

STORAGE NAME: h0819s1.ft

DATE: April 17, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS**

BILL #: CS for HB 819 and 473

RELATING TO: Motor Vehicle Emissions

SPONSOR(S): Committee on Environmental Protection, Representative Fuller & others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ENVIRONMENTAL PROTECTION YEAS 14 NAYS 1
 - (2) TRANSPORTATION (W/D)
 - (3) FINANCE AND TAXATION
 - (4) TRANSPORTATION AND ECONOMIC DEVELOPMENT APPROP.
 - (5)
-

I. SUMMARY:

CS for HB 819 and 473 amends the definition section of the vehicle emission program: "program area" is redefined to narrowly apply only to Hillsborough and Pinellas counties, instead of all nonattainment areas, so long as the Department of Highway Safety and Motor Vehicles has a vendor under state contract to operate the vehicle inspection program in these areas; and the definition of "nonattainment area," an area which was designated by the EPA which exceeded primary or secondary ambient air quality standards, was deleted in its entirety.

CS for HB 819 and 473 also exempts a new motor vehicle from inspection at the time of the first registration only, instead of its prior two-year exemption.

Lastly, this bill amends the contractual requirements between the Department and the inspection contractors. The contract term is limited to two years, instead of seven, with 2 one-year renewals. In addition, the contracts are not to include any liquidated damages payable by the state to the contractor should the Legislature abolish the inspection program prior to the contract term.

On March 20, 2000, the Committee on Environmental Protection adopted a strike everything amendment and then passed the bill as a committee substitute. See the "Amendments or Committee Substitute Changes" section.

The bill reduces General Revenue Fund receipts by (\$0.9) million in fiscal years 2000-01 and 2001-02, and reduces Highway Safety Operating Trust Fund receipts by (\$11.8) million and (\$12.1) million in fiscal years 2000-01 and 2001-02, respectively.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

In 1963, Congress created the **Clean Air Act**. The Clean Air Act, as amended, regulates pollution control and requires communities to meet air quality standards for certain air pollutants. The EPA implements the Clean Air Act through federal regulations. Pursuant to the Clean Air Act, the states are required to enter into a State Implementation Plan with the EPA which provides the means by which each state addresses air pollution.

The EPA designates the regions which meet the National Ambient Air Quality Standards (NAAQS) under the Clean Air Act as "**attainment**" areas. Conversely, the regions that fail to meet the NAAQ standard for one or more criterium pollutants are designated as "**nonattainment**" areas. In 1990, Congress amended the Clean Air Act and set forth a new attainment schedule.

The 1990 amendment required any area falling within a particular nonattainment classification to meet the ozone NAAQS within a specified date ranging from three to 20 years, depending upon the extent of ozone pollution. When the NAAQ standards changed in 1990, six of Florida's counties fell into nonattainment and failed to satisfy acceptable ozone levels, they were: Duval, Dade, Broward, Palm Beach, Pinellas, and Hillsborough.

In response, the Florida Legislature enacted the **Clean Outdoor Air Act**, creating the Motor Vehicle Inspection Program (MVIP) - ss. 325.201- 325.219, F.S., to help bring those counties into compliance. The purpose of the Clean Outdoor Air Act is to improve air quality in the counties designated by the EPA as nonattainment areas. This is done by ensuring vehicle emissions inspections. Vehicles that do not pass the inspection must be repaired, or obtain a waiver or exemption in order to have their registration renewed.

Section 325.207, F.S., also sets forth the requirements for the inspection stations, and provides the Dept. of Highway and Safety Motor Vehicle with the authority to enter into contracts with private contractors to operate the inspection stations.

In 1993, the state requested that the above six counties be re-designated to "attainment status" based upon their improved air quality. The EPA approved the re-designation with the stipulation that the counties would have "maintenance plans" for 10 years after the date of re-designation, as required by the Clean Air Act. Upon approval by the EPA, the

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maintenance plans were incorporated into Florida's State Implementation Plan (SIP). This plan may be changed only with the approval of the EPA.

