, to vacate or change position at a berth, anchorage, or facility, whether public or private, in order to facilitate navigation, commerce, protection of other vessels or property, or dredging of channels or berths.
- Designating port facilities for the loading or discharging of vessels.
- Assigning berths at wharves for arriving vessels.

Ports are authorized to establish fees and compensation for these services when provided by the port.

### ***Harbor Safety***

Ports, in agreement with the United States Coast Guard, state harbor pilots, and other ports in its operating port area, must adopt guidelines for:

- Minimum bottom clearance for each berth and channel,
- The movement of vessels, and
- Radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels.<sup>32</sup>

### ***County Seaport Projects and Facilities***

Section 125.012, F.S. confers broad authority to counties to provide for port improvements within their jurisdiction, including the ability to:

- Construct, acquire, establish, improve, extend, enlarge, reconstruct, equip, maintain, repair, and operate any project<sup>33</sup>, either within or without the territorial boundaries of the county.
- Subject to the jurisdiction of the United States and the State of Florida and the general laws of Florida relating to dredging and filling, to construct, establish, and improve harbors in the county and all navigable and nonnavigable waters connected therewith; to regulate and control all such waters; to construct and maintain such canals, slips, turning basins, and channels and upon such terms and conditions as may be required by the United States; and to enact, adopt, and establish by resolution rules and regulations for the complete exercise of jurisdiction and control over all such waters.
- To appoint shipping masters for ports or harbors under its control, to determine their qualifications, and to adopt rules and regulations prescribing their duties.

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<sup>32</sup> Section 313.23, F.S.

<sup>33</sup> Section 125.011(2)(a), F.S. defines “project” as one or more of the following: “harbor, port, shipping, and airport facilities of all kinds and includes, but is not limited to, harbors, channels, turning basins, anchorage areas, jetties, breakwaters, waterways, canals, locks, tidal basins, wharves, docks, piers, slips, bulkheads, public landings, warehouses, terminals, refrigerating and cold storage plants, railroads and motor terminals for passengers and freight, rolling stock, car ferries, boats, conveyors and appliances of all kinds for the handling, storage, inspection and transportation of freight and the handling of passenger traffic, ... and the loading and unloading and handling of passengers, mail, express and freight.”

- To license stevedores as independent contractors for hire to handle stevedoring at and in the harbors and airports in the county, to fix the terms and conditions of such licenses, and to determine the fees to be charged for same.
- To make and enter into all contracts and agreements and to do and perform all acts and deeds necessary and incidental to the performance of its duties and the exercise of its powers.
- To fix, regulate, and collect rates and charges for the services and facilities furnished by any project under its control; to establish, limit, and control the use of any project as may be deemed necessary to ensure the proper operation of the project; to impose sanctions to promote and enforce compliances; to prescribe rules and regulations and impose penalties and sanctions to ensure the proper performance of the duties of any stevedore or of any shipping master and the enforcement of any rule or regulation which the county may adopt in the regulation of the ports, harbors, wharves, docks, airports, and other projects under its control.
- To fix the rates of wharfage, dockage, warehousing, storage, and port and terminal charges for the use of the port and harbor facilities located within or without the county and owned or operated by the county; and to fix and determine the rates, tolls, and other charges for the use of harbor and airport improvements and harbor and airport facilities located within or without the county insofar as it may do so under the State Constitution and the Constitution and laws of the United States.
- To regulate the operation, docking, storing, and conduct of all watercraft of any kind plying or using the waterways within the county and of all aircraft of any kind operating over and within the county or utilizing any other area, field, location, or place within the county for air navigation purposes or for the repair, storage, or handling of aircraft within the county.
- To receive and accept, from any federal agency, grants for or in aid of the construction, improvement, or operation of any project and to receive and accept contributions from any source of either money, property, labor, or other things of value.
- To make any and all applications required by the Treasury Department and other departments or agencies of the United States Government as a condition precedent to the establishment within the county of a free port, foreign trade zone, or area for the reception from foreign countries of articles of commerce; to expedite and encourage foreign commerce and the handling, processing, and delivery thereof into foreign commerce free from the payment of custom duties and to enter into any agreements required by such departments or agencies in connection therewith; and to make like applications and agreements with respect to the establishment within the county of one or more bonded warehouses.
- To enter into any contract with the government of the United States or any agency thereof which may be necessary in order to procure assistance, appropriations, and aid for the deepening, widening, and extending of channels and turning basins, the building and construction of public mass transit facilities, airport and airport facilities, slips, wharves, breakwaters, jetties, bulkheads, and any and all other harbor and air navigation improvements and facilities.
- To make or cause to be made such surveys, investigations, studies, borings, maps, plans, drawings, and estimates of cost and revenues as it may deem necessary and to prepare and adopt a comprehensive plan or plans for the location, construction, improvement, and development of any project.
- To grant exclusive or nonexclusive franchises to persons, firms, or corporations for the operating of restaurants, cafeterias, bars, taxicabs, vending machines, and other concessions

of a nonaeronautical nature in, on, and in connection with any project owned and operated by the county.

- To adopt and promulgate suitable rules, regulations, and directions for the operation and conduct of any project owned or operated by the county and for the use of any such project and any facility connected therewith by others.
- To enter into contracts with utility companies or others for the supplying by such utility companies or others of water, electricity, or telephone service to or in connection with any project.
- To own, maintain, operate, and control export trading companies, foreign sales corporations, and consulting services corporations as provided by the laws of the United States or this state; to enter into management contracts with such corporations or companies established for the purpose of providing or operating such facilities; to own, maintain, operate, and control cargo clearance centers and customs clearance facilities, and to enter into management contracts with corporations established for the purpose of providing or operating such facilities; to maintain the confidentiality of trade information and data pursuant to the patent or copyright laws of the United States, pursuant to the patent or copyright laws of foreign nations to the extent that same are enforced by the courts of the United States, and pursuant to the trade secrets doctrine; and to authorize airport and port employees to serve as officers and directors of export trading companies, foreign sales corporations, customs and cargo clearance corporations, and consulting services corporations for the sale of services to others. Counties are authorized to expend any unobligated and available surplus funds from the authorized activities for the construction of capital facilities.

### ***Passenger Transportation Fees and For-hire Vehicles***

Sections 316.85(6), and 627.748(17)(b), F.S., acknowledge the ability of a seaport to charge reasonable fees to for-hire vehicles for their use of the airport's or seaport's facilities as well as designate locations for staging, pickup, or other similar operations at the seaport.

### ***Recent Developments in Key West***

CS/SB 426 appears to be generated in part by three petition initiatives to amend the City of Key West (the City) charter. The three amendments:

- Limited the number of persons disembarking from cruise ships to a total of not more than 1,500 per day at any and all public and privately owned or leased property located within the municipal boundary of the City;
- Prohibited any cruise ship with a capacity of 1,300 or more persons from disembarking individuals at any and all public or privately owned or leased property located within the City.
- Prohibited any cruise ship with a capacity of 1,300 or more persons from disembarking individuals at any and all public or privately owned or leased property located within the City.

The proposed initiatives were placed on the November 3, 2020, general election ballot and, after some preliminary litigation which failed to remove the initiatives from the ballot, Key West voters approved the city charter amendments. Apparently due to COVID-19, no cruise ships are



currently sailing into the Port of Key West.<sup>34</sup> According to the City’s website, the Port of Key West currently has three docking facilities, the City-owned Mallory Square Dock, the privately-owned Pier B, and the Navy Mole Pier.<sup>35</sup> The cruise schedule link on the City’s website shows no scheduled cruises until May of this year.<sup>36</sup>

### III. Effect of Proposed Changes:

The bill sets out a number of “whereas” clauses and creates a new section of law relating to regulation of commerce in Florida seaports.

Section 1 creates s. 311.25, F.S., prohibiting a local ballot initiative or referendum from restricting maritime commerce in Florida’s seaports. The prohibition applies, but is not limited, to restricting such commerce based on any of the following:

- Vessel type, size, number, or capacity
- Number, origin, nationality, embarkation, or disembarkation of passenger or crew or their entry into this state of any local jurisdiction.
- Source, type, loading, or unloading of cargo.
- Environmental or health records of a particular vessel or vessel line.

The bill prohibits and voids any local ballot initiative or referendum, or any local law, charter amendment, ordinance, resolution, regulation, or policy in a local ballot initiative or referendum in violation of the prohibition, adopted before, on, or after the effective date of the act. This provision voids the recently enacted City of Key West charter amendments.

Except for a municipality that is also a county pursuant to s. 125.011(1), F.S. (defined to mean Miami-Dade County), a municipality or political subdivision thereof, or a special district within the boundaries of a single municipality, is prohibited from restricting maritime commerce in the seaports with respect to any federally authorized passenger cruise vessel based on any of the following:

- Vessel type, size, number, or capacity, except when the port is physically unable to accommodate a passenger cruise vessel pursuant to applicable federal or state laws or regulations.
- Number, origin, nationality, embarkation, or disembarkation of passengers or crew or their entry into this state or any local jurisdiction.
- Source, type, loading, or unloading of cargo related or incidental to its use as a passenger cruise vessel.
- Environmental or health records of a particular passenger cruise vessel or cruise line.

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<sup>34</sup> The Center for Disease Control and Prevention issued a No Sail Order that expired on October 21, 2020, and subsequently announced a framework for conditional sailing, described as a phased resumption of cruise ship passenger operations, and “establishing requirements to mitigate the COVID-19 risk to passengers and crew, prevent the further spread of COVID-19 from cruise ships into U.S. communities, and protect public health and safety.” The order may be viewed at [https://www.cdc.gov/quarantine/pdf/CDC-Conditional-Sail-Order\\_10\\_30\\_2020-p.pdf](https://www.cdc.gov/quarantine/pdf/CDC-Conditional-Sail-Order_10_30_2020-p.pdf) (last visited March 3, 2021).

<sup>35</sup> See City of Key West, Florida, *Cruise Ships/Marine Services*, available at <https://www.cityofkeywest-fl.gov/158/Cruise-Ships-Marine-Services> (last visited March 3, 2021).

<sup>36</sup> *Id.* (Scroll down to find the link.)

The bill prohibits and voids any conflicting provision of a law, a charter, an ordinance, a resolution, a regulation, a policy, an initiative, or a referendum existing before, on, or after the effective date of the act. Miami-Dade County is excluded from the bill's prohibitions. Because the Port of Key West is currently the only municipally-governed port offering cruise vessel docking and related services, the bill's prohibitions appear to apply only to the Port of Key West.

Section 2 directs the Division of Law Revision to replace the phrase "the effective date of this act" wherever it occurs in the act with the date the act becomes law.

Section 3 provides the bill takes effect upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

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.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Given the current COVID-related environment and the Center for Disease Control and Prevention's (CDC) conditional sail order,<sup>37</sup> the fiscal impact to the cruise industry is indeterminate.

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<sup>37</sup> *Supra* note 34.

C. Government Sector Impact:

Given the current COVID-related environment and the CDC's conditional sail order, the fiscal impact to state and local government is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under the bill, a special district within the boundaries of a single municipality is prohibited from restricting maritime commerce in the seaports as specified. The result of application of this provision may be unclear, and clarification may be in order.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 312.25.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Transportation on March 10, 2021:**

**The CS:**

- Prohibits a local ballot initiative or referendum from restricting maritime commerce in Florida's seaports based on specified criteria.
- Prohibits and voids a local ballot initiative or referendum, or any local law, charter amendment, ordinance, resolution, regulation, or policy adopted in a local ballot initiative or referendum in violation of the prohibition before, on, or after the effective date of the act.
- Prohibits a municipality or political subdivision thereof, or a special district within the boundaries of a single municipality from restricting maritime commerce in the seaports with respect to any federally authorized passenger cruise vessel based on specified criteria.
- Prohibits and voids any conflicting provision of a law, a charter, an ordinance, a resolution, a regulation, a policy, an initiative, or a referendum existing before, on, or after the effective date of the act.

B. Amendments:

None.



384856

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| Senate     | . | House |
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The Committee on Transportation (Boyd) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 66 - 96

and insert:

311.25 Regulation of commerce in Florida seaports.-

(1) (a) A local ballot initiative or referendum may not restrict maritime commerce in the seaports of this state, including, but not limited to, restricting such commerce based on any of the following:

1. Vessel type, size, number, or capacity.



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11        2. Number, origin, nationality, embarkation, or  
12 disembarkation of passengers or crew or their entry into this  
13 state or any local jurisdiction.

14        3. Source, type, loading, or unloading of cargo.

15        4. Environmental or health records of a particular vessel  
16 or vessel line.

17        (b) Any local ballot initiative or referendum, or any local  
18 law, charter amendment, ordinance, resolution, regulation, or  
19 policy adopted in a local ballot initiative or referendum, in  
20 violation of this subsection which was adopted before, on, or  
21 after the effective date of this act is prohibited and void.

22        (2) (a) Except for a municipality that is also a county as  
23 defined in s. 125.011(1), a municipality or political  
24 subdivision thereof or a special district within the boundaries  
25 of a single municipality may not restrict maritime commerce in  
26 the seaports of this state with respect to any federally  
27 authorized passenger cruise vessel based on any of the  
28 following:

29        1. Vessel type, size, number, or capacity, except when the  
30 port is physically unable to accommodate a passenger cruise  
31 vessel pursuant to applicable federal or state laws or  
32 regulations.

33        2. Number, origin, nationality, embarkation, or  
34 disembarkation of passengers or crew or their entry into this  
35 state or any local jurisdiction.

36        3. Source, type, loading, or unloading of cargo related or  
37 incidental to its use as a passenger cruise vessel.

38        4. Environmental or health records of a particular  
39 passenger cruise vessel or cruise line.



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(b) Any provision of a law, a charter, an ordinance, a resolution, a regulation, a policy, an initiative, or a referendum which is in conflict with this subsection and which existed before, on, or after the effective date of this act is prohibited and void.

Section 2. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

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

And the title is amended as follows:

Delete lines 3 - 60

and insert:

regulations; creating s. 311.25, F.S.; prohibiting a local ballot initiative or referendum from restricting maritime commerce in the seaports of this state; providing that certain local initiatives or referendums relating to such restrictions are prohibited and void; prohibiting certain municipalities and municipal special districts from adopting specified restrictions or regulations on maritime commerce in the seaports of this state with respect to any federally authorized passenger cruise vessel; providing that certain local actions relating to such restrictions or regulations are prohibited and void; providing a directive to the Division of Law Revision; providing an effective date.

WHEREAS, maritime commerce between and among seaports, both



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foreign and domestic, is the subject of extensive federal and state regulation designed to protect the marine environment and the health, safety, and welfare of the general public and those involved in conducting that commerce, and

WHEREAS, the economic impact of a seaport extends far beyond the boundaries of the local jurisdiction in which the port is located, materially contributing to the economies of multiple cities and counties within the region and to the economy of this state as a whole, and

WHEREAS, Florida seaports currently generate nearly 900,000 direct and indirect jobs and contribute \$117.6 billion in economic value to this state through cargo and cruise activities, accounting for approximately 13 percent of this state's gross domestic product and \$4.2 billion in state and local taxes, and

WHEREAS, because this state is a peninsula, much of this state is highly dependent upon the unimpeded flow of maritime commerce through its seaports, which is made even more critical when this state is threatened or impacted by natural disasters, such as tropical storms and hurricanes, and

WHEREAS, because of its geographic location, this state is a hub for global maritime commerce and is uniquely positioned to capture an even larger share of this commerce as global trade routes shift, and

WHEREAS, the international, national, statewide, and regional importance of Florida seaports has long been recognized in federal and state law with respect to the regulation, planning, and public financing of seaport operations and facilities, and



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WHEREAS, this state is widely known as the cruise capital of the world, and the cruise industry is vital to this state's economy, contributing more than \$9 billion in direct spending on an annual basis and supporting 159,000 jobs with more than \$8 billion in total wages and salaries before the current pandemic, and

WHEREAS, 8.3 million passengers boarded cruises from one of this state's five cruise ports in 2019, accounting for 60 percent of embarkations in the United States, generating 11 million passenger and crew onshore visits in both home port and transit port calls in this state, and

WHEREAS, allowing a voter initiative or referendum in each local seaport jurisdiction to impose its own requirements on the maritime commerce conducted in that port could result in abrupt changes in the supply lines bringing goods into and out of this state and therefore could reasonably be expected to suppress such commerce and potentially drive it out of the port and out of this state in search of a more consistent and predictable operating environment, thus disrupting this state's economy and threatening the public's health, safety, and welfare, and

WHEREAS, allowing a voter initiative or referendum in each local seaport jurisdiction to impose its own requirements on the maritime commerce conducted in that port could result in abrupt changes in vessel traffic, frustrating the multiyear planning process for all Florida seaports and the assumptions and forecasts underlying federal and state financing of port improvement projects, and

WHEREAS, there are similar concerns regarding the capacity of a municipality or municipal special district to impose such





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requirements on the maritime commerce conducted in a port, as the more limited geographic and political scope of a municipality or municipal special district may make such entity less sensitive to the negative impact of such requirements on neighboring municipalities and on the county, region, and state, and

WHEREAS, many local economies in this state depend heavily on tourism, on which the surrounding politics can be particularly complex at a municipal level, significantly heightening the concern of municipalities and municipal special districts that place local requirements on passenger cruise vessels or cruise lines, and

WHEREAS, in light of these potential negative impacts, the permissible scope of local voter initiatives or referendums and of the powers of a municipality or municipal special district must be appropriately limited, NOW, THEREFORE,



622662

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The Committee on Transportation (Rodriguez) recommended the following:

**Senate Amendment to Amendment (384856) (with title amendment)**

Between lines 44 and 45  
insert:

(3) This section does not apply to a seaport located within an area designated as an area of critical state concern under chapter 380.

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



622662

11 And the title is amended as follows:  
12       Delete line 65  
13 and insert:  
14       void; providing an exemption for seaports located  
15       within an area designated as an area of critical state  
16       concern; providing a directive to the Division of Law



559796

LEGISLATIVE ACTION

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| Senate     | . | House |
| Comm: WD   | . |       |
| 03/11/2021 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

---

The Committee on Transportation (Rodriguez) recommended the following:

**Senate Amendment**

Between lines 92 and 93  
insert:

(3) This section does not apply to a seaport located within  
any area designated as an area of critical state concern under  
chapter 380.



955870

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: WD   | . |       |
| 03/11/2021 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

---

The Committee on Transportation (Rodriguez) recommended the following:

**Senate Amendment**

Between lines 92 and 93  
insert:

(3) This section does not apply to a county, as defined in  
s. 125.011(1).

By Senator Boyd

21-00757-21

2021426\_\_

1 A bill to be entitled  
 2 An act relating to state preemption of seaport  
 3 regulations; creating s. 311.25, F.S.; preempting to  
 4 the state the regulation of commerce in state  
 5 seaports; providing exceptions; providing  
 6 construction; providing an effective date.  
 7  
 8 WHEREAS, maritime commerce between and among seaports, both  
 9 foreign and domestic, is the subject of extensive federal and  
 10 state regulation designed to protect the marine environment and  
 11 the health, safety, and welfare of the general public and those  
 12 involved in conducting that commerce, and  
 13 WHEREAS, the economic impact of a seaport extends far  
 14 beyond the boundaries of the local jurisdiction in which the  
 15 port is located, materially contributing to the economies of  
 16 multiple cities and counties within the region and to the  
 17 economy of the state as a whole, and  
 18 WHEREAS, Florida seaports currently generate nearly 900,000  
 19 direct and indirect jobs and contribute \$117.6 billion in  
 20 economic value to the state through cargo and cruise activities,  
 21 accounting for approximately 13 percent of Florida's gross  
 22 domestic product and \$4.2 billion in state and local taxes, and  
 23 WHEREAS, because Florida is a peninsula, much of the state  
 24 is highly dependent upon the unimpeded flow of maritime commerce  
 25 through its seaports, which is made even more critical when the  
 26 state is threatened or impacted by natural disasters, such as  
 27 tropical storms and hurricanes, and  
 28 WHEREAS, because of its geographic location, Florida is a  
 29 hub for global maritime commerce and is uniquely positioned to

Page 1 of 4

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

21-00757-21

2021426\_\_

30 capture an even larger share of this commerce as global trade  
 31 routes shift, and  
 32 WHEREAS, the international, national, statewide, and  
 33 regional importance of Florida seaports has long been recognized  
 34 in federal and state law with respect to the regulation,  
 35 planning, and public financing of seaport operations and  
 36 facilities, and  
 37 WHEREAS, allowing each local government in which a Florida  
 38 seaport is located to impose its own requirements on the  
 39 maritime commerce conducted in that port could result in abrupt  
 40 changes in the supply lines bringing goods into and out of this  
 41 state, thus disrupting Florida's economy and threatening the  
 42 public's health, safety, and welfare, and  
 43 WHEREAS, allowing each local government in which a Florida  
 44 seaport is located to impose its own requirements on the  
 45 maritime commerce conducted in that port could reasonably be  
 46 expected to suppress such commerce and potentially drive it out  
 47 of the port and out of the state in search of a more consistent  
 48 and predictable operating environment, thus disrupting Florida's  
 49 economy and threatening the public's health, safety, and  
 50 welfare, and  
 51 WHEREAS, allowing each local government in which a Florida  
 52 seaport is located to impose its own requirements on the  
 53 maritime commerce conducted in that port could result in abrupt  
 54 changes in vessel traffic, frustrating the multi-year planning  
 55 process for all Florida seaports and the assumptions and  
 56 forecasts underlying federal and state financing of port  
 57 improvement projects, and  
 58 WHEREAS, in light of these negative impacts, federal and

Page 2 of 4

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

21-00757-21 2021426\_\_

state governments must be relied upon to adopt uniform regulations governing seaport operations, NOW, THEREFORE,

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

Section 1. Section 311.25, Florida Statutes, is created to read:

311.25 Regulation of commerce in Florida seaports; preemption.-

(1) Notwithstanding any other law to the contrary, a local government may not restrict or regulate commerce in the seaports of this state, as listed in s. 311.09, including, but not limited to, regulating or restricting a vessel's type or size, source or type of cargo, or number, origin, or nationality of passengers. All such matters are expressly preempted to the state.

(2) If not otherwise preempted by federal or state law, this section does not limit the authority of a port authority or port district, as defined in s. 315.02, or a port operation as provided in s. 125.012, to:

(a) Regulate vessel movements within its jurisdiction pursuant to s. 313.22(1).

(b) Establish fees and compensation for its services pursuant to s. 313.22(2).

(c) Adopt guidelines for minimum bottom clearance, for the movement of vessels, and for radio communications of vessel traffic pursuant to s. 313.23.

However, an action provided in this subsection may not have the

21-00757-21 2021426\_\_

effect of regulating or restricting a vessel's type or size, source or type of cargo, or number, origin, or nationality of passengers, except as required to ensure safety due to the physical limitations of channels, berths, anchorages, or other port facilities.

Section 2. Any provision of a county or municipal charter, ordinance, resolution, regulation, or policy that is preempted by this act and that existed before, on, or after the effective date of this act is void.

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

YOU MUST PRINT **AND DELIVER** THIS FORM TO THE ASSIGNED TESTIMONY ROOM

03/10/2021

Meeting Date

THE FLORIDA SENATE

**APPEARANCE RECORD**

SB 426

Bill Number (if applicable)

559796

Amendment Barcode (if applicable)

W/D

Topic Preemption of Seaports

Name Holly Parker Curry

Job Title Florida Policy Manager

Address 1229 Mitchell Ave.

Street

Tallahassee

City

FL

State

32306

Zip

Phone 8505673393

Email hparker@surfrider.c

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Surfrider Foundation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

3/10/2021

Meeting Date

426

Bill Number (if applicable)

#384856

Amendment Barcode (if applicable)

Topic Seaport Premption

Name Richard Pinsky

Job Title

Address 201 E. Park Ave. Suite 300

Street

Tallahassee

City

FL

State

32301

Zip

Phone (561) 386-1992

Email richard.pinsky@akerman.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

03/10/2021

Meeting Date

SB 426

Bill Number (if applicable)

384856

Amendment Barcode (if applicable)

Topic State Preemption of Seaport Regulations

Name Michael Rubin

Job Title VP Government Affairs

Address 502 East Jefferson Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-222-8028

Email mike.rubin@flaports.org

Speaking: ☒ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Ports Council

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

March 10, 2021

Meeting Date

426

Bill Number (if applicable)

622662

Amendment Barcode (if applicable)

Topic State Preemption of Seaport Regulations

Name Josh Aubuchon

Job Title Attorney

Address 201 East Park Avenue, Suite 200B

Phone 850-583-2400

Street

Tallahassee

FL

32301

Email josh@dacfl.com

City

State

Zip

Speaking ☒ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Florida Ports for Economic Independence

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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03/10/2021

Meeting Date

THE FLORIDA SENATE

**APPEARANCE RECORD**

SB 426

Bill Number (if applicable)

622662

Amendment Barcode (if applicable)

Topic Preemption of Seaports

Name Holly Parker Curry

Job Title Florida Policy Manager

Address 1229 Mitchell Ave.

Phone 8505673393

Street

Tallahassee

FL

32303

Email hparker@surfrider.c

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Surfrider Foundation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/10/21  
Meeting Date

426  
Bill Number (if applicable)

Topic Sea Ports

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Rising

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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**THE FLORIDA SENATE**

**APPEARANCE RECORD**

March 10, 2021

*Meeting Date*

426

*Bill Number (if applicable)*

Topic State Preemption of Seaport Regulations

*Amendment Barcode (if applicable)*

Name Josh Aubuchon

Job Title Attorney

Address 201 East Park Avenue, Suite 200B

Phone 850-583-2400

*Street*

Tallahassee

FL

32301

Email josh@dacfl.com

*City*

*State*

*Zip*

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Ports for Economic Independence

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

03/10/21  
Meeting Date

SB 426  
Bill Number (if applicable)

Topic Perspective of a former Governor appointed  
Name Danny Hughes Port Commissioner, Maritime

Job Title Businessman: Chairman, Diversified Group

Address 112 Ann St. Phone 504 915-3525  
Street

Key West FL 33040 Email danny@dannyhughes.com  
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Maritime Business

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

03/10/2021

*Meeting Date*

SB 426

*Bill Number (if applicable)*

Topic Preemption of Seaports

*Amendment Barcode (if applicable)*

Name Holly Parker Curry

Job Title Florida Policy Manager

Address 1229 Mitchell Ave.

Phone 8505673393

*Street*

Tallahassee

FL

32303

*City*

*State*

*Zip*

Email hparker@surfrider.c

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
*(The Chair will read this information into the record.)*

Representing Surfrider Foundation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

3/10/2021

*Meeting Date*

426

*Bill Number (if applicable)*

Topic Seaport Preemption

*Amendment Barcode (if applicable)*

Name Richard Pinsky

Job Title \_\_\_\_\_

Address 201 E. Park Ave. Suite 300

Phone (561) 386-1992

*Street*

Tallahassee

FL

32301

Email richard.pinsky@akerman.com

*City*

*State*

*Zip*

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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**THE FLORIDA SENATE**

03/10/2021

*Meeting Date*

**APPEARANCE RECORD**

426

*Bill Number (if applicable)*

Topic State Preemption of Seaport Regulations

*Amendment Barcode (if applicable)*

Name Warren Husband

Job Title \_\_\_\_\_

Address PO Box 10909

Phone (850) 205-9000

*Street*

Tallahassee

FL

32302

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
*(The Chair will read this information into the record.)*

Representing Fla. Harbor Pilots Assoc. & Marquesas, LLC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/14/14)

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**THE FLORIDA SENATE**

**APPEARANCE RECORD**

03/10/2021

*Meeting Date*

SB 426

*Bill Number (if applicable)*

Topic State Preemption of Seaport Regulations

*Amendment Barcode (if applicable)*

Name Michael Rubin

Job Title VP Government Affairs

Address 502 East Jefferson Street

Phone 850-222-8028

*Street*

Tallahassee

FL

32301

Email mike.rubin@flaports.org

*City*

*State*

*Zip*

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Ports Council

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

3/10/21

Meeting Date

426

Bill Number (if applicable)

Topic State Preemption of Seaport Regulations

Amendment Barcode (if applicable)

Name David Cullen

Job Title \_\_\_\_\_

Address 1934 Shelby Ct.

Phone 941-323-2404

Street

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32308

Email cullenasea@gmail.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing Sierra Club Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/14/14)

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**THE FLORIDA SENATE**

**APPEARANCE RECORD**

3/10/2021

*Meeting Date*

426

*Bill Number (if applicable)*

Topic State Preemption Of Seaport Regulations

*Amendment Barcode (if applicable)*

Name Jonathan Webber

Job Title Deputy Director

Address 1700 N. Monroe St. #11-286

Phone 954-593-4449

*Street*

Tallahassee

FL

32303

Email jwebber@fcvoters.org

*City*

*State*

*Zip*

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
*(The Chair will read this information into the record.)*

Representing Florida Conservation Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/10/2021

Meeting Date

SB426

Bill Number (if applicable)

Topic Transportation

Amendment Barcode (if applicable)

Name Nicole Fogarty

Job Title Legislative Affairs Director

Address 2300 Virginia Ave.

Phone 772-708-3954

Street

Fort Pierce

FL

34982

Email FogartyN@stlucieco.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing St. Lucie County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Transportation

---

BILL: CS/SB 684

INTRODUCER: Transportation Committee and Senator Brandes

SUBJECT: Department of Transportation

DATE: March 10, 2021

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Price   | Vickers        | TR        | <b>Fav/CS</b> |
| 2. |         |                | ATD       |               |
| 3. |         |                | AP        |               |

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 684 directs the Florida Department of Transportation (FDOT) to allow any person to purchase a commuter pass for each motor vehicle the person owns at an annual cost of \$60 per vehicle, which exempts the motor vehicle from any Pinellas Bayway System tolls during the term of the pass. The annual cost must be adjusted to inflation no more frequently than once a year and no less frequently than once every five years. Funds collected from the sale of the commuter passes must be deposited into the State Transportation Trust Fund (STTF), or in the Turnpike General Reserve Trust Fund if the system is transferred to the Florida Turnpike Enterprise (FTE), and the funds must be used for the operation and maintenance of the system.

The bill increases the annual cost of commuter passes for the Pinellas Bayway System from \$50 to \$60 and requires periodic adjustments to the cost for inflation. See "Fiscal Impact Statement" heading for additional information.

The bill takes effect July 1, 2021.

**II. Present Situation:**

**Pinellas Bayway**

The Pinellas Bayway System, currently owned by the Florida Department of Transportation (FDOT), is a tolled system of bridges and causeways that provide a connection between St.

Petersburg Beach, Fort DeSoto Park, and Interstate 275. The system is approximately 15.2 miles in length and includes 1.3 miles of bridges.<sup>1</sup> Tolls on the Pinellas Bayway System are collected by the FTE.

### *History of the Bayway System*

In 1968, the predecessor of the FDOT entered into a settlement agreement in *Leonard Lee Ratner, Esther Ratner, and LEECO Gas and Oil Co., vs. State Road Department of the State of Florida*.<sup>2</sup> In the settlement agreement, the State Road Department agreed that owners and residents of real property in the Bayway Isles Development would have the right to purchase an annual pass through the toll gate at the easterly terminus of the Bayway system in St. Petersburg for \$15 per vehicle. That agreement remains in place.

In 1985, the Legislature authorized a \$50 “annual” pass for any person’s owned motor vehicles which exempted such vehicles from Bayway tolls during the term of the pass. Funds collected from sales of the pass were to be used first for payment of annual operating costs and, second, to discharge bond indebtedness. Thereafter, these funds, together with tolls collected for use of the Bayway, were to be used for a reserve construction account for “Phase II” of Bayway improvements. Upon completion, toll collection was to continue and be used to reimburse the FDOT for all accrued maintenance costs for the Bayway.<sup>3</sup>

In 1995, enacted legislation amending the 1985 law required a portion of the tolls collected to first be used for construction of Blind Pass Road/SR 699 improvements, and then for Phase II of the Bayway improvements. On-going toll collection after completion of Phase II remained in place to be used to reimburse the FDOT for all accrued maintenance costs.<sup>4</sup>

In 2014, section 48 of ch. 2014-223, L.O.F., repealed reference to the Blind Pass Road/State Road 699 improvements and provided that funds in the reserve construction account be used for the widening of State Road 682 from State Road 679 west to Gulf Boulevard. By the time the Blind Pass Road/SR 699 improvements had been completed, the bridge on State Road 679 over Boca Ciega Bay has been declared structurally deficient. However, no funds for replacement of the bridge were included in the FDOT District work program. The FDOT advised that transfer of the Bayway system from the FDOT to the FTE would allow replacement of the structurally deficient bridge to be moved up from 2020 to 2017 in the FDOT work program and to be funded through a combination of the accrued reserve account revenues and other financing available to the FTE.

In the 2016 Session, HB 7061 was enacted. Among other transportation-related provisions, the legislation created s. 338.165(11), F.S., authorizing the FDOT to transfer the Pinellas Bayway System to become part of the turnpike system. The bill also preserved the provisions of the *Ratner* settlement agreement and final judgment by retaining the ability to purchase a \$15 annual resident pass. Additionally, the bill transferred the construction reserve account to the FDOT

---

<sup>1</sup> See the 2020 Toll Operations Annual Report, *Pinellas Bayway System*, available at [https://floridasturnpike.com/wp-content/uploads/2021/02/03\\_Department-owned-Facilities.pdf](https://floridasturnpike.com/wp-content/uploads/2021/02/03_Department-owned-Facilities.pdf) (last visited March 4, 2021).

<sup>2</sup> No. 67-1081 (Fla. 2<sup>nd</sup> Cir. Ct. 1968).

<sup>3</sup> Ch. 85-364, L.O.F.

<sup>4</sup> Ch. 95-382, L.O.F.



when ownership of the system is transferred to the FTE. Further, the bill repealed ch. 85-634, L.O.F., as amended by ch. 95-382 and section 48 of ch. 2014-223, L.O.F., thereby removing the authorization for purchase of the \$50 “annual” pass.

Consistent with the 2016 legislation, the SunPass website currently lists for purchase a \$15 resident pass that “expires on June 30th regardless of when the \$15 pass was purchased. Up to five passes may be purchased for a fee of \$15. The pass is valid at the East Plaza only. Proof of residency is required.”<sup>5</sup>

However, in addition to the resident pass, the site lists for purchase a \$50 “commuter” pass, “a yearly pass system for two-axle vehicles that expires on September 30th regardless of when the \$50 pass per vehicle was purchased. Pass is valid at all three Pinellas Bayway Plazas and available to all motorists.”<sup>6</sup>

Research reveals no specific grant of authority to the FDOT for the sale of “commuter” passes on the Bayway System.

### ***Toll Indexing***

Section 338.165(3), F.S., requires the FDOT, including the FTE, to index *toll rates* on existing toll facilities to the annual CPI or similar inflation indicators, no more frequently than once a year and no less frequently than once every 5 years as necessary to accommodate cash toll rate schedules. Toll rates may be increased beyond these limits as directed by bond documents, covenants, or governing body authorization or pursuant to FDOT administrative rule. It appears that indexing has never been applied to purchase amounts for any *passes*.

### **III. Effect of Proposed Changes:**

The bill provides the FDOT with statutory authority for an existing commuter pass relating to the Pinellas Bayway System, indexes the cost of the pass to the Consumer Price Index, and provides for use of funds collected from sale of the passes.

**Section 1** of the bill creates an undesignated section of law directing the FDOT to allow any person to purchase a commuter pass for each motor vehicle the person owns at an annual cost of \$60 per vehicle, exempting the vehicle from any Pinellas Bayway System tolls during the term of the pass. Funds collected from the sale of the commuter passes must be deposited into the STTF, or in the Turnpike General Revenue Fund if the system is transferred to the FTE. The funds must be used for the operation and maintenance of the system.

