

STORAGE NAME: h1033.sa.doc
DATE: March 28, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 1033
RELATING TO: Red Light Safety Act of 2001
SPONSOR(S): Representative(s) Trovillion and Slosberg
TIED BILL(S): None

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

- (1) STATE ADMINISTRATION
 - (2) TRANSPORTATION
 - (3) FISCAL POLICY & RESOURCES
 - (4) COUNCIL FOR SMARTER GOVERNMENT
 - (5)
-

I. SUMMARY:

Current law requires police officers to issue traffic citations based solely on independent evidence or personal observation of the actual traffic violation. The only situation in which local governments are specifically authorized to use photographic enforcement mechanisms is if a vehicle owner fails to pay tolls on toll facilities.

This bill creates the "Red Light Safety Act of 2001." This bill creates the Florida Red Light Safety Program to govern the operation of such detectors; this program is administered by the Department of Highway Safety and Motor Vehicles.

This bill provides that in order for a county or municipality to use a traffic infraction detector, an ordinance must be passed containing certain provisions requiring signs to be posted, requiring public awareness campaigns, and establishing a schedule of fines.

This bill provides for certain exemptions for emergency vehicles, if responding to a call, and particular commercial motor vehicles.

Any ticket issued under this legislation must contain particular components, such as a copy of the recorded image, the date and time of the alleged violation, and the location where such violation occurred. A ticket must be mailed by first class mail within 14 days of the violation.

A vehicle owner must pay the fine unless he or she can provide certain information regarding his or her nonliability. A vehicle owner may contest the citation in court, and may not be assessed a fine exceeding \$100.

This bill has certain reporting requirements for both cities and municipalities and the Department of Highway Safety and Motor Vehicles.

This bill does not appear to have a fiscal impact on state government; however, there may be a fiscal impact on participating local governments. See "Fiscal Analysis & Economic Statement" section for detail.

See "Other Comments" section for concerns.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

Chapter 316, F.S., provides for state uniform traffic control and authorizes local governments to enforce traffic laws on the roads within their jurisdiction. Currently, traffic infractions require an officer to issue a citation based solely on independent evidence or personal observation that a violation has occurred.¹

Section 316.0745, F.S., authorizes the Department of Transportation to adopt a uniform system of traffic control devices to use on the streets and highways of the state. Section 316.0745(6), F.S., states that any system of traffic control devices controlled and operated from a remote location by electronic computers or similar devices must meet all requirements established for the uniform system. If such control devices affect the movement of traffic on state roads, the design of the system must be reviewed and approved by the Department of Transportation.

Section 316.074, F.S., provides that the driver of a vehicle must obey the instructions of any official traffic control devices. Section 316.075(c)(1), F.S., requires the driver of a vehicle to stop the vehicle when facing a steady red signal. Currently, in order for a driver to receive a traffic citation under this section, a law enforcement officer must witness the violation.

Section 316.1001, F.S., authorizes local governments to issue citations by mail to vehicle owners who fail to pay tolls on toll facilities based on photographic evidence. This is the only situation in which local governments are specifically authorized to use photographic enforcement mechanisms to issue citations.

Section 316.1967, F.S., establishes a process that local governments use to enforce parking ordinances. The law provides that an owner of a vehicle is liable for the payment of any parking ticket violation unless the owner can furnish evidence that the vehicle was in the care, custody, or control of another person at the time of the parking violation. Any civil penalty imposed under this section is not to exceed \$100.

Section 320.03, F.S., specifies the registration procedures for individuals pursuing motor vehicle license plates or registration stickers. Section 320.03(6), F.S., states that if an applicant's name appears on the list referred to in ss. 316.1001(4) or 316.1967(6), F.S., a license plate or revalidation

¹ Department of Highway Safety and Motor Vehicles Bill Analysis, HB 1033, March 14, 2001.

sticker may not be issued until that person's name no longer appears on the list or until the person presents a receipt from the clerk showing that the fines outstanding have been paid.