In 1997, the EPA revised the NAAQ standard for ozone. The new standard is called the "8 hour ozone standard." However, a host of petitioners challenged the new standards in court claiming that the EPA arbitrarily set these standards without appropriate legislative guidelines. *America Trucking Associations, Inc. v. United States Environmental Protection Agency*, No. 97-1440 (D.C. Circuit, May 1999). Under the new eight hour standard, a total of 300 counties nationwide would not meet the new EPA standards and would fall into nonattainment, versus 106 counties that do not meet the current requirement. Under the new standards, both Hillsborough and Pinellas may fall into nonattainment. The court held that the EPA violated the nondelegation of legislative authority doctrine and remanded the new NAAQ standards back to EPA.

According to the Florida Department of Environmental Protection (DEP), air monitoring data suggests that four counties, Broward, Dade, Duval, and Palm Beach will be in compliance with the new ozone standards. Therefore, the MVIP would no longer be needed in these four counties. However, Hillsborough and Pinellas (and possibly Escambia) counties are not expected to be in compliance with the new ozone standards and may or may not require the MVIP. The EPA is expected to make its determinations regarding "attainment status" in July 2000.

The EPA posted a revised SIP in the Federal Register which proposes to eliminate Florida's program in Dade, Palm Beach, Duval and Broward counties. However, this plan would still require Hillsborough and Pinellas to comply with the vehicle emissions program. If this bill becomes law, it will be inconsistent with the EPA's proposed plan. As a result, Florida's DEP currently suggests to terminate the vehicle inspection program in compliance with EPA's recommendation to avoid sanctions under the Clean Air Act.

Prior to the imposition of any federal sanctions, the Environmental Protection Agency would have to make a finding that the state had violated the State Implementation Plan. This would then trigger an 18-month period of review during which the state would need to demonstrate how it would achieve the reduction credits currently associated with the program and modify the State Implementation Plan accordingly. If after this 18-month period of review, the Environmental Protection Agency determined that the state had failed to submit these requirements, sanctions could be imposed. Potential sanctions include the withholding of highway funds and imposition of emissions offset requirements. The withholding of highway funds would be applicable to the relevant nonattainment area, not the entire state. The emissions off-set requirements provide for a 2 to 1 ratio of emissions reductions to increased emissions for new or modified sources or emissions units for which permitting is required.

If the state does terminate the contracts prior to the contractual date of expiration, then the state must set forth the procedure for determining damages payable by the state to the contractor pursuant to s. 325.207(7)(i), F.S. Currently, all existing contracts are scheduled to expire in April and May of 2000. During the 1999 Legislative Session, the Legislature required the DHSMV to renew the contracts by June 30, 2000.

C. EFFECT OF PROPOSED CHANGES:

This CS for HB 819 and 473 would terminate the vehicle emission inspection programs in all counties except Hillsborough and Pinellas.

This bill is aligned with the EPA's new recommendation to the State Implementation Plan in its federal register. Therefore, it may be unlikely that the EPA would fine Florida for failing to comply with the State Implementation Plan.

According to DEP, it is doubtful the Environmental Protection Agency would approve a revision to the State Implementation Plan eliminating the MVIP in those two counties without an alternative ozone control strategy being implemented. Such control strategies might include additional nitrogen oxide controls on stationary sources or early implementation of low-sulfur fuel in the area.

The effective date of this bill was changed to July 1, 2000. This date would fall in between contracts negotiated by the state and the inspectors. Therefore, it is unlikely that a concern for breach of contract would arise. As a result, the state would probably not have an issue with damages in this area.

The contract term is statutorily limited to two years. According to DEP, it would take an additional two years to wind the program down. The program may, at the counties' discretion, be renewed once a year for two additional years upon the approval by the Department of Highway Safety and Motor Vehicles (DHSMV) and the DEP depending upon the status of the Hillsborough and Pinellas counties air quality.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Repeals s. 325.202(10), F.S., which defines "nonattainment area" as an area designated by EPA to exceed primary and secondary ambient air quality standards.

This section also amends the definition of "program area" in subsection (10) to exclude nonattainment areas, and include only Hillsborough and Pinellas counties. The DHSMV is to have a vendor under state contract for the purposes of operating a vehicle inspection program in these counties in order to be considered a program area.

Section 2: Amends s. 325.203(4)(k) and (l), F.S., to delete the requirement that new motor vehicles are exempt from inspection requirements for the first two years, and instead, requires the vehicles to be exempt only at the time of the first registration.