The bill directs the FDOT or the FTE, as appropriate, to index the annual commuter pass cost to the annual CPI or similar inflation indicators, rounded to the nearest dollar. CPI adjustment to the commuter pass cost may be made no more frequently than once a year and no less frequently than once every five years. This is the same adjustment for inflation required of the FDOT and the FTE.

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<sup>5</sup> See SunPass, *Tolls*, available at <https://www.sunpass.com/en/tolls/tollsSunPass.shtml> (last visited March 4, 2021).

<sup>6</sup> *Id.*

The bill takes effect July 1, 2021.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19, of the Florida Constitution requires that a new state tax or fee, as well as an increased state tax or fee, must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, s. 19(d)(1), of the Florida Constitution defines “fee” to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”

The bill appears to increase an existing fee and provides for its use. The bill requires approval by two-thirds of the membership of each house of the Legislature.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The bill increases the existing fee for a Bayway System commuter pass from \$50 to \$60 annually, which amount would be adjusted to inflation as specified.

B. Private Sector Impact:

Purchasers of the commuter pass will be required to pay \$60 annually, which amount would be adjusted to inflation as specified.

C. Government Sector Impact:

According to the FDOT, an *average* of approximately 11,000 passes are sold, which under the bill would produce approximately \$110,000 for the first year. However, based on the FDOT’s estimated increase of about \$1.00 to the pass price due to indexing, the

annual cost of a pass upon adjustment would rise to \$61. This would produce approximately \$11,000 in additional revenue in year 2 and beyond for operation and maintenance of the Bayway System.<sup>7</sup>

**VI. Technical Deficiencies:**

The bill is effective July 1, 2021. Commuter passes expire annually on September 30<sup>th</sup>, regardless of when the pass was purchased. The FDOT advises that the \$10 increase in the cost of the commuter pass will require rulemaking, which would not be completed in time for passes to be issued beginning October 1, 2021, at the \$60 price.<sup>8</sup>

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates an undesignated section of Florida law.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

**CS by Transportation on March 10, 2021:**

The CS removes all of the provisions in the original bill relating to use of revenues for landscaping and beautification of the Bayway System.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>7</sup> See the FDOT's email to committee staff dated January 4, 2021 (on filed in the Senate Transportation Committee).

<sup>8</sup> *Id.*



635780

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 03/11/2021 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Transportation (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 47 - 66.

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

And the title is amended as follows:

Delete lines 11 - 25

and insert:

indicators; providing an effective

By Senator Brandes

24-00888A-21

2021684\_\_

A bill to be entitled

An act relating to the Department of Transportation; requiring the department to allow persons to purchase certain commuter passes for their motor vehicles; requiring that funds collected from the sale of the commuter passes be deposited in specified trust funds and used for the operation and maintenance of the Pinellas Bayway System; requiring the department or the Florida Turnpike Enterprise, as appropriate, to index annual commuter pass costs to certain inflation indicators; requiring the department or the enterprise, as appropriate, to use a specified portion of funds collected from the sale of commuter passes during a specified period of time for landscaping and beautification; beginning on a specified date, requiring the department or the enterprise, as appropriate, to annually use a specified amount of funds for landscaping and beautification; beginning on a specified date, requiring the department or the enterprise, as appropriate, to index the landscaping and beautification allocation amount to certain inflation indicators; specifying that funds provided under this act are in addition to any funds otherwise allocated by the department or the enterprise, as appropriate, for such purposes; providing an effective date.

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

Page 1 of 3

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

24-00888A-21

2021684\_\_

Section 1. (1) The Department of Transportation shall allow any person to purchase a commuter pass for each motor vehicle the person owns at an annual cost of \$60 per vehicle which exempts the motor vehicle from any Pinellas Bayway System tolls during the term of the pass. Funds collected from the sale of commuter passes must be deposited in the State Transportation Trust Fund, or in the Turnpike General Reserve Trust Fund if the Pinellas Bayway System is transferred pursuant to s. 338.165(11), Florida Statutes, and used for the operation and maintenance of the Pinellas Bayway System.

(2) The department or the Florida Turnpike Enterprise, as appropriate, shall index the annual commuter pass cost to the annual Consumer Price Index or similar inflation indicators, rounded to the nearest dollar. Commuter pass cost adjustments for inflation under this section may be made no more frequently than once a year and may be made no less frequently than once every 5 years.

(3) Notwithstanding subsection (1), the first \$10 of each commuter pass sold during the first 12 months after July 1, 2021, must be used by the department or the turnpike enterprise, as appropriate, for landscaping and beautification of the Pinellas Bayway System.

(4) Beginning July 1, 2022, the department or the turnpike enterprise, as appropriate, shall use no less than \$100,000 annually for such landscaping and beautification. Beginning July 1, 2027, and every 5 years thereafter, the department or the turnpike enterprise, as appropriate, shall index the \$100,000 annual limitation to the annual Consumer Price Index or similar inflation indicators, the result of which shall constitute the

Page 2 of 3

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

24-00888A-21

2021684\_\_

59 annual limitation on use of funds for landscaping and  
60 beautification until the next scheduled adjustment. Any amounts  
61 that exceed the adjusted annual limitation shall be deposited  
62 and used as provided in subsection (1).

63 (5) The funds provided under this section for landscaping  
64 and beautification of the Pinellas Bayway System shall be in  
65 addition to any funds otherwise allocated by the department or  
66 the turnpike enterprise, as appropriate, for such purposes.

67 Section 2. This act shall take effect July 1, 2021.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: SB 1126

INTRODUCER: Senator Harrell

SUBJECT: Department of Transportation

DATE: March 10, 2021

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Price   | Vickers        | TR        | <b>Favorable</b> |
| 2. |         |                | ATD       |                  |
| 3. |         |                | AP        |                  |

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**I. Summary:**

SB 1126 represents the Florida Department of Transportation's (FDOT) legislative proposals for the 2021 Legislative Session. The bill contains a number of FDOT-related revisions to current law including:

- Increases from \$275 to \$300 million the authorized dollar amount representing an alternative debt service cap on Right-of-Way Acquisition and Bridge Construction Bonds issued to finance or refinance the cost of acquiring real property for state roads or the cost of bridge construction.
- Removes the expiration date for Legislative Budget Commission (LBC) chair and vice chair authority to approve amendments to the FDOT's work program that transfer fixed capital outlay appropriations between categories or increase an appropriation category.
- Clarifies that the Department of Revenue is the entity responsible for transferring a portion of documentary stamp tax revenues distributed to the State Treasury and credited to the State Transportation Trust Fund (STTF) from the State Treasury to the General Revenue Fund.
- Revises from October 1 to August 1 the date for metropolitan planning organization (MPO) annual submissions of project priorities to the FDOT districts for purposes of developing the FDOT's tentative work program and MPO transportation improvement programs.
- Removes provisions requiring the FDOT to provide space and video conference capability at each FDOT district office for persons requesting a hearing before the Commercial Motor Vehicle Review Board, instead requiring the FDOT to allow such persons to appear remotely before the board via communications media technology already authorized by Administration Commission rule.
- Grants the FDOT rulemaking authority for the purpose of implementing statutory provisions relating to airport zoning.
- Revises provisions relating to a notice and hearing the FDOT is required to provide when a transportation project on the State Highway System modifies an existing access to an abutting property owner to provide clarity and improve readability.

- Removes obsolete references to a previously-expired general service revenue service charge from specified collected revenue deposited into the STTF.

The extent of any potential fiscal impact to the FDOT resulting from the increased alternative debt service cap on Right-of-Way Acquisition and Bridge Construction Bonds is unknown. The remaining revisions are primarily administrative and housekeeping in nature and are expected to present no immediate fiscal impact to state or local revenues.

The bill takes effect July 1, 2021.

## **II. Present Situation:**

For ease of organization and readability, the present situation is discussed below in conjunction with the effect of proposed changes.

## **III. Effect of Proposed Changes:**

### **Debt Service Cap on Right-of-Way Acquisition and Bridge Construction Bonds (Section 2)**

#### ***Present Situation***

Section 215.605, F.S., authorizes the issuance of state 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, the Legislature must authorize bonds, which must be issued pursuant to the State Bond Act.<sup>1</sup> The proceeds from the sale of issued bonds must be deposited into the Right-of-Way Acquisition and Bridge Construction Trust Fund.<sup>2</sup>

Section 206.46, F.S., authorizes the FDOT to transfer up to 7 percent of the revenues deposited into the STTF in each fiscal year into the Right-of-Way Acquisition and Bridge Construction Trust Fund to meet outstanding or proposed bond obligations; or, at a minimum, an amount sufficient to pay for the debt service coverage of outstanding bonds.<sup>3</sup> The annual transfer amount, however, may not exceed that which is necessary to provide the required debt service coverage levels for a maximum debt service of \$275 million. Thus, debt service may not exceed seven percent of the revenues deposited into the STTF or \$275 million, whichever is less.

The FDOT noted in 2020 that no adjustment has been made to the \$275 million cap since 2007. The FDOT provided information that based on the FDOT's most recent bond sale and Revenue Estimating Conference projections [at that time], the limit on debt service based on the 7-percent-of-revenue threshold would have been \$287 million in Fiscal Year 2019-2020 (based on revenues of \$4.1 billion), growing to \$350 million in Fiscal Year 2028-2029 (based on revenues of \$5 billion). Additionally, the FDOT advised that under the current statutory limit, the \$275 million cap leaves the FDOT with only about \$100 million of available bonding capacity.<sup>4</sup>

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<sup>1</sup> Sections 215.57-215.83, F.S.

<sup>2</sup> Section 215.605(4), F.S.

<sup>3</sup> The transfer is required to be payable primarily from the motor and diesel fuel taxes transferred to the STTF.

<sup>4</sup> See the FDOT's 2020 Legislative Proposal, *Change the Right-of-Way Acquisition and Bridge Construction Bonds Debt Service Cap* (on file in the Senate Infrastructure and Security Committee).



***Effect of Proposed Changes***

Section 2 of the bill amends s. 206.46, F.S., to increase the authorized dollar amount representing an alternative debt service cap on Right-of-Way Acquisition and Bridge Construction Bonds. Thus, under the bill, debt service could not exceed seven percent of the revenues deposited into the STTF or \$350 million, whichever is less.

**Work Program Amendments (Section 10)*****Present Situation***

Current law authorizes the FDOT to amend its adopted work program and provides procedures for such amendments.<sup>5</sup> However, any work program amendment that transfers fixed capital outlay appropriations between categories or increases an appropriation category is subject to approval by the LBC.

Prior to 2016, if a meeting of the LBC could not be held within 30 days after the FDOT submitted an amendment, the chair and vice chair of the LBC could approve the amendment.<sup>6</sup> In 2016, the Legislature repealed the authorization for LBC chair and vice chair approval if the LBC could not meet.<sup>7</sup> In 2019, this authorization was reinstated with an expiration date of July 1, 2020.<sup>8</sup> In 2020, the authorization was reinstated with an expiration date of July 1, 2021.<sup>9</sup>

***Effect of Proposed Changes***

Section 10 of the bill amends s. 339.135(7)(g), F.S., to remove the expiration of authorization for LBC chair and vice chair approval of the identified amendments to the FDOT's adopted work program, thereby making the provision permanent.

**Documentary Stamp Tax/General Revenue Fund Transfer (Section 1)*****Present Situation***

Chapter 201, F.S., levies an excise tax (documentary stamp tax) on documents such as deeds, stocks and bonds, notes and written obligations to pay money, mortgages, liens, and other evidences of indebtedness. The Florida Department of Revenue (FDOR) administers the provisions of that chapter,<sup>10</sup> including provisions governing the collection of documentary stamp taxes, which are distributed each fiscal year to the General Revenue Fund and various other trust funds.

After certain required distributions to the Land Acquisition Trust Fund,<sup>11</sup> approximately 24 percent of the remainder of the taxes collected or \$541.75 million, whichever is less, is paid into the State Treasury to the credit of the STTF, \$75 million of which must be transferred to the

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<sup>5</sup> Section 339.135(7), F.S.

<sup>6</sup> Section 339.135(7)(g), F.S. (2015).

<sup>7</sup> Section 16, Ch. 2016-181, L.O.F.

<sup>8</sup> Section 101, Ch. 2019-116, L.O.F.

<sup>9</sup> Section 93, Ch. 2020-144, L.O.F.

<sup>10</sup> Section 201.11, F.S.

<sup>11</sup> Section 201.15(1) and (2), F.S.

General Revenue Fund. The remaining amount credited to the STTF must be used to fund certain transportation-related programs.<sup>12</sup> Although current law specifies the FDOR as the administering agency of that chapter, the FDOR is not expressly identified as the entity responsible for making the \$75 million transfer each fiscal year.

### ***Effect of Proposed Changes***

Section 1 of the bill amends s. 201.15(4)(a), F.S., to expressly require the FDOR to make the \$75 million transfer each fiscal year from funds credited to the STTF in the State Treasury to the General Revenue Fund.

## **Metropolitan Planning Organizations Project Priority Submissions to the FDOT (Sections 10 and 11)**

### ***Present Situation***

The FDOT's adopted work program is the 5-year work program adopted by the FDOT pursuant to s. 339.135, F.S. In developing the adopted work program, each of the FDOT districts submits an annual district work program, which is the 5-year listing of transportation projects planned for each fiscal year, to the FDOT's central office for review and development of the tentative work program. The tentative work program is the 5-year listing of all transportation projects planned for each fiscal year which is developed by the FDOT's central office based on the district work programs.<sup>13</sup> Each year, a new fifth year is added for purposes of developing the tentative and adopted work programs.

With respect to development of the tentative work program, as outlined in s. 339.135(4), F.S., the district work program is developed cooperatively with the various metropolitan planning organizations (MPOs) around the state and must include, to the maximum extent feasible, the project priorities submitted by the MPOs to the FDOT's districts by October 1 of each year. The FDOT and an MPO may agree in writing to vary the submission date.<sup>14</sup>

The FDOT advises that during a "normal" work program development cycle, submission of MPO project priorities by October 1 allows sufficient time for development of the tentative work program cycle. However, because the Legislature meets beginning in January in even-numbered years,<sup>15</sup> the tentative work program cycle is "compressed" by two months, creating a need for earlier submission of project information. The FDOT notes that no failure to submit a priority list has occurred, but earlier submission has been provided as a courtesy, rather than a mandate.<sup>16</sup>

The MPOs are also required, in cooperation with the state and affected public transportation operators, to develop a transportation improvement program for the area within the jurisdiction of the MPO. Similar to work program development, each MPO is required to submit to the

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<sup>12</sup> Section 201.15(4)(a), F.S. The programs include the New Starts Transit Program, the Small County Outreach Program, the Strategic Intermodal System, and the Transportation Regional Incentive Program.

<sup>13</sup> Section 339.135(1), F.S.

<sup>14</sup> Section 339.135(4)(c)2., F.S.

<sup>15</sup> Article III, s. 3(b), Florida Constitution.

<sup>16</sup> See the FDOT's 2020 Legislative Proposal, *Advance MPO Deadline to Submit Project Priorities* (on file in the Senate Infrastructure and Security Committee).

appropriate FDOT district a list of project priorities by October 1 of each year. Again, the FDOT and an MPO may agree in writing to vary the submission date. The MPO-approved lists must be used by the FDOT districts in developing the district work programs.<sup>17</sup>

### ***Effect of Proposed Changes***

Sections 10 and 11 of the bill, respectively, amend s. 339.135(4)(c) and s. 339.175(8)(b), F.S., to revise from October 1 to August 1 the deadline for MPOs to submit their project priority lists for purposes of developing the FDOT's tentative work program and for purposes of development of MPO transportation improvement programs.

## **Commercial Motor Vehicle Review Board/Remote Appearance (Section 6)**

### ***Present Situation***

The Commercial Motor Vehicle Review Board (the Board), established within the FDOT, is composed of three permanent members (the FDOT secretary as chair, the executive director of the Department of Highway Safety and Motor Vehicles, and the Commissioner of Agriculture, or their designees; three appointed by the Governor (one each from the road construction industry and the trucking industry, and one with a general business or legal background); and one appointed by the Commissioner of Agriculture from the agriculture industry.<sup>18</sup>

The Board is authorized to review any penalty imposed upon any vehicle or person under the provisions of Chapter 316, F.S., relating to weights imposed on the highways by the axles and wheels of motor vehicles, to special fuel and motor fuel tax compliance, or to violations of safety regulations, and the Board may modify, cancel, revoke, or sustain any such penalty.<sup>19</sup> The Board is authorized to hold sessions and conduct proceedings at any place.<sup>20</sup> According to the FDOT's website, the Board meets physically in Tallahassee.<sup>21</sup>

Any person against whom a penalty is imposed may apply to the Board for a modification, cancellation, or revocation of the penalty.<sup>22</sup> A written explanation provided within a letter protesting a penalty is acceptable in lieu of physical attendance by a person requesting a hearing before the Board, but attendance "will provide the petitioner the opportunity to respond to Review Board inquiries into subjects that the petitioner may have overlooked when drafting his letter of protest."<sup>23</sup> Appearance by telephone is not available, but pursuant to the provisions of s. 316.545(7)(f), F.S., the FDOT is required to provide space and video conference capability at each of its seven district offices to enable a person requesting a hearing to appear remotely

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<sup>17</sup> Section 339.175(8), F.S.

<sup>18</sup> Section 316.645(7)(a) and (b), F.S. See the FDOT, Traffic Engineering and Operations Office, *Commercial Motor Vehicle Review Board*, for more details on the Board, as well as its 2021 meeting schedule, available at [Commercial Motor Vehicle Review Board \(fdot.gov\)](https://www.fdot.gov/commercial-motor-vehicle-review-board) (retrieved February 1, 2021).

<sup>19</sup> Section 316.545(7), F.S.

<sup>20</sup> Section 316.545(8), F.S.

<sup>21</sup> *Supra* note 8.

<sup>22</sup> *Supra* note 10.

<sup>23</sup> See the FDOT, Traffic Engineering and Operations Office, *Commercial Motor Vehicle Review Board*, for more details on the Board, as well as its 2021 meeting schedule, available at [Commercial Motor Vehicle Review Board \(fdot.gov\)](https://www.fdot.gov/commercial-motor-vehicle-review-board) (retrieved February 1, 2021).

before the board, provided the requester notifies the Board at least 14 calendar days before the hearing date.<sup>24</sup>

By rule of the Administration Commission, agencies are currently authorized to conduct proceedings using communications media technology; *i.e.*, the electronic transmission of printed matter, audio, full-motion video, freeze frame video, compressed video, and digital video by any method available.<sup>25</sup>

The current requirement for providing space and video conference capability at each of the seven FDOT district offices does not take advantage of the various forms of communications media technology authorized for use in conducting agency proceedings.

### ***Effect of Proposed Changes***

Section 6 of the bill amends s. 316.545(7), F.S., to remove the requirement that remote appearance before the Board by a person requesting a hearing take place at one of the FDOT district offices by means of video conference capability and replace it with authorization for use of communications media technology by any means.

The FDOT would be required when using such technology to provide a notice to the requester specifying the address or addresses of all access points, specifically designating those which are in locations normally open to the public; the address of each access point where an interested person may go to attend the proceedings; an address, email address, and telephone number where an interested person may write or call for additional information; and an address, email address, and designated person to whom a person may submit written or other physical evidence which he or she intends to offer into evidence during the CMT proceedings.<sup>26</sup>

This revision would allow the FDOT to more efficiently conduct proceedings before the Board and reduce the need of a person requesting a hearing to travel to one of the FDOT district offices to be heard. The FDOT advises any person requesting to appear before the Board at one of the FDOT district offices will continue to be accommodated.<sup>27</sup>

### **Airport Zoning/FDOT Rulemaking (Section 8)**

#### ***Present Situation***

The Legislature in 2016 enacted a substantial re-write<sup>28</sup> of Chapter 333, F.S., which contains airport zoning provisions relating to the management of airspace and land use at or near airports. Generally, the 2016 re-write:

- Updated statutory definitions and terms in accordance with federal regulations.
- Streamlined the local airport protection zoning process to a simpler permitting model.

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<sup>24</sup> *Id.*

<sup>25</sup> Fla. Admin. Code R. 28-109 available at [28-109 : CONDUCTING PROCEEDINGS BY COMMUNICATIONS MEDIA TECHNOLOGY - Florida Administrative Rules, Law, Code, Register - FAC, FAR, eRulemaking \(flrules.org\)](https://www.flrules.org/FAC/28-109) (retrieved February 1, 2021).

<sup>26</sup> *Id.*

<sup>27</sup> Telephone conversation with FDOT staff, February 1, 2021.

<sup>28</sup> Ch. 2016-239, L.O.F.

- Provided local governments the flexibility to structure and incorporate the airport protection zoning review process into existing local zoning review processes and repealed duplicative requirements for obtaining a variance.
- Made other grammatical, editorial, and conforming changes.

The FDOT has a long-standing rule<sup>29</sup> that pre-dates the 2016 substantial re-write, “*Airport Licensing, Registration, and Airspace Protection*,” the purpose of which is “to promote safe civil aviation by eliminating hazards; to provide airfield standards for airports; to provide standards for airport marking and lighting; to license and register airports, pursuant to the licensing and registration requirements of Chapter 330, F.S., and to promote flight safety by providing for airspace protection, pursuant to the requirements of Chapter 333, F.S.” The provisions of the rule appear to be critical to promotion of safe civil aviation. However, in the midst of the 2016 re-write, authority for the long-standing rule was apparently inadvertently overlooked.

### ***Effect of Proposed Changes***

Section 8 of the bill creates s. 333.14, F.S., to provide the FDOT with express authority to adopt rules to implement the provisions of Chapter 333, F.S., thereby providing specific authorization for Fla. Admin. Code R. 14-60.

## **Transportation Projects/Modifying Access/Abutting Property Owners (Section 9)**

### ***Present Situation***

Under current law, when the FDOT proposes a project on the State Highway System that will divide a state highway, erect median barriers modifying currently available vehicle turning movements, or have the effect of closing or modifying an existing access to an abutting property owner, the FDOT is required to notify all affected property owners, municipalities, and counties at least 180 days before the design of the project is finalized. The notice must include a written explanation regarding the need for the project and an indication that all affected parties will be given an opportunity to provide comments to the FDOT regarding potential impacts of the change. The FDOT must hold at least one public hearing in the jurisdiction where the project is located; receive public input to determine how the project will affect access to businesses and the potential economic impact of the project on the local business community; and review all comments from the public hearing, taking the comments and any alternatives presented by a local government during the hearing into consideration in the final design of the highway project.<sup>30</sup>

### ***Effect of Proposed Changes***

Section 9 of the bill amends s. 335.199, F.S., to make editorial revisions and improve readability. The bill clarifies that the FDOT must provide the required notice at least 180 days before the design *phase* of the project is *completed*, rather than finalized. The bill also revises all occurrences of the word “hearing” to “meeting,” apparently to remove any sort of legal

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<sup>29</sup> Fla. Admin. Code R. 14-60 available at [14-60 : AIRPORT LICENSING, REGISTRATION, AND AIRSPACE PROTECTION - Florida Administrative Rules, Law, Code, Register - FAC, FAR, eRulemaking \(flrules.org\)](https://flrules.org/rule/14-60) (retrieved February 1, 2021).

<sup>30</sup> Section 335.199, F.S.

connotation, as the required events are not in the nature of any sort of judicial proceeding but are more closely akin to informational “meetings.”

The bill clarifies that the FDOT must hold at least one public meeting *prior to completing the design phase of the project*, so that the FDOT reviews all comments from the public meeting and takes the comments and any alternatives presented by a local government during the meeting into consideration in the final design of the project.

### **Obsolete References to the General Revenue Service Charge (Sections 3, 4, 5, and 7)**

#### ***Present Situation***

Section 215.20(1), F.S., appropriates from revenue deposited into most state trust funds<sup>31</sup> an 8 percent service charge, which represents the estimated pro rata share of the cost of general government. All such appropriations are deposited into the General Revenue Fund.

Section 215.211(1), F.S., however, eliminated the service charge beginning July 1, 2000, for taxes distributed under:

- Section 206.606(1), F.S., relating to the distribution of motor and diesel fuel taxes;
- Section 212.0501(6), F.S., relating to taxes on diesel fuel used in self-propelled off-road equipment for business purposes; and
- Section 319.32(5), F.S., relating to the disposition of fees from certificate of title transactions.

Additionally, s. 215.211(2), F.S., eliminated the service charge beginning July 1, 2001, on taxes distributed under s. 206.608, F.S., relating to the State Comprehensive Enhanced Transportation System Tax.

Although the service charge on the specified taxes has been eliminated, references to the service charge remain in statute for the described taxes or fees.

#### ***Effect of Proposed Changes***

Sections 3, 4, 5, and 7, respectively, remove the obsolete references to the General Revenue service charge that remain in ss. 206.606(1), 206.608, 212.0501(6), and 319.32(5), F.S.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

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<sup>31</sup> Section 215.22, F.S., sets out a list of items and trust funds that are exempt from the service charge, including trust funds administered by the Department of Transportation.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals requesting a hearing before the Commercial Motor Vehicle Review Board who are authorized to appear remotely via communications media technology may experience reduced expenses associated with travel to an FDOT district office to appear.

C. Government Sector Impact:

Currently, the amount transferred by the FDOT into the Right-of-Way and Bridge Acquisition Trust Fund may not exceed 7 percent of the revenues deposited into the STTF, or \$275 million, whichever is less. The bill provides that the amount transferred may not exceed 7 percent of the revenues deposited into the STTF or \$350 million, whichever is less. This revision may provide the FDOT with additional bonding capacity. However, the resulting impact of any additional bonding capacity is unknown.

**VI. Related Issues:**

None.

**VII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 201.15, 206.46, 206.606, 206.608, 212.0501, 316.545, 319.32, 333.15, 335.199, 339.135, and 339.175.

This bill creates the following sections of the Florida Statutes: 333.15.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Harrell

25-01671A-21

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1 A bill to be entitled  
 2 An act relating to the Department of Transportation;  
 3 amending s. 201.15, F.S.; clarifying that the  
 4 Department of Revenue is responsible for a certain  
 5 transfer from the State Treasury to the General  
 6 Revenue Fund of a portion of documentary stamp tax  
 7 distributions credited to the State Transportation  
 8 Trust Fund; amending s. 206.46, F.S.; revising a  
 9 limitation on an annual transfer from the State  
 10 Transportation Trust Fund to the Right-of-Way  
 11 Acquisition and Bridge Construction Trust Fund;  
 12 amending ss. 206.606, 206.608, and 212.0501, F.S.;  
 13 removing a requirement for the deduction of certain  
 14 service charges before the distribution of certain  
 15 moneys; amending s. 316.545, F.S.; deleting a  
 16 requirement that the department provide space and  
 17 video conference capability at each of the  
 18 department's district offices as an alternative to  
 19 physical appearance by a person requesting a hearing  
 20 before the Commercial Motor Vehicle Review Board  
 21 within the department; requiring the department to  
 22 allow a person requesting a hearing to appear remotely  
 23 via communications media technology authorized by a  
 24 specified rule; amending s. 319.32, F.S.; removing a  
 25 requirement for the deduction of certain service  
 26 charges before depositing fees for a certificate of  
 27 title into the State Transportation Trust Fund;  
 28 creating s. 333.15, F.S.; requiring the department to  
 29 adopt rules to implement ch. 333, relating to airport

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

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30 zoning; amending s. 335.199, F.S.; requiring the  
 31 department, when proposing any project on the State  
 32 Highway System which will close or modify an existing  
 33 access to an abutting property owner, to provide  
 34 notice to affected property owners, municipalities,  
 35 and counties at least 180 days before the design phase  
 36 of the project is completed; requiring the department  
 37 to hold at least one public meeting before completing  
 38 the design phase of the project; making a technical  
 39 change; amending s. 339.135, F.S.; revising the date  
 40 by which a metropolitan planning organization must  
 41 annually submit project priorities to the appropriate  
 42 department district for purposes of developing  
 43 department district work programs; removing the  
 44 expiration of provisions relating to approval of  
 45 department work program amendments when a meeting of  
 46 the Legislative Budget Commission cannot be held  
 47 within a specified timeframe; amending s. 339.175,  
 48 F.S.; revising the date by which a metropolitan  
 49 planning organization must annually submit a list of  
 50 project priorities to the appropriate department  
 51 district for purposes of developing department  
 52 district work programs and developing metropolitan  
 53 planning organization transportation improvement  
 54 programs; providing an effective date.

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

58 Section 1. Paragraph (a) of subsection (4) of section

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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.

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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 by the Department of Revenue 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 Florida Rail Enterprise for the purposes established in s. 341.303(5).

Section 2. Subsection (2) of section 206.46, Florida Statutes, is amended to read:

206.46 State Transportation Trust Fund.—

(2) Notwithstanding any other ~~provisions of~~ law, from the revenues deposited into the State Transportation Trust Fund a

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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 may ~~shall~~ not exceed an amount necessary to provide the required debt service coverage levels for a maximum debt service not to exceed \$350 ~~\$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) \$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

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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 less ~~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

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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 whose needs are unmet due to insufficient financial resources from vessel registration fees.

(c) 0.65 percent of moneys collected pursuant to s. 206.41(1)(g) shall be transferred to the Agricultural Emergency Eradication Trust Fund.

(d) \$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) shall be transferred to the Agricultural Emergency Eradication Trust Fund.

(2) The remaining proceeds of the tax levied pursuant to s.

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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 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. Paragraph (f) of subsection (7) of section 316.545, Florida Statutes, is amended to read:

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

(7) There is created within the Department of Transportation the Commercial Motor Vehicle Review Board, consisting of three permanent members who shall be the Secretary of Transportation, the executive director of the Department of

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Highway Safety and Motor Vehicles, and the Commissioner of Agriculture, or their authorized representatives, and four additional members appointed pursuant to paragraph (b), which may review any penalty imposed upon any vehicle or person under the provisions of this chapter relating to weights imposed on the highways by the axles and wheels of motor vehicles, to special fuel and motor fuel tax compliance, or to violations of safety regulations.

(f) The review board may hold sessions and conduct proceedings at any place within the state. As an alternative to physical appearance, ~~and in addition to any other method of appearance authorized by rule,~~ the Department of Transportation shall allow provide space and video conference capability at each district office to enable a person requesting a hearing to appear remotely before the board via communications media technology as authorized by chapter 28-109, Florida Administrative Code, regardless of the physical location of the board proceeding.

Section 7. 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

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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 8. Section 333.15, Florida Statutes, is created to read:

333.15 Rulemaking authority.—The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this chapter.

Section 9. Subsections (1), (3), and (4) of section 335.199, Florida Statutes, are amended to read:

335.199 Transportation projects modifying access to adjacent property.—

(1) Whenever the Department of Transportation proposes any project on the State Highway System which will divide a state highway, erect median barriers modifying currently available vehicle turning movements, or have the effect of closing or modifying an existing access to an abutting property owner, the department shall notify all affected property owners, municipalities, and counties at least 180 days before the design

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291 phase of the project is completed ~~finalized~~. The department's  
 292 notice shall provide a written explanation regarding the need  
 293 for the project and indicate that all affected parties will be  
 294 given an opportunity to provide comments to the department  
 295 regarding potential impacts of the change.

296 (3) The department shall hold at least one public meeting  
 297 before completing the design phase of the project ~~hearing~~ in the  
 298 jurisdiction where the project is located and receive public  
 299 input to determine how the project will affect access to  
 300 businesses and the potential economic impact of the project on  
 301 the local business community.

302 (4) The department must review all comments from the public  
 303 meeting ~~hearing~~ and take the comments and any alternatives  
 304 presented by a local government under subsection (2) into  
 305 consideration in the final design of the highway project.

306 Section 10. Paragraph (c) of subsection (4) and paragraph  
 307 (g) of subsection (7) of section 339.135, Florida Statutes, are  
 308 amended to read:

309 339.135 Work program; legislative budget request;  
 310 definitions; preparation, adoption, execution, and amendment.—

311 (4) FUNDING AND DEVELOPING A TENTATIVE WORK PROGRAM.—

312 (c)1. For purposes of this section, the board of county  
 313 commissioners shall serve as the metropolitan planning  
 314 organization in those counties which are not located in a  
 315 metropolitan planning organization and shall be involved in the  
 316 development of the district work program to the same extent as a  
 317 metropolitan planning organization.

318 2. The district work program shall be developed  
 319 cooperatively from the outset with the various metropolitan

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320 planning organizations of the state and include, to the maximum  
 321 extent feasible, the project priorities of metropolitan planning  
 322 organizations which have been submitted to the district by  
 323 August 1 ~~October 1~~ of each year pursuant to s. 339.175(8)(b);  
 324 however, the department and a metropolitan planning organization  
 325 may, in writing, cooperatively agree to vary this submittal  
 326 date. To assist the metropolitan planning organizations in  
 327 developing their lists of project priorities, the district shall  
 328 disclose to each metropolitan planning organization any  
 329 anticipated changes in the allocation or programming of state  
 330 and federal funds which may affect the inclusion of metropolitan  
 331 planning organization project priorities in the district work  
 332 program.

333 3. Before ~~Prior to~~ submittal of the district work program  
 334 to the central office, the district shall provide the affected  
 335 metropolitan planning organization with written justification  
 336 for any project proposed to be rescheduled or deleted from the  
 337 district work program which project is part of the metropolitan  
 338 planning organization's transportation improvement program and  
 339 is contained in the last 4 years of the previous adopted work  
 340 program. By no later than 14 days after submittal of the  
 341 district work program to the central office, the affected  
 342 metropolitan planning organization may file an objection to such  
 343 rescheduling or deletion. When an objection is filed with the  
 344 secretary, the rescheduling or deletion may not be included in  
 345 the district work program unless the inclusion of such  
 346 rescheduling or deletion is specifically approved by the  
 347 secretary. The Florida Transportation Commission shall include  
 348 such objections in its evaluation of the tentative work program

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only when the secretary has approved the rescheduling or deletion.

(7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—

(g)1. Any work program amendment 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, 2021.~~

Section 11. 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

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priorities and shall submit the list to the appropriate district of the department by August 1 ~~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 12. This act shall take effect July 1, 2021.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: SB 1324

INTRODUCER: Senator Harrell

SUBJECT: Digital Driver Licenses and Identification Cards

DATE: March 10, 2021

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Proctor | Vickers        | TR        | <b>Favorable</b> |
| 2. |         |                | AP        |                  |
| 3. |         |                | RC        |                  |

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**I. Summary:**

SB 1324 requires the Department of Highway Safety and Motor Vehicles (DHSMV) to establish a secure and uniform system for issuing optional digital proofs of driver licenses and identification cards. The DHSMV may contract with one or more private entities to develop an electronic credentialing system. The electronic credentialing system may not retain internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system.

The bill prohibits a private entity who contracts for data verification through an electronic credentialing system with the DHSMV from storing, selling, or sharing personal information collected by scanning a digital proof of driver license or identification card unless consent has been provided by the individual.

Notwithstanding any law prescribing the design for, or information required to be displayed on, a driver license or identification card, a digital proof of driver license or identification may comprise a limited profile that includes only information necessary to conduct a specific transaction on the electronic credentialing system.

A person may not be issued a digital proof of driver license or identification card until they satisfy all requirements for issuance of the respective driver license or identification card and has been issued a printed driver license or identification card. The bill also establishes penalties for a person who manufactures or possesses a false digital identification card.

The bill may have an indeterminate fiscal impact on state government. Please see Section V Fiscal Impact Statement for additional information.