C. EFFECT OF PROPOSED CHANGES:

This bill creates the "Red Light Safety Act of 2001." This bill requires a county or municipality to enact an ordinance if it is to use a traffic infraction detector to enforce s. 316.075(1)(c), F.S.² The bill defines a *traffic infraction detector*:

A device that uses a vehicle sensor installed to work in conjunction with a traffic control signal and a camera synchronized to automatically record two or more sequenced photographs, microphotographs, electronic images which utilize wet film, digital photographs, or streaming video, of only the rear of a motor vehicle at the same the vehicle fails to stop when facing a steady red traffic control signal. Any citation issued by the utilization of a traffic infraction detector must include a photograph showing both the license tag of the offending vehicle and the traffic control device being violated.

This bill creates the Florida Red Light Safety Program to govern the operation of traffic infraction detectors, administered by the Department of Highway Safety and Motor Vehicles (DHSMV).

A county or municipality, in order to use a traffic infraction detector, must enact an ordinance so providing. The ordinance must

- Require a sign be posted at specific locations providing notification that a traffic detection device may be in use;
- Require that the county or municipality make a public announcement and conduct a public awareness campaign of the proposed use of traffic infraction detectors at least 30 days prior to commencing the program;
- Establish a schedule of fines assessed against the registered owner of vehicles who commit an infraction as detected by the traffic infraction detectors; such fine may not exceed \$100; and
- Authorize a traffic infraction officer to issue tickets.

A motor vehicle rental company is not classified as an owner under certain conditions.

This bill provides for the following exemptions in the issuance of citations: an emergency vehicle when responding to an emergency call, and commercial motor vehicles as defined in s. 320.01(26),³ F.S., and taxed pursuant to s. 320.0715, F.S.⁴

Any fine issued under this bill must be imposed in the same manner as provided for parking violations under s. 316.1967, F.S.⁵ Such a violation is not a conviction of the operator, may not be

² Section 316.075(1)(c), F.S., states: "Vehicular traffic facing a steady red signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown."

³ Section 320.01(26), F.S., defines commercial vehicles as "any vehicle which is not owned or operated by a governmental entity, which uses special fuel or motor fuel on the public highways, and which has a gross vehicle weight of 26,001 pounds or more."

⁴ Section 320.0715, F.S., states: "All commercial motor vehicles domiciled in this state and engaged in interstate commerce shall be registered in accordance with the provisions of the International Registration Plan."

made a part of the driving record of the operator, and may not be used for the setting of motor vehicle insurance rates. In addition, points may not be assessed as a result of such violation.

Any individual issued a citation under this provision is charged with a noncriminal violation and must comply with the directions on the ticket. The ticket must contain

- The name and address of the person alleged to be liable as the registered owner or operator of the vehicle;
- The registration number of the vehicle;
- The violation charged;
- A copy of the recorded image;
- The location where the violation occurred;
- The date and time of the violation;
- Information that identifies the device that recorded the violation;
- A signed statement by a trained technician employed by the agency or its contractor stating that the vehicle did indeed violate the law; and
- A warning that failure to contest the violation is deemed an admission of liability.

The violation is processed by the county or municipality that has jurisdiction over the particular road or highway where the violation occurred. The ticket is sent by first class mail addressed to the owner of the motor vehicle postmarked no later than 14 days after the date of the violation.

The registered owner of the vehicle must pay the fine, unless such owner can establish

- That the vehicle passed through the intersection in order to yield right-of-way to an emergency vehicle or as part of a funeral procession;
- That the vehicle passed through the intersection at the direction of a law officer; or
- That the vehicle was in the care, custody, or control of another person at the time of the violation.

If an owner chooses to establish such facts, he or she must send, within 20 days after the receipt of the notification of the alleged violation, a statement to the county or municipality stating the name, address, and driver's license number, if available, of the person in control of the vehicle at the time of the violation; or a copy of a police report indicating that the vehicle was stolen at the time of the violation. A ticket may be issued to the person who allegedly had control of the vehicle at the time of the violation.

