

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 88

SPONSOR: Senator Geller

SUBJECT: High Occupancy Vehicle Lanes

DATE: March 7, 2003      REVISED: 3/11/03 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McAuliffe</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable</u>
2.	<u>Cibula</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>ATD</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill authorizes inherently low-emission vehicles (ILEVs) with a single occupant to travel in high occupancy vehicle (HOV) lanes. The Department of Highway Safety and Motor Vehicles is required to issue decals to be placed on ILEVs indicating the authorization to operate in HOV lanes.

This bill substantially amends section 316.0741, Florida Statutes.

## II. Present Situation:

Section 316.0741, F.S., defines an high occupancy vehicle (HOV) lane as “a lane of a public roadway designated for use by vehicles in which there is more than one occupant unless otherwise authorized by federal law.” The primary purpose of HOV lanes is to increase the total number of persons moved in a freeway corridor.<sup>1</sup> Road signs indicate the hours that an HOV lane is in effect as well as the minimum number of occupants that must be in a vehicle to qualify as an high occupancy vehicle.<sup>2</sup> Driving in an HOV lane with less than the required minimum number of occupants constitutes a moving violation punishable by a \$60 fine.<sup>3</sup>

Florida’s HOV lanes are located near Orlando, Ft. Lauderdale, and Miami.<sup>4</sup> Interstate 4 in the Orlando area contains an HOV lane 30 miles in length in each direction.<sup>5</sup> Interstate 95 in the Ft.

<sup>1</sup> Texas Transportation Institute, *ABC’s of HOVs: The Texas Experience*, p. 9, September 1999.

<sup>2</sup> Section 316.0741, F.S.

<sup>3</sup> Sections 316.0741(3) and 318.18(3)(a), F.S.

<sup>4</sup> Federal Highway Administration, *HOV Pooled-Fund Study, HOV Facility Information*, available at <http://hovpfs.ops.fhwa.dot.gov/inventory/inventory.cfm> (last visited Mar. 7, 2003).

<sup>5</sup> *Id.*

Lauderdale area contains an HOV lane 27 miles in length in each direction.<sup>6</sup> Interstate 95 in the Miami area contains 35 miles of HOV lanes, and U.S. Highway 1 contains 3 miles of bus-only HOV lanes.<sup>7</sup> Vehicles must have at least 2 occupants to operate in an HOV lane in Florida.<sup>8</sup>

By accepting Federal-aid funds, the state Department of Transportation agreed to manage, operate, and maintain Florida's HOV lanes as they were originally planned, designed, constructed, and approved.<sup>9</sup> If certain changes are made by a state to the operation of HOV lanes, federal approval is required. Changes to the minimum number of people in a vehicle in order to use HOV lanes (for example, from 3 occupants to 2), or small adjustments to when HOV restrictions begin or end, are not considered significant changes and are not causes for further federal review.<sup>10</sup> A proposal to significantly adjust the hours of operation or to convert an HOV lane to a general purpose lane is considered a significant change in the original project design concept or scope and would require further federal review.<sup>11</sup>

The federal government, in 23 U.S.C. s. 102, established minimum occupancy requirements for HOV lanes and permitted states to authorize inherently low-emission vehicles (ILEVs) with one occupant to travel in HOV lanes without requiring a federal review. Section 102(a)(1) and (2) of Title 23 U.S.C. states:

(a) HOV passenger requirements.--

(1) In general.--A State transportation department shall establish the occupancy requirements of vehicles operating in high occupancy vehicle lanes; except that no fewer than 2 occupants per vehicle may be required and, subject to section 163 of the Surface Transportation Assistance Act of 1982, motorcycles and bicycles shall not be considered single occupant vehicles.

(2) Exception for Inherently Low-Emission Vehicles.--Notwithstanding paragraph (1), before September 30, 2003, a State may permit a vehicle with fewer than 2 occupants to operate in high occupancy vehicle lanes if the vehicle is certified as an Inherently Low-Emission Vehicle pursuant to title 40, Code of Federal Regulations, and is labeled in accordance with, section 88.312-93(c) of such title. Such permission may be revoked by the State should the State determine it necessary.