The bill has an effective date of July 1, 2021.



## II. Present Situation:

### Digital Driver License

Eleven states are testing mobile driver's licenses or planning pilot projects, including Florida, Arkansas, Colorado, Oklahoma, Louisiana, Iowa, Delaware, Idaho, Maryland, Wyoming and the District of Columbia. New Jersey and Texas have passed legislation to start the process. A digital driver's license would come in the form of a phone app protected by biometrics or a PIN. Instead of handing over a physical license to a police officer or store clerk, an individual could display the relevant information or send it electronically.<sup>1</sup>

### Florida Digital Proof of Driver License

Current Florida law provides for the establishment of a digital proof of driver license. Specifically, current law requires the DHSMV to begin to review and prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license. The statute authorizes the DHSMV to contract with one or more private entities to develop a digital proof of driver license system.<sup>2</sup>

The digital proof of driver license developed by the DHSMV or by an entity contracted by DHSMV must be in such a format as to allow law enforcement to verify the authenticity of the digital proof of driver license.<sup>3</sup> The DHSMV may adopt rules to ensure valid authentication of digital driver licenses by law enforcement.<sup>4</sup> A person may not be issued a digital proof of driver license until he or she has satisfied all of the statutory requirements relating to the issuance of a physical driver license.<sup>5</sup>

Current law also establishes certain penalties for a person who manufactures or possesses a false digital proof of driver license.<sup>6</sup> Specifically, a person who:

- Manufactures a false digital proof of driver license commits a felony of the third degree, punishable by up to five years in prison<sup>7</sup> and a fine not to exceed \$5,000,<sup>8</sup> or punishable under the habitual felony offender statute.<sup>9</sup>
- Possesses a false digital proof of driver license commits a misdemeanor of the second degree, punishable by up to 60 days in prison<sup>10</sup> and a fine not to exceed \$500.<sup>11</sup>

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<sup>1</sup> Veronica Combs, *Mobile Driver's License Would Replace the Physical Card With a Digital Identity*, Tech Republic, April 15, 2020, <https://www.techrepublic.com/article/mobile-drivers-license-would-replace-the-physical-card-with-a-digital-identity/>.

<sup>2</sup> Section 322.032(1), F.S.

<sup>3</sup> Section 322.032(2), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 322.032(3), F.S.

<sup>6</sup> Section 322.032(4), F.S.

<sup>7</sup> Section 775.082, F.S.

<sup>8</sup> Section 775.083(1)(c), F.S.

<sup>9</sup> Section 775.084, F.S.

<sup>10</sup> *Supra* FN 7.

<sup>11</sup> Section 775.083(1)(e), F.S.

## AAMVA and Mobile Driver Licenses

The American Association of Motor Vehicle Administrators (“AAMVA”) has worked since 2012 to develop identity credential standards, cross-jurisdictional use, authentication, data privacy protection, and other uses of mobile driver licenses. AAMVA has collaborated with Underwriter Laboratories to establish international guidelines and interoperability for industry leaders to test their mobile driver license solutions with one another.<sup>12</sup>

## Motorist Modernization

The DHSMV’s Motorist Modernization Project is a multi-phased program to modernize legacy applications and processes. The Motorist Modernization Project has committed resources and approved funding to procure a mobile driver license solution as part of Phase II of the Motorist Modernization effort. The fiscal year 2020-21 appropriation for Motorist Modernization Phase II was \$9,877,400. Of this amount, \$400,000 was allocated for mobile driver license. The mobile driver license includes a digital identification, which is a digital representation of a person’s identity; however, the actual mobile driver license is a digital representation of a physical credential and driving privileges. The DHSMV has branded this effort as the “Florida Smart ID.” Below is an overview of the Florida Smart ID timeline:

- Received legislative authority to implement in 2014;
- AAMVA standards completed in 2019;
- Vendor awarded contract June 2020;
- Started work July 2020; and
- Pilot program slated to start March 25, 2021, and planned to run for 90 days.<sup>13</sup>

## Florida Smart ID

The Florida Smart ID has multiple interactions occurring between the systems components comprising the Florida Smart ID solution, including a credential service provider (CSP)<sup>14</sup>, the Florida Smart ID device and an associated verifier device.<sup>15</sup>

The CSP is the gateway or broker between the Florida Smart ID and verifier device interactions with the DHSMV. The CSP uses open data standards and public key infrastructure<sup>16</sup> to

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<sup>12</sup> Department of Highway Safety and Motor Vehicles, *2021 Legislative Bill Analysis for SB 1324*, (March 5, 2021), p. 2 (on file with the Senate Committee on Transportation).

<sup>13</sup> *Ibid* at p. 3.

<sup>14</sup> A Credential Service Provider (CSP) is a trusted entity that issues or registers subscriber tokens and issues electronic credentials to subscribers. The CSP may encompass registration authorities and verifiers that it operates. A CSP may be an independent third party, or may issue credentials for its own use. National Information Technology Laboratory, Computer Security Resource Center, [https://csrc.nist.gov/glossary/term/credential\\_service\\_provider](https://csrc.nist.gov/glossary/term/credential_service_provider) (last visited March 4, 2021).

<sup>15</sup> Kevin Jacobs, Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, Mobile DL info, February 23, 2021.

<sup>16</sup> “Public Key Infrastructure (PKI) is the combination of software, encryption technologies, and services that enables entities to protect the security of their communications and business transactions on networks. Using a combination of private (e.g., secret) key and public key cryptography, PKI enables a number of other security services, including data confidentiality, data integrity and non-repudiation. PKI integrates digital certificates, public key cryptography, and certification authorities into one complete network security architecture.” U.S. General Services Administration, Fed ID Card, <https://www.fedidcard.gov/faq/what-pki-public-key-infrastructure-and-why-do-i-need-it#> (last visited March 4, 2021).

accomplish the required communications and security. Interactions from the Florida Smart ID, the verifier device and the CSP are performed over secure web communications.<sup>17</sup>

The Florida Smart ID is used by customers to present proof of identity or age. The application is downloaded from the Apple App or Google Play store and installed on a smart device, such as a smartphone or tablet. Once downloaded, a secure enrollment process occurs using the DHSMV's Virtual Office website. The DHSMV validates the identity and eligibility to activate the Florida Smart ID for use on the device.<sup>18</sup>

Once activated, the Florida Smart ID can be used to interact with retailer or law enforcement verifier devices. This interaction occurs at the consent of the customer and uses Bluetooth, near field communication<sup>19</sup> or Wi-Fi Direct to communicate with the verifier device. The communication method is determined by a "handshake" between the devices where one device displays a QR code<sup>20</sup> to the other device's camera, which signals how the devices can communicate to each other. The customer selects the type of verification needed (Proof of Age or Law Enforcement) and presents a QR to be scanned by the verifier device.<sup>21</sup>

The Florida Smart ID Verifier application may also be integrated into a point of sale system for a seamless interaction with customers to verify a customer's identity or proof of age. When the customer's QR code is scanned, the required information displays on the verifier device. The interaction with the customer device does not store any data, which is protected using encryption within the process.<sup>22</sup>

Verification can be performed in an offline or online mode depending on the verification type. For example, age verification by a retailer is completely offline and does not need to "call back" or interact with the CSP, and would utilize methods, such as Bluetooth, to communicate with the customer's Florida Smart ID. Law enforcement online verification could interact with the CSP to receive the customer's most current driving record.<sup>23</sup>

### III. Effect of Proposed Changes:

The bill amends s. 322.032, F.S., to define the terms:

- "Digital proof of driver license" to mean an electronic credential viewable on an electronic credentialing system;
- "Digital proof of identification card" to mean an electronic credential viewable on an electronic credentialing system;

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<sup>17</sup> *Supra* FN 15.

<sup>18</sup> *Id.*

<sup>19</sup> Near Field Communication (NFC) is a set of short-range wireless technologies, typically requiring a distance of 4cm or less to initiate a connection. Developers, Documentation Guides, <https://developer.android.com/guide/topics/connectivity/nfc> (last visited March 4, 2021).

<sup>20</sup> QR Codes or Quick Response codes are two-dimensional codes that are scanned with a smartphone, connecting individuals to additional online content or information. They are made up of modules arranged on a contrasting background. Digital.gov, QR-Codes, <https://digital.gov/2013/02/14/qr-codes/> (last visited March 4, 2021).

<sup>21</sup> *Supra* FN 15.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

- “Electronic credentialing system” to mean a computer system accessed using a computer, a cellular telephone, or any other personal device which queries the department’s driver license and identification card records, displays or transmits digital proofs of driver licenses and identification cards, and verifies the authenticity of those electronic credentials;
- “Limited profile” to mean an electronic credential containing some, but not all, of the information displayed on a printed driver license or identification card; and
- “Scanning” to mean obtaining data from a digital proof of driver license or identification card in an electronic format.

The bill requires the DHSMV to establish a secure and uniform system for issuing an optional digital proof of driver license or identification card. The DHSMV may contract with one or more private entities to develop an electronic credentialing system. The electronic credentialing system may not retain internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system.

A digital proof of driver license or identification card established by the DHSMV by a contracted entity must be in a format that allows verification of the authenticity of the digital proof of driver license or identification card.

The bill provides the DHSMV may adopt rules to ensure valid authentication of digital driver licenses and identification cards.

Notwithstanding any law prescribing the design for, or information required to be displayed on, a driver license or identification card, a digital proof of driver license or identification may comprise a limited profile that includes only information necessary to conduct a specific transaction on the electronic credentialing system.

A person may not be issued a digital proof of driver license or identification card until they satisfy all requirements for issuance of the respective driver license or identification card and has been issued a printed driver license or identification card. The electronic credentialing system must, upon each presentation of a digital driver license or identification card, display or transmit current records for the driver license or identification card. If a licensee’s driving privilege is suspended, revoked, or disqualified, or if their driver license is otherwise canceled or expired, a digital proof of driver license may not be issued; however, a digital proof of identification card may be issued if the licensee is otherwise eligible for an identification card.

The bill provides the DHSMV may use a telephone number submitted by a licensee or cardholder in connection with a digital driver license or identification card only for purposes of communication regarding the digital proof of driver license or identification card or the motor vehicle records of the licensee or cardholder.

The DHSMV may enter into a contract with a private entity which authorizes online data calls or offline data verification through the electronic credentialing system that queries the DHSMV’s driver license and identification card records, displays or transmits digital proofs of driver licenses or identification cards, or verifies the authenticity of such electronic credentials.

An individual may consent to allow a private entity to collect and store personal information obtained by scanning their digital proof of driver license or identification card. However, the individual must be informed what information is collected and the purpose or purposes for which the information will be used. If the individual does not want the private entity to scan their digital proof of the individual's driver license or identification card, the private entity may manually collect personal information from the individual.

Except as provided above, a private entity that contracts with the DHSMV and that scans a digital proof of driver license or identification card may not store, sell, or share personal information collected from such scanning of the digital proof of driver license or identification card. A private entity that violates this subsection is subject to a civil penalty not to exceed \$5,000 per occurrence. However, this does not apply to a financial institution as defined in s. 655.005(1)(i), F.S.<sup>24</sup>

The bill establishes certain penalties for a person who manufactures or possesses a false digital identification card. Specifically, a person who:

- Manufactures a false digital identification card commits a felony of the third degree, punishable by up to five years in prison<sup>25</sup> and a fine not to exceed \$5,000,<sup>26</sup> or punishable under the habitual felony offender statute.<sup>27</sup>
- Possesses a false digital identification card commits a misdemeanor of the second degree, punishable by up to 60 days in prison<sup>28</sup> and a fine not to exceed \$500.<sup>29</sup>

The bill amends s. 322.14, F.S., to clarify that upon successful completion of all required examinations and payment of the required fee the DHSMV will issue to every qualified applicant a printed driver license.

The bill amends s. 322.15, F.S., to provide that if a law enforcement officer or authorized representative of the DHSMV is unable to immediately verify the digital proof of driver license, upon the demand of a law enforcement officer or authorized representative of the DHSMV, the licensee must present or submit their printed driver license.

The bill provides the DHSMV may adopt rules to ensure valid authentication of digital driver licenses and identification cards.

The bill provides an effective date of July 1, 2021.

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<sup>24</sup> Section 655.005(1)(i), F.S., defines "Financial institution" to mean a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

<sup>25</sup> *Supra* FN 7.

<sup>26</sup> *Supra* FN 8.

<sup>27</sup> *Supra* FN 9.

<sup>28</sup> *Supra* FN 7.

<sup>29</sup> *Supra* FN 11.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill may have an indeterminate fiscal impact on the private sector. Businesses who wish to provide electronic verification of Florida Smart ID will need the retail reader application installed on a mobile device that supports either the android or IOS operating systems. Additionally, if the business prefers to integrate the verification process into their point of sale systems rather than use a mobile device it would require development to be done by the business to integrate a retail reader application into their point of sale systems.<sup>30</sup>

**C. Government Sector Impact:**

State and local law enforcement agencies will need to train their members and update associated enforcement policies for the Florida Smart ID. This may have an indeterminate, likely insignificant fiscal impact on state and local government.<sup>31</sup>

The DHSMV has already undertaken development of the Florida Smart ID through existing law and therefor already has the resources to continue with the expanded

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<sup>30</sup> *Supra* FN 12, p. 8.

<sup>31</sup> *Ibid* at p. 6.

requirements of the bill. Due to this, the fiscal impact on the DHSMV is minimal and can be handled within existing resources.<sup>32</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 322.032, 322.14, and 322.15.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>32</sup> *Ibid*

By Senator Harrell

25-01611A-21

20211324\_\_

1 A bill to be entitled  
 2 An act relating to digital driver licenses and  
 3 identification cards; amending s. 322.032, F.S.;  
 4 defining terms; requiring the Department of Highway  
 5 Safety and Motor Vehicles to establish a secure and  
 6 uniform system for issuing optional digital proofs of  
 7 driver licenses and identification cards; authorizing  
 8 the department to contract with one or more private  
 9 entities to develop an electronic credentialing  
 10 system; prohibiting such electronic credentialing  
 11 system from retaining certain information; revising  
 12 requirements for digital proofs of driver licenses and  
 13 providing requirements for digital proofs of  
 14 identification cards; revising the department's  
 15 rulemaking authority; revising requirements for the  
 16 issuance of digital proofs of driver licenses and  
 17 identification cards; authorizing the department to  
 18 use telephone numbers submitted by licensees and  
 19 cardholders for specified purposes only; authorizing  
 20 the department to enter into contracts with private  
 21 entities for a specified purpose; prohibiting such  
 22 private entities from storing, selling, or sharing  
 23 personal information collected from scanning the  
 24 digital proofs of driver licenses and identification  
 25 cards; providing an exception by authorizing  
 26 individuals to consent to allow private entities to  
 27 collect and store such personal information; requiring  
 28 that an individual is informed what information is  
 29 collected in such scans and the purposes for which the

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

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30 information will be used; authorizing private entities  
 31 to manually collect personal information from  
 32 individuals under certain circumstances; providing a  
 33 civil penalty; providing applicability; conforming  
 34 provisions to changes made by the act; amending s.  
 35 322.14, F.S.; conforming a provision to changes made  
 36 by the act; amending s. 322.15, F.S.; conforming a  
 37 provision to changes made by the act; requiring a  
 38 licensee to present or submit his or her printed  
 39 driver license to a law enforcement officer or an  
 40 authorized representative of the department under  
 41 specified circumstances; reenacting s. 322.121(2),  
 42 F.S., relating to periodic reexamination of all  
 43 drivers, to incorporate the amendment made to s.  
 44 322.15, F.S., in a reference thereto; providing an  
 45 effective date.

46  
 47 Be It Enacted by the Legislature of the State of Florida:

48  
 49 Section 1. Section 322.032, Florida Statutes, is amended to  
 50 read:

51 322.032 Digital proof of driver license or identification  
 52 card.—

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

54 (a) "Digital proof of driver license" means an electronic  
 55 credential viewable on an electronic credentialing system.

56 (b) "Digital proof of identification card" means an  
 57 electronic credential viewable on an electronic credentialing  
 58 system.

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



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(c) "Electronic credentialing system" means a computer system accessed using a computer, a cellular telephone, or any other personal device which queries the department's driver license and identification card records, displays or transmits digital proofs of driver licenses and identification cards, and verifies the authenticity of those electronic credentials.

(d) "Limited profile" means an electronic credential containing some, but not all, of the information displayed on a printed driver license or identification card.

(e) "Scanning" means obtaining data from a digital proof of driver license or identification card in an electronic format.

(2) (a) The department shall establish ~~begin to review and prepare for the development of~~ a secure and uniform system for issuing an optional digital proof of driver license or identification card. The department may contract with one or more private entities to develop an electronic credentialing a digital proof of driver license system.

(b) The electronic credentialing system may not retain Internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system.

(3) (a) ~~(2)~~ The digital proof of driver license or identification card established ~~developed~~ by the department or by an entity contracted by the department must be in such a format as to allow verification of law enforcement to verify the authenticity of the digital proof of driver license or identification card. The department may adopt rules to ensure valid authentication of digital driver licenses and

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~~identification cards by law enforcement.~~

(b) 1. Notwithstanding ss. 322.14, 322.141, 322.142, and any other law prescribing the design for, or information required to be displayed on, a driver license, a digital proof of driver license may comprise a limited profile that includes only information necessary to conduct a specific transaction on the electronic credentialing system.

2. Notwithstanding ss. 322.051, 322.141, and any other law prescribing the design for, or information required to be displayed on, an identification card, a digital proof of identification card may comprise a limited profile that includes only information necessary to conduct a specific transaction on the electronic credentialing system.

(4) ~~(3)~~ A person may not be issued a digital proof of driver license or identification card until he or she satisfies all ~~has satisfied all of the~~ requirements of this chapter for issuance of the respective a physical driver license or identification card and has been issued a printed driver license or identification card. The electronic credentialing system must, upon each presentation of a digital driver license or identification card, display or transmit current records for the driver license or identification card. If a licensee's driving privilege is suspended, revoked, or disqualified, or if his or her driver license is otherwise canceled or expired, a digital proof of driver license may not be issued; however, a digital proof of identification card may be issued if the licensee is otherwise eligible for an identification card under s. 322.051 as provided in this chapter.

(5) The department may use a telephone number submitted by

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117 a licensee or cardholder in connection with a digital driver  
 118 license or identification card only for purposes of  
 119 communication regarding the digital proof of driver license or  
 120 identification card or the motor vehicle records, as defined in  
 121 s. 119.0712(2)(a), of the licensee or cardholder.

122 (6) The department may enter into a contract with a private  
 123 entity which authorizes online data calls or offline data  
 124 verification through the electronic credentialing system that  
 125 queries the department's driver license and identification card  
 126 records, displays or transmits digital proofs of driver licenses  
 127 or identification cards, or verifies the authenticity of such  
 128 electronic credentials.

129 (7)(a) Except as provided in paragraph (b), a private  
 130 entity that contracts with the department and that scans a  
 131 digital proof of driver license or identification card may not  
 132 store, sell, or share personal information collected from such  
 133 scanning of the digital proof of driver license or  
 134 identification card.

135 (b) An individual may consent to allow a private entity to  
 136 collect and store personal information obtained by scanning his  
 137 or her digital proof of driver license or identification card.  
 138 However, the individual must be informed what information is  
 139 collected and the purpose or purposes for which the information  
 140 will be used. If the individual does not want the private entity  
 141 to scan his or her digital proof of the individual's driver  
 142 license or identification card, the private entity may manually  
 143 collect personal information from the individual.

144 (c) A private entity that violates this subsection is  
 145 subject to a civil penalty not to exceed \$5,000 per occurrence.

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146 (d) This subsection does not apply to a financial  
 147 institution as defined in s. 655.005(1)(i).

148 (8)(4) A person who:

149 (a) Manufactures a false digital proof of driver license or  
 150 identification card commits a felony of the third degree,  
 151 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

152 (b) Possesses a false digital proof of driver license or  
 153 identification card commits a misdemeanor of the second degree,  
 154 punishable as provided in s. 775.082.

155 Section 2. Paragraph (a) of subsection (1) of section  
 156 322.14, Florida Statutes, is amended to read:

157 322.14 Licenses issued to drivers.—

158 (1)(a) The department shall, upon successful completion of  
 159 all required examinations and payment of the required fee, issue  
 160 to every qualified applicant a printed driver license that must  
 161 bear a color photograph or digital image of the licensee; the  
 162 name of the state; a distinguishing number assigned to the  
 163 licensee; and the licensee's full name, date of birth, and  
 164 residence address; a brief description of the licensee,  
 165 including, but not limited to, the licensee's gender and height;  
 166 and the dates of issuance and expiration of the license. A space  
 167 shall be provided upon which the licensee shall affix his or her  
 168 usual signature. A license is invalid until it has been signed  
 169 by the licensee except that the signature of the licensee is not  
 170 required if it appears thereon in facsimile or if the licensee  
 171 is not present within the state at the time of issuance.

172 Section 3. Subsection (1) of section 322.15, Florida  
 173 Statutes, is amended to read:

174 322.15 License to be carried and exhibited on demand;

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175 fingerprint to be imprinted upon a citation.—

176 (1) Every licensee shall have his or her driver license,  
 177 which must be fully legible with no portion of such license  
 178 faded, altered, mutilated, or defaced, in his or her immediate  
 179 possession at all times when operating a motor vehicle and shall  
 180 present or submit the same upon the demand of a law enforcement  
 181 officer or an authorized representative of the department. A  
 182 licensee may present or submit a digital proof of driver license  
 183 as provided in s. 322.032 in lieu of his or her printed a  
 184 physical driver license; however, if the law enforcement officer  
 185 or authorized representative of the department is unable to  
 186 immediately verify the digital proof of driver license, upon the  
 187 demand of the law enforcement officer or authorized  
 188 representative of the department, the licensee must present or  
 189 submit his or her printed driver license.

190 Section 4. For the purpose of incorporating the amendment  
 191 made by this act to section 322.15, Florida Statutes, in a  
 192 reference thereto, subsection (2) of section 322.121, Florida  
 193 Statutes, is reenacted to read:

194 322.121 Periodic reexamination of all drivers.—

195 (2) For each licensee whose driving record does not show  
 196 any revocations, disqualifications, or suspensions for the  
 197 preceding 7 years or any convictions for the preceding 3 years  
 198 except for convictions of the following nonmoving violations:

199 (a) Failure to exhibit a vehicle registration certificate,  
 200 rental agreement, or cab card pursuant to s. 320.0605;

201 (b) Failure to renew a motor vehicle or mobile home  
 202 registration that has been expired for 6 months or less pursuant  
 203 to s. 320.07(3)(a);

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204 (c) Operating a motor vehicle with an expired license that  
 205 has been expired for 6 months or less pursuant to s. 322.065;

206 (d) Failure to carry or exhibit a license pursuant to s.  
 207 322.15(1); or

208 (e) Failure to notify the department of a change of address  
 209 or name within 10 days pursuant to s. 322.19,

210  
 211 the department shall cause such licensee's license to be  
 212 prominently marked with the notation "Safe Driver."

213 Section 5. This act shall take effect July 1, 2021.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: CS/SB 1326

INTRODUCER: Committee on Transportation and Senator Harrell

SUBJECT: Public Records/Department of Highway Safety and Motor Vehicles

DATE: March 10, 2021

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Proctor | Vickers        | TR        | <b>Fav/CS</b> |
| 2. |         |                | ATD       |               |
| 3. |         |                | AP        |               |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1326 is a bill relating the Department of Highway Safety and Motor Vehicles (DHSMV), which contains public record exemptions for:

- Secure login credentials held by the DHSMV; and
- Internet protocol addresses, geolocation data, and other information held by the DHSMV which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2026, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

The bill takes effect on the same date that SB 1324 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

## II. Present Situation:

### Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

### Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>5</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>5</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>10</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>12</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>13</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>16</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>19</sup>

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>20</sup>

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<sup>8</sup> Section 119.07(1)(a), F.S.

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

<sup>11</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>12</sup> *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>13</sup> *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>14</sup> *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>15</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>18</sup> Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;<sup>21</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

The Act also requires specified questions to be considered during the review process.<sup>24</sup> In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>25</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>26</sup>

### **Driver Privacy Protection Act of 1994**

Motorist personal information, when held by the DHSMV in motor vehicle records, is confidential pursuant to the Driver's Privacy Protection Act (DPPA) of 1994.<sup>27</sup> These restrictions on the disclosure of motorist personal information do not apply to vessel titles or vessel registrations. Because the personal information in vessel records comprises much of the same information contained in motor vehicle records, when personal information revealed in vessel records is made available to the public, the protections afforded by the DPPA are undermined, eroding the privacy of motorist personal information.

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<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?  
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>25</sup> See generally s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

<sup>27</sup> 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), F.S.

Personal information covered by the DPPA includes: access to your social security number, driver license or identification card number, name, address, telephone number and medical or disability information, contained in your motor vehicle and driver license records. Additionally, emergency contact information and email addresses are restricted pursuant to s. 119.0712(2), F.S.<sup>28</sup>

Information that is not covered by the DPPA is non-personal information contained in motor vehicle and driver license records such as vehicular crash records, driving violations and driver status information, and are considered public information.<sup>29</sup>

Personal information in motor vehicle and driver license records can be released for the following purposes:<sup>30, 31</sup>

- For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions;
- For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers;
- For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only -
  - to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
  - if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;
- For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court;
- For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals;
- For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting;
- For use in providing notice to the owners of towed or impounded vehicles;
- For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection;

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<sup>28</sup> Florida Department of Highway Safety and Motor Vehicles, *Privacy Statement Driver Privacy Protection Act*, available at <https://www.flhsmv.gov/privacy-statement/driver-privacy-protection-act/> (last visited on March 2, 2021).

<sup>29</sup> *Id.*

<sup>30</sup> *Supra*, note 27.

<sup>31</sup> Florida Department of Highway Safety and Motor Vehicles forms HSMV 90511 (Revised 11/19) available at <https://www.flhsmv.gov/pdf/forms/90511.pdf> (last visited March 2, 2021) and HSMV 90510 (Revised 03/19) available at <https://www.flhsmv.gov/pdf/forms/90510.pdf> (last visited March 2, 2021).



- For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license;
- For use in connection with the operation of private toll transportation facilities;
- For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains;
- For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains;
- For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains; and
- For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

### III. Effect of Proposed Changes:

The bill amends s. 119.0712, F.S., creating public record exemptions for:

- Secure login credentials held by the DHSMV before, on, or after the effective date of the exemption; and
- Internet protocol addresses, geolocation data, and other information held by the DHSMV which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal.

The bill defines the following terms:

- “Secure login credentials” to mean information collected or issued by the DHSMV for purposes of authenticating a user logging into a user account on a computer, a computer system, a computer network, or an electronic device; or an online user account accessible over the Internet, whether through a mobile device, a website, or any other electronic means. The term includes, but is not limited to, user identifications and passwords; personal identification numbers; security questions and answers; and e-mail addresses, telephone numbers, and human biometric information used for authentication or password recovery; and
- “Public-facing portal” means a web portal or computer application accessible by the public over the Internet, whether through a mobile device, website, or other electronic means, which is established for administering chs. 319, 320, 322, 328, or any other provision of law conferring duties upon the DHSMV.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2026, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

The bill contains a statement of public necessity, which includes:

- The Legislature finds that it is a public necessity that secure login credentials, Internet protocol addresses, and geolocation data held by the DHSMV for purposes of authenticating

a user logging into a user account be exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution;

- The Legislature finds that safeguarding the integrity and accuracy of data systems maintained by the DHSMV is of paramount public importance;
- Those systems comprise critical information related to driver licenses, state identification cards, motor vehicles and vessels, and Florida Highway Patrol law enforcement records;
- Those systems also comprise personal information restricted from public disclosure by the federal Driver's Privacy Protection Act of 1994;
- Accordingly, unauthorized access to those systems poses a serious threat to the integrity and accuracy of the data contained therein;
- Moreover, the unauthorized disclosure of personal information contained in those systems may subject users to identity theft, financial harm, or other adverse impacts;
- The Legislature further finds that development in information technology allows the DHSMV to make secure transactions more readily available to the public through expanded use of online user accounts accessible over the Internet, including applications such as digital driver licenses;
- The public release of secure login credentials, Internet protocol addresses, and geolocation data would render these data systems vulnerable to unauthorized access; and
- The Legislature finds that, to safeguard user accounts from unauthorized access and avert the unauthorized disclosure of personal information, it is a public necessity that secure login credentials, Internet protocol addresses, and geolocation data be exempt from public records requirements and, without the public records exemption, the effective and efficient administration of user accounts would be hindered.

The bill has an effective on the same date that SB 1324 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

###### **Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for secure login credentials held by the DHSMV and internet protocol addresses, geolocation data, and other information held by the DHSMV which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal. Thus, the bill requires a two-thirds vote to be enacted.

**Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

**Breadth of Exemption**

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law.

The purpose of the law is to protect secure login credentials held by the DHSMV and internet protocol addresses, geolocation data, and other information held by the DHSMV which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal. This bill exempts only secure login credentials held by the DHSMV and internet protocol addresses, geolocation data, and other information held by the DHSMV which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 119.0712

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Committee on Transportation on March 10, 2021:**

- Amends the effective date to reflect the linked bill SB 1324.

**B. Amendments:**

None.



252740

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 03/11/2021 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Transportation (Harrell) recommended the following:

**Senate Amendment**

Delete line 92  
and insert:  
SB 1324 or similar legislation takes effect, if such legislation

By Senator Harrell

25-01612A-21

20211326\_\_

A bill to be entitled

An act relating to public records; amending s. 119.0712, F.S.; providing exemptions from public records requirements for secure login credentials, Internet protocol addresses, and geolocation data held by the Department of Highway Safety and Motor Vehicles; providing retroactive application; defining the terms "secure login credentials" and "public-facing portal"; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (e) is added to subsection (2) of section 119.0712, Florida Statutes, to read:

119.0712 Executive branch agency-specific exemptions from inspection or copying of public records.—

(2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—

(e)1. Secure login credentials held by the Department of Highway Safety and Motor Vehicles are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to secure login credentials held by the department before, on, or after the effective date of the exemption. For purposes of this subparagraph, the term "secure login credentials" means information collected or issued by the department for purposes of authenticating a user logging into a user account on a computer, a computer system, a computer

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

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network, or an electronic device; or an online user account accessible over the Internet, whether through a mobile device, a website, or any other electronic means. The term includes, but is not limited to, user identifications and passwords; personal identification numbers; security questions and answers; and e-mail addresses, telephone numbers, and human biometric information used for authentication or password recovery.

2. Internet protocol addresses, geolocation data, and other information held by the Department of Highway Safety and Motor Vehicles which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held by the department before, on, or after the effective date of the exemption. For purposes of this subparagraph, the term "public-facing portal" means a web portal or computer application accessible by the public over the Internet, whether through a mobile device, website, or other electronic means, which is established for administering chapter 319, chapter 320, chapter 322, chapter 328, or any other provision of law conferring duties upon the department.

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that secure login credentials, Internet protocol addresses, and geolocation data held by the Department of

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

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59 Highway Safety and Motor Vehicles for purposes of authenticating  
 60 a user logging into a user account be exempt from s. 119.07(1),  
 61 Florida Statutes, and s. 24(a), Article I of the State  
 62 Constitution. The Legislature finds that safeguarding the  
 63 integrity and accuracy of data systems maintained by the  
 64 Department of Highway Safety and Motor Vehicles is of paramount  
 65 public importance. Those systems comprise critical information  
 66 related to driver licenses, state identification cards, motor  
 67 vehicles and vessels, and Florida Highway Patrol law enforcement  
 68 records. Those systems also comprise personal information  
 69 restricted from public disclosure by the federal Driver's  
 70 Privacy Protection Act of 1994. Accordingly, unauthorized access  
 71 to those systems poses a serious threat to the integrity and  
 72 accuracy of the data contained therein. Moreover, the  
 73 unauthorized disclosure of personal information contained in  
 74 those systems may subject users to identity theft, financial  
 75 harm, or other adverse impacts. The Legislature further finds  
 76 that development in information technology allows the Department  
 77 of Highway Safety and Motor Vehicles to make secure transactions  
 78 more readily available to the public through expanded use of  
 79 online user accounts accessible over the Internet, including  
 80 applications such as digital driver licenses. The public release  
 81 of secure login credentials, Internet protocol addresses, and  
 82 geolocation data would render these data systems vulnerable to  
 83 unauthorized access. The Legislature finds that, to safeguard  
 84 user accounts from unauthorized access and avert the  
 85 unauthorized disclosure of personal information, it is a public  
 86 necessity that secure login credentials, Internet protocol  
 87 addresses, and geolocation data be exempt from public records

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88 requirements and, without the public records exemption, the  
 89 effective and efficient administration of user accounts would be  
 90 hindered.  
 91 Section 3. This act shall take effect on the same date that  
 92 SB \_\_\_\_ or similar legislation takes effect, if such legislation  
 93 is adopted in the same legislative session or an extension  
 94 thereof and becomes a law.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: CS/SB 1500

INTRODUCER: Committee on Transportation and Senator Harrell

SUBJECT: Transportation

DATE: March 11, 2021

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Proctor | Vickers        | TR        | <b>Fav/CS</b> |
| 2. |         |                | ATD       |               |
| 3. |         |                | AP        |               |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1500 is an omnibus transportation bill that includes the following provisions:

- Adds road and bridge maintenance or construction vehicles to the list of vehicles subject to the Move Over Law;
- Removes a reporting date requirement in law to allow more complete collection from law enforcement agencies of all texting and driving data for an annual report;
- Updates statute to reflect that the Department of Highway Safety and Motor Vehicles (DHSMV) has statutory authority to adopt rules for the safe operation of nonpublic sector buses and conduct compliance reviews;
- Authorizes law enforcement officers of the DHSMV or a duly appointed agent of the DHSMV to inspect nonpublic sector buses and remove them from service if continued operation would present an unduly hazardous operating condition;
- Provides the DHSMV with the power of subpoena and the ability to administer oaths or affirmations, examine witnesses, require affidavits, take depositions, and compel the attendance of witnesses and the production of documents and other evidence for use in conducting investigations or examinations;
- Requires specified licensed dealers to provide proof of a renewal, continuation, or change of insurance liability coverage or surety bonds within ten calendar days of any issuance to the DHSMV;
- Clarifies that the Central Florida Expressway Authority may not, without the prior consultation of the secretary of the Florida Department of Transportation (FDOT), construct any extensions, additions, or improvements to the expressway system in Lake County;



- Dissolves the inactive Northwest Florida Transportation Corridor Authority and provides for distribution of the authority's assets;
- Replaces an affidavit with an attestation on a form provided by the DHSMV as a requirement for an insurance company to receive a salvage certificate of title or certificate of destruction from the DHSMV;
- Revises provisions relating to the operation of radios or other soundmaking devices in vehicles following a Florida Supreme Court decision finding portions of the relevant statute unconstitutional;
- Provides that payments to the Department of Transportation Financing Corporation from the FDOT under a service contract for debt service must be made prior to other obligations, aside from debt service for other bond programs, and adds a borrowing limit to the Department of Transportation Financing Corporation of \$100 million in annual debt service;
- Amends statute to test economic feasibility of a project's estimated net revenues based on the average annual debt service of the proposed bonds; and
- Exempts airports from the requirement that the same entity may not performing both design and construction engineering and inspection services.

The bill has an effective date of July 1, 2021.