A person may contest a violation by electing to appear before an authorized judge. The court, after a hearing, may impose a civil penalty not to exceed \$100 plus costs. Any certificate affirmed by a

⁵ Section 316.1967, F.S., establishes a process that local governments use to enforce parking ordinances. Any civil penalty imposed under this section is not to exceed \$100.

person employed or under contract with the county or municipality where the violation occurred, or a facsimile thereof which is based upon inspection of photographs or other recorded images produced by a traffic infraction detector, is prima facie evidence of the facts contained in the certificate. A photograph or other recorded image evidencing such a violation must be available for inspection.

Any person who receives a violation under this provision may be included on the list authorized under s. 316.1967(6), F.S.⁶

If a person received a citation from a police officer at the time of the violation, he or she may not be issued an additional ticket pursuant to this legislation.

Each county and municipality utilizing a traffic infraction detector must submit an annual report to the DHSMV detailing the results of using such detectors and the procedures for enforcement. The DHSMV must then provide a summary report to the President of the Senate, the Speaker of the House of Representatives, and the Governor regarding the use of such detectors. The DHSMV must report its recommendations, including any necessary legislation, on or before December 1, 2002.

If any county or municipality is found to be utilizing traffic infraction detectors for purposes other than public health, welfare, and safety, the Legislature may exclude such entity from further participation in the program.

The bill further amends s. 316.0745(6), F.S., by adding an additional subsection. This addition requires that any traffic infraction detectors must meet requirements established by the Department of Transportation and must be tested according to procedures and at regular intervals as prescribed by the department.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None

⁶ Section 316.1967(6), F.S., states: "Any county or municipality may provide by ordinance that the clerk of the court of the traffic violations bureau shall supply the department . . . by electronic means data . . . listing persons who have three or more outstanding parking violations."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Counties and municipalities are authorized through local ordinance to assess up to a \$100 fine for traffic signal violations as determined through the use of a traffic infraction detection device. This could provide additional revenues to local governments.⁷

2. Expenditures:

Local governments are required to post signs notifying the use of traffic infraction detection devices for traffic signal enforcement. The cost for such signs is indeterminate and will vary based on, in part, their number, size, and location.⁸

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities 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:

None.

B. RULE-MAKING AUTHORITY:

None.

⁷ Department of Highway Safety and Motor Vehicles Bill Analysis, HB 1033, March 14, 2001.

⁸ Department of Highway Safety and Motor Vehicles Bill Analysis, HB 1033, March 14, 2001.

C. OTHER COMMENTS:

HB 1159 was proposed during the 2000 Legislative session. This bill would have authorized Palm Beach County and Broward County and any municipality within the two counties to implement a pilot program, administered by the Department of Highway Safety and Motor Vehicles (DHSMV), to test traffic infraction detectors for the purpose of taking pictures of the rear of motor vehicles that run red lights. HB 1159 died in the Committee on Transportation & Economic Development Appropriations. Similar legislation is proposed for this legislative session: HB 71/ SB 1586.

The DHSMV states that “[t]his technology has been tested in other states with varying degrees of success. It is debatable whether this method of traffic enforcement would be accepted favorably by Florida residents and tourists visiting the state.”⁹ Furthermore, the DHSMV states that most arguments against the use of traffic infraction detectors have come from those interested in protecting the privacy of motorists from electronic surveillance.¹⁰

Page 4 lines 4-7 of the bill provide for an exemption for commercial motor vehicles defined in s. 320.01(20), F.S., (vehicle not owned by a governmental entity, using public highways weighing 26,001 pounds or more) and “taxed pursuant to s. 320.0715, F.S.” (requires all commercial motor vehicles domiciled in Florida and engaged in *interstate commerce* to register pursuant to the provisions of “the International Registration Plan”, for a fee; a temporary operational permit provides commercial motor vehicle registration “privileges” in each International Registration Plan member jurisdiction).

It is unclear why all, non-governmental, commercial motor vehicles, irrespective of weight or where “domiciled” are not treated equally. Although commercial motor vehicle owners are not a suspect class, for purposes of a constitutional determination of an equal protection challenge, they are however, treated disparately and thus the law is subject to a “rational relation” test.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Lauren Cyran

J. Marleen Ahearn, Ph.D., J.D.

⁹ *Id.*

¹⁰ Department of Highway Safety and Motor Vehicles Bill Analysis, HB 1033, March 14, 2001.