Section 3: Amends s. 325.207(8)(a), F.S., to provide a contract term of two years, instead of five years, with 2 one-year renewals. In addition, subsection (i) is amended to delete the provisions for damages, and instead provides that no damages of any type, including liquidated damages are payable by the state to the contractor if the program is abolished earlier than the contract date.

Also, subsection (o) is deleted which provided for authorization of the contract to be amended if a clean fuel requirement was implemented.

Last, this section creates a new section (11) which requires the DHSMV to contract with a private contractor in each program area. This prevents a contractor from bidding on a contract in more than one contract zone.

Section 4: Amends s. 325.2135, F.S., to require the Department to enter into one contract by June 30, 2000, for a biennial inspection program. This section removes the authority which allowed the DHSMV to extend the current contracts until a new contract is implemented.

Also, the contract period is statutorily limited to two years, instead of seven years, with two one-year renewals.

Section 5: This bill takes effect on July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

REVENUE REDUCTION:

| | <u>FY 2000-01</u> | <u>FY 2001-02</u> |
|------------------------------------|---------------------|---------------------|
| General Revenue Fund (Surcharge) | \$ 891,339 | \$ 909,121 |
| <u>Highway Safety Operating TF</u> | <u>11,842,073</u> | <u>12,078,316</u> |
| Total Revenue Reduction | \$12,733,412 | \$12,987,437 |

2. Expenditures:

EXPENDITURES ELIMINATED/ SAVED:

| | <u>FY 2000-01</u> | <u>FY 2001-02</u> | <u>FY 2002-03</u> |
|-------------------------------|---------------------|--------------------|--------------------|
| Highway Safety Operating TF: | | | |
| Salaries & Benefits | \$ 1,655,000 | \$ 1,688,000 | \$1,722,000 |
| Expenses | 103,000 | 103,000 | 103,000 |
| Risk Management | 30,000 | 30,000 | 30,000 |
| Transfer to DEP | <u>250,000</u> | <u>250,000</u> | <u>250,000</u> |
| Total expenditures eliminated | \$ 2,038,000 | \$2,072,000 | \$2,105,000 |

EXPENDITURES INCURRED:

If the contracts are discontinued prior to the contractual expiration date, the state may incur damages. These damages are indeterminate at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Direct private sector costs:

The emission inspection station contractors would receive a revenue reduction of approximately \$27,300,000 during FY 2000-01 and \$27,600,000 during FY 2001-02. The revenue reduction associated with the repair industry would be approximately \$26,500,000 during FY 2000-01.

Direct private sector benefits:

Motor vehicle owners would save the costs of vehicle inspections. These costs would reach approximately \$53,400,000 during FY 2000-01 and approximately \$54,100,000 during FY 2001-02.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

This bill revokes the vehicle emissions program and the department's rule-making authority related to this program.

C. OTHER COMMENTS:

The terminology in s. 325.207(8)(i), F.S., of this bill which states that any contract shall contain "no damages of any type" should be clarified to state that each contract must contain a provision that "expressly" states that no damages of any type, including liquidated damages shall be payable by the state to the contractor. This clarification will avoid contracts that may be, according to this language, silent on damages. Otherwise, it is likely that a contractual issue may arise on lack of mutual obligation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 20, 2000, the Committee on Environmental Protection adopted a strike everything amendment and passed the bill as a committee substitute. This committee substitute also adopted the bill number to HB 473 and the late Representative Healey as a co-sponsor.

The committee substitute is different from the original bill and provides the following:

- "program area" is redefined to include only Hillsborough and Pinellas counties and only if the state has a vending contract pending to operate the motor vehicle inspection program;
- the definition of "nonattainment area" is deleted;
- new motor vehicles are exempt from the original inspection, but are subject to the vehicle emissions inspection thereafter, instead of the previous two year exemption;
- the contractual requirements between the state and the inspection contractors is amended to be statutorily limited to two years, instead of seven, with two one-year renewals; and
- no contract should have damages of any type, including liquidated damages payable by the state to the inspection contractor.

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VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Staff Director:

Christine Hoke, J.D.

Wayne Kiger

AS FURTHER REVISED BY THE COMMITTEE ON Finance and Taxation:

Prepared by:

Staff Director:

Carol Dickson-Carr

Alan Johansen