## **II. Present Situation:**

### **Move Over Law**

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 the 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 his or her 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.<sup>1</sup> The purpose of the Move Over Law is to protect workers stopped along the road performing their jobs.<sup>2</sup>

A violation of the Move Over Law is a noncriminal traffic infraction, punishable as a moving violation.<sup>3</sup> 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.<sup>4</sup>

According to the FDOT, for the safety of both workers and the public, temporary traffic control<sup>5</sup> is required for maintenance and construction activities. However, due to the risks associated with

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<sup>1</sup> Section 316.126(1)(b), F.S.

<sup>2</sup> Florida Driver Handbook, 2019, p. 44, available at <https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf> (last visited February 17, 2021).

<sup>3</sup> Section 316.126(6), F.S.

<sup>4</sup> 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](https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2019) (last visited February 17, 2021).

<sup>5</sup> Temporary traffic control is considered the devices and personnel that change road conditions for a work zone or following an incident. Email from John Kotyk, Deputy Director Legislative Affairs, FDOT, Questions, January 31, 2020 (Copy on file with Transportation & Infrastructure Subcommittee).

setting up traffic controls for short duration work activities, such as fence repair, ditch repair, or tree trimming, such controls may be omitted. This places road and bridge maintenance or construction vehicles in situations similar to vehicles identified in the Move Over Law,<sup>6</sup> where they are working along the road without any protection from adjacent traffic.

Section 316.2397, F.S., prohibits certain lights on vehicles and provides certain exceptions. With regard to road and bridge construction or maintenance vehicles, the statute provides that:

- Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles may show or display amber lights when in operation or a hazard exists.
- Road maintenance and construction equipment and vehicles may display flashing white lights or flashing white strobe lights when in operation and where a hazard exists.<sup>7</sup>

### **Texting and Driving Report Date**

When a law enforcement officer issues a citation for operating a motor vehicle while using a wireless communications device, the law enforcement officer must record the race and ethnicity of the violator. All law enforcement agencies must maintain such information and report the information to the DHSMV in a form and manner determined by the DHSMV. Beginning February 1, 2020, the DHSMV is required to annually report the data collected to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The data collected must be reported at least by statewide totals for local law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies. The statewide total for local law enforcement agencies must combine the data for the county sheriffs and the municipal law enforcement agencies.<sup>8</sup>

### **Nonpublic Sector Buses**

Senate Bill 2000 (2011) moved responsibility for Motor Carrier Compliance (to include nonpublic sector buses) from the FDOT to the DHSMV.<sup>9</sup> However, some statutes were not amended at the time to reflect the corresponding changes. The FDOT no longer revises standards for the safe operation of nonpublic sector buses.

The statutes currently direct the FDOT to establish and revise standards contained in federal law<sup>10</sup> to ensure the safe operation of nonpublic sector buses. The standards must be directed toward ensuring that:

- Nonpublic sector buses are safely maintained, equipped, and operated.
- Nonpublic sector buses are carrying the insurance required by law and carrying liability insurance on the checked baggage of passengers not to exceed the standard adopted by the United States Department of Transportation.
- Florida license tags are purchased for nonpublic sector buses pursuant to state law.

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<sup>6</sup> FDOT Legislative Proposal, Move Over Law (Copy on file with the Committee on Transportation).

<sup>7</sup> Section 316.2397(4) and (5), F.S.

<sup>8</sup> Section 316.305(5), F.S.

<sup>9</sup> Chapter 2011-69, L.O.F.

<sup>10</sup> 49 C.F.R. parts 382, 385, and 390-397.

- Employers check the driving records of their drivers of nonpublic sector buses at least once each year to ascertain whether the driver has a suspended or revoked driver license.

The statutes currently provide that FDOT personnel may conduct compliance reviews for determining compliance with these requirements. A civil penalty not to exceed \$5,000 in the aggregate may be assessed against any person who violates any provision of this section or who violates any rule or order of the FDOT. A civil penalty not to exceed \$25,000 in the aggregate may be assessed for violations found in a follow-up compliance review conducted within a 24-month period. A civil penalty not to exceed \$25,000 in the aggregate may be assessed and the motor carrier may be enjoined pursuant to s. 316.3026, F.S., if violations are found after a second follow-up compliance review within 12 months after the first follow-up compliance review.

### **Subpoena Authority**

A subpoena is a written order to compel an individual to give testimony on a particular subject, often before a court, but sometimes in other proceedings.<sup>11</sup> A subpoena duces tecum is a type of subpoena that requires the witness to produce a document or documents pertinent to a proceeding.<sup>12</sup> Section 27.04, F.S., “allows the state attorney to issue subpoenas duces tecum for records as part of an ongoing investigation.”<sup>13</sup> The state does not need to establish the relevance and materiality of the information sought through an investigative subpoena,<sup>14</sup> but the subject matter of the investigation must be confined to violations of criminal law.<sup>15</sup>

Section 92.605(2), F.S., describes subpoenas, court orders, and warrants issued in compliance with the Electronic Communications and Privacy Act.<sup>16</sup> The federal act and its Florida counterpart, s. 934.23, F.S., authorize a law enforcement officer, state attorney, or judge to subpoena the records of an out-of-state corporation that provides electronic communication services or remote computing services to the public. A corporation must comply within 20 days after receipt of the subpoena. However, if the recipient cannot comply within that time period, it must notify the law enforcement officer who sought the subpoena within the 20-day time period that the records cannot be provided and comply as soon as possible.<sup>17</sup> An “out-of-state corporation,” i.e., any corporation qualified to do business in Florida under s. 607.1501, F.S.,<sup>18</sup> is “properly served,” by subpoena or otherwise, when service is effected on that corporation’s registered agent.<sup>19</sup>

<sup>11</sup> *Subpoena*, Legal Information Institute (available at <https://www.law.cornell.edu/wex/subpoena>).

<sup>12</sup> *Subpoena duces tecum*, Legal Information Institute, (available at [https://www.law.cornell.edu/wex/subpoena\\_duces\\_tecum](https://www.law.cornell.edu/wex/subpoena_duces_tecum)).

<sup>13</sup> *State v. Investigation*, 802 So. 2d 1141, 1144 (Fla. 2d DCA 2001).

<sup>14</sup> *Id.*

<sup>15</sup> *Morgan v. State*, 309 So. 2d 552, 553 (Fla. 1975).

<sup>16</sup> 18 U.S.C. § 2701 et seq.

<sup>17</sup> Section 92.605(2)(b), F.S. If the entity seeking the subpoena shows and the court finds that failure to produce the requested records would produce an “adverse result,” i.e., physical harm, flight from prosecution, destruction of evidence, intimidation of witnesses, or jeopardy to the investigation, the court may order the records be produced earlier than 20 days. Section 92.605(c), (1)(a), F.S. The court may also extend the time to comply with a subpoena if doing so will not cause an adverse result.

<sup>18</sup> Section 92.605(1)(e), F.S.

<sup>19</sup> Section 92.605(1)(h), F.S. Per s. 607.0505, F.S., a foreign corporation doing business in Florida must have a registered agent, and per s. 607.1507, F.S., such agent must be located in or authorized to transact business in Florida.

### Subpoenas in General

A subpoena is an order directed to a person requiring attendance at a particular time and place. A subpoena ad testificandum requires attendance to testify as a witness, while a subpoena duces tecum orders a witness to appear and bring certain documents, records, or other tangible evidence that may be introduced as evidence in a case.<sup>20</sup> Subpoenas may be issued in a criminal investigation,<sup>21</sup> a criminal prosecution during discovery,<sup>22</sup> or for trial<sup>23</sup> by a defendant, his or her counsel,<sup>24</sup> or the state attorney. Generally, a subpoena must state the name of the court, title of action, and time and place the witness is ordered to give testimony or produce other evidence.<sup>25</sup> When a witness is subpoenaed by either party in a criminal case, he or she must remain available for attendance until the case is resolved or until he or she is excused by the court.<sup>26</sup> If a witness departs without permission of the court or intentionally fails to produce requested tangible evidence, he or she may be held in contempt of court.<sup>27</sup>

### Contempt of Court

Contempt is a refusal to obey a court's legal order, mandate or decree.<sup>28</sup> There are two main types of contempt: civil and criminal. Civil contempt occurs when a person intentionally fails to do something ordered by the court in a civil case. Civil contempt is intended to compel a party's compliance or compensate a party for losses resulting from the contemptuous conduct.<sup>29</sup> Criminal contempt results from conduct that tends to intentionally obstruct or interfere with the administration of justice, and its purpose is to punish offensive conduct, vindicate the court's authority, and deter such conduct.<sup>30</sup> Both main types of contempt may also be:

- Direct: when committed in the immediate presence of the court, such as an assault of a testifying witness; or
- Indirect: when committed away from the presence of the court, such as disobeying a court order.

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<sup>20</sup> *Black's Law Dictionary* (11th ed. 2019).

<sup>21</sup> Florida law authorizes certain entities to use subpoenas to conduct criminal investigations, including, but not limited to, s. 409.920, F.S. (authorizing the Attorney General to subpoena witnesses or materials, including medical records, during an investigation for Medicaid fraud); s. 415.107, F.S. (authorizing a criminal justice agency investigating a report related to abuse, neglect, or exploitation of a vulnerable adult to subpoena related records); and s. 414.411, F.S. (authorizing the Department of Financial Services to subpoena witnesses and records related to a public assistance fraud investigation).

<sup>22</sup> Fla. R. Civ. P. 3.220(h) allows any party to conduct a deposition by oral examination of any person authorized by the rule, generally including listed witnesses, co-defendants, or unlisted witnesses who have information relevant to the offense charged.

<sup>23</sup> A subpoena for testimony before the court and subpoenas for production of tangible evidence before the court may generally be issued by the clerk of the court or by any attorney of record in the case. Fla. R. Civ. P. 3.361(a).

<sup>24</sup> The United States Constitution guarantees a defendant in a criminal case the right to compulsory processes for obtaining witnesses in his or her favor; U.S. Const. amend. 6.

<sup>25</sup> *Id.*

<sup>26</sup> S. 914.03, F.S.

<sup>27</sup> *Id.*

<sup>28</sup> S. 38.23, F.S.; *See also Black's Law Dictionary*, (11th ed. 2019).

<sup>29</sup> *Elliott v. Bradshaw*, 59 So. 3d 1182 (Fla. 4th DCA 2011); *Bowen v. Bowen*, 471 So. 2d 1274 (Fla. 1985).

<sup>30</sup> *Elliot*, 59 So. 3d at 1184; *Berlow v. Berlow*, 21 So. 3d 81 (Fla. 3d DCA 2009); *In re Steffens*, 988 So. 2d 142 (Fla. 5th DCA 2008).

A person commits indirect criminal contempt when he or she intentionally obstructs or interferes with the administration of justice by violating a court order, such as an investigative subpoena.<sup>31</sup> While authorized by statute,<sup>32</sup> criminal contempt is not specifically classified as a felony or misdemeanor, and is instead classified as a common law crime,<sup>33</sup> punishable by up to twelve months in county jail and a fine up to \$500.<sup>34</sup> <sup>35</sup> Due process of law requires that a party accused of indirect contempt be advised of the charge and provided an opportunity to defend himself or herself.<sup>36</sup>

#### Investigative Subpoenas in Criminal Cases

Within the criminal justice system, law enforcement is typically responsible for investigating a crime and an assistant state attorney (ASA) prosecutes the offender. However, the State is often called upon to conduct or assist in an investigation which may lead to the filing of criminal charges. Under these circumstances, an ASA is authorized to issue an investigative subpoena.<sup>37</sup> Specifically, s. 27.04, F.S., allows an ASA to issue a subpoena for records<sup>38</sup> as part of any ongoing investigation.<sup>39</sup> An investigative subpoena allows the State to obtain information necessary to determine whether criminal activity is occurring or has occurred. When issuing an investigative subpoena, the State is not required to prove relevancy or materiality of the records sought,<sup>40</sup> but may only gather information that may lead to criminal charges.<sup>41</sup>

#### Records Subpoenas to Florida Businesses and Out-Of-State Corporations

When investigating a crime relating to the use of electronic communications, such as homicide involving electronically stored surveillance footage, internet child pornography, or vehicular homicide due to careless cell phone usage, ASAs frequently require out-of-state corporations (OOSCs)<sup>42</sup> to produce electronic records under strict time constraints. If such records are not produced timely, electronic records may be destroyed, witnesses' memories may fade, and public safety may be compromised. Under these circumstances, s. 92.605, F.S., permits an ASA, or other qualified law enforcement personnel, to issue an investigative subpoena to an OOSC.<sup>43</sup>

If an ASA issues an investigative subpoena to an OOSC providing electronic communication services or remote computing services to the public, and such records reveal a customer's

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<sup>31</sup> *Elliot*, 59 So. 3d at 1184; *Sando v. State*, 972 So. 2d 271 (Fla. 4th DCA 2008).

<sup>32</sup> S. 38.22, F.S.

<sup>33</sup> A common law crime is one which is not separately reclassified by statute as either a felony or a misdemeanor, *See* S. 775.01, F.S. (2005).

<sup>34</sup> S. 775.02, F.S.

<sup>35</sup> County courts and circuit courts possess the same power to punish contempt. S. 900.04, F.S.

<sup>36</sup> U.S. Const. amend. 5; Fla. R. Civ. P. 3.840.

<sup>37</sup> *State v. Investigation*, 802 So. 2d 1141, 1144 (Fla. 2d DCA 2001).

<sup>38</sup> *See Imparato v. Spicola*, 238 So. 2d 503 (Fla. 2d DCA 1970).

<sup>39</sup> S. 16.56(3), F.S., provides the same authority to a statewide prosecutor.

<sup>40</sup> *State*, 802 So. 2d 1141 at 1144.

<sup>41</sup> *Morgan v. State*, 309 So. 2d 552 (Fla. 2d DCA 1975).

<sup>42</sup> Out-of-state corporation means any corporation that is qualified to do business in this state under s. 607.1501, F.S.; S. 92.605(1)(e), F.S.

<sup>43</sup> Section 92.605, F.S. permits service on an OOSC by any law enforcement officer seeking a court order or subpoena under ss. 16.56, 27.04, 905.185, or 914.04, F.S., or who is issued a search warrant under s. 933.01, or anyone who is authorized to issue a subpoena under the Florida Rules of Criminal Procedure.

identity, stored data, or usage of such services, or the destination or recipients of communications sent to or from a customer, the following requirements apply:<sup>44</sup>

- An OOSC's registered agent must be properly served with a subpoena.<sup>45</sup>
- An OOSC's response to the subpoena is due within 20 business days of receipt, unless a longer time period is provided.
  - If a court finds that failing to produce records within 20 business days will cause an adverse result,<sup>46</sup> a shorter time period may be provided.<sup>47</sup>
  - A court may also reasonably extend the time period provided if an extension will not cause an adverse result.
- If an OOSC cannot produce the requested records within the time period provided, it must notify the ASA within the 20-day time period and agree to produce the documents at the earliest possible time.

While explicitly requiring compliance or notification of inability to comply within 20 days, the law does not provide a specific consequence for when an OOSC fails to comply with a subpoena issued under s. 92.605, F.S. As such, contempt of court is the only available remedy an ASA may seek. Because an OOSC is not a single, identifiable person who may be sent to jail, and a one-time \$500 fine is unlikely to incentivize timely compliance by a large corporation, a contempt proceeding is neither practical nor useful in punishing or deterring an OOSC's intentional violation or untimely compliance with a subpoena.

### **Garage Liability Insurance**

Motor vehicle dealers are required to have garage liability insurance or general liability insurance coupled with a business automobile policy in order to ensure a licensed dealer<sup>48</sup> has coverage for the day-to-day operations of businesses in the automotive industry that are not covered under most commercial or business liability insurance, including providing coverage for all dealer- owned vehicles driven by prospective purchasers.<sup>49</sup>

While the Florida law requires a dealer to provide at the time of licensure application proof of the required coverage for the duration of the licensure period and again at the beginning of each licensure renewal period, the statute doesn't cover the issue of a gap in coverage during the licensure period. Gaps in coverage can, and do, occur as a result of various actions - a dealer may cancel a policy in the middle of the term or the insurer itself may cancel the policy in the middle of the term for nonpayment of the premium or for other reasons.

This technicality may allow a motor vehicle dealer to meet the requirement of proof of coverage at the beginning of the licensure period but allow the coverage to lapse during the licensure

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<sup>44</sup> S. 92.605(2), F.S.

<sup>45</sup> Properly served means delivery by hand or in a manner reasonably allowing for proof of delivery if delivered by mail or facsimile. S. 92.605(1)(h), F.S.

<sup>46</sup> An adverse result includes the potential: danger to the life or physical safety of an individual; risk of flight from prosecution; destruction of or tampering with evidence; intimidation of potential witnesses; or serious jeopardy to an investigation or undue delay of a trial. S. 92.605(1)(a), F.S.

<sup>47</sup> S. 92.605(2)(c), F.S.

<sup>48</sup> Section 320.27, F.S.

<sup>49</sup> Section 320.27(3), F.S.

period and then reinstate coverage at the beginning of the next licensure period. The cancellation and later reinstatement of a policy creates a gap wherein the dealer has no insurance coverage. A gap in insurance coverage at any time during the licensure period has the potential to result in direct consumer harm, as any dealer-owned vehicles taken for test drives or driven as program models by the dealer, or any consumer-owned vehicles damaged while on the dealer's lot, or any other property or personal injury situations that would otherwise be covered under a garage liability policy are not otherwise covered. Currently, over 14,500 dealers are required to carry appropriate insurance coverage.<sup>50</sup>

The DHSMV currently advises vehicle dealers and recreational vehicle dealers about upcoming policy expirations by generating a list of dealers whose policies are set to expire. The DHSMV then sends out three separate notices that ask each dealer to submit an updated or current policy to the DHSMV. Additionally, after the policy has expired, the DHSMV sends a follow-up letter that indicates the DHSMV will take administrative action against the licensee for non-compliance with the insurance requirement if an updated policy is not received within fourteen days. In addition to this written communication, the DHSMV field offices follow up with telephone calls and emails to the dealers, attempting to bring them into compliance with the insurance requirement. Ultimately, if the dealer is unresponsive and does not provide the DHSMV with proof of the required coverage, the Bureau of Dealer Services forwards the relevant information to the Office of the General Counsel with a request to initiate an administrative action against the dealer under ch. 120, F.S.<sup>51</sup>

Currently, the DHSMV has no enforcement authority permitting it to take administrative action against a dealer's license for not timely providing proof of coverage. The only enforcement authority available lies in the ability to seek administrative action if the dealer has a gap in coverage or does not obtain and maintain coverage.<sup>52</sup>

### **Surety Bond Requirements for Motor Vehicle, Mobile Home and Recreational Vehicle Dealers**

Several entities are required to provide the DHSMV a surety bond or irrevocable letter of credit to ensure customers who suffer losses or are otherwise harmed by them in the course of doing business have an avenue to file a claim against the surety bond or irrevocable letter of credit in order to be made whole or compensated for any loss or harm. Those entities are:

- Motor vehicle dealer in the sum of \$25,000;<sup>53</sup>
- Mobile home dealers in the sum of \$25,000, or, if the dealer has more than four supplemental locations, in the sum of \$50,000;<sup>54</sup>
- Mobile home manufacturers in the sum of \$50,000;<sup>55</sup> and
- Recreational vehicle manufacturers, importers, and distributors in the sum of \$10,000.<sup>56</sup>

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<sup>50</sup> Department of Highway Safety and Motor Vehicles, *2021 Legislative Bill Analysis for SB 1500*, (March 5, 2021), p. 4 (on file with the Senate Committee on Transportation).

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> Section 320.27(10), F.S.

<sup>54</sup> Section 320.77(16), F.S.

<sup>55</sup> Section 320.8225(5)(a) F.S.

<sup>56</sup> Section 320.8225(5)(b) F.S.

While Florida law requires these entities to provide proof of the required surety bond or irrevocable letter of credit at the time of licensure application and again at the beginning of any licensure renewal period, the statute doesn't cover the issue of a gap in coverage during the licensure period. Gaps in coverage can, and do, occur as a result of various actions – an entity may cancel their bond or letter of credit in the middle of the term, or the insurer itself may cancel the bond or letter of credit in the middle of the term for nonpayment of the premium or for other reasons.

This technicality may allow an entity to meet the requirement of proof of coverage at the beginning of the licensure period but allow the coverage to lapse during the licensure period and then reinstate coverage at the beginning of the next licensure period. The cancellation and then later reinstatement of a policy creates a gap during which the entity has no bond or letter of credit coverage. A gap in the surety bond coverage at any time during the licensure period has the potential to result in direct consumer harm, as a customer who has suffered loss or harm as a result of an entity's actions would have no bond or letter of credit through which to make a claim. Currently, there are over 14,500 motor vehicle dealers and approximately 1,376 mobile home dealers and brokers that are required to carry an appropriate surety bond or letter of credit coverage.<sup>57</sup>

The DHSMV currently advises these entities about upcoming surety bond expirations in the same manner as they do for upcoming garage insurance liability policy expirations.<sup>58</sup>

Currently, the DHSMV has no enforcement authority permitting it to take administrative action against a dealer's license for not timely providing proof of coverage. The only enforcement authority available lies in the ability to seek administrative action if the dealer has a gap surety bond coverage or does not obtain and maintain surety bond coverage.<sup>59</sup>

### **Lake County Central Florida Expressway Authority Enabling Language**

Section 348.754, F.S., provides that to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the FDOT, the Central Florida Expressway Authority may not, without the prior consent of the secretary of the FDOT, construct any extensions, additions, or improvements to the expressway system in Lake County.<sup>60</sup>

### **Northwest Florida Transportation Corridor Authority**

The Northwest Florida Transportation Corridor Authority (NFTCA), is an agency of the State of Florida, created in 2005 pursuant to ch. 343, Part IV, F.S. One of several transportation authorities in Florida, the governing body consists of eight voting members, one each from Escambia, Santa Rosa, Walton, Okaloosa, Bay, Gulf, Franklin, and Wakulla Counties, appointed by the Governor to a 4-year term. The appointees are residents of their respective counties and

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<sup>57</sup> *Supra* FN50, p. 5.

<sup>58</sup> *Ibid*, p. 6.

<sup>59</sup> *Supra* FN50, p. 5.

<sup>60</sup> Section 348.754, F.S.



may not hold an elected office. The district secretary of the FDOT serving Northwest Florida also serves as an ex officio, nonvoting member of the NFTCA governing body.<sup>61</sup>

The primary purpose of the NFTCA is to improve mobility on the U.S. 98 corridor in Northwest Florida, enhance traveler safety, identify and develop hurricane evacuation routes, promote economic development, and implement transportation projects to alleviate current or anticipated traffic congestion.<sup>62</sup>

The NFTCA met on September 20, 2018, and during the meeting, the NFTCA Board voted unanimously, approving Resolution 18-02, to become inactive as an authority. The NFTCA Board also voted unanimously to approve their 2019 Budget which utilized all of their remaining funds of \$1,016. They placed \$1,015 under Board Expenses and \$1 in Total Reserves for the 2019 Budget before going inactive.<sup>63</sup>

### **Salvage Certificate of Title or Certificate of Destruction**

Under current law, an insurance company is required to provide an affidavit to the DHSMV to receive a salvage certificate of title or certificate of destruction for a motor vehicle or mobile home if the insurance company is unable to obtain a properly assigned certificate of title from the owner or lienholder of the motor vehicle or mobile home, if the motor vehicle or mobile home does not carry an electronic lien on the title.

Section 319.30(3)(b), F.S., provides:

(b) The owner, including persons who are self-insured, of a motor vehicle or mobile home that is considered to be salvage shall, within 72 hours after the motor vehicle or mobile home becomes salvage, forward the title to the motor vehicle or mobile home to the department for processing. However, an insurance company that pays money as compensation for the total loss of a motor vehicle or mobile home shall obtain the certificate of title for the motor vehicle or mobile home, make the required notification to the National Motor Vehicle Title Information System, and, within 72 hours after receiving such certificate of title, forward such title by the United States Postal Service, by another commercial delivery service, or by electronic means, when such means are made available by the department, to the department for processing. The owner or insurance company, as applicable, may not dispose of a vehicle or mobile home that is a total loss before it obtains a salvage certificate of title or certificate of destruction from the department. Effective January 1, 2020:

1. Thirty days after payment of a claim for compensation pursuant to this paragraph, the insurance company may receive a salvage certificate of title or certificate of destruction from the department if the insurance company is unable to obtain a properly assigned certificate of title from the owner or lienholder of the motor vehicle or mobile home, if the motor vehicle or mobile home does not carry an electronic lien on the title and the insurance company:

a. Has obtained the release of all liens on the motor vehicle or mobile home;

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<sup>61</sup> Section 343.81(2), F.S.

<sup>62</sup> Section 343.81(1), F.S.

<sup>63</sup> Northwest Florida Transportation Corridor Authority, Board Meeting Minutes, September 20, 2018 (on file with the Senate Transportation Committee).

- b. Has provided proof of payment of the total loss claim; and
  - c. Has provided an affidavit on letterhead signed by the insurance company or its authorized agent stating the attempts that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail. The affidavit must include a request that the salvage certificate of title or certificate of destruction be issued in the insurance company's name due to payment of a total loss claim to the owner or lienholder. The attempts to contact the owner may be by written request delivered in person or by first-class mail with a certificate of mailing to the owner's or lienholder's last known address.
2. If the owner or lienholder is notified of the request for title in person, the insurance company must provide an affidavit attesting to the in-person request for a certificate of title.
  3. The request to the owner or lienholder for the certificate of title must include a complete description of the motor vehicle or mobile home and the statement that a total loss claim has been paid on the motor vehicle or mobile home.

### **Excessive Noise**

Section 316.3045, F.S., provides that it is unlawful for any person operating or occupying a motor vehicle on a street or highway to operate or amplify the sound produced by a radio, tape player, or other mechanical soundmaking device or instrument from within the motor vehicle so that the sound is:

- Plainly audible at a distance of 25 feet or more from the motor vehicle; or
- Louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals.

The provisions of s. 316.3045, F.S., do not apply to any law enforcement or emergency vehicles equipped with any communication device necessary for the performance of their duties, or to motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices.

Richard T. Catalano and another man were cited in 2007 and 2008, respectively, in separate incidents in Pinellas County, Florida, for violating the sound standards of s. 316.3045, F.S. (playing music too loudly in their vehicles) and both men challenged the constitutionality of the law, arguing that the statute is facially unconstitutional. The circuit court agreed and invalidated the law, and the Second District Court of Appeal upheld that decision.

On appeal, the Florida Supreme Court first determined that the "plainly audible at a distance of 25 feet or more" standard "provides fair warning of the prohibited conduct and provides an objective guideline – distance – to prevent arbitrary and discriminatory enforcement so that basic policy matters are not delegated to policemen, judges, and juries for resolution on an ad hoc and subjective basis.... This is not a standard that calls for police officers to judge whether sound is excessive, raucous, disturbing, or offensive; if the officer can hear the amplified sound more than

twenty-five feet from its source, the individual has violated the statute.”<sup>64</sup> The court then held that the “plainly audible” standard is not unconstitutionally vague.<sup>65</sup>

Next turning to whether the statute is unconstitutionally overbroad or an unreasonable restriction on the freedom of expression, the court noted that “the right to play music, including amplified music, in public fora is protected under the First Amendment.... Limitations are reasonable if they are “justified without reference to the content of the regulated speech,... narrowly tailored to serve a significant governmental interest, and... leave open ample alternative channels for communication of the information.”... If the time, place, and manner of the limitations are content based, a strict standard of scrutiny is applied.”<sup>66</sup>

With respect to s. 316.3045, F.S., the court noted:

“Initially, it would appear that section 316.3045(1)(a) does not regulate expression based on the content of the message as it bans all amplified sound coming from within the interior of a motor vehicle that is “plainly audible” beyond twenty-five feet from the source. In short, the statute proscribes excessive sound emanating from vehicles on public thoroughfares. Subsection (3), however, except “motor vehicles” used for business or political purposes, which in the normal course of conducting such business use [sound-making] devices” from this broad proscription.

“...The regulation, however, treats commercial and political speech more favorably than noncommercial speech.... Regardless of the intent of the Legislature, section 316.3045 is a sweeping ban on amplified sound that can be heard beyond twenty-five feet of a motor vehicle, unless that sound comes from a business or political vehicle, which presumably uses sound-making devices for the purpose of expressing commercial and political viewpoints.... Thus, the statute is content based because it does not apply equally to music, political speech, and advertising.”<sup>67</sup>

Pointing to the State’s argument that the statute serves the State’s interest in traffic safety and protecting the public from excessively loud noise, the court agreed that protecting the public from excessively loud noise is a compelling state interest, but that traffic safety generally is not a compelling state interest.<sup>68</sup>

The court then held:

“Accordingly, we find that the statute is an unreasonable restriction on First Amendment rights. Likewise, the restriction of the constitutionally protected right to amplify sound, despite the State’s acknowledgement that this level of noise is tolerable and safe if the source is a commercial or political vehicle, is not narrowly tailored to achieve the government’s interests in improving traffic safety and protecting the citizenry from excessive noise. Thus, we also find that the statute is unconstitutionally overbroad

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<sup>64</sup> State of Florida, Appellant, vs. Richard T Catalano, et al., Appellees, 104 So. 3d 1069 (Fla. 2012).

<sup>65</sup> Id. at 9-10.

<sup>66</sup> Id. at 13-14, citations omitted.

<sup>67</sup> Id. at 15-16, citations omitted.

<sup>68</sup> Id. at 16.

because it restricts the freedom of expression in a manner more intrusive than necessary.”<sup>69</sup>

### **Department of Transportation Financing Corporation**

Section 339.0809(4), F.S., created the Department of Transportation Financing Corporation which serves as a conduit issuer of indebtedness secured by amounts payable to the Department of Transportation Financing Corporation by the FDOT under service contracts. The Department of Transportation Financing Corporation is authorized to issue debt, payable from and secured by the contractual payments by the FDOT, and to provide the proceeds of the debt to the FDOT for the purpose of financing identified transportation projects contained in the FDOT’s Work Program. The FDOT’s commitments to make payments under service contracts and which secure bonds issued by the Department of Transportation Financing Corporation are subject to annual appropriation by the legislature.

Generally, bonding programs authorized under the Florida Statutes contain debt limitations, either on the amount of debt that can be issued or on the amount of annual debt service that can be obligated. For example, s. 206.46, F.S., imposes a debt service limit on Right-of-Way bonds of 7% of the revenues deposited into the State Transportation Trust Fund (STTF) or \$275 million, whichever is less. However, there is no debt limit on the amount of debt the Department of Transportation Financing Corporation can issue on behalf of the FDOT.

To date, the Department of Transportation Financing Corporation has issued \$319.6 million in bonds to fund improvements to I-95 and I-595 in Broward County. A third issuance of \$122.6 million for this project is anticipated in fiscal year 2021-2022.

### **Turnpike Economic Feasibility**

Florida Statute mandates that prior to the issuance of turnpike revenue bonds for a project, the estimated net revenues of the proposed project must be sufficient to pay at least 50 percent of the annual debt service on bonds associated with the project by the end of the 12th year of operation and to pay 100 percent of the debt service on the bonds by the end of the 30th year of operation.<sup>70</sup>

However, the test of ‘economic feasibility’<sup>71</sup>, in its current form, does not reflect the project’s ability to generate enough revenue to cover annual debt service on the associated bonds and typically shows no debt service in the 30th year of operation of the project. The current test for determining ‘economic feasibility’ begins when the project being financed becomes operational and therefore, runs well past the final maturity date of the 30 year bonds issued to finance construction.<sup>72</sup>

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<sup>69</sup> Id. at 19.

<sup>70</sup> Section 338.221(8), F.S.

<sup>71</sup> Ibid.

<sup>72</sup> Alexis Lambert, Chief of Staff, Florida Division of Bond Finance, FW: DBF Analysis, March 8, 2021.

## Construction Engineering and Inspection

The FDOT construction engineering and inspection (CEI) program includes the activities and resources required to review and inspect highway and bridge construction projects. Inspection of these projects includes review of plans, specifications, and working drawings; control of materials used and review of material testing reports; supervision of utility relocation; supervision of contract subletting; control of contract time and time extensions; and maintenance of a project diary. The FDOT utilizes consultant CEI services on all construction projects using in-house project administrators or project managers in charge of the construction.<sup>73</sup>

The post design occurs during construction where the engineer-of-record will modify, add, delete or change the original plan to meet field conditions or address construction changes requested by the contractor and is programmed on a construction inspection engineering phase.<sup>74</sup>

Under current law only a seaport listed in s. 3119.09, F.S.<sup>75</sup>, is exempt from the requirement that the same entity may not performing both design and CEI services for a project that is wholly or partially funded by the FDOT and administered by a local governmental entity.<sup>76</sup>

### III. Effect of Proposed Changes:

#### Move Over Law (Sections 1 and 19)

The bill amends s. 316.126, F.S., to add road and bridge maintenance or construction vehicles displaying warning lights and operating 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 their speed when road and bridge maintenance or construction vehicles are displaying warning lights on the roadside.

#### Excessive Noise (Section 2)

The bill amends s. 316.3045, F.S., to:

- Repeal current paragraph (b) of subsection (1), which prohibits sound from a soundmaking device or instrument from with a motor vehicle so that the sound is louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals;
- Repeal the exclusion in subsection (3) of motor vehicles used for business or political purposes, which in the normal course of conducting business use soundmaking devices; and
- Make editorial and clarifying changes.<sup>77</sup>

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<sup>73</sup> FDOT Work Program Instructions FY 21/22 - 25/26, September 18, 2020, Part III - Chapter 6, p. 1 of 2, available at <https://fdotewp1.dot.state.fl.us/fmsupportapps/Documents/development/WorkProgramInstructions.pdf> (last visited March 9, 2021).

<sup>74</sup> *Ibid.*

<sup>75</sup> The list includes the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.

<sup>76</sup> Section 337.14(7), F.S.

<sup>77</sup> The Supreme Court noted the opinion of one of the lower court judges that paragraph "... (b) of the statute suffers constitutional infirmity as it "permits citations, at least 'in areas adjoining churches, schools, or hospitals,' for sound that is 'louder than necessary for the convenient hearing by persons inside the vehicle.'" *Supra* FN 64 at 6, citations omitted.

Having removed those portions of the statute rejected by the court, the statute is then presumably constitutional.

### **Texting and Driving Report Date (Section 3)**

The bill amends s. 316.305, F.S., to remove the February 1 reporting date requirement in law to allow more complete collection from law enforcement agencies of all texting and driving data required to be included in the annual report. The DHSMV will still report the texting and driving data on an annual basis once all data from law enforcement agencies is received. This is the current process utilized by the DHSMV for the annual seat belt usage report.<sup>78</sup>

### **Nonpublic Sector Buses (Sections 4 and 20)**

The bill amends s. 316.70, F.S., to reflect that DHSMV, not the FDOT, has statutory authority to adopt rules for the safe operations of nonpublic sector buses and conduct compliance reviews. This change acknowledges that the DHSMV is the agency responsible for the safe operations of nonpublic sector buses.

The bill cross-references the applicable Code of Federal Regulations, removes duplicative standards for nonpublic sector buses, and removes the time periods for follow-up compliance investigations. The bill also authorizes law enforcement officers of the DHSMV or a duly appointed agent of the DHSMV with a current safety inspector certification from the Commercial Vehicle Safety Alliance to inspect nonpublic sector buses and remove them from service if continued operation would present an unduly hazardous operating condition. However, if continuous operation would not be unduly hazardous, the officer or agent may give written notice requiring correction of the condition within 15 days after the inspection.

### **Subpoena Authority (Sections 5, 6, 12, and 13)**

The bill creates ss. 319.1414 and 322.71, F.S., and amends ss. 319.25 and 320.861, F.S., providing the DHSMV with the power of subpoena and the ability to administer oaths or affirmations, examine witnesses, require affidavits, take depositions, and compel the attendance of witnesses and the production of books, papers, documents, records, and other evidence for use in conducting investigations or examinations into:

- Authorized private rebuilt inspection providers in ch. 319, F.S. (title certificates);
- Persons suspected of violating or of having violated any provision of ch. 322, F.S. (driver licenses);
- Dealing with unlawful issuances of driver licenses and identification cards, or any rule or order issued or adopted pursuant to ch. 322, F.S. (driver licenses);
- Persons suspected of violating or of having violated any provision of ch. 319, F.S., dealing with motor vehicle title certificates, or any rule or order issued or adopted pursuant to ch. 319, F.S. (title certificates); and

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<sup>78</sup> Section 316.614(9), F.S.

- Persons suspected of violating or of having violated any provision of ch. 320, F.S., dealing with motor vehicle licenses, or any rule or order issued or adopted pursuant to ch. 320, F.S. (motor vehicle licenses).

The bill provides that subpoenas may be served by an authorized representative of the DHSMV, and creates a judicial enforcement mechanism related to the subpoena authority and creates entitlement to witness fees for those subpoenaed under the section. If a person refuses to obey the subpoena, the DHSMV may petition a court in the county in which the person or business is located. The court will direct the person to obey the subpoena, and award any costs incurred by the DHSMV to obtain the order.

The DHSMV advised scenarios where subpoena authority could be utilized to potentially lead to the discovery of pertinent information would be investigations or examinations into odometer rollbacks, fraudulent repair and storage title transactions, and driver license fraud.<sup>79</sup>

### **Salvage Certificate of Title or Certificate of Destruction (Section 7)**

The bill amends s. 319.30(3)(b), F.S., to provide that an insurance company may receive a salvage certificate of title or certificate of destruction from the DHSMV if the insurance company is unable to obtain a properly assigned certificate of title from the owner or lienholder of a motor vehicle or mobile home, if the motor vehicle or mobile home does not carry an electronic lien on the title and the insurance company:

- Has obtained the release of all liens on the motor vehicle or mobile home;
- Has attested on a form provided by the department that payment of the total loss claim has been distributed; and
- Has attested on a form provided by the department and signed by the insurance company or its authorized agent stating the attempts that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail. The form must include a request that the salvage certificate of title or certificate of destruction be issued in the insurance company's name due to payment of a total loss claim to the owner or lienholder. The attempts to contact the owner may be by written request delivered in person or by first-class mail with a certificate of mailing to the owner's or lienholder's last known address.

### **Garage Liability Insurance and Surety Bond (Sections 8, 9, 10, and 11)**

The bill amends ss. 320.27(3), 320.77(16), 320.771(3)(j) and 320.8225(5)(a), F.S., to require motor vehicle, mobile home, and recreational vehicle dealers, manufacturers, distributors, and importers to deliver to the DHSMV, in the manner prescribed by the DHSMV, proof of continuous insurance coverage during the licensure period and notification to the DHSMV of any change during the licensure period. The bill provides that a licensee must deliver to the DHSMV a new policy or copy of the policy within ten calendar days of a renewal, continuation, or change in policy.

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<sup>79</sup> Kevin Jacobs, Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, FW: Subpoena Explanation, February 16, 2021.

The bill amends ss. 320.27(10), 320.771(16)(a) and 320.8225(5)(b), F.S., to require continuous bond coverage by motor vehicle, mobile home, and recreational vehicle dealers, manufacturers, distributors, and importers during the licensure period and notification to the DHSMV of any change during the licensure period. The licensee is required to provide proof, in a manner prescribed by the DHSMV, of a renewal, continuation, or change of a surety bond or irrevocable letter of credit or surety bond and cash bond within ten calendar days of any issuance of such surety bond or irrevocable letter of credit.

#### **Construction Engineering and Inspection (Section 14)**

The bill amends s. 337.14(7), F.S., to exempt airports as defined in s. 332.004, F.S.<sup>80</sup>, from the requirement that the same entity may not performing both design and CEI services for a project that is wholly or partially funded by the FDOT and administered by a local governmental entity.

#### **Turnpike Economic Feasibility (Sections 15 and 21)**

The bill amends s. 338.221(8), F.S., to revise the economic feasibility test utilized in connection with Turnpike projects. The revised test would ensure that estimated net revenues of the proposed Turnpike project would cover the debt service on the associated bonds, and provides a more reliable test of a project's ability to generate sufficient revenues to pay debt service. It would require the estimated net revenues of the proposed turnpike project, excluding feeder roads and turnpike improvements, to be sufficient to pay at least 50 percent of the average annual debt service on the bonds associated with the project by the end of the 12th year of operation and to pay at least 100 percent of the average annual debt service on the bonds by the end of the 30th year of operation.

#### **Department of Transportation Financing Corporation (Section 16)**

The bill amends s. 339.0809(4), F.S., to provide that payments to the Department of Transportation Financing Corporation from the FDOT under a service contract for debt service must be made prior to other obligations of the STTF, aside from debt service for other bond programs of the FDOT (e.g. Right-of-Way, GARVEE and Seaports). The bill also adds a borrowing limit to the Department of Transportation Financing Corporation of \$100 million in annual debt service which is estimated to provide \$1.1 to \$1.6 billion in bonding capacity depending on the term of the debt.

#### **Northwest Florida Transportation Corridor Authority (Sections 17 and 22)**

The bill repeals Part III of ch. 343, F.S., consisting of ss. 343.80, 343.805, 343.81, 343.82, 343.83, 753 343.835, 343.836, 343.84, 343.85, 343.87, 343.875, 343.88, 754 343.881, 343.884, and 343.89, F.S.

Notwithstanding any other law, the bill dissolves the inactive NFTCA. The NFTCA must discharge or make provisions for the their debts, obligations, and other liabilities; settle and close

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<sup>80</sup> Section 332.004, F.S., defines "airport" to mean any area of land or water, or any manmade object or facility located therein, which is used, or intended for public use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for public use, for airport buildings or other airport facilities or rights-of-way.



the NFTCA's activities and affairs; and provide for distribution of the their assets (estimated to be \$1,016),<sup>81</sup> or the proceeds of such assets, such that each local general-purpose government represented on the NFTCA's board receives a distribution generally in proportion to each entity's contribution to the acquisition of the assets.

#### **Lake County Central Florida Expressway Authority Enabling Language (Section 18)**

The bill amends s. 348.754, F.S., to provide that to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the FDOT, the Central Florida Expressway Authority may not, without the prior consultation of the secretary of the FDOT, construct any extensions, additions, or improvements to the expressway system in Lake County.

The bill has an effective date of July 1, 2021.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There is a potential impact to the nonpublic sector bus industry associated with changes to the commercial motor vehicle regulations contained in the bill; however, the impact is indeterminate at this time.

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<sup>81</sup> *Supra*, FN 63.

Those who receive a subpoena from the DHSMV may be entitled to witness fees. In addition, if a person refuses to obey the subpoena, the DHSMV may petition a court in the county in which the person or business is located and the court may direct the person to obey the subpoena, and award any costs incurred by the DHSMV to obtain the order.

A citizen found to have violated the sound standard of s. 316.3045, F.S., for sound which is plainly audible at a distance of 25 feet or more from the citizen's motor vehicle, is subject to a \$30 penalty for a nonmoving traffic violation.<sup>82</sup>

Exempting airports from the requirement that the same entity may not performing both design and CEI services for a project that is wholly or partially funded by the FDOT and administered by a local governmental entity may allow a single entity to be awarded both design and CEI services for a project.

**C. Government Sector Impact:**

The bill authorizes the DHSMV to exercise the power of subpoena as it relates to the investigation of fraud involving motor vehicle registrations, titles, driver licenses, motor vehicle dealers, and other areas of jurisdictional responsibility. All costs related to this new function can be absorbed within existing resources.

The bill adds a borrowing limit to the Department of Transportation Financing Corporation of \$100 million in annual debt service which is estimated to provide \$1.1 to \$1.6 billion in bonding capacity depending on the term of the debt, should the program be fully utilized.<sup>83</sup> Under current law there is no borrowing limit.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 316.126, 316.3045, 316.305, 316.70, 319.25, 319.30, 320.27, 320.77, 320.771, 320.8225, 320.861, 337.14, 338.221, 339.0809 and 348.754.

This bill creates the following sections of the Florida Statutes: 319.1414 and 322.71.

The bill repeals part III of ch. 343, F.S.

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<sup>82</sup> Section 318.18(2), F.S.

<sup>83</sup> *Supra*, FN 72.

The bill reenacts the following sections of the Florida Statutes: 318.18, 316.3026 and 338.2276.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Committee on Transportation on March 10, 2021:**

- Dissolves the inactive Northwest Florida Transportation Corridor Authority and provides for distribution of the authority’s assets;
- Replaces an affidavit with an attestation on a form provided by the DHSMV as a requirement for an insurance company to receive a salvage certificate of title or certificate of destruction from the DHSMV;
- Revises provisions relating to the operation of radios or other soundmaking devices in vehicles following a Florida Supreme Court decision finding portions of the relevant statute unconstitutional;
- Provides that payments to the Department of Transportation Financing Corporation from the FDOT under a service contract for debt service must be made prior to other obligations, aside from debt service for other bond programs, and adds a borrowing limit to the Financing Corporation of \$100 million in annual debt service;
- Amends statute to test economic feasibility of a project’s estimated net revenues based on the average annual debt service of the proposed bonds;
- Exempts airports from the requirement that the same entity may not performing both design and CEI services; and
- Adds mobile home dealers to the garage liability provisions of the bill.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 03/11/2021 | . |       |
|            | . |       |
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The Committee on Transportation (Harrell) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (b) of subsection (1) of section  
316.126, Florida Statutes, is amended, and subsection (6) of  
that section is reenacted, to read:

316.126 Operation of vehicles and actions of pedestrians on  
approach of an authorized emergency, sanitation, or utility  
service vehicle.—



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(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.

(6) A violation of this section is a noncriminal traffic



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infractioin, punishable pursuant to chapter 318 as either a moving violation for infractions of subsection (1) or subsection (3), or as a pedestrian violation for infractions of subsection (2).

Section 2. Section 316.3045, Florida Statutes, is amended to read:

316.3045 Operation of radios or other mechanical soundmaking devices or instruments in vehicles; exemptions.—

(1) ~~A~~ It is unlawful for any person who operates or occupies ~~operating or occupying~~ a motor vehicle on a street or highway may not ~~to~~ operate or amplify the sound produced by a radio, tape player, or other mechanical soundmaking device or instrument from within the motor vehicle so that the sound is+

~~(a)~~ plainly audible at a distance of 25 feet or more from the motor vehicle; ~~or~~

~~(b) Louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals.~~

(2) ~~The provisions of~~ This section does ~~shall~~ not apply to any law enforcement motor vehicle equipped with any communication device necessary in the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary in the performance of any emergency procedures.

(3) This section does ~~The provisions of this section do not apply to motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices. The provisions of this subsection shall not be deemed to prevent local authorities, with respect to streets~~



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and highways under their jurisdiction and within the reasonable exercise of the police power, from regulating the time, place, and manner in which a device or an instrument described in subsection (1) ~~such business~~ may be operated.

(4) ~~The provisions of~~ This section does ~~de~~ not apply to the noise made by a horn or other warning device required or permitted by s. 316.271. The Department of Highway Safety and Motor Vehicles shall adopt ~~promulgate~~ rules defining "plainly audible" and shall establish standards regarding how sound should be measured by law enforcement personnel who enforce the provisions of this section.

(5) A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 3. Subsection (5) of section 316.305, Florida Statutes, is amended to read:

316.305 Wireless communications devices; prohibition.—

(5) When a law enforcement officer issues a citation for a violation of this section, the law enforcement officer must record the race and ethnicity of the violator. All law enforcement agencies must maintain such information and report the information to the department in a form and manner determined by the department. ~~Beginning February 1, 2020,~~ The department shall annually report the data collected under this subsection to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The data collected must be reported at least by statewide totals for local law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies. The statewide total for



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local law enforcement agencies shall combine the data for the county sheriffs and the municipal law enforcement agencies.

Section 4. Section 316.70, Florida Statutes, is amended to read:

316.70 Nonpublic sector buses; safety rules.—

(1) All owners and drivers of nonpublic sector buses operated on the public highways of this state are subject to the rules and regulations ~~The Department of Transportation shall establish and revise standards to ensure the safe operation of nonpublic sector buses, which standards shall be those contained in 49 C.F.R. parts 382, 385, and 390-397 to ensure and which shall be directed toward ensuring that:~~

(a) Nonpublic sector buses are safely maintained, equipped, and operated.

(b) Nonpublic sector buses are carrying the insurance required by law and carrying liability insurance on the checked baggage of passengers not to exceed the standard adopted by the United States Department of Transportation.

(c) Florida license tags are purchased for nonpublic sector buses pursuant to s. 320.38.

~~(d) The driving records of drivers of nonpublic sector buses are checked by their employers at least once each year to ascertain whether the driver has a suspended or revoked driver license.~~

(2) Department of Highway Safety and Motor Vehicles ~~Transportation~~ personnel may conduct compliance reviews for the purpose of determining compliance with this section. A civil penalty ~~not to exceed \$5,000 in the aggregate~~ may be assessed against any person who violates any provision of this section or





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who violates any rule or order of the department found during a  
compliance review as provided in s. 316.3025. A ~~of~~  
~~Transportation. A civil penalty not to exceed \$25,000 in the~~  
~~aggregate may be assessed for violations found in a followup~~  
~~compliance review conducted within a 24-month period. A civil~~  
~~penalty not to exceed \$25,000 in the aggregate may be assessed~~  
~~and the~~ motor carrier may be enjoined from operation pursuant to  
s. 316.3026 for if violations found during a ~~are found after a~~  
~~second followup~~ compliance review ~~within 12 months after the~~  
~~first followup compliance review~~. Motor carriers found to be  
operating without insurance coverage required by s. 627.742 or  
49 C.F.R. part 387 may be enjoined as provided in s. 316.3026.

(3) For the purpose of enforcing this section, any law  
enforcement officer of the Department of Highway Safety and  
Motor Vehicles or a duly appointed agent of the department who  
holds a current safety inspector certification from the  
Commercial Vehicle Safety Alliance may require the driver of any  
commercial vehicle operated on the highways of this state to  
stop and submit to an inspection of the vehicle or the driver's  
records. If the vehicle is being operated or the driver is  
operating the vehicle in an unsafe condition, or if any required  
part or equipment is not present or is not in proper repair or  
adjustment, and the continued operation would be unduly  
hazardous, the officer or agent may require the vehicle or the  
driver to be removed from service pursuant to the North American  
Standard Out-of-Service Criteria until all safety concerns are  
corrected. However, if continuous operation would not be unduly  
hazardous, the officer or agent may give written notice  
requiring correction of the condition within 15 days after the



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inspection.

(4) School buses subject to ~~the provisions of~~ chapter 1006 or s. 316.615 are exempt from ~~the provisions of~~ this section.

Section 5. Section 319.1414, Florida Statutes, is created to read:

319.1414 Investigations; examinations; subpoenas; hearings; witnesses.—

(1) The department may conduct investigations and examinations of department-authorized private rebuilt inspection providers as it deems necessary to determine whether a person has violated or is about to violate this chapter or a contract entered into pursuant to this chapter or to assist with the enforcement of this chapter.

(2) For purposes of any investigation or examination conducted pursuant to this section, the department may exercise the power of subpoena and the powers to administer oaths or affirmations, to examine witnesses, to require affidavits, to take depositions, and to compel the attendance of witnesses and the production of books, papers, documents, records, and other evidence. A designated agent of the department may serve a subpoena relating to an investigation or examination.

(3) If a person refuses to testify; produce books, papers, documents, or records; or otherwise obey a subpoena or subpoena duces tecum issued under subsection (2), the department may petition a court of competent jurisdiction in the county where the person's residence or principal place of business is located, upon which the court must issue an order requiring such person to obey the subpoena or show cause for failing to obey the subpoena. Unless the person shows sufficient cause for



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185 failing to obey the subpoena, the court shall direct the person  
186 to obey the subpoena. Failure to comply with such order is  
187 contempt of court.

188 (4) For the purpose of any investigation, examination, or  
189 proceeding initiated by the department under this chapter, the  
190 department is authorized to designate agents to serve subpoenas  
191 and other process and to administer oaths or affirmations.

192 (5) Witnesses subpoenaed under this section are entitled to  
193 witness fees at the same rate established by s. 92.142 for  
194 witnesses in a civil case, except that witness fees are not  
195 payable for appearance at the witness's place of business during  
196 regular business hours or at the witness's residence.

197 (6) The department may adopt rules to administer this  
198 section.

199 Section 6. Section 319.25, Florida Statutes, is amended to  
200 read:

201 319.25 Cancellation of certificates; investigations;  
202 subpoenas and other process; oaths; rules.-

203 (1) If it appears that a certificate of title has been  
204 improperly issued, the department shall cancel the certificate.  
205 Upon cancellation of any certificate of title, the department  
206 shall notify the person to whom the certificate of title was  
207 issued, as well as any lienholders appearing thereon, of the  
208 cancellation and shall demand the surrender of the certificate  
209 of title, but the cancellation shall not affect the validity of  
210 any lien noted thereon. The holder of the certificate of title  
211 shall return it to the department forthwith. If a certificate of  
212 registration has been issued to the holder of a certificate of  
213 title so canceled, the department shall immediately cancel the



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certificate of registration and demand the return of such certificate of registration and license plate or mobile home sticker; and the holder of such certificate of registration and license plate or sticker shall return them to the department forthwith.

(2) The department is authorized, upon application of any person and payment of the proper fees, to prepare and furnish lists containing title information in such form as the department may authorize, to search the records of the department and make reports thereof, and to make photographic copies of the department records and attestations thereof, except as provided in chapter 119.

(3) The department may conduct investigations and examinations of any person suspected of violating or of having violated this chapter or any rule adopted or order issued under this chapter.

(4) For purposes of any investigation or examination conducted pursuant to this section, the department may exercise the power of subpoena and the powers to administer oaths or affirmations, to examine witnesses, to require affidavits, to take depositions, and to compel the attendance of witnesses and the production of books, papers, documents, records, and other evidence. An authorized representative of the department may serve a subpoena relating to an investigation or examination.

(5) If a person refuses to testify; produce books, papers, documents, or records; or otherwise obey the subpoena or subpoena duces tecum issued under subsection (4), the department may petition a court of competent jurisdiction in the county where the person's residence or principal place of business is



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located, upon which the court must issue an order requiring such person to obey the subpoena or show cause for failing to obey the subpoena. Unless the person shows sufficient cause for failing to obey the subpoena, the court must direct the person to obey the subpoena. Failure to comply with such order is contempt of court.

(6) For the purpose of any investigation, examination, or proceeding initiated by the department under this chapter, the department is authorized to designate agents to serve subpoenas and other process and to administer oaths or affirmations.

(7) Witnesses subpoenaed under this section are entitled to witness fees at the same rate established by s. 92.142 for witnesses in a civil case, except that witness fees are not payable for appearance at the witness's place of business during regular business hours or at the witness's residence.

(8) The department may adopt rules to administer this section.

Section 7. Paragraph (b) of subsection (3) of section 319.30, Florida Statutes, is amended to read:

319.30 Definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.—

(3)

(b) The owner, including persons who are self-insured, of a motor vehicle or mobile home that is considered to be salvage shall, within 72 hours after the motor vehicle or mobile home becomes salvage, forward the title to the motor vehicle or mobile home to the department for processing. However, an insurance company that pays money as compensation for the total loss of a motor vehicle or mobile home shall obtain the



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certificate of title for the motor vehicle or mobile home, make the required notification to the National Motor Vehicle Title Information System, and, within 72 hours after receiving such certificate of title, forward such title by the United States Postal Service, by another commercial delivery service, or by electronic means, when such means are made available by the department, to the department for processing. The owner or insurance company, as applicable, may not dispose of a vehicle or mobile home that is a total loss before it obtains a salvage certificate of title or certificate of destruction from the department. Effective January 1, 2020:

1. Thirty days after payment of a claim for compensation pursuant to this paragraph, the insurance company may receive a salvage certificate of title or certificate of destruction from the department if the insurance company is unable to obtain a properly assigned certificate of title from the owner or lienholder of the motor vehicle or mobile home, if the motor vehicle or mobile home does not carry an electronic lien on the title and the insurance company:

a. Has obtained the release of all liens on the motor vehicle or mobile home;

b. Has attested on a form provided by the department that ~~provided proof of~~ payment of the total loss claim has been distributed; and

c. Has attested on a form provided by the department and ~~provided an affidavit on letterhead~~ signed by the insurance company or its authorized agent stating the attempts that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail. The form



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affidavit must include a request that the salvage certificate of title or certificate of destruction be issued in the insurance company's name due to payment of a total loss claim to the owner or lienholder. The attempts to contact the owner may be by written request delivered in person or by first-class mail with a certificate of mailing to the owner's or lienholder's last known address.

2. If the owner or lienholder is notified of the request for title in person, the insurance company must provide an affidavit attesting to the in-person request for a certificate of title.

3. The request to the owner or lienholder for the certificate of title must include a complete description of the motor vehicle or mobile home and the statement that a total loss claim has been paid on the motor vehicle or mobile home.

Section 8. Subsection (3) and paragraph (a) of subsection (10) of section 320.27, Florida Statutes, are amended to read:

320.27 Motor vehicle dealers.—

(3) APPLICATION AND FEE.—The application for the license shall be in such form as may be prescribed by the department and shall be subject to such rules with respect thereto as may be so prescribed by it. Such application shall be verified by oath or affirmation and shall contain a full statement of the name and birth date of the person or persons applying therefor; the name of the firm or copartnership, with the names and places of residence of all members thereof, if such applicant is a firm or copartnership; the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the name of the state under whose laws



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the corporation is organized; the present and former place or places of residence of the applicant; and prior business in which the applicant has been engaged and the location thereof. Such application shall describe the exact location of the place of business and shall state whether the place of business is owned by the applicant and when acquired, or, if leased, a true copy of the lease shall be attached to the application. The applicant shall certify that the location provides an adequately equipped office and is not a residence; that the location affords sufficient unoccupied space upon and within which adequately to store all motor vehicles offered and displayed for sale; and that the location is a suitable place where the applicant can in good faith carry on such business and keep and maintain books, records, and files necessary to conduct such business, which shall be available at all reasonable hours to inspection by the department or any of its inspectors or other employees. The applicant shall certify that the business of a motor vehicle dealer is the principal business which shall be conducted at that location. The application shall contain a statement that the applicant is either franchised by a manufacturer of motor vehicles, in which case the name of each motor vehicle that the applicant is franchised to sell shall be included, or an independent (nonfranchised) motor vehicle dealer. The application shall contain other relevant information as may be required by the department, including evidence that the applicant is insured under a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy, which shall include, at a minimum, \$25,000 combined single-limit liability coverage including





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bodily injury and property damage protection and \$10,000 personal injury protection. However, a salvage motor vehicle dealer as defined in subparagraph (1)(c)5. is exempt from the requirements for garage liability insurance and personal injury protection insurance on those vehicles that cannot be legally operated on roads, highways, or streets in this state. Franchise dealers must submit a garage liability insurance policy, and all other dealers must submit a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy. Such policy shall be for the license period, and evidence of a new or continued policy shall be delivered to the department at the beginning of each license period. A licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such policy or within 10 calendar days after any issuance of a new policy, a copy of the renewed, continued, changed, or new policy. Upon making initial application, the applicant shall pay to the department a fee of \$300 in addition to any other fees required by law. Applicants may choose to extend the licensure period for 1 additional year for a total of 2 years. An initial applicant shall pay to the department a fee of \$300 for the first year and \$75 for the second year, in addition to any other fees required by law. An applicant for renewal shall pay to the department \$75 for a 1-year renewal or \$150 for a 2-year renewal, in addition to any other fees required by law. Upon making an application for a change of location, the person shall pay a fee of \$50 in addition to any other fees now required by law. The department shall, in the case of every application for initial licensure,



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verify whether certain facts set forth in the application are true. Each applicant, general partner in the case of a partnership, or corporate officer and director in the case of a corporate applicant, must file a set of fingerprints with the department for the purpose of determining any prior criminal record or any outstanding warrants. The department shall submit the fingerprints to the Department of Law Enforcement for state processing and forwarding to the Federal Bureau of Investigation for federal processing. The actual cost of state and federal processing shall be borne by the applicant and is in addition to the fee for licensure. The department may issue a license to an applicant pending the results of the fingerprint investigation, which license is fully revocable if the department subsequently determines that any facts set forth in the application are not true or correctly represented.

(10) SURETY BOND OR IRREVOCABLE LETTER OF CREDIT REQUIRED.—

(a) Annually, before any license shall be issued to a motor vehicle dealer, the applicant-dealer of new or used motor vehicles shall deliver to the department a good and sufficient surety bond or irrevocable letter of credit, executed by the applicant-dealer as principal, in the sum of \$25,000. A licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such surety bond or irrevocable letter of credit or within 10 calendar days after any issuance of a new surety bond or irrevocable letter of credit, a copy of such renewed, continued, changed, or new surety bond or irrevocable letter of credit.

Section 9. Paragraph (a) of subsection (16) of section



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320.77, Florida Statutes, is amended to read:

320.77 License required of mobile home dealers.—

(16) SURETY BOND, CASH BOND, OR IRREVOCABLE LETTER OF CREDIT REQUIRED.—

(a) Before any license shall be issued or renewed, the applicant or licensee shall deliver to the department a good and sufficient surety bond, cash bond, or irrevocable letter of credit, executed by the applicant or licensee as principal. The licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such surety bond, cash bond, or irrevocable letter of credit or within 10 calendar days after any issuance of a new surety bond, cash bond, or irrevocable letter of credit, a copy of such renewed, continued, changed, or new surety bond, cash bond, or irrevocable letter of credit. The bond or irrevocable letter of credit shall be in a form to be approved by the department and shall be conditioned upon the dealer's complying with the conditions of any written contract made by the dealer in connection with the sale, exchange, or improvement of any mobile home and his or her not violating any of the provisions of chapter 319 or this chapter in the conduct of the business for which the dealer is licensed. The bond or irrevocable letter of credit shall be to the department and in favor of any retail customer who shall suffer any loss as a result of any violation of the conditions contained in this section. The bond or irrevocable letter of credit shall be for the license period, and a new bond or irrevocable letter of credit or a proper continuation certificate shall be delivered to the department at the



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beginning of each license period. However, the aggregate liability of the surety in any one license year shall in no event exceed the sum of such bond, or, in the case of a letter of credit, the aggregate liability of the issuing bank shall not exceed the sum of the credit. The amount of the bond required shall be as follows:

1. A single dealer who buys, sells, or deals in mobile homes and who has four or fewer supplemental licenses shall provide a surety bond, cash bond, or irrevocable letter of credit executed by the dealer applicant or licensee in the amount of \$25,000.

2. A single dealer who buys, sells, or deals in mobile homes and who has more than four supplemental licenses shall provide a surety bond, cash bond, or irrevocable letter of credit executed by the dealer applicant or licensee in the amount of \$50,000.

For the purposes of this paragraph, any person who buys, sells, or deals in both mobile homes and recreational vehicles shall provide the same surety bond required of dealers who buy, sell, or deal in mobile homes only.

Section 10. Paragraph (j) of subsection (3) and paragraph (a) of subsection (16) of section 320.771, Florida Statutes, are amended to read:

320.771 License required of recreational vehicle dealers.—

(3) APPLICATION.—The application for such license shall be in the form prescribed by the department and subject to such rules as may be prescribed by it. The application shall be verified by oath or affirmation and shall contain:



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(j) Evidence ~~A statement~~ that the applicant is insured under a garage liability insurance policy, which shall include, at a minimum, \$25,000 combined single-limit liability coverage, including bodily injury and property damage protection, and \$10,000 personal injury protection, if the applicant is to be licensed as a dealer in, or intends to sell, recreational vehicles. Such policy must be for the license period and delivered to the department in the manner prescribed by the department. The licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such policy or within 10 calendar days after any issuance of a new policy, a copy of such renewed, continued, changed, or new policy.

However, a garage liability policy is not required for the licensure of a mobile home dealer who sells only park trailers.

The department shall, if it deems necessary, cause an investigation to be made to ascertain if the facts set forth in the application are true and shall not issue a license to the applicant until it is satisfied that the facts set forth in the application are true.

(16) BOND.—

(a) Before any license shall be issued or renewed, the applicant shall deliver to the department, in the manner prescribed by the department, a good and sufficient surety bond, executed by the applicant as principal and by a surety company qualified to do business in the state as surety. The licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or



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continuation of or change in such surety bond or within 10  
calendar days after any issuance of a new surety bond, a copy of  
such renewed, continued, changed, or new surety bond. The bond  
shall be in a form to be approved by the department and shall be  
conditioned upon the dealer's complying with the conditions of  
any written contract made by that dealer in connection with the  
sale, exchange, or improvement of any recreational vehicle and  
his or her not violating any of the provisions of chapter 319 or  
this chapter in the conduct of the business for which he or she  
is licensed. The bond shall be to the department and in favor of  
any retail customer who shall suffer any loss as a result of any  
violation of the conditions hereinabove contained. The bond  
shall be for the license period, and a new bond or a proper  
continuation certificate shall be delivered to the department at  
the beginning of each license period. However, the aggregate  
liability of the surety in any one license year shall in no  
event exceed the sum of such bond. The amount of the bond  
required shall be as follows:

1. A single dealer who buys, sells, or deals in  
recreational vehicles and has four or fewer supplemental  
licenses shall provide a surety bond in the amount of \$10,000.

2. A single dealer who buys, sells, or deals in  
recreational vehicles and who has more than four supplemental  
licenses shall provide a surety bond in the amount of \$20,000.

For the purposes of this paragraph, any person who buys, sells,  
or deals in both mobile homes and recreational vehicles shall  
provide the same surety bond required of dealers who buy, sell,  
or deal in mobile homes only.



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Section 11. Paragraphs (a) and (b) of subsection (5) of section 320.8225, Florida Statutes, are amended to read:

320.8225 Mobile home and recreational vehicle manufacturer, distributor, and importer license.—

(5) REQUIREMENT OF ASSURANCE.—

(a) Annually, prior to the receipt of a license to manufacture mobile homes, the applicant or licensee shall submit, in the manner prescribed by the department, a surety bond, cash bond, or letter of credit from a financial institution, or a proper continuation certificate, sufficient to assure satisfaction of claims against the licensee for failure to comply with appropriate code standards, failure to provide warranty service, or violation of any provisions of this section. The amount of the surety bond, cash bond, or letter of credit must be \$50,000. Only one surety bond, cash bond, or letter of credit shall be required for each manufacturer, regardless of the number of factory locations. The surety bond, cash bond, or letter of credit must be to the department, in favor of any retail customer who suffers a loss arising out of noncompliance with code standards or failure to honor or provide warranty service. The department may disapprove any bond or letter of credit that does not provide assurance as provided in this section. A licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such surety bond, cash bond, or letter of credit or within 10 calendar days after any issuance of a new surety bond, cash bond, or letter of credit, a copy of such renewed, continued, changed, or new surety bond, cash bond, or letter of credit.



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(b) Annually, before ~~prior to~~ the receipt of a license to manufacture, distribute, or import recreational vehicles, the applicant or licensee shall submit, in the manner prescribed by the department, a surety bond, or a proper continuation certificate, sufficient to assure satisfaction of claims against the licensee for failure to comply with appropriate code standards, failure to provide warranty service, or violation of any provisions of this section. The amount of the surety bond must be \$10,000 per year. The surety bond must be to the department, in favor of any retail customer who suffers loss arising out of noncompliance with code standards or failure to honor or provide warranty service. The department may disapprove any bond that does not provide assurance as provided in this section. The licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such surety bond or within 10 calendar days after any issuance of a new surety bond, a copy of such renewed, continued, changed, or new surety bond.

Section 12. Section 320.861, Florida Statutes, is amended to read:

320.861 Investigations; subpoenas and other process; oaths; rules ~~Inspection of records; production of evidence; subpoena power.~~

(1) The department may conduct investigations and examinations of any person suspected of violating or of having violated this chapter or any rule adopted or order issued thereunder ~~inspect the pertinent books, records, letters, and contracts of any licensee, whether dealer or manufacturer,~~





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~~relating to any written complaint made to it against such licensee.~~

(2) For purposes of any investigation or examination conducted pursuant to this section, the department may ~~is~~ granted and authorized to exercise the power of subpoena and the powers to administer oaths or affirmations, to examine witnesses, to require affidavits, to take depositions, and to compel the attendance of witnesses and the production of books, papers, documents, records, and other evidence. A designated agent of the department may serve a subpoena relating to an investigation or examination for the attendance of witnesses and the production of any documentary evidence necessary to the disposition by it of any written complaint against any licensee, whether dealer or manufacturer.

(3) If a person refuses to testify; to produce books, papers, documents, or records; or to otherwise obey the subpoena or subpoena duces tecum issued under subsection (2), the department may petition a court of competent jurisdiction in the county where the person's residence or principal place of business is located, upon which the court must issue an order requiring such person to obey the subpoena or show cause for failing to obey the subpoena. Unless the person shows sufficient cause for failing to obey the subpoena, the court must direct the person to obey the subpoena. Failure to comply with such order constitutes contempt of court.

(4) For the purpose of any investigation, examination, or proceeding initiated by the department under this chapter, the department may designate agents to serve subpoenas and other process and to administer oaths or affirmations. The department



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shall exercise this power on its own initiative in accordance with ss. 320.615 and 320.71.

(5) Witnesses subpoenaed under this section are entitled to witness fees at the same rate established by s. 92.142 for witnesses in a civil case, except that witness fees are not payable for appearance at the witness's place of business during regular business hours or at the witness's residence.

(6) The department may adopt rules to administer this section.

Section 13. Section 322.71, Florida Statutes, is created to read:

322.71 Investigations; subpoenas and other process; oaths; rules.—

(1) The department may conduct investigations and examinations of any person suspected of violating or of having violated any provision of this chapter or any rule adopted or order issued under this chapter.

(2) For purposes of any investigation or examination conducted pursuant to this section, the department may exercise the power of subpoena and the powers to administer oaths or affirmations, to examine witnesses, to require affidavits, to take depositions, and to compel the attendance of witnesses and the production of books, papers, documents, records, and other evidence. Such subpoenas may be served by an authorized representative of the department.

(3) If a person refuses to testify; to produce books, papers, documents, or records; or to otherwise obey the subpoena or subpoena duces tecum issued under subsection (2), the department may petition a court of competent jurisdiction in the



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county where the person's residence or principal place of business is located, upon which the court must issue an order requiring such person to obey the subpoena or show cause for failing to obey the subpoena. Unless the person shows sufficient cause for failing to obey the subpoena, the court must direct the person to obey the subpoena. Failure to comply with such order constitutes contempt of court.

(4) For the purpose of any investigation, examination, or proceeding initiated by the department under this chapter, the department may designate agents to serve subpoenas and other process and to administer oaths or affirmations.

(5) Witnesses subpoenaed under this section are entitled to witness fees at the same rate established by s. 92.142 for witnesses in a civil case, except that witness fees are not payable for appearance at the witness's place of business during regular business hours or at the witness's residence.

(6) The department may adopt rules to administer this section.

Section 14. 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



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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 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 15. Paragraph (a) of subsection (8) of section 338.221, Florida Statutes, is amended to read:

338.221 Definitions.—As used in ss. 338.22-338.241, the following words and terms have the following meanings, unless the context indicates another or different meaning or intent:

(8) "Economically feasible" means:

(a) For a proposed turnpike project, that, as determined by the department before the issuance of revenue bonds for the project, the estimated net revenues of the proposed turnpike project, excluding feeder roads and turnpike improvements, will be sufficient to pay at least 50 percent of the average annual debt service on the bonds associated with the project by the end of the 12th year of operation and to pay at least 100 percent of the average annual debt service on the bonds by the end of the



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30th year of operation. In implementing this paragraph, up to 50 percent of the adopted work program costs of the project may be funded from turnpike revenues.

This subsection does not prohibit the pledging of revenues from the entire turnpike system to bonds issued to finance or refinance a turnpike project or group of turnpike projects.

Section 16. Subsection (4) of section 339.0809, Florida Statutes, is amended to read:

339.0809 Florida Department of Transportation Financing Corporation.—

(4) The Florida Department of Transportation Financing Corporation may enter into one or more service contracts with the department to provide services to the department in connection with projects approved in the department's work program, which approval specifically provides that the department may enter into a service contract for the project pursuant to this section. The department may enter into one or more such service contracts with the corporation and provide for payments under such contracts, subject to annual appropriation by the Legislature. The proceeds from such service contracts may be used for the corporation's administrative costs and expenses after payments under subsection (5). Each service contract may have a term of up to 35 years. In compliance with s. 287.0641 and other applicable law, the obligations of the department under such service contracts do not constitute a general obligation of the state or a pledge of the full faith and credit or taxing power of the state, and such obligations are not an obligation of the State Board of Administration or entities for



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which it invests funds, other than the department as provided in this section, but are payable solely from amounts available in the State Transportation Trust Fund, subject to annual appropriation. Notwithstanding any law to the contrary, funds in the State Transportation Trust Fund must first be available for appropriation for payments under a service contract before any other purpose, except for payments pursuant to s. 215.616, s. 215.617, s. 320.20(3) or (4), or s. 339.0801(1)(a). Annual debt service on the corporation's bonds payable from moneys appropriated for service contract payments may not exceed \$100 million. In compliance with this subsection and s. 287.0582, the service contract must expressly include the following statement: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

Section 17. Part III of chapter 343, Florida Statutes, consisting of sections 343.80, 343.805, 343.81, 343.82, 343.83, 343.835, 343.836, 343.84, 343.85, 343.87, 343.875, 343.88, 343.881, 343.884, and 343.89, Florida Statutes, is repealed.

Section 18. Paragraph (c) of subsection (1) of section 348.754, Florida Statutes, is amended to read:

348.754 Purposes and powers.—

(1)

(c) Notwithstanding any other provision of this section to the contrary, to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the department, the authority may not, without ~~the~~ prior consultation with consent of the secretary of the department, construct any extensions, additions, or improvements to the



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expressway system in Lake County.

Section 19. For the purpose of incorporating the amendment made by this act to section 316.126, Florida Statutes, in a reference thereto, paragraph (d) of subsection (2) of section 318.18, Florida Statutes, is reenacted 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:

(2) Thirty dollars for all nonmoving traffic violations and:

(d) For all violations of s. 316.126(1)(b), unless otherwise specified.

Section 20. For the purpose of incorporating the amendment made by this act to section 316.70, Florida Statutes, in a reference thereto, subsection (1) of section 316.3026, Florida Statutes, is reenacted to read:

316.3026 Unlawful operation of motor carriers.—

(1) The Office of Commercial Vehicle Enforcement may issue out-of-service orders to motor carriers, as defined in s. 320.01, who, after proper notice, have failed to pay any penalty or fine assessed by the department, or its agent, against any owner or motor carrier for violations of state law, refused to submit to a compliance review and provide records pursuant to s. 316.302(6) or s. 316.70, or violated safety regulations pursuant to s. 316.302 or insurance requirements in s. 627.7415. Such out-of-service orders have the effect of prohibiting the operations of any motor vehicles owned, leased, or otherwise operated by the motor carrier upon the roadways of this state, until the violations have been corrected or penalties have been



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paid. Out-of-service orders must be approved by the director of the Division of the Florida Highway Patrol or his or her designee. An administrative hearing pursuant to s. 120.569 shall be afforded to motor carriers subject to such orders.

Section 21. For the purpose of incorporating the amendment made by this act to section 338.221, Florida Statutes, in a reference thereto, section 338.2276, Florida Statutes, is reenacted to read:

338.2276 Western Beltway turnpike project; financing.—Upon a determination of economic feasibility, as defined in s. 338.221(8), for part C of the Western Beltway turnpike project, which part extends from Florida's Turnpike near Ocoee in Orange County southerly through Orange County and Osceola County to an interchange with I-4 near the Osceola/Polk County line, the Department of Transportation shall include a request for the issuance of turnpike revenue bonds to construct the project as part of its next legislative budget request and tentative work program. If funding is insufficient to construct part C, it is the intent of the Legislature that such project be given priority as a project financed from subsequent issuances of turnpike revenue bonds approved by the Legislature; however, such priority consideration is contingent on the project's meeting all economic feasibility requirements and upon the project's being financed without the use of capitalized interest.

Section 22. Notwithstanding any other law, the Northwest Florida Transportation Corridor Authority is dissolved. The authority shall discharge or make provision for the authority's debts, obligations, and other liabilities; settle and close the





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authority's activities and affairs; and provide for distribution  
of the authority's assets, or the proceeds of such assets, such  
that each local general-purpose government represented on the  
authority's board receives a distribution generally in  
proportion to each entity's contribution to the acquisition of  
the assets.

Section 23. This act shall take effect July 1, 2021.

===== T I T L E   A M E N D M E N T =====  
And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to transportation; amending s.  
316.126, F.S.; requiring drivers to change lanes when  
approaching a road and bridge maintenance or  
construction vehicle displaying warning lights on the  
roadside; amending s. 316.3045, F.S.; revising  
provisions relating to the operation of radios or  
other soundmaking devices in vehicles; deleting a  
standard for determining prohibited sound levels;  
deleting an exception for vehicles operated for  
business or political purposes; authorizing local  
authorities to regulate the place where such  
soundmaking devices may be operated; amending s.  
316.305, F.S.; deleting obsolete language; amending s.  
316.70, F.S.; providing that owners and drivers of  
nonpublic sector buses operated on public highways of  
this state are subject to specified provisions of law;



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authorizing the Department of Highway Safety and Motor Vehicles to conduct compliance reviews for a specified purpose; revising civil penalties; authorizing certain law enforcement officers and appointed agents to require drivers of commercial vehicles to submit to an inspection of the vehicle and the driver's records; authorizing such officers and agents to require the vehicle and driver to be removed from service under specified conditions; authorizing such officers and agents to give written notice; creating s. 319.1414, F.S.; authorizing the department to conduct investigations and examinations of department-authorized private rebuilt inspection providers; authorizing the department to exercise certain powers when conducting such investigations and examinations; authorizing the department to petition a court if a person refuses to testify, produce materials, or obey a subpoena or subpoena duces tecum; requiring the court to issue an order; requiring such person to obey the subpoena or show cause for failing to obey the subpoena; providing a penalty for a person who fails to comply with the court's order; authorizing the department to designate agents for specified purposes; providing that subpoenaed witnesses are entitled to witness fees; providing exceptions; authorizing the department to adopt rules; amending s. 319.25, F.S.; authorizing the department to conduct investigations and examinations relating to violations of provisions relating to title certificates; authorizing the



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department to exercise certain powers when conducting such investigations and examinations; authorizing the department to petition a court if a person refuses to testify, produce materials, or obey a subpoena or subpoena duces tecum; requiring the court to issue an order; requiring such person to obey the subpoena or show cause for failing to obey the subpoena; providing a penalty for a person who fails to comply with the court's order; authorizing the department to designate agents for specified purposes; providing that subpoenaed witnesses are entitled to witness fees; providing exceptions; authorizing the department to adopt rules; amending s. 319.30, F.S.; revising conditions under which insurance companies are authorized to receive salvage certificates of title or certificates of destruction for motor vehicles and mobile homes from the department; amending s. 320.27, F.S.; requiring motor vehicle dealer licensees to deliver copies of renewed, continued, changed, or new insurance policies to the department within specified timeframes under certain conditions; requiring such licensees to deliver copies of renewed, continued, changed, or new surety bonds or irrevocable letters of credit to the department within specified timeframes under certain conditions; amending s. 320.77, F.S.; requiring mobile home dealer licensees to deliver copies of renewed, continued, changed, or new surety bonds, cash bonds, or irrevocable letters of credit to the department within specified timeframes under



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certain conditions; amending s. 320.771, F.S.;  
revising requirements for applications for licenses  
required of recreational vehicle dealers; requiring  
recreational vehicle dealer licensees to deliver  
copies of renewed, continued, changed, or new  
insurance policies to the department within specified  
timeframes under certain conditions; requiring such  
licensees to deliver copies of renewed, continued,  
changed, or new surety bonds to the department within  
specified timeframes under certain conditions;  
amending s. 320.8225, F.S.; requiring mobile home and  
recreational vehicle manufacturer, distributor, and  
importer licensees to deliver copies of renewed,  
continued, changed, or new surety bonds, cash bonds,  
or letters of credit to the department within  
specified timeframes under certain conditions;  
amending s. 320.861, F.S.; authorizing the department  
to conduct investigations and examinations relating to  
violations of certain laws, rules, or orders relating  
to motor vehicle licenses; revising the powers of the  
department relating to conducting such investigations  
and examinations; authorizing the department to  
petition a court if a person refuses to testify,  
produce materials, or obey a subpoena or subpoena  
duces tecum; requiring the court to issue an order;  
requiring such person to obey the subpoena or show  
cause for failing to obey the subpoena; providing a  
penalty for a person who fails to comply with the  
court's order; authorizing the department to designate



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agents for specified purposes; providing that  
subpoenaed witnesses are entitled to witness fees;  
providing exceptions; authorizing the department to  
adopt rules; creating s. 322.71, F.S.; authorizing the  
department to conduct investigations and examinations  
relating to violations of certain laws, rules, or  
orders relating to driver licenses; authorizing the  
department to exercise certain powers when conducting  
such investigations and examinations; authorizing the  
department to petition a court if a person refuses to  
testify, produce materials, or obey a subpoena or  
subpoena duces tecum; requiring the court to issue an  
order; requiring such person to obey the subpoena or  
show cause for failing to obey the subpoena; providing  
a penalty for a person who fails to comply with the  
court's order; authorizing the department to designate  
agents for specified purposes; providing that  
subpoenaed witnesses are entitled to witness fees;  
providing exceptions; authorizing the department to  
adopt rules; amending s. 337.14, F.S.; exempting  
airports from certain restrictions regarding entities  
performing engineering and inspection services;  
amending s. 338.221, F.S.; revising the definition of  
the term "economically feasible"; amending s.  
339.0809, F.S.; requiring that funds in the State  
Transportation Trust Fund be first available for  
appropriation for payments under a service contract  
before any other purpose; providing exceptions;  
prohibiting annual debt service on the Florida



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Department of Transportation Financing Corporation's bonds payable from moneys appropriated from service contract payments from exceeding \$100 million; repealing part III of chapter 343, F.S., relating to the creation and operation of the Northwest Florida Transportation Corridor Authority; amending s. 348.754, F.S.; prohibiting the Central Florida Expressway Authority from constructing any extensions, additions, or improvements to the Central Florida Expressway System in Lake County without prior consultation with, rather than consent of, the Secretary of Transportation; reenacting s. 318.18(2)(d), F.S., relating to the amount of penalties, to incorporate the amendment made to s. 316.126, F.S., in a reference thereto; reenacting s. 316.3026(1), F.S., relating to unlawful operation of motor carriers, to incorporate the amendment made to s. 316.70, F.S., in a reference thereto; reenacting s. 338.2276, F.S., relating to the Western Beltway turnpike project, to incorporate the amendment made to s. 338.221, F.S., in a reference thereto; dissolving the Northwest Florida Transportation Corridor Authority and requiring the authority to discharge its liabilities, settle and close its activities and affairs, and provide for the distribution of the authority's assets; providing an effective date.



953058

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: WD   | . |       |
| 03/11/2021 | . |       |
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|            | . |       |

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The Committee on Transportation (Rodriguez) recommended the following:

**Senate Amendment to Amendment (936070) (with title amendment)**

Between lines 828 and 829  
insert:

Section 23. Department of Transportation to conduct feasibility study.—The Department of Transportation is directed to examine the feasibility of implementing a toll rebate program for low-income individuals in the form of a rebate to be credited to each participating individual's account. The



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department shall develop a report that, at a minimum, recommends eligibility requirements for participation in the program, such as city residency and a specified income maximum, the rebate amount provided per trip, and the minimum number of trips required during a specified timeframe to qualify for the rebate. The department shall provide the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2021.

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

And the title is amended as follows:

Delete line 993

and insert:

authority's assets; directing the Department of Transportation to examine the feasibility of implementing a Toll Rebate Program for low-income individuals; requiring the department to develop a report; specifying requirements for the report; requiring the department to submit the report to the Governor and the Legislature by a specified date; providing an effective date.



By Senator Harrell

25-01617C-21

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1 A bill to be entitled  
 2 An act relating to transportation; amending s.  
 3 316.126, F.S.; requiring drivers to change lanes when  
 4 approaching a road and bridge maintenance or  
 5 construction vehicle displaying warning lights on the  
 6 roadside; amending s. 316.305, F.S.; deleting obsolete  
 7 language; amending s. 316.70, F.S.; providing that  
 8 owners and drivers of nonpublic sector buses operated  
 9 on public highways of this state are subject to  
 10 specified provisions of law; authorizing the  
 11 Department of Highway Safety and Motor Vehicles to  
 12 conduct compliance reviews for a specified purpose;  
 13 revising civil penalties; authorizing certain law  
 14 enforcement officers and appointed agents to require  
 15 drivers of commercial vehicles to submit to an  
 16 inspection of the vehicle and the driver's records;  
 17 authorizing such officers and agents to require the  
 18 vehicle and driver to be removed from service under  
 19 specified conditions; authorizing such officers and  
 20 agents to give written notice; creating s. 319.1414,  
 21 F.S.; authorizing the department to conduct  
 22 investigations and examinations of department-  
 23 authorized private rebuilt inspection providers;  
 24 authorizing the department to exercise certain powers  
 25 when conducting such investigations and examinations;  
 26 authorizing the department to petition a court if a  
 27 person refuses to testify, produce materials, or obey  
 28 a subpoena or subpoena duces tecum; requiring the  
 29 court to issue an order; requiring such person to obey

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

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30 the subpoena or show cause for failing to obey the  
 31 subpoena; providing a penalty for a person who fails  
 32 to comply with the court's order; authorizing the  
 33 department to designate agents for specified purposes;  
 34 providing that subpoenaed witnesses are entitled to  
 35 witness fees; providing exceptions; authorizing the  
 36 department to adopt rules; amending s. 319.25, F.S.;  
 37 authorizing the department to conduct investigations  
 38 and examinations relating to violations of provisions  
 39 relating to title certificates; authorizing the  
 40 department to exercise certain powers when conducting  
 41 such investigations and examinations; authorizing the  
 42 department to petition a court if a person refuses to  
 43 testify, produce materials, or obey a subpoena or  
 44 subpoena duces tecum; requiring the court to issue an  
 45 order; requiring such person to obey the subpoena or  
 46 show cause for failing to obey the subpoena; providing  
 47 a penalty for a person who fails to comply with the  
 48 court's order; authorizing the department to designate  
 49 agents for specified purposes; providing that  
 50 subpoenaed witnesses are entitled to witness fees;  
 51 providing exceptions; authorizing the department to  
 52 adopt rules; amending s. 320.27, F.S.; requiring motor  
 53 vehicle dealer licensees to deliver copies of renewed,  
 54 continued, changed, or new insurance policies to the  
 55 department within specified timeframes under certain  
 56 conditions; requiring such licensees to deliver copies  
 57 of renewed, continued, changed, or new surety bonds or  
 58 irrevocable letters of credit to the department within

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

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59 specified timeframes under certain conditions;  
 60 amending s. 320.77, F.S.; requiring mobile home dealer  
 61 licensees to deliver copies of renewed, continued,  
 62 changed, or new surety bonds, cash bonds, or  
 63 irrevocable letters of credit to the department within  
 64 specified timeframes under certain conditions;  
 65 amending s. 320.8225, F.S.; requiring mobile home and  
 66 recreational vehicle manufacturer, distributor, and  
 67 importer licensees to deliver copies of renewed,  
 68 continued, changed, or new surety bonds, cash bonds,  
 69 or letters of credit to the department within  
 70 specified timeframes under certain conditions;  
 71 amending s. 320.861, F.S.; authorizing the department  
 72 to conduct investigations and examinations relating to  
 73 violations of certain laws, rules, or orders relating  
 74 to motor vehicle licenses; revising the powers of the  
 75 department relating to conducting such investigations  
 76 and examinations; authorizing the department to  
 77 petition a court if a person refuses to testify,  
 78 produce materials, or obey a subpoena or subpoena  
 79 duces tecum; requiring the court to issue an order;  
 80 requiring such person to obey the subpoena or show  
 81 cause for failing to obey the subpoena; providing a  
 82 penalty for a person who fails to comply with the  
 83 court's order; authorizing the department to designate  
 84 agents for specified purposes; providing that  
 85 subpoenaed witnesses are entitled to witness fees;  
 86 providing exceptions; authorizing the department to  
 87 adopt rules; creating s. 322.71, F.S.; authorizing the

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88 department to conduct investigations and examinations  
 89 relating to violations of certain laws, rules, or  
 90 orders relating to driver licenses; authorizing the  
 91 department to exercise certain powers when conducting  
 92 such investigations and examinations; authorizing the  
 93 department to petition a court if a person refuses to  
 94 testify, produce materials, or obey a subpoena or  
 95 subpoena duces tecum; requiring the court to issue an  
 96 order; requiring such person to obey the subpoena or  
 97 show cause for failing to obey the subpoena; providing  
 98 a penalty for a person who fails to comply with the  
 99 court's order; authorizing the department to designate  
 100 agents for specified purposes; providing that  
 101 subpoenaed witnesses are entitled to witness fees;  
 102 providing exceptions; authorizing the department to  
 103 adopt rules; amending s. 348.754, F.S.; prohibiting  
 104 the Central Florida Expressway Authority from  
 105 constructing any extensions, additions, or  
 106 improvements to the Central Florida Expressway System  
 107 in Lake County without the prior consultation, rather  
 108 than consent, of the Secretary of Transportation;  
 109 reenacting s. 318.18(2)(d), F.S., relating to the  
 110 amount of penalties, to incorporate the amendment made  
 111 to s. 316.126, F.S., in a reference thereto;  
 112 reenacting s. 316.3026(1), F.S., relating to unlawful  
 113 operation of motor carriers, to incorporate the  
 114 amendment made to s. 316.70, F.S., in a reference  
 115 thereto; providing an effective date.  
 116

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

Section 1. Paragraph (b) of subsection (1) of section 316.126, Florida Statutes, is amended, and subsection (6) of that section is reenacted, 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

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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.

(6) A violation of this section is a noncriminal traffic infraction, punishable pursuant to chapter 318 as either a moving violation for infractions of subsection (1) or subsection (3), or as a pedestrian violation for infractions of subsection (2).

Section 2. Subsection (5) of section 316.305, Florida Statutes, is amended to read:

316.305 Wireless communications devices; prohibition.—

(5) When a law enforcement officer issues a citation for a violation of this section, the law enforcement officer must record the race and ethnicity of the violator. All law enforcement agencies must maintain such information and report the information to the department in a form and manner determined by the department. ~~Beginning February 1, 2020,~~ The department shall annually report the data collected under this subsection to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The data collected must be reported at least by statewide totals for local law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies. The statewide total for local law enforcement agencies shall combine the data for the county sheriffs and the municipal law enforcement agencies.

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175 Section 3. Section 316.70, Florida Statutes, is amended to  
 176 read:  
 177 316.70 Nonpublic sector buses; safety rules.—  
 178 (1) All owners and drivers of nonpublic sector buses  
 179 operated on the public highways of this state are subject to the  
 180 rules and regulations ~~The Department of Transportation shall~~  
 181 ~~establish and revise standards to ensure the safe operation of~~  
 182 ~~nonpublic sector buses, which standards shall be those contained~~  
 183 ~~in 49 C.F.R. parts 382, 385, and 390-397 to ensure and which~~  
 184 ~~shall be directed toward ensuring that:~~  
 185 (a) Nonpublic sector buses are safely maintained, equipped,  
 186 and operated.  
 187 (b) Nonpublic sector buses are carrying the insurance  
 188 required by law and carrying liability insurance on the checked  
 189 baggage of passengers not to exceed the standard adopted by the  
 190 United States Department of Transportation.  
 191 (c) Florida license tags are purchased for nonpublic sector  
 192 buses pursuant to s. 320.38.  
 193 ~~(d) The driving records of drivers of nonpublic sector~~  
 194 ~~buses are checked by their employers at least once each year to~~  
 195 ~~ascertain whether the driver has a suspended or revoked driver~~  
 196 ~~license.~~  
 197 (2) Department of Highway Safety and Motor Vehicles  
 198 ~~Transportation~~ personnel may conduct compliance reviews for the  
 199 purpose of determining compliance with this section. A civil  
 200 penalty ~~not to exceed \$5,000 in the aggregate~~ may be assessed  
 201 against any person who violates any provision of this section or  
 202 who violates any rule or order of the department found during a  
 203 compliance review as provided in s. 316.3025. A ef

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204 ~~Transportation. A civil penalty not to exceed \$25,000 in the~~  
 205 ~~aggregate may be assessed for violations found in a followup~~  
 206 ~~compliance review conducted within a 24-month period. A civil~~  
 207 ~~penalty not to exceed \$25,000 in the aggregate may be assessed~~  
 208 ~~and the motor carrier may be enjoined from operation pursuant to~~  
 209 ~~s. 316.3026 for if violations found during a are found after a~~  
 210 ~~second followup compliance review within 12 months after the~~  
 211 ~~first followup compliance review. Motor carriers found to be~~  
 212 ~~operating without insurance coverage required by s. 627.742 or~~  
 213 ~~49 C.F.R. part 387 may be enjoined as provided in s. 316.3026.~~  
 214 (3) For the purpose of enforcing this section, any law  
 215 enforcement officer of the Department of Highway Safety and  
 216 Motor Vehicles or a duly appointed agent of the department who  
 217 holds a current safety inspector certification from the  
 218 Commercial Vehicle Safety Alliance may require the driver of any  
 219 commercial vehicle operated on the highways of this state to  
 220 stop and submit to an inspection of the vehicle or the driver's  
 221 records. If the vehicle is being operated or the driver is  
 222 operating the vehicle in an unsafe condition, or if any required  
 223 part or equipment is not present or is not in proper repair or  
 224 adjustment, and the continued operation would be unduly  
 225 hazardous, the officer or agent may require the vehicle or the  
 226 driver to be removed from service pursuant to the North American  
 227 Standard Out-of-Service Criteria until all safety concerns are  
 228 corrected. However, if continuous operation would not be unduly  
 229 hazardous, the officer or agent may give written notice  
 230 requiring correction of the condition within 15 days after the  
 231 inspection.  
 232 (4) School buses subject to the provisions of chapter 1006

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or s. 316.615 are exempt from ~~the provisions of~~ this section.

Section 4. Section 319.1414, Florida Statutes, is created to read:

319.1414 Investigations; examinations; subpoenas; hearings; witnesses.—

(1) The department may conduct investigations and examinations of department-authorized private rebuilt inspection providers as it deems necessary to determine whether a person has violated or is about to violate this chapter or a contract entered into pursuant to this chapter or to assist with the enforcement of this chapter.

(2) For purposes of any investigation or examination conducted pursuant to this section, the department may exercise the power of subpoena and the powers to administer oaths or affirmations, to examine witnesses, to require affidavits, to take depositions, and to compel the attendance of witnesses and the production of books, papers, documents, records, and other evidence. A designated agent of the department may serve a subpoena relating to an investigation or examination.

(3) If a person refuses to testify; produce books, papers, documents, or records; or otherwise obey a subpoena or subpoena duces tecum issued under subsection (2), the department may petition a court of competent jurisdiction in the county where the person's residence or principal place of business is located, upon which the court must issue an order requiring such person to obey the subpoena or show cause for failing to obey the subpoena. Unless the person shows sufficient cause for failing to obey the subpoena, the court shall direct the person to obey the subpoena. Failure to comply with such order is

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contempt of court.

(4) For the purpose of any investigation, examination, or proceeding initiated by the department under this chapter, the department is authorized to designate agents to serve subpoenas and other process and to administer oaths or affirmations.

(5) Witnesses subpoenaed under this section are entitled to witness fees at the same rate established by s. 92.142 for witnesses in a civil case, except that witness fees are not payable for appearance at the witness's place of business during regular business hours or at the witness's residence.

(6) The department may adopt rules to administer this section.

Section 5. Section 319.25, Florida Statutes, is amended to read:

319.25 Cancellation of certificates; investigations; subpoenas and other process; oaths; rules.—

(1) If it appears that a certificate of title has been improperly issued, the department shall cancel the certificate. Upon cancellation of any certificate of title, the department shall notify the person to whom the certificate of title was issued, as well as any lienholders appearing thereon, of the cancellation and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of any lien noted thereon. The holder of the certificate of title shall return it to the department forthwith. If a certificate of registration has been issued to the holder of a certificate of title so canceled, the department shall immediately cancel the certificate of registration and demand the return of such certificate of registration and license plate or mobile home

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sticker; and the holder of such certificate of registration and license plate or sticker shall return them to the department forthwith.

(2) The department is authorized, upon application of any person and payment of the proper fees, to prepare and furnish lists containing title information in such form as the department may authorize, to search the records of the department and make reports thereof, and to make photographic copies of the department records and attestations thereof, except as provided in chapter 119.

(3) The department may conduct investigations and examinations of any person suspected of violating or of having violated this chapter or any rule adopted or order issued under this chapter.

(4) For purposes of any investigation or examination conducted pursuant to this section, the department may exercise the power of subpoena and the powers to administer oaths or affirmations, to examine witnesses, to require affidavits, to take depositions, and to compel the attendance of witnesses and the production of books, papers, documents, records, and other evidence. An authorized representative of the department may serve a subpoena relating to an investigation or examination.

(5) If a person refuses to testify; produce books, papers, documents, or records; or otherwise obey the subpoena or subpoena duces tecum issued under subsection (4), the department may petition a court of competent jurisdiction in the county where the person's residence or principal place of business is located, upon which the court must issue an order requiring such person to obey the subpoena or show cause for failing to obey

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the subpoena. Unless the person shows sufficient cause for failing to obey the subpoena, the court must direct the person to obey the subpoena. Failure to comply with such order is contempt of court.

(6) For the purpose of any investigation, examination, or proceeding initiated by the department under this chapter, the department is authorized to designate agents to serve subpoenas and other process and to administer oaths or affirmations.

(7) Witnesses subpoenaed under this section are entitled to witness fees at the same rate established by s. 92.142 for witnesses in a civil case, except that witness fees are not payable for appearance at the witness's place of business during regular business hours or at the witness's residence.

(8) The department may adopt rules to administer this section.

Section 6. Subsection (3) and paragraph (a) of subsection (10) of section 320.27, Florida Statutes, are amended to read: 320.27 Motor vehicle dealers.—

(3) APPLICATION AND FEE.—The application for the license shall be in such form as may be prescribed by the department and shall be subject to such rules with respect thereto as may be so prescribed by it. Such application shall be verified by oath or affirmation and shall contain a full statement of the name and birth date of the person or persons applying therefor; the name of the firm or copartnership, with the names and places of residence of all members thereof, if such applicant is a firm or copartnership; the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the name of the state under whose laws

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349 the corporation is organized; the present and former place or  
 350 places of residence of the applicant; and prior business in  
 351 which the applicant has been engaged and the location thereof.  
 352 Such application shall describe the exact location of the place  
 353 of business and shall state whether the place of business is  
 354 owned by the applicant and when acquired, or, if leased, a true  
 355 copy of the lease shall be attached to the application. The  
 356 applicant shall certify that the location provides an adequately  
 357 equipped office and is not a residence; that the location  
 358 affords sufficient unoccupied space upon and within which  
 359 adequately to store all motor vehicles offered and displayed for  
 360 sale; and that the location is a suitable place where the  
 361 applicant can in good faith carry on such business and keep and  
 362 maintain books, records, and files necessary to conduct such  
 363 business, which shall be available at all reasonable hours to  
 364 inspection by the department or any of its inspectors or other  
 365 employees. The applicant shall certify that the business of a  
 366 motor vehicle dealer is the principal business which shall be  
 367 conducted at that location. The application shall contain a  
 368 statement that the applicant is either franchised by a  
 369 manufacturer of motor vehicles, in which case the name of each  
 370 motor vehicle that the applicant is franchised to sell shall be  
 371 included, or an independent (nonfranchised) motor vehicle  
 372 dealer. The application shall contain other relevant information  
 373 as may be required by the department, including evidence that  
 374 the applicant is insured under a garage liability insurance  
 375 policy or a general liability insurance policy coupled with a  
 376 business automobile policy, which shall include, at a minimum,  
 377 \$25,000 combined single-limit liability coverage including

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378 bodily injury and property damage protection and \$10,000  
 379 personal injury protection. However, a salvage motor vehicle  
 380 dealer as defined in subparagraph (1)(c)5. is exempt from the  
 381 requirements for garage liability insurance and personal injury  
 382 protection insurance on those vehicles that cannot be legally  
 383 operated on roads, highways, or streets in this state. Franchise  
 384 dealers must submit a garage liability insurance policy, and all  
 385 other dealers must submit a garage liability insurance policy or  
 386 a general liability insurance policy coupled with a business  
 387 automobile policy. Such policy shall be for the license period,  
 388 and evidence of a new or continued policy shall be delivered to  
 389 the department at the beginning of each license period. A  
 390 licensee shall deliver to the department, in the manner  
 391 prescribed by the department, within 10 calendar days after any  
 392 renewal or continuation of or change in such policy or within 10  
 393 calendar days after any issuance of a new such policy, a copy of  
 394 the renewed, continued, changed, or new policy. Upon making  
 395 initial application, the applicant shall pay to the department a  
 396 fee of \$300 in addition to any other fees required by law.  
 397 Applicants may choose to extend the licensure period for 1  
 398 additional year for a total of 2 years. An initial applicant  
 399 shall pay to the department a fee of \$300 for the first year and  
 400 \$75 for the second year, in addition to any other fees required  
 401 by law. An applicant for renewal shall pay to the department \$75  
 402 for a 1-year renewal or \$150 for a 2-year renewal, in addition  
 403 to any other fees required by law. Upon making an application  
 404 for a change of location, the person shall pay a fee of \$50 in  
 405 addition to any other fees now required by law. The department  
 406 shall, in the case of every application for initial licensure,

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verify whether certain facts set forth in the application are true. Each applicant, general partner in the case of a partnership, or corporate officer and director in the case of a corporate applicant, must file a set of fingerprints with the department for the purpose of determining any prior criminal record or any outstanding warrants. The department shall submit the fingerprints to the Department of Law Enforcement for state processing and forwarding to the Federal Bureau of Investigation for federal processing. The actual cost of state and federal processing shall be borne by the applicant and is in addition to the fee for licensure. The department may issue a license to an applicant pending the results of the fingerprint investigation, which license is fully revocable if the department subsequently determines that any facts set forth in the application are not true or correctly represented.

(10) SURETY BOND OR IRREVOCABLE LETTER OF CREDIT REQUIRED.—

(a) Annually, before any license shall be issued to a motor vehicle dealer, the applicant-dealer of new or used motor vehicles shall deliver to the department a good and sufficient surety bond or irrevocable letter of credit, executed by the applicant-dealer as principal, in the sum of \$25,000. A licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such surety bond or irrevocable letter of credit or within 10 calendar days after any issuance of a new such surety bond or irrevocable letter of credit, a copy of such renewed, continued, changed, or new surety bond or irrevocable letter of credit.

Section 7. Paragraph (a) of subsection (16) of section

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320.77, Florida Statutes, is amended to read:

320.77 License required of mobile home dealers.—

(16) SURETY BOND, CASH BOND, OR IRREVOCABLE LETTER OF CREDIT REQUIRED.—

(a) Before any license shall be issued or renewed, the applicant or licensee shall deliver to the department a good and sufficient surety bond, cash bond, or irrevocable letter of credit, executed by the applicant or licensee as principal. The licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such surety bond, cash bond, or irrevocable letter of credit or within 10 calendar days after any issuance of a new such surety bond, cash bond, or irrevocable letter of credit, a copy of such renewed, continued, changed, or new surety bond, cash bond, or irrevocable letter of credit. The bond or irrevocable letter of credit shall be in a form to be approved by the department and shall be conditioned upon the dealer's complying with the conditions of any written contract made by the dealer in connection with the sale, exchange, or improvement of any mobile home and his or her not violating any of the provisions of chapter 319 or this chapter in the conduct of the business for which the dealer is licensed. The bond or irrevocable letter of credit shall be to the department and in favor of any retail customer who shall suffer any loss as a result of any violation of the conditions contained in this section. The bond or irrevocable letter of credit shall be for the license period, and a new bond or irrevocable letter of credit or a proper continuation certificate shall be delivered to the department at the



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beginning of each license period. However, the aggregate liability of the surety in any one license year shall in no event exceed the sum of such bond, or, in the case of a letter of credit, the aggregate liability of the issuing bank shall not exceed the sum of the credit. The amount of the bond required shall be as follows:

1. A single dealer who buys, sells, or deals in mobile homes and who has four or fewer supplemental licenses shall provide a surety bond, cash bond, or irrevocable letter of credit executed by the dealer applicant or licensee in the amount of \$25,000.

2. A single dealer who buys, sells, or deals in mobile homes and who has more than four supplemental licenses shall provide a surety bond, cash bond, or irrevocable letter of credit executed by the dealer applicant or licensee in the amount of \$50,000.

For the purposes of this paragraph, any person who buys, sells, or deals in both mobile homes and recreational vehicles shall provide the same surety bond required of dealers who buy, sell, or deal in mobile homes only.

Section 8. Paragraphs (a) and (b) of subsection (5) of section 320.8225, Florida Statutes, are amended to read:

320.8225 Mobile home and recreational vehicle manufacturer, distributor, and importer license.—

(5) REQUIREMENT OF ASSURANCE.—

(a) Annually, prior to the receipt of a license to manufacture mobile homes, the applicant or licensee shall submit, in the manner prescribed by the department, a surety

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bond, cash bond, or letter of credit from a financial institution, or a proper continuation certificate, sufficient to assure satisfaction of claims against the licensee for failure to comply with appropriate code standards, failure to provide warranty service, or violation of any provisions of this section. The amount of the surety bond, cash bond, or letter of credit must be \$50,000. Only one surety bond, cash bond, or letter of credit shall be required for each manufacturer, regardless of the number of factory locations. The surety bond, cash bond, or letter of credit must be to the department, in favor of any retail customer who suffers a loss arising out of noncompliance with code standards or failure to honor or provide warranty service. The department may disapprove any bond or letter of credit that does not provide assurance as provided in this section. A licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such surety bond, cash bond, or letter of credit or within 10 calendar days after any issuance of a new such surety bond, cash bond, or letter of credit, a copy of such renewed, continued, changed, or new surety bond, cash bond, or letter of credit.

(b) Annually, ~~before~~ ~~prior to~~ the receipt of a license to manufacture, distribute, or import recreational vehicles, the applicant or licensee shall submit, in the manner prescribed by the department, a surety bond, or a proper continuation certificate, sufficient to assure satisfaction of claims against the licensee for failure to comply with appropriate code standards, failure to provide warranty service, or violation of any provisions of this section. The amount of the surety bond

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must be \$10,000 per year. The surety bond must be to the department, in favor of any retail customer who suffers loss arising out of noncompliance with code standards or failure to honor or provide warranty service. The department may disapprove any bond that does not provide assurance as provided in this section. The licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such surety bond or within 10 calendar days after any issuance of a new such surety bond, a copy of such renewed, continued, changed, or new surety bond.

Section 9. Section 320.861, Florida Statutes, is amended to read:

320.861 Investigations; subpoenas and other process; oaths; rules ~~Inspection of records; production of evidence; subpoena power.-~~

(1) The department may conduct investigations and examinations of any person suspected of violating or of having violated this chapter or any rule adopted or order issued thereunder ~~inspect the pertinent books, records, letters, and contracts of any licensee, whether dealer or manufacturer, relating to any written complaint made to it against such licensee.~~

(2) For purposes of any investigation or examination conducted pursuant to this section, the department may ~~is granted and authorized to~~ exercise the power of subpoena and the powers to administer oaths or affirmations, to examine witnesses, to require affidavits, to take depositions, and to compel the attendance of witnesses and the production of books,

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papers, documents, records, and other evidence. A designated agent of the department may serve a subpoena relating to an investigation or examination for the attendance of witnesses and the production of any documentary evidence necessary to the disposition by it of any written complaint against any licensee, whether dealer or manufacturer.

(3) If a person refuses to testify; to produce books, papers, documents, or records; or to otherwise obey the subpoena or subpoena duces tecum issued under subsection (2), the department may petition a court of competent jurisdiction in the county where the person's residence or principal place of business is located, upon which the court must issue an order requiring such person to obey the subpoena or show cause for failing to obey the subpoena. Unless the person shows sufficient cause for failing to obey the subpoena, the court must direct the person to obey the subpoena. Failure to comply with such order constitutes contempt of court.

(4) For the purpose of any investigation, examination, or proceeding initiated by the department under this chapter, the department may designate agents to serve subpoenas and other process and to administer oaths or affirmations. The department shall exercise this power on its own initiative in accordance with ss. 320.615 and 320.71.

(5) Witnesses subpoenaed under this section are entitled to witness fees at the same rate established by s. 92.142 for witnesses in a civil case, except that witness fees are not payable for appearance at the witness's place of business during regular business hours or at the witness's residence.

(6) The department may adopt rules to administer this

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581 section.

582 Section 10. Section 322.71, Florida Statutes, is created to  
583 read:

584 322.71 Investigations; subpoenas and other process; oaths;  
585 rules.-

586 (1) The department may conduct investigations and  
587 examinations of any person suspected of violating or of having  
588 violated any provision of this chapter or any rule adopted or  
589 order issued under this chapter.

590 (2) For purposes of any investigation or examination  
591 conducted pursuant to this section, the department may exercise  
592 the power of subpoena and the powers to administer oaths or  
593 affirmations, to examine witnesses, to require affidavits, to  
594 take depositions, and to compel the attendance of witnesses and  
595 the production of books, papers, documents, records, and other  
596 evidence. Such subpoenas may be served by an authorized  
597 representative of the department.

598 (3) If a person refuses to testify; to produce books,  
599 papers, documents, or records; or to otherwise obey the subpoena  
600 or subpoena duces tecum issued under subsection (2), the  
601 department may petition a court of competent jurisdiction in the  
602 county where the person's residence or principal place of  
603 business is located, upon which the court must issue an order  
604 requiring such person to obey the subpoena or show cause for  
605 failing to obey the subpoena. Unless the person shows sufficient  
606 cause for failing to obey the subpoena, the court must direct  
607 the person to obey the subpoena. Failure to comply with such  
608 order constitutes contempt of court.

609 (4) For the purpose of any investigation, examination, or

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610 proceeding initiated by the department under this chapter, the  
611 department may designate agents to serve subpoenas and other  
612 process and to administer oaths or affirmations.

613 (5) Witnesses subpoenaed under this section are entitled to  
614 witness fees at the same rate established by s. 92.142 for  
615 witnesses in a civil case, except that witness fees are not  
616 payable for appearance at the witness's place of business during  
617 regular business hours or at the witness's residence.

618 (6) The department may adopt rules to administer this  
619 section.

620 Section 11. Paragraph (c) of subsection (1) of section  
621 348.754, Florida Statutes, is amended to read:

622 348.754 Purposes and powers.-

623 (1)

624 (c) Notwithstanding any other provision of this section to  
625 the contrary, to ensure the continued financial feasibility of  
626 the portion of the Wekiva Parkway to be constructed by the  
627 department, the authority may not, without the prior  
628 consultation ~~consent~~ of the secretary of the department,  
629 construct any extensions, additions, or improvements to the  
630 expressway system in Lake County.

631 Section 12. For the purpose of incorporating the amendment  
632 made by this act to section 316.126, Florida Statutes, in a  
633 reference thereto, paragraph (d) of subsection (2) of section  
634 318.18, Florida Statutes, is reenacted to read:

635 318.18 Amount of penalties.-The penalties required for a  
636 noncriminal disposition pursuant to s. 318.14 or a criminal  
637 offense listed in s. 318.17 are as follows:

638 (2) Thirty dollars for all nonmoving traffic violations

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639 and:

640 (d) For all violations of s. 316.126(1)(b), unless  
641 otherwise specified.

642 Section 13. For the purpose of incorporating the amendment  
643 made by this act to section 316.70, Florida Statutes, in a  
644 reference thereto, subsection (1) of section 316.3026, Florida  
645 Statutes, is reenacted to read:

646 316.3026 Unlawful operation of motor carriers.—

647 (1) The Office of Commercial Vehicle Enforcement may issue  
648 out-of-service orders to motor carriers, as defined in s.  
649 320.01, who, after proper notice, have failed to pay any penalty  
650 or fine assessed by the department, or its agent, against any  
651 owner or motor carrier for violations of state law, refused to  
652 submit to a compliance review and provide records pursuant to s.  
653 316.302(6) or s. 316.70, or violated safety regulations pursuant  
654 to s. 316.302 or insurance requirements in s. 627.7415. Such  
655 out-of-service orders have the effect of prohibiting the  
656 operations of any motor vehicles owned, leased, or otherwise  
657 operated by the motor carrier upon the roadways of this state,  
658 until the violations have been corrected or penalties have been  
659 paid. Out-of-service orders must be approved by the director of  
660 the Division of the Florida Highway Patrol or his or her  
661 designee. An administrative hearing pursuant to s. 120.569 shall  
662 be afforded to motor carriers subject to such orders.

663 Section 14. This act shall take effect July 1, 2021.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: CS/SB 1502

INTRODUCER: Committee on Transportation and Senator Harrell

SUBJECT: Public Records/Department of Highway Safety and Motor Vehicles

DATE: March 10, 2021

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Proctor | Vickers        | TR        | <b>Fav/CS</b> |
| 2. |         |                | ATD       |               |
| 3. |         |                | AP        |               |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1502 relates the Department of Highway Safety and Motor Vehicles (DHSMV), and contains a public record exemption for information received by the DHSMV as a result of an investigation or examination until the investigation or examination ceases to be active or administrative action taken by the DHSMV has concluded or been made part of any hearing or court proceeding.

The bill provides that the DHSMV may release information that is made confidential and exempt in furtherance of its official duties and responsibilities or, if released to another governmental agency, in the furtherance of that agency's official duties and responsibilities.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2026, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

The bill takes effect on the same date that SB 1500 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

## II. Present Situation:

### Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the Legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

### Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>5</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>5</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>10</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>12</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>13</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>16</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>19</sup>

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>20</sup>

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<sup>8</sup> Section 119.07(1)(a), F.S.

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

<sup>11</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>12</sup> *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>13</sup> *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>14</sup> *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>15</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>18</sup> Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;<sup>21</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

The Act also requires specified questions to be considered during the review process.<sup>24</sup> In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>25</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>26</sup>

## Subpoenas

A subpoena is a written order to compel an individual to give testimony on a particular subject, often before a court, but sometimes in other proceedings.<sup>27</sup> A subpoena duces tecum is a type of subpoena that requires the witness to produce a document or documents pertinent to a proceeding.<sup>28</sup> Section 27.04, F.S., “allows the state attorney to issue subpoenas duces tecum for records as part of an ongoing investigation.”<sup>29</sup> The state does not need to establish the relevance

<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>25</sup> See generally s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

<sup>27</sup> *Subpoena*, Legal Information Institute (available at <https://www.law.cornell.edu/wex/subpoena>).

<sup>28</sup> *Subpoena duces tecum*, Legal Information Institute, (available at [https://www.law.cornell.edu/wex/subpoena\\_duces\\_tecum](https://www.law.cornell.edu/wex/subpoena_duces_tecum)).

<sup>29</sup> *State v. Investigation*, 802 So. 2d 1141, 1144 (Fla. 2d DCA 2001).



and materiality of the information sought through an investigative subpoena,<sup>30</sup> but the subject matter of the investigation must be confined to violations of criminal law.<sup>31</sup>

Section 92.605(2), F.S., describes subpoenas, court orders, and warrants issued in compliance with the Electronic Communications and Privacy Act.<sup>32</sup> The federal act and its Florida counterpart, s. 934.23, F.S., authorize a law enforcement officer, state attorney, or judge to subpoena the records of an out-of-state corporation that provides electronic communication services or remote computing services to the public. A corporation must comply within 20 days after receipt of the subpoena. However, if the recipient cannot comply within that time period, it must notify the law enforcement officer who sought the subpoena within the 20-day time period that the records cannot be provided and comply as soon as possible.<sup>33</sup> An “out-of-state corporation,” i.e., any corporation qualified to do business in Florida under s. 607.1501, F.S.,<sup>34</sup> is “properly served,” by subpoena or otherwise, when service is effected on that corporation’s registered agent.<sup>35</sup>

### Subpoenas in General

A subpoena is an order directed to a person requiring attendance at a particular time and place. A subpoena ad testificandum requires attendance to testify as a witness, while a subpoena duces tecum orders a witness to appear and bring certain documents, records, or other tangible evidence that may be introduced as evidence in a case.<sup>36</sup> Subpoenas may be issued in a criminal investigation,<sup>37</sup> a criminal prosecution during discovery,<sup>38</sup> or for trial<sup>39</sup> by a defendant, his or her counsel,<sup>40</sup> or the state attorney. Generally, a subpoena must state the name of the court, title of action, and time and place the witness is ordered to give testimony or produce other evidence.<sup>41</sup> When a witness is subpoenaed by either party in a criminal case, he or she must remain available

<sup>30</sup> *Id.*

<sup>31</sup> *Morgan v. State*, 309 So. 2d 552, 553 (Fla. 1975).

<sup>32</sup> 18 U.S.C. § 2701 et seq.

<sup>33</sup> Section 92.605(2)(b), F.S. If the entity seeking the subpoena shows and the court finds that failure to produce the requested records would produce an “adverse result,” i.e., physical harm, flight from prosecution, destruction of evidence, intimidation of witnesses, or jeopardy to the investigation, the court may order the records be produced earlier than 20 days. Section 92.605(c), (1)(a), F.S. The court may also extend the time to comply with a subpoena if doing so will not cause an adverse result.

<sup>34</sup> Section 92.605(1)(e), F.S.

<sup>35</sup> Section 92.605(1)(h), F.S. Per s. 607.0505, F.S., a foreign corporation doing business in Florida must have a registered agent, and per s. 607.1507, F.S., such agent must be located in or authorized to transact business in Florida.

<sup>36</sup> *Black's Law Dictionary* (11th ed. 2019).

<sup>37</sup> Florida law authorizes certain entities to use subpoenas to conduct criminal investigations, including, but not limited to, s. 409.920, F.S. (authorizing the Attorney General to subpoena witnesses or materials, including medical records, during an investigation for Medicaid fraud); s. 415.107, F.S. (authorizing a criminal justice agency investigating a report related to abuse, neglect, or exploitation of a vulnerable adult to subpoena related records); and s. 414.411, F.S. (authorizing the Department of Financial Services to subpoena witnesses and records related to a public assistance fraud investigation).

<sup>38</sup> Fla. R. Civ. P. 3.220(h) allows any party to conduct a deposition by oral examination of any person authorized by the rule, generally including listed witnesses, co-defendants, or unlisted witnesses who have information relevant to the offense charged.

<sup>39</sup> A subpoena for testimony before the court and subpoenas for production of tangible evidence before the court may generally be issued by the clerk of the court or by any attorney of record in the case. Fla. R. Civ. P. 3.361(a).

<sup>40</sup> The United States Constitution guarantees a defendant in a criminal case the right to compulsory processes for obtaining witnesses in his or her favor; U.S. Const. amend. 6.

<sup>41</sup> *Id.*

for attendance until the case is resolved or until he or she is excused by the court.<sup>42</sup> If a witness departs without permission of the court or intentionally fails to produce requested tangible evidence, he or she may be held in contempt of court.<sup>43</sup>

### Contempt of Court

Contempt is a refusal to obey a court's legal order, mandate or decree.<sup>44</sup> There are two main types of contempt: civil and criminal. Civil contempt occurs when a person intentionally fails to do something ordered by the court in a civil case. Civil contempt is intended to compel a party's compliance or compensate a party for losses resulting from the contemptuous conduct.<sup>45</sup>

Criminal contempt results from conduct that tends to intentionally obstruct or interfere with the administration of justice, and its purpose is to punish offensive conduct, vindicate the court's authority, and deter such conduct.<sup>46</sup> Both main types of contempt may also be:

- Direct: when committed in the immediate presence of the court, such as an assault of a testifying witness; or
- Indirect: when committed away from the presence of the court, such as disobeying a court order.

A person commits indirect criminal contempt when he or she intentionally obstructs or interferes with the administration of justice by violating a court order, such as an investigative subpoena.<sup>47</sup> While authorized by statute,<sup>48</sup> criminal contempt is not specifically classified as a felony or misdemeanor, and is instead classified as a common law crime,<sup>49</sup> punishable by up to twelve months in county jail and a fine up to \$500.<sup>50</sup> <sup>51</sup> Due process of law requires that a party accused of indirect contempt be advised of the charge and provided an opportunity to defend himself or herself.<sup>52</sup>

### Investigative Subpoenas in Criminal Cases

Within the criminal justice system, law enforcement is typically responsible for investigating a crime and an assistant state attorney (ASA) prosecutes the offender. However, the State is often called upon to conduct or assist in an investigation which may lead to the filing of criminal charges. Under these circumstances, an ASA is authorized to issue an investigative subpoena.<sup>53</sup> Specifically, s. 27.04, F.S., allows an ASA to issue a subpoena for records<sup>54</sup> as part of any ongoing investigation.<sup>55</sup> An investigative subpoena allows the State to obtain information

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<sup>42</sup> S. 914.03, F.S.

<sup>43</sup> *Id.*

<sup>44</sup> S. 38.23, F.S.; *See also Black's Law Dictionary*, (11th ed. 2019).

<sup>45</sup> *Elliott v. Bradshaw*, 59 So. 3d 1182 (Fla. 4th DCA 2011); *Bowen v. Bowen*, 471 So. 2d 1274 (Fla. 1985).

<sup>46</sup> *Elliott*, 59 So. 3d at 1184; *Berlow v. Berlow*, 21 So. 3d 81 (Fla. 3d DCA 2009); *In re Steffens*, 988 So. 2d 142 (Fla. 5th DCA 2008).

<sup>47</sup> *Elliott*, 59 So. 3d at 1184; *Sando v. State*, 972 So. 2d 271 (Fla. 4th DCA 2008).

<sup>48</sup> S. 38.22, F.S.

<sup>49</sup> A common law crime is one which is not separately reclassified by statute as either a felony or a misdemeanor, *See S. 775.01*, F.S. (2005).

<sup>50</sup> S. 775.02, F.S.

<sup>51</sup> County courts and circuit courts possess the same power to punish contempt. S. 900.04, F.S.

<sup>52</sup> U.S. Const. amend. 5; Fla. R. Civ. P. 3.840.

<sup>53</sup> *State v. Investigation*, 802 So. 2d 1141, 1144 (Fla. 2d DCA 2001).

<sup>54</sup> *See Imparato v. Spicola*, 238 So. 2d 503 (Fla. 2d DCA 1970).

<sup>55</sup> S. 16.56(3), F.S., provides the same authority to a statewide prosecutor.

necessary to determine whether criminal activity is occurring or has occurred. When issuing an investigative subpoena, the State is not required to prove relevancy or materiality of the records sought,<sup>56</sup> but may only gather information that may lead to criminal charges.<sup>57</sup>

#### Records Subpoenas to Florida Businesses and Out-Of-State Corporations

When investigating a crime relating to the use of electronic communications, such as homicide involving electronically stored surveillance footage, internet child pornography, or vehicular homicide due to careless cell phone usage, ASAs frequently require out-of-state corporations (OOSCs)<sup>58</sup> to produce electronic records under strict time constraints. If such records are not produced timely, electronic records may be destroyed, witnesses' memories may fade, and public safety may be compromised. Under these circumstances, s. 92.605, F.S., permits an ASA, or other qualified law enforcement personnel, to issue an investigative subpoena to an OOSC.<sup>59</sup>

If an ASA issues an investigative subpoena to an OOSC providing electronic communication services or remote computing services to the public, and such records reveal a customer's identity, stored data, or usage of such services, or the destination or recipients of communications sent to or from a customer, the following requirements apply:<sup>60</sup>

- An OOSC's registered agent must be properly served with a subpoena.<sup>61</sup>
- An OOSC's response to the subpoena is due within 20 business days of receipt, unless a longer time period is provided.
  - If a court finds that failing to produce records within 20 business days will cause an adverse result,<sup>62</sup> a shorter time period may be provided.<sup>63</sup>
  - A court may also reasonably extend the time period provided if an extension will not cause an adverse result.
- If an OOSC cannot produce the requested records within the time period provided, it must notify the ASA within the 20-day time period and agree to produce the documents at the earliest possible time.

While explicitly requiring compliance or notification of inability to comply within 20 days, the law does not provide a specific consequence for when an OOSC fails to comply with a subpoena issued under s. 92.605, F.S. As such, contempt of court is the only available remedy an ASA may seek. Because an OOSC is not a single, identifiable person who may be sent to jail, and a one-time \$500 fine is unlikely to incentivize timely compliance by a large corporation, a

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<sup>56</sup> *State*, 802 So. 2d 1141 at 1144.

<sup>57</sup> *Morgan v. State*, 309 So. 2d 552 (Fla. 2d DCA 1975).

<sup>58</sup> Out-of-state corporation means any corporation that is qualified to do business in this state under s. 607.1501, F.S.; S. 92.605(1)(e), F.S.

<sup>59</sup> Section 92.605, F.S. permits service on an OOSC by any law enforcement officer seeking a court order or subpoena under ss. 16.56, 27.04, 905.185, or 914.04, F.S., or who is issued a search warrant under s. 933.01, or anyone who is authorized to issue a subpoena under the Florida Rules of Criminal Procedure.

<sup>60</sup> S. 92.605(2), F.S.

<sup>61</sup> Properly served means delivery by hand or in a manner reasonably allowing for proof of delivery if delivered by mail or facsimile. S. 92.605(1)(h), F.S.

<sup>62</sup> An adverse result includes the potential: danger to the life or physical safety of an individual; risk of flight from prosecution; destruction of or tampering with evidence; intimidation of potential witnesses; or serious jeopardy to an investigation or undue delay of a trial. S. 92.605(1)(a), F.S.

<sup>63</sup> S. 92.605(2)(c), F.S.

contempt proceeding is neither practical nor useful in punishing or deterring an OOSC's intentional violation or untimely compliance with a subpoena.

### **III. Effect of Proposed Changes:**

The bill amends ss. 319.1414, 319.25, 320.861, and 322.71, F.S., to provide that information received by the DHSMV as a result of an investigation or examination is confidential and exempt from the disclosure requirements in s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation or examination ceases to be active or administrative action taken by the DHSMV has concluded or been made part of any hearing or court proceeding.

The bill provides the DHSMV may release information that is made confidential and exempt in furtherance of its official duties and responsibilities or, if released to another governmental agency, in the furtherance of that agency's official duties and responsibilities.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2026, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

The bill contains a statement of public necessity, which includes:

- The Legislature finds that it is a public necessity that information received by the DHSMV as a result of an investigation or examination conducted pursuant to s. 319.1414, s. 319.25, chapter 320 as provided in s. 320.861, or chapter 322 as provided in s. 322.71, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution until the investigation or examination ceases to be active or administrative action taken by the DHSMV has concluded or been made part of any hearing or court proceeding.
- The release of such information about a pending investigation or examination of violations of ss. 319.1414 and 319.25, F.S., and chapters 320 and 322, F.S., could obstruct or jeopardize the integrity of the investigation or examination and impair the ability of the DHSMV to perform its official duties and carry out its responsibilities under ss. 319.1414 and 319.25, F.S., and chapters 320 and 322, F. S.
- Therefore, the Legislature finds that it is a public necessity to make such information confidential and exempt from public records requirements.

The bill has an effective on the same date that SB 1500 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:****Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for information received by the DHSMV as a result of an investigation or examination.

**Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

**Breadth of Exemption**

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law.

The purpose of the law is to protect information received by the DHSMV as a result of an investigation or examination. This bill exempts only information received by the DHSMV as a result of an investigation or examination. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 319.1414, 319.25, 320.861, and 322.71

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Committee on Transportation on March 10, 2021:**

- Amends the effective date and directory clauses to reflect the linked bill SB 1500.

B. Amendments:

None.



763330

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 03/11/2021 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Transportation (Harrell) recommended the following:

**Senate Amendment (with directory amendment)**

Delete line 143  
and insert:  
SB 1500 or similar legislation takes effect, if such legislation

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete line 34

and insert:



763330

11 Florida Statutes, as created by SB 1500, 2021 Regular Session,  
12 is

13  
14 Delete line 56  
15 and insert:

16 Florida Statutes, as amended by SB 1500, 2021 Regular Session,  
17

18 Delete line 78  
19 and insert:

20 Florida Statutes, as amended by SB 1500, 2021 Regular Session,  
21 is

22  
23 Delete line 100  
24 and insert:

25 Florida Statutes, as created by SB 1500, 2021 Regular Session,  
26 is



By Senator Harrell

25-01618-21

20211502\_\_

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 319.1414, F.S.; exempting from public records  
 4 requirements certain information received by the  
 5 Department of Highway Safety and Motor Vehicles as a  
 6 result of investigations and examinations of private  
 7 rebuilt inspection providers; providing for future  
 8 legislative review and repeal of the exemptions;  
 9 amending s. 319.25, F.S.; exempting from public  
 10 records requirements certain information received by  
 11 the department as a result of investigations and  
 12 examinations relating to title certificates; providing  
 13 for future legislative review and repeal of the  
 14 exemptions; amending s. 320.861, F.S.; exempting from  
 15 public records requirements certain information  
 16 received by the department as a result of  
 17 investigations and examinations of persons suspected  
 18 of violating or of having violated certain laws,  
 19 rules, or orders relating to motor vehicle licenses;  
 20 providing for future legislative review and repeal of  
 21 the exemptions; amending s. 322.71, F.S.; exempting  
 22 from public records requirements certain information  
 23 received by the department as a result of  
 24 investigations and examinations of persons suspected  
 25 of violating or of having violated certain laws,  
 26 rules, or orders relating to driver licenses;  
 27 providing for future legislative review and repeal of  
 28 the exemptions; providing a statement of public  
 29 necessity; providing a contingent effective date.

Page 1 of 5

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

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30  
 31 Be It Enacted by the Legislature of the State of Florida:  
 32  
 33 Section 1. Present subsection (6) of section 319.1414,  
 34 Florida Statutes, as created by SB \_\_\_, 2021 Regular Session, is  
 35 redesignated as subsection (7), and a new subsection (6) is  
 36 added to that section, to read:  
 37 319.1414 Investigations; examinations; subpoenas; hearings;  
 38 witnesses.—  
 39 (6) Information received by the department as a result of  
 40 an investigation or examination conducted pursuant to this  
 41 section is confidential and exempt from the disclosure  
 42 requirements in s. 119.07(1) and s. 24(a), Art. I of the State  
 43 Constitution until the investigation or examination ceases to be  
 44 active or administrative action taken by the department has  
 45 concluded or been made part of any hearing or court proceeding.  
 46 The department may release information that is made confidential  
 47 and exempt under this subsection in furtherance of its official  
 48 duties and responsibilities or, if released to another  
 49 governmental agency, in the furtherance of that agency's  
 50 official duties and responsibilities. This subsection is subject  
 51 to the Open Government Sunset Review Act in accordance with s.  
 52 119.15 and shall stand repealed on October 2, 2026, unless  
 53 reviewed and saved from repeal through reenactment by the  
 54 Legislature.  
 55 Section 2. Present subsection (8) of section 319.25,  
 56 Florida Statutes, as amended by SB \_\_\_, 2021 Regular Session,  
 57 is redesignated as subsection (9), and a new subsection (8) is  
 58 added to that section, to read:

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

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319.25 Cancellation of certificates; investigations; subpoenas and other process; oaths; rules.—

(8) Information received by the department as a result of an investigation or examination conducted pursuant to this section is confidential and exempt from the disclosure requirements in s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation or examination ceases to be active or administrative action taken by the department has concluded or been made part of any hearing or court proceeding. The department may release information that is made confidential and exempt under this subsection in furtherance of its official duties and responsibilities or, if released to another governmental agency, in the furtherance of that agency's official duties and responsibilities. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. Present subsection (6) of section 320.861, Florida Statutes, as amended by SB \_\_\_, 2021 Regular Session, is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

320.861 Investigations; subpoenas and other process; oaths; rules.—

(6) Information received by the department as a result of an investigation or examination conducted pursuant to this chapter is confidential and exempt from the disclosure requirements in s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation or examination ceases to be

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active or administrative action taken by the department has concluded or been made part of any hearing or court proceeding. The department may release information that is made confidential and exempt under this subsection in furtherance of its official duties and responsibilities or, if released to another governmental agency, in the furtherance of that agency's official duties and responsibilities. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. Present subsection (6) of section 322.71, Florida Statutes, as created by SB \_\_\_, 2021 Regular Session, is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

322.71 Investigations; subpoenas and other process; oaths; rules.—

(6) Information received by the department as a result of an investigation or examination conducted pursuant to this chapter is confidential and exempt from the disclosure requirements in s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation or examination ceases to be active or administrative action taken by the department has concluded or been made part of any hearing or court proceeding. The department may release information that is made confidential and exempt under this subsection in furtherance of its official duties and responsibilities or, if released to another governmental agency, in the furtherance of that agency's official duties and responsibilities. This subsection is subject

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to the Open Government Sunset Review Act in accordance with s.  
119.15 and shall stand repealed on October 2, 2026, unless  
reviewed and saved from repeal through reenactment by the  
Legislature.

Section 5. The Legislature finds that it is a public  
necessity that information received by the Department of Highway  
Safety and Motor Vehicles as a result of an investigation or  
examination conducted pursuant to s. 319.1414, s. 319.25,  
chapter 320 as provided in s. 320.861, or chapter 322 as  
provided in s. 322.71, Florida Statutes, be made confidential  
and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
Article I of the State Constitution until the investigation or  
examination ceases to be active or administrative action taken  
by the department has concluded or been made part of any hearing  
or court proceeding. The release of such information about a  
pending investigation or examination of violations of ss.  
319.1414 and 319.25, Florida Statutes, and chapters 320 and 322,  
Florida Statutes, could obstruct or jeopardize the integrity of  
the investigation or examination and impair the ability of the  
Department of Highway Safety and Motor Vehicles to perform its  
official duties and carry out its responsibilities under ss.  
319.1414 and 319.25, Florida Statutes, and chapters 320 and 322,  
Florida Statutes. Therefore, the Legislature finds that it is a  
public necessity to make such information confidential and  
exempt from public records requirements.

Section 6. This act shall take effect on the same date that  
SB \_\_\_\_ or similar legislation takes effect, if such legislation  
is adopted in the same legislative session or an extension  
thereof and becomes a law.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: CS/SB 1620

INTRODUCER: Transportation Committee and Senator Brandes

SUBJECT: Autonomous Vehicles

DATE: March 11, 2021

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Price   | Vickers        | TR        | <b>Fav/CS</b> |
| 2. |         |                | CA        |               |
| 3. |         |                | RC        |               |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1620 defines the term “low-speed autonomous delivery vehicle” as a fully autonomous vehicle that meets the current federal definition. The bill authorizes such vehicles to operate only on streets or roads where the posted speed limit is 35 miles per hour or less but are not prohibited from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour. A low-speed autonomous delivery vehicle may operate on a street or road with a posted speed limit of more than 35 miles per hour, but no more than 45 miles per hour, under certain conditions.

The bill sets out equipment requirements for such vehicles and provides that the new provisions are superseded by any conflicting federal regulations. The bill also establishes insurance coverage requirements for such vehicles. The provisions of any motor vehicle equipment laws or regulations of this state, relating to or supporting motor vehicle operation by a human driver but not relevant for an automated driving system, are rendered inapplicable to fully autonomous vehicles designed to be operated *exclusively* by the automated driving system for *all* trips.

The bill also makes conforming revisions made necessary by the above provisions.

The fiscal impact to state and local revenues is indeterminate. See the “Fiscal Impact Statement” below for details.

The bill takes effect July 1, 2021.

## II. Present Situation:

### Low-Speed Autonomous Delivery Vehicles

Convenient delivery of goods to households is increasingly popular, particularly so in the current pandemic. New types of vehicles designed specifically for such purposes are emerging. One such vehicle is produced by Nuro, Inc., based in California,<sup>1</sup> which produces a vehicle called the R2X. Nuro indicates the vehicle is about half the width and weight of a typical car.<sup>2</sup>

As described by the National Highway Traffic Safety Administration (NHTSA),<sup>3</sup> the R2X is a highly automated low-speed, electrically-powered delivery vehicle designed to carry cargo exclusively (everything “from dinner to dry cleaning”<sup>4</sup>) and operate without a human driver. The vehicle has no occupant compartments, designated seating positions, or manual controls for driving the vehicle. The R2X is equipped with a system that allows a remote operator to take over the driving functions of the vehicle.<sup>5</sup>

Federal law defines “low-speed vehicle” to mean a motor vehicle:

- That is 4-wheeled,
- Whose speed attainable in 1 mile is more than 20 miles per hour and not more than 25 miles per hour on a paved level surface, and
- Whose gross vehicle weight rating is less than 3,000 pounds.<sup>6</sup>

Federal regulations in 49 C.F.R. s. 571.500 require each low-speed vehicle to be equipped with:

- Headlamps,
- Front and rear turn signal lamps,
- Taillamps,
- Stop lamps,
- Reflex reflectors: one red on each side as far to the rear as practicable, and one red on the rear,
- An exterior mirror mounted on the driver's side of the vehicle and either an exterior mirror mounted on the passenger's side of the vehicle or an interior mirror,
- A parking brake,
- A windshield that conforms to a specified Federal Motor Vehicle Safety Standard (FMVSS) relating to glazing.
- A vehicle identification number.
- Seat belt assemblies that comply with a specified FMVSS.

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<sup>1</sup> See Nuro, *About*, available at [Nuro — About](#) (last visited March 8, 2021).

<sup>2</sup> See Nuro, *Delivery Safety: Nuro's Approach*, at p. 9, available at [delivering\\_safety\\_nuros\\_approach.pdf \(squarespace.com\)](#) (last visited

<sup>3</sup> See Federal Register, Volume 85, No. 28, Tuesday, February 11, 2020, available at [Federal Register :: Nuro, Inc.; Grant of Temporary Exemption for a Low-Speed Vehicle With an Automated Driving System](#) (last visited March 8, 2021).

<sup>4</sup> Nuro, available at [Nuro — Product](#) (last visited March 8, 2021).

<sup>5</sup> NHTSA notes its understanding that the remote operator system is a “fallback” safety feature and is not a primary means of controlling the system. *Id.* at p. 1.

<sup>6</sup> 49 C.F.R. 571.3.

- Specified rear visibility requirements relating to back-up cameras.
- An alert sound necessary for pedestrians to detect and recognize the vehicle.

### ***Temporary Exemption from Federal Motor Vehicle Safety Standards***

The National Traffic and Motor Vehicle Safety Act<sup>7</sup> grants the U.S. Department of Transportation (USDOT) broad authority to exempt motor vehicles from an FMVSS or bumper standard on a temporary basis under specified terms and conditions.<sup>8</sup> The USDOT Secretary has delegated this authority to NHTSA.<sup>9</sup>

Pursuant to that authority, NHTSA has granted at least one company, Nuro, *temporary* exemptions from three of the low-speed vehicle equipment requirements in 49 C.F.R. s. 571.500.<sup>10</sup> The exemptions are from the following equipment requirements listed above:

- The exterior and interior mirror requirement.
- The windshield glazing requirements.
- The rear visibility requirements (relating to backup camera “linger time.”)

The exemption was granted under a number of terms and conditions and authorizes Nuro to produce 2,500 of the exempted R2X vehicles during any 12-month period of the exemption, or a maximum of 5,000 exempted vehicles over the full two-year period of the exemption. The exemption expires on February 10, 2022.

## **Autonomous Vehicles**

### ***Federal Policy and Guidance***

In October of 2018, the USDOT began releasing federal guidance for automated driving systems, building on previous policy and adopting an industry standard to ensure consistency in taxonomy usage. The standard sets out levels of vehicle automation, ranging from Level 0 (no automation) to Level 6 (full automation). The USDOT has since issued additional guidance, involving the work of multiple stakeholders, in periodic publications intended to lay the groundwork for deployment of automated vehicles and technology.<sup>11</sup> The latest guidance comes in the form of an *Automated Vehicles Comprehensive Plan*,<sup>12</sup> the goals of which are summarized by the USDOT as follows:

- Promote Collaboration and Transparency – USDOT will promote access to clear and reliable information to its partners and stakeholders, including the public, regarding the capabilities and limitations of ADS.<sup>13</sup>
- Modernize the Regulatory Environment – USDOT will modernize regulations to remove unintended and unnecessary barriers to innovative vehicle designs, features, and operational

<sup>7</sup> 49 U.S.C. 310 *et seq.*

<sup>8</sup> 49 U.S.C. 30113.

<sup>9</sup> 49 C.F.R. 1.95.

<sup>10</sup> See Federal Register, Volume 85, No. 28, Tuesday, February 11, 2020, available at [Federal Register :: Nuro, Inc.: Grant of Temporary Exemption for a Low-Speed Vehicle With an Automated Driving System](https://www.federalregister.gov/documents/2020/02/11/2020-02844/nuro-inc-grant-of-temporary-exemption-for-a-low-speed-vehicle-with-an-automated-driving-system) (last visited March 8, 2021).

<sup>11</sup> USDOT, *USDOT Automated Vehicles Activities*, “ADS 2.0 Activities,” “AV 3.0 Activities,” and “AV 4.0 Activities” tabs available at <https://www.transportation.gov/AV> (last visited March 7, 2021).

<sup>12</sup> Available at [Automated Vehicles Comprehensive Plan | US Department of Transportation](https://www.transportation.gov/AV/AV40) (last visited March 7, 2021).

<sup>13</sup> “Automated driving systems.” See discussion of current Florida definitions on p. 2 of this analysis.

models, and will develop safety focused frameworks and tools to assess the safe performance of ADS technologies.

- Prepare the Transportation System – USDOT will conduct, in partnership with stakeholders, the foundational research and demonstration activities needed to safely evaluate and integrate ADS, while working to improve the safety, efficiency, and accessibility of the transportation system.<sup>14</sup>

The USDOT is seeking public comments on the plan, with the comment period ending on March 22, 2021. Thus far, only guidance has been issued. No federal statutes or rules specifically applicable to automated vehicles are currently in place.

## **Current Florida Autonomous Vehicle Law**

### ***Definitions***

Current law defines the following relevant terms:

- “Automated driving system” means the hardware and software that are collectively capable of performing the entire dynamic driving task of an autonomous vehicle on a sustained basis, regardless of whether it is limited to a specific operational design domain.
- “Autonomous vehicle” means any vehicle equipped with an automated driving system.
- “Dynamic driving task” means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic within its specific operational design domain, if any, excluding strategic functions such as trip scheduling and selection of destinations and waypoints.
- “Fully autonomous vehicle” means a vehicle equipped with an automated driving system designed to function without a human operator.
- “Operational design domain” means a description of the specific operating domain in which an automated driving system is designed to properly operate, including, but not limited to, roadway types, speed ranges, environmental conditions such as weather and time of day, and other domain constraints.<sup>15</sup>
- “Teleoperation system” means the hardware and software installed in a motor vehicle which allow a remote human operator to supervise or perform aspects of, or the entirety of, the dynamic driving task.
- “Remote human operator” means a natural person who is not physically present in a vehicle equipped with an automated driving system who engages or monitors the vehicle from a remote location. A remote human operator may have the ability to perform aspects of, or the entirety of, the dynamic driving task for the vehicle or cause the vehicle to achieve a minimal risk condition. A remote human operator must be physically present in the United States and be licensed to operate a motor vehicle by a United States jurisdiction.<sup>16</sup>
- “Minimal risk condition” means a reasonably safe state, such as bringing the vehicle to a complete stop and activating the vehicle’s hazard lamps.<sup>17</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> Section 316.003(3), F.S.

<sup>16</sup> Section 316.003(90), F.S.

<sup>17</sup> Section 319.145(2), F.S.

A remote human operator must be physically present in the United States and be licensed to operate a motor vehicle by a United States jurisdiction.

### ***Operation and Compliance with Traffic and Motor Vehicle Laws***

A licensed operator is not required to operate a fully autonomous vehicle, and such vehicle may operate in this state regardless of whether a human operator, or any human at all, is physically present in the vehicle. For purposes of state uniform traffic control, the automated driving system, when engaged, is deemed the operator of an autonomous vehicle, regardless of whether a person is physically present in the vehicle while the vehicle is operating with the automated driving system engaged.<sup>18</sup> If the autonomous vehicle is fully autonomous, it must be able to achieve a minimal risk condition if a failure of the automated driving system occurs which renders that system unable to perform the entire dynamic driving task relevant to its intended operational design domain.<sup>19</sup>

The existing requirement for a driver's license does not apply when a fully autonomous vehicle is operated with the automated driving system engaged and without a human operator.<sup>20</sup> No registration statute specific to autonomous vehicles exists in current law; autonomous vehicle owners pay the same license tax as for any other vehicle, generally based on vehicle type and weight.<sup>21</sup> The owner or registrant of a fully autonomous vehicle (which is not a transportation network company) must have automobile insurance:

- In the amount of \$1 million because of bodily injury to, or death of, one person in any one crash.
- Subject to such limits for one person, in the amount of \$1 million because of bodily injury to, or death of, two or more persons in any one crash.
- In the amount of \$1 million because of injury to, or destruction of, property of others in any one crash.<sup>22</sup>

An autonomous vehicle or a fully autonomous vehicle equipped with a teleoperation system may operate without a human operator physically present in the vehicle when the teleoperation system is engaged and, if so equipped, is exempt from certain duties and a prohibition relating to vehicle operation on a *driver* in ch. 316, F.S., such as the duty to provide information and render reasonable assistance in a crash, the duty to give notice of the crash to appropriate law enforcement, and the prohibition against leaving an unattended motor vehicle without first setting the brake.<sup>23</sup>

An autonomous vehicle registered in this state must meet all of the following requirements:

- When required by federal law:
  - Have been certified in accordance with federal regulations in 49 C.F.R. part 567 as being in compliance with applicable federal motor vehicle safety standards.

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<sup>18</sup> Section 316.85, F.S.

<sup>19</sup> Section 319.145, F.S.

<sup>20</sup> Section 322.015, F.S.

<sup>21</sup> See s. 320.08, F.S.

<sup>22</sup> Section 627.749(3), F.S.

<sup>23</sup> The exemptions are contained in ss. 316.062(5), 316.063(4), 316.065(5), 316.1975(3), and 316.303(1). F.S. Similarly,



- Bear the required certification label or labels including reference to any exemption granted under applicable federal law.
- Be capable of being operated in compliance with the applicable traffic and motor vehicle laws of this state, regardless of whether the vehicle is operating with the automated driving system engaged.

## **Current Florida Low-Speed Vehicle Law**

### ***Definitions***

Current Florida law defines “low-speed vehicle,” to mean any four-wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including, but not limited to, neighborhood electric vehicles. Low-speed vehicles must comply with the safety standards in 49 C.F.R. s. 571.500 and s. 316.2122, F.S.<sup>24</sup>

### ***Operation and Compliance with Traffic and Motor Vehicle Laws***

The operation of a low-speed vehicle on any road in this state is authorized with the following restrictions:

- A low-speed vehicle or mini truck may be operated only on streets where the posted speed limit is 35 miles per hour or less but is not prohibited from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.
- A low-speed vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.
- A low-speed vehicle or mini truck must be registered and insured in accordance with s. 320.02, F.S.,<sup>25</sup> and titled pursuant to chapter 319, F.S.<sup>26</sup>
- Any person operating a low-speed vehicle or mini truck must have in his or her possession a valid driver license.
- The FDOT, counties, and municipalities, if necessary in the interest of safety, may prohibit the operation of low-speed vehicles on any road under their respective jurisdictions.<sup>27</sup>

For purposes of seasonal delivery personnel, a low-speed vehicle, under certain restrictions for package size and weight, annually from midnight October 15 until midnight January 31 may operate on any public road within a residential area with a posted speed limit of 35 miles per hour or less. The vehicle must be:

- Marked in a conspicuous manner with the name of the delivery service;

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<sup>24</sup> Section 320.01(41), F.S.

<sup>25</sup> That section requires every owner or person in charge of a motor vehicle that is operated or driven on the roads of this state to register the vehicle in this state. Florida’s Financial Responsibility Law requires minimum amounts of liability coverage of \$10,000 in the event of bodily injury to, or death of, one person, \$20,000 in the event of injury to, or death of, two or more persons, and \$10,000 in the event of damage to property of others, or \$30,000 combined policy. *See* s. 324.022, F.S. In addition, personal injury protection must provide a minimum benefit of \$10,000 for bodily injury to any one person who sustains an emergency medical condition, which is reduced to a \$2,500 limit for medical benefits if a treating medical provider does not determine an emergency medical condition existed. *See* s. 627.736(1), F.S.

<sup>26</sup> That section provides for applications for and issuance of certificates of title for every motor vehicle to be registered and licensed under the laws of this state.

<sup>27</sup> Section 316.2122, F.S.

- Equipped with, at a minimum, the equipment required under s. 316.212(6), F.S.
- Equipped with head lamps and tail lamps, in addition to the safety requirements in s. 316.212(6), F.S., if operated after sunset.<sup>28</sup>

These low-speed vehicles are presumably operated by a human driver and not autonomous.

The license tax for an electric low-speed vehicle is the same as that prescribed for any other vehicle, generally based on vehicle type and weight.<sup>29</sup> Low-speed vehicles must have a license plate that complies with the requirements of s. 320.06, F.S., relating to plate symbols and numbers and renewal and replacement, etc.

### III. Effect of Proposed Changes:

The bill defines the term “low-speed autonomous delivery vehicle,” authorizes such vehicles to operate on certain streets and roads under specified conditions, and renders inapplicable to fully autonomous vehicles designed to be operated *exclusively* by the automated driving system for *all* trips, the provisions of any motor vehicle equipment laws or regulations of this state, relating to or supporting motor vehicle operation by a human driver but not relevant for an automated driving system.

Section 1 amends s. 316.003, F.S., adding a new definition of “low-speed autonomous delivery vehicle,” meaning a fully autonomous vehicle that meets the definition of a low-speed vehicle in the Code of Federal Regulations.<sup>30</sup>

Section 2 amends s. 316.2122, F.S., currently applicable to low-speed vehicles (and mini trucks) on specified roadways. The bill authorizes an LSADV to operate on any road with the following restrictions:

- An LSADV may operate only on streets or roads where the posted speed limit is 35 miles per hour or less but is not prohibited from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.
- An LSADV may operate on a street or road with a posted speed limit of more than 35 miles per hour, but no more than 45 miles per hour, if:
  - The vehicle travels no more than 1 continuous mile on such a street or road, but the vehicle may travel in excess of 1 continuous mile if authorized by the entity with jurisdiction over the street or road;
  - The vehicle operates exclusively in the right lane, other than for the purpose of completing a turn; and
  - On a two-lane street or road where overtaking and passing another vehicle is unsafe because of traffic moving in the opposite direction or because of other unsafe conditions, and five or more vehicles are formed in a line behind the LSADV, the autonomous delivery vehicle exits the roadway wherever a sufficient area for a safe turn-out exists, to permit the vehicles following to proceed.

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<sup>28</sup> Section 316.2126(3), F.S.

<sup>29</sup> *Supra* note 21.

<sup>30</sup> *Supra* note 6.

An LSADV must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, and vehicle identification numbers. This provision conflicts with the federal equipment requirements<sup>31</sup> for low-speed vehicles discussed above. However, the bill provides that federal regulations adopted by NHTSA<sup>32</sup> supersede this provision. Because this provision is superseded by the equipment requirements of the federal regulations, only those vehicles that comply with the federal equipment requirements, or entities with vehicles that are granted an exemption from the requirements, are therefore authorized to operate under the restrictions set out above.

An LSADV must be covered by a policy of automobile insurance providing the following coverage:

- Primary liability coverage of at least \$1 million for death, bodily injury, and property damage.
- Minimum personal injury protection benefits required under current law.<sup>33</sup>
- Uninsured and underinsured vehicle coverage.<sup>34</sup>

Under the bill, the coverage requirements may be satisfied by automobile insurance maintained by the owner of an LSADV, the owner of the teleoperation system, the remote human operator, or a combination thereof.

These insurance requirements are identical to those for fully autonomous vehicles used in the passenger-transportation arena. Should an LSADV be involved in an incident involving an uninsured or underinsured motorist, the LSADV policy would provide benefits to the at-fault party.

The bill preserves the existing authority of the FDOT, counties, and municipalities, if necessary in the interest of safety, to prohibit the operation of low-speed vehicles (and by definition, LSADVs) on any road under their respective jurisdictions.

Section 3 amends s. 316.215, F.S., rendering the provisions of any motor vehicle equipment laws or regulations of this state, relating to or supporting motor vehicle operation by a human driver but not relevant for an automated driving system, inapplicable to fully autonomous vehicles designed to be operated *exclusively* by the automated driving system for all trips. To the extent that any unidentified conflict with federal law exists or arises, this provision may result in unintended consequences.

Sections 1, 4, and 5 amend ss. 316.003(62), 316.306(3)(a), and 655.960(1), F.S., respectively, to conform cross-references made necessary by the bill's revisions.

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<sup>31</sup> 49 C.F.R. s. 571.500, *supra* p. 4

<sup>32</sup> NHTSA, the National Highway Traffic Safety Administration, is a part of the USDOT. See USDOT, *U.S. Department of Transportation Administrations*, available at [U.S. Department of Transportation Administrations | US Department of Transportation](https://www.transportation.gov/department) (last visited March 7, 2021).

<sup>33</sup> *Supra* note 25.

<sup>34</sup> Uninsured and underinsured motorist coverage generally provides the policyholder with benefits if the at-fault driver does not have sufficient bodily injury coverage. The limits of coverage must generally be not less than the limits of bodily injury liability insurance purchased by the named insured, or such lower limit complying with the rating plan of the company selected by the insured. See s. 627.727, F.S.

Section 6 provides the bill takes effect July 1, 2021.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. Persons required to title, register, and insure the subject vehicles will incur expenses doing so. However, the number of such vehicles deployed or planned for deployment in Florida is unknown.

C. Government Sector Impact:

Indeterminate. The number of such vehicles deployed or planned for deployment in Florida is unknown.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The DHSMV notes the following issues:

- The definition does not express that the vehicle is authorized solely for the delivery of goods and without passengers.
- The portion of the bill deeming motor vehicle equipment laws or regulations inapplicable to fully autonomous vehicles is vague and subject to a variety of interpretations.
- Safety concerns arise in the context of these vehicles crossing streets with speed limits greater than 35 miles per hour, given that their required maximum speed is 25 miles per hour.

Enforcement of the bill's provisions may prove difficult for law enforcement. Whether *any* vehicle currently complies with the provisions of the bill is presently unknown. However, with no human in the vehicle, law enforcement may have difficulty even investigating such compliance.

### **VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 316.003, 316.2122, 316.215, 316.306, and 655.960.

### **IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Transportation on March 20, 2021:**

The CS establishes insurance coverage requirements for LSADVs.

- B. **Amendments:**

None.



562206

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: WD   | . |       |
| 03/09/2021 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Transportation (Berman) recommended the following:

**Senate Amendment**

Between lines 92 and 93  
insert:

(e) A low-speed autonomous delivery vehicle must be  
registered and insured in accordance with s. 320.02 and titled  
pursuant to chapter 319.



708324

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 03/11/2021 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Transportation (Brandes) recommended the following:

**Senate Amendment**

Between lines 92 and 93  
insert:

(e) A low-speed autonomous delivery vehicle must be covered by a policy of automobile insurance which provides the coverage required by s. 627.749(2) (a)1., 2., and 3.

The coverage requirements of this paragraph may be satisfied by automobile insurance maintained by the owner of a low-speed



708324

11 autonomous delivery vehicle, the owner of the teleoperation  
12 system, the remote human operator, or a combination thereof.



By Senator Brandes

24-01183D-21

20211620\_\_

A bill to be entitled

An act relating to autonomous vehicles; amending s. 316.003, F.S.; defining the term "low-speed autonomous delivery vehicle"; amending s. 316.2122, F.S.; authorizing the operation of a low-speed autonomous delivery vehicle on certain streets and roads; providing construction; authorizing the operation of a low-speed autonomous delivery vehicle on streets or roads with a posted speed limit of up to 45 miles per hour under specified conditions; providing requirements for low-speed autonomous delivery vehicles; amending s. 316.215, F.S.; providing that certain fully autonomous vehicles are not subject to certain provisions of law or regulations; amending ss. 316.306 and 655.960, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (38) through (105) of section 316.003, Florida Statutes, are redesignated as subsections (39) through (106), respectively, a new subsection (38) is added to that section, and present subsection (62) of that section is 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:

(38) LOW-SPEED AUTONOMOUS DELIVERY VEHICLE.—A fully

Page 1 of 6

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

24-01183D-21

20211620\_\_

autonomous vehicle that meets the definition of a low-speed vehicle in 49 C.F.R. s. 571.3.

~~(63)-(62)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph ~~(85) (b) (44) (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.

Section 2. Section 316.2122, Florida Statutes, is amended to read:

316.2122 Operation of a low-speed vehicle, ~~or~~ mini truck, or low-speed autonomous delivery vehicle on certain roadways.—

(1) The operation of a low-speed vehicle as defined in s. 320.01 or a mini truck as defined in s. 320.01 on any road is authorized with the following restrictions:

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

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

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

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

Page 2 of 6

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

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(2) The operation of a low-speed autonomous delivery vehicle on any road is authorized with the following restrictions:

(a) A low-speed autonomous delivery vehicle may operate only on streets or roads where the posted speed limit is 35 miles per hour or less. This paragraph does not prohibit a low-speed autonomous delivery vehicle from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b) A low-speed autonomous delivery vehicle may operate on a street or road with a posted speed limit of more than 35 miles per hour, but no more than 45 miles per hour, if:

1. The low-speed autonomous delivery vehicle travels no more than 1 continuous mile on such a street or road, except that the vehicle may travel in excess of 1 continuous mile if authorized by the entity with jurisdiction over the street or road;

2. The low-speed autonomous delivery vehicle operates exclusively in the right lane, other than for the purpose of completing a turn; and

3. On a two-lane street or road where overtaking and passing another vehicle is unsafe because of traffic moving in the opposite direction or because of other unsafe conditions, and five or more vehicles are formed in a line behind the autonomous delivery vehicle, the low-speed autonomous delivery vehicle exits the roadway wherever a sufficient area for a safe turn-out exists, to permit the vehicles following to proceed.

(c) A low-speed autonomous delivery vehicle must be equipped with headlamps, stop lamps, turn signal lamps,

24-01183D-21

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taillamps, reflex reflectors, and vehicle identification numbers.

(d) Federal regulations adopted by the National Highway Traffic Safety Administration shall supersede this subsection when found to be in conflict with this subsection.

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

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

Section 3. Present subsection (6) of section 316.215, Florida Statutes, is redesignated as subsection (7), a new subsection (6) is added to that section, and present subsection (6) is republished, to read:

316.215 Scope and effect of regulations.—

(6) The provisions of any motor vehicle equipment laws or regulations of this state which relate to or support motor vehicle operation by a human driver but are not relevant for an automated driving system shall not apply to fully autonomous vehicles that are designed to be operated exclusively by the automated driving system for all trips.

(7)(6) A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 4. Paragraph (a) of subsection (3) of section

24-01183D-21

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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(106) ~~s. 316.003(105)~~. 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 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 5. 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

24-01183D-21

20211620\_\_

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(85) (a) or (b) ~~s. 316.003(84) (a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003.

Section 6. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/10/21

Meeting Date

1620

Bill Number (if applicable)

Topic Autonomous Vehicles

Amendment Barcode (if applicable)

Name Christopher Emmanuel

Job Title Policy Director

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/10

Meeting Date

SB 1620

Bill Number (if applicable)

Topic

Automas Vehicles

Amendment Barcode (if applicable)

Name

David Sardo

Job Title

Senior

Address

Street

City

State

Zip

Phone

Email

3528056597

goldendoe  
18550316

Speaking:

☒

For

☐

Against

☒

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

SALE & WARE

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with

Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/10/2021

Meeting Date

1620

Bill Number (if applicable)

Topic Automated vehicles

Amendment Barcode (if applicable)

Name Slater Bayliss

Job Title \_\_\_\_\_

Address 204 S Monroe St  
Street

Phone 850-222-8900

Tallahassee FL 32301  
City State Zip

Email Swb@cardenaspartners.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

03-10-21  
Meeting Date

# 1620  
Bill Number (if applicable)

Topic Autonomous Vehicles

Amendment Barcode (if applicable)

Name Ken Williams

Job Title \_\_\_\_\_

Address 7411 Meadow Dr  
Street

Phone 813-493-7685

Tampa FL  
City State Zip

Email 79kwilliams@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: SB 1716

INTRODUCER: Senator Hooper

SUBJECT: Transportation Facility Designations/Deputy Michael J. Magli Memorial Road

DATE: March 10, 2021

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Price   | Vickers        | TR        | <b>Favorable</b> |
| 2. |         |                | ATD       |                  |
| 3. |         |                | AP        |                  |

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**I. Summary:**

SB 1716 designates the portion of C.R. 611/East Lake Road South between Keystone Road and Forelock Road in Pinellas County as “Deputy Michael J. Magli Memorial Road” and directs the Florida Department of Transportation (FDOT) to erect suitable markers.

The estimated cost to the FDOT to install the designation markers required under the bill is \$1,000. See Section V, “Fiscal Impact Statement,” for details.

The bill takes effect July 1, 2021.

**II. Present Situation:**

Section 334.071, F.S., provides that legislative designations of transportation facilities are for honorary or memorial purposes or to distinguish a particular facility. Such designations are not to be construed as requiring any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes.<sup>1</sup>

When the Legislature establishes road or bridge designations, the FDOT is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation and to erect any other markers it deems appropriate for the transportation facility.<sup>2</sup>

The FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the

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<sup>1</sup> Section 334.071(1), F.S.

<sup>2</sup> Section 334.071(2), F.S.



designated road or bridge segment is located in more than one city or county, each affected local government must pass resolutions supporting the designations before installation of the markers.<sup>3</sup>

### **Deputy Michael J. Magli**

Born in New York, Deputy Michael J. Magli moved to the Tampa Bay area in 1994. He was initially hired as a part-time Criminal Justice Specialist with the Pinellas County Sheriff's Office (PCSO), transferred to a deputy recruit position, and was assigned to the Patrol Operations Bureau in 2014.<sup>4</sup> Reportedly the first deputy with the PCSO to die in the line of duty, Deputy Magli was hit on February 17, 2021, while trying to stop a suspected drunk driver.<sup>5</sup> He is survived by his wife, Stephanie, and two young daughters.<sup>6</sup>

### **III. Effect of Proposed Changes:**

SB 1716 designates the portion of C.R. 611/East Lake Road South between Keystone Road and Forelock Road in Pinellas County as "Deputy Michael J. Magli Memorial Road" and directs the Florida Department of Transportation (FDOT) to erect suitable markers.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. State Tax or Fee Increases:**

None.

#### **E. Other Constitutional Issues:**

None.

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<sup>3</sup> Section 334.071(3), F.S.

<sup>4</sup> See Pinellas County Sheriff's Office, *Deputy Michael J. Magli, End of Watch February 17, 2021*, available at [Michael J. Magli - \(pcsoweb.com\)](https://www.pcsoweb.com/michael-j-magli) (last visited February 25, 2021).

<sup>5</sup> See Fox 13 Tampa Bay, *Fallen hero: Community says farewell to Deputy Michael Magli*, available at [Fallen hero: Community says farewell to Deputy Michael Magli \(fox13news.com\)](https://www.fox13news.com/story/news/2021/02/25/fallen-hero-community-says-farewell-to-deputy-michael-magli/7278444002/) (last visited February 25, 2021).

<sup>6</sup> *Supra* note 12.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The estimated cost to erect the designation markers required under this bill is \$1,000, based on the assumption that a minimum of two markers are required at a cost to the FDOT of no less than \$500 each. The estimate includes sign fabrication, installation, and maintenance over time but does not include any additional expenses related to maintenance of traffic, dedication event costs, or replacement necessitated by damage, vandalism, or storm events. The FDOT is expected to absorb the estimated cost within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates an undesignated section of Florida law.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Hooper

16-01620B-21

20211716\_\_

A bill to be entitled

An act relating to transportation facility designations; providing an honorary designation of a certain transportation facility in Pinellas County; directing the Department of Transportation to erect suitable markers; providing an effective date.

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

Section 1. Deputy Michael J. Magli Memorial Road designated; Department of Transportation to erect suitable markers.-

(1) That portion of C.R. 611/East Lake Road South between Keystone Road and Forelock Road in Pinellas County is designated as "Deputy Michael J. Magli Memorial Road."

(2) The Department of Transportation is directed to erect suitable markers designating Deputy Michael J. Magli Memorial Road as described in subsection (1).

Section 2. This act shall take effect July 1, 2021.

# CourtSmart Tag Report

**Room:** SB 110

**Case No.:**

**Type:**

**Caption:** Senate Transportation Committee

**Judge:**

**Started:** 3/10/2021 8:01:20 AM

**Ends:** 3/10/2021 9:57:02 AM

**Length:** 01:55:43

8:01:19 AM Meeting called to order by Chair Harrell  
8:01:41 AM Comments from Chair Harrell  
8:01:48 AM Roll call by CAA Marilyn Hudson  
8:01:54 AM Quorum present  
8:02:08 AM Comments from Chair Harrell  
8:02:26 AM Introduction of Tab 11, SB 1716 by Chair Harrell  
8:03:16 AM Explanation of SB 1716, Transportation Facility Designations/Deputy Michael J. Magil Memorial Road by Senator Hooper  
8:04:25 AM Comments from Chair Harrell  
8:04:51 AM Closure by Senator Hooper  
8:05:10 AM Roll call by CAA  
8:05:26 AM SB 1716 reported favorably  
8:05:48 AM Introduction of Tab 4, SB 684 by Chair Harrell  
8:06:10 AM Explanation of SB 684, Department of Transportation by Senator Brandes  
8:06:45 AM Introduction of Amendment Barcode 635780 by Chair Harrell  
8:06:54 AM Explanation of Amendment by Senator Brandes  
8:07:11 AM Comments from Chair Harrell  
8:07:17 AM Question from Senator Berman  
8:07:24 AM Response from Senator Brandes  
8:07:56 AM Amendment adopted  
8:08:02 AM Comments from Chair Harrell  
8:08:24 AM Closure waived  
8:08:27 AM Roll call by CAA  
8:08:33 AM CS/SB 684 reported favorably  
8:08:50 AM Introduction of Tab10, SB 1620 by Chair Harrell  
8:09:07 AM Explanation of SB 1620, Autonomous Vehicles by Senator Brandes  
8:10:18 AM Introduction of Amendment by Chair Harrell  
8:10:27 AM Explanation of Amendment Barcode 708324 by Senator Brandes  
8:10:42 AM Comments from Chair Harrell  
8:10:56 AM Amendment adopted  
8:11:03 AM Comments from Chair Harrell  
8:11:07 AM Question from Senator Gainer  
8:11:19 AM Response from Senator Brandes  
8:11:27 AM Question from Chair Harrell  
8:11:32 AM Response from Senator Brandes  
8:12:38 AM Follow-up question from Chair Harrell  
8:12:45 AM Response from Senator Brandes  
8:14:18 AM Comments from Chair Harrell  
8:14:24 AM Slater Bayliss waives in support  
8:14:37 AM Speaker Ken Williams in opposition  
8:16:53 AM Christopher Emmanuel, Florida Chamber of Commerce in support  
8:18:04 AM Speaker David Serdar  
8:18:58 AM Comments from Chair Harrell  
8:19:41 AM Senator Brandes in closure  
8:19:49 AM Roll call by CAA  
8:20:19 AM CS/SB 1620 reported favorably  
8:20:34 AM Introduction of Tab 1, SB 138 by Chair Harrell  
8:20:52 AM Introduction of Strike-all Amendment Barcode 310554 by Chair Harrell  
8:21:47 AM Explanation of Amendment by Senator Brandes  
8:23:02 AM Comments from Chair Harrell  
8:23:09 AM Question from Senator Berman  
8:23:16 AM Response from Senator Brandes

8:23:31 AM Follow-up question from Senator Berman  
8:23:37 AM Response from Senator Brandes  
8:23:58 AM Follow-up question from Senator Berman  
8:24:04 AM Response from Senator Brandes  
8:24:32 AM Response from Senate Staff Cindy Price  
8:25:08 AM Speaker Secretary Kevin Thibault, Florida Department of Transportation  
8:26:04 AM Question from Chair Harrell  
8:26:09 AM Response from Secretary Thibault  
8:28:02 AM Response from Senator Brandes  
8:28:36 AM Question from Chair Harrell  
8:28:42 AM Response from Senator Brandes  
8:29:57 AM Comments from Chair Harrell  
8:30:17 AM Amendment adopted  
8:30:22 AM Comments from Chair Harrell  
8:30:34 AM Speaker Melanie Bostick, Advanced Energy Economy in support  
8:31:36 AM Speaker David Cullen, Sierra Club Florida in support  
8:34:08 AM Speaker Matthew Alford, Drive Electric Florida in support  
8:35:52 AM Comments from Chair Harrell  
8:35:59 AM Senator Gainer in debate  
8:36:12 AM Closure waived  
8:36:18 AM Roll call by CAA  
8:36:21 AM CS/SB 138 reported favorably  
8:36:31 AM Introduction of Tab 2, SB 140 by Chair Harrell  
8:36:47 AM Explanation of SB 140, Fees/Electric Vehicles by Senator Brandes  
8:38:37 AM Introduction of Amendment Barcode 608690 by Chair Harrell  
8:38:42 AM Explanation of Amendment by Senator Brandes  
8:38:54 AM Comments from Chair Harrell  
8:39:13 AM Speaker on Amendment  
8:39:48 AM Comments from Chair Harrell  
8:39:52 AM Amendment adopted  
8:39:56 AM Comments from Chair Harrell  
8:40:02 AM Question from Senator Berman  
8:40:15 AM Response from Senator Brandes  
8:40:27 AM Follow-up question from Senator Berman  
8:40:35 AM Response from Senator Brandes  
8:40:40 AM Follow-up question from Senator Berman  
8:40:46 AM Response from Senator Brandes  
8:42:14 AM Follow-up question from Senator Berman  
8:42:25 AM Response from Senator Brandes  
8:43:34 AM Speaker Vittorio Nastasi, Reason Foundation in support  
8:45:36 AM Comments from Chair Harrell  
8:45:47 AM Senator Gainer in debate  
8:45:52 AM Response from Senator Brandes  
8:46:18 AM Response from Chair Harrell  
8:46:26 AM Response from Senator Brandes  
8:46:34 AM Senator Berman in debate  
8:48:00 AM Closure by Senator Brandes  
8:48:12 AM Roll call by CAA  
8:49:12 AM CS/SB 140 reported favorably  
8:49:29 AM Introduction of Tab 3, SB 426 by Chair Harrell  
8:49:34 AM Comments from Senator Boyd  
8:49:48 AM Amendment Barcodes 559796 and 955870 withdrawn per Senator Rodriguez  
8:50:42 AM Introduction of Late-filed Amendment Barcode 384856 by Chair Harrell  
8:51:18 AM Explanation of Amendment by Senator Boyd  
8:54:55 AM Comments from Chair Harrell regarding Late-filed Amendment Barcode 384856  
8:55:54 AM Question from Senator Berman  
8:55:59 AM Response from Senator Boyd  
8:56:34 AM Introduction of Late-filed Amendment to Amendment Barcode 622662 by Chair Harrell  
8:56:55 AM Amendment withdrawn per Senator Rodriguez  
8:57:12 AM Speaker Michael Rubin, Florida Ports Council in opposition  
8:58:57 AM Speaker Richard Pinsky, Port of Palm Beach in opposition  
9:05:11 AM Speaker Danny Hughes in support

9:09:13 AM Comments from Chair Harrell  
9:09:19 AM Senator Boyd in closure on Amendment  
9:10:37 AM Amendment Barcode 384856 adopted  
9:10:59 AM Comments from Chair Harrell  
9:11:05 AM Comment from Senator Gainer  
9:11:48 AM Question from Senator Jones  
9:12:08 AM Response from Senator Boyd  
9:12:35 AM Comments from Chair Harrell  
9:12:55 AM Ida Eskamani, Florida Rising waives in opposition  
9:13:08 AM Speaker Josh Aubuchon, Florida Ports for Economic Independence in opposition  
9:15:32 AM Speaker Danny Hughes in support  
9:16:14 AM Speaker Holly Parker Curry, Surfrider Foundation in opposition  
9:17:52 AM Speaker Richard Pinsky, Port of Palm Beach in opposition  
9:19:38 AM Speaker Warren Husband, Florida Harbor Pilots Association & Marquesas, LLC in support  
9:20:37 AM Speaker Michael Rubin, Florida Ports Council in opposition  
9:21:01 AM Speaker Jesse Salter  
9:22:46 AM Speaker David Cullen, Sierra Club in opposition  
9:22:59 AM Speaker Jonathan Webber, Florida Conservation Voters in opposition  
9:25:17 AM Nicole Fogarty, St. Lucie County waives in opposition  
9:25:35 AM Comments from Chair Harrell  
9:25:42 AM Senator Wright in debate  
9:25:54 AM Senator Jones in debate  
9:27:22 AM Senator Rodriguez in debate  
9:29:01 AM Senator Berman in debate  
9:29:37 AM Chair Harrell in debate  
9:31:25 AM Senator Boyd in closure  
9:33:53 AM Roll call by CAA  
9:34:53 AM CS/SB 426 reported favorably  
9:35:12 AM Chair passed to Vice Chair Perry  
9:35:23 AM Introduction of Tab 5, SB 1126 by Chair Perry  
9:35:43 AM Explanation of SB 1126, Department of Transportation by Senator Harrell  
9:38:23 AM Comments from Chair Perry  
9:38:39 AM Closure waived  
9:38:43 AM Roll call by CAA  
9:38:46 AM SB 1126 reported favorably  
9:39:01 AM Introduction of Tab 6, SB 1324 by Chair Perry  
9:39:13 AM Explanation of SB 1324, Digital Driver Licenses and Identification Cards by Senator Harrell  
9:41:12 AM Comments from Chair Perry  
9:41:17 AM Question from Senator Berman  
9:41:21 AM Response from Senator Harrell  
9:41:50 AM Comments from Chair Perry  
9:42:02 AM Closure waived  
9:42:07 AM Roll call by CAA  
9:42:11 AM SB 1324 reported favorably  
9:42:26 AM Introduction of Tab 7, SB 1326 by Chair Perry  
9:42:37 AM Explanation of SB 1326, Public Records/Department of Highway Safety and Motor Vehicles by Senator Harrell  
9:43:11 AM Introduction of Amendment Barcode 252740 by Chair Perry  
9:43:21 AM Explanation of Amendment by Senator Harrell  
9:43:28 AM Comments from Chair Perry  
9:43:37 AM Amendment adopted  
9:43:40 AM Comments from Chair Perry  
9:43:47 AM Closure waived  
9:43:55 AM Roll call by CAA  
9:44:00 AM CS/SB 1326 reported favorably  
9:44:15 AM Introduction of Tab 8, SB 1500 by Chair Perry  
9:44:26 AM Explanation of SB 1500, Transportation by Senator Harrell  
9:46:53 AM Introduction of Amendment Barcode 936070 by Chair Perry  
9:47:06 AM Explanation of Amendment by Senator Harrell  
9:49:21 AM Question from Senator Berman  
9:49:42 AM Response from Senator Harrell  
9:49:59 AM Comments from Chair Perry

**9:50:05 AM** Amendment to Amendment Barcode 953058 withdrawn  
**9:50:14 AM** Comments from Chair Perry  
**9:50:23 AM** Senator Jones in debate on Amendment  
**9:51:00 AM** Senator Harrell in closure  
**9:51:15 AM** Amendment adopted  
**9:51:26 AM** Comments from Chair Perry  
**9:51:36 AM** Question from Senator Berman  
**9:51:44 AM** Response from Senator Harrell  
**9:52:44 AM** Senator Jones in debate  
**9:53:24 AM** Senator Harrell in closure  
**9:53:58 AM** Roll call by CAA  
**9:54:07 AM** CS/SB 1500 reported favorably  
**9:54:19 AM** Introduction of Tab 9, SB 1502 by Chair Perry  
**9:54:38 AM** Explanation of SB 1502, Public Records/Department of Highway Safety and Motor Vehicles by Senator Harrell  
**9:55:11 AM** Comments from Chair Perry  
**9:55:17 AM** Introduction of Amendment Barcode 763330 by Chair Perry  
**9:55:26 AM** Explanation of Amendment by Senator Harrell  
**9:55:34 AM** Comments from Chair Perry  
**9:55:38 AM** Amendment adopted  
**9:55:44 AM** Comments from Chair Perry  
**9:55:56 AM** Closure waived  
**9:55:59 AM** Roll call by CAA  
**9:56:04 AM** CS/SB 1502 reported favorably  
**9:56:15 AM** Senator would like to be shown voting in the affirmative on CS/SB 1326, without objection, motion adopted  
**9:56:35 AM** Chair Perry would like to be shown voting in the affirmative on CS/SB 138, CS/SB 140, CS/SB 1620 and SB 1716, without objection, motion adopted  
**9:56:48 AM** Senator Bracy moves to adjourn  
**9:56:53 AM** Meeting adjourned