The language in 23 U.S.C. s. 102(a)(2), which states that "before September 30, 2003, a State may permit a vehicle with fewer than 2 occupants to operate in high occupancy vehicle lanes," is ambiguous. The language is unclear as to whether a state must act before September 30, 2003, to authorize single-occupant ILEVs to operate in HOV lanes, or whether the authority for ILEVs to operate on HOV lanes terminates after September 29, 2003. According to an interpretation of 23

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

<sup>7</sup> *Id.*

<sup>8</sup> Section 316.0741(1), F.S.

<sup>9</sup> Federal Highway Administration, *Federal-Aid Highway Program Guidance on High Occupancy Vehicle (HOV) Lanes*, available at <http://www.fhwa.dot.gov/operations/hovguide01.htm> (last modified Mar. 26, 2002).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

U.S.C. s. 102(a)(2) by the Federal Highway Administration, single-occupant ILEVs are not permitted to travel in HOV lanes in any state after September 29, 2003.<sup>12</sup>

ILEVs are a subcategory of clean-fuel vehicles that have essentially no fuel vapor emissions.<sup>13</sup> According to a staff member of the U.S. Environmental Protection Agency (EPA), a vehicle will have no fuel vapor emissions if fuel is unable to evaporate out of the vehicle's fuel tank.<sup>14</sup> A fuel tank on an ILEV is more like a pressurized tank on a barbecue grill than a tank on a gasoline fueled automobile, according to the administrator. ILEVs have single dedicated gaseous fuel (compressed natural gas, liquid natural gas, or liquefied petroleum gas) systems.<sup>15</sup> The EPA established the ILEV category of vehicles to recognize there are certain technologies and clean fuels which have inherently lower emissions in the primary ozone precursors (hydro-carbons and oxides of nitrogen) than typical clean-fuel vehicles.<sup>16</sup> Today, however, exhaust emission standards are the same for ILEVs and most new gasoline powered vehicles, according to a staff member of the EPA.<sup>17</sup> ILEVs are certified as such by the EPA.<sup>18</sup> To date, all ILEVs are fueled by compressed natural gas.

In 2000, there were 3,198 vehicles fueled by compressed natural gas.<sup>19</sup> Many of these vehicles may have been certified as ILEVs because all ILEVs to date are fueled by compressed natural gas. For the 2003 model year, certified ILEV vehicles may be limited to versions of the following vehicles: Chevrolet Cavalier, Honda Civic, Ford Crown Victoria, Chevrolet C2500 Silverado 2WD, Ford F150 Pickup 2WD, Ford E250 Pickup, Ford E350 Pickup, and Dodge Ram 2500 Van 2WD.<sup>20</sup>

According to the U.S. Department of Energy, there are 40 compressed natural gas refueling stations located in Florida.<sup>21</sup> Fifteen of these stations are located in the same counties as Orlando, Ft. Lauderdale, and Miami and, thus, near Florida's HOV lanes. Nine of these 15 refueling stations are accessible to non-government vehicles.

### III. Effect of Proposed Changes:

The bill authorizes inherently low-emission vehicles (ILEVs) with a single occupant to travel in high occupancy vehicle (HOV) lanes. The Department of Highway Safety and Motor Vehicles is

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<sup>12</sup> Letter from Jeffrey A. Lindley, Director, Office of Transportation Management, Federal Highway Administration, dated February 28, 2003 (electronically transmitted to the staff of the Committee on Commerce, Economic Opportunities, and Consumer Services).

<sup>13</sup> See 40 C.F.R. s. 88.311-93.

<sup>14</sup> Conversation with Tad Wysor, Senior Technical and Policy Advisor for the Office of Transportation and Air Quality, March 2003.

<sup>15</sup> *Supra* note 9 at Section 2.

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

<sup>17</sup> See 40 C.F.R. s. 88.104-94 and *supra* note 14.

<sup>18</sup> 40 C.F.R. s. 88.311-93.

<sup>19</sup> See Energy Information Administration, *Estimated Number of Alternative-Fueled Vehicles in Use, by State and Fuel Type, 2000*, available at <http://www.eia.doe.gov/cneaf/alternate/page/datatables/table4.html>.

<sup>20</sup> U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, and U.S. Environmental Protection Agency, *Model Year 2003, Fuel Economy Guide*, p. 16, and conversation with a Ford Motor Company representative on February 18, 2003.

<sup>21</sup> See Department of Energy, Alternative Fuel Data Center, Alternative Fuel Station Locator, available at [http://www.afdc.doe.gov/refueling\\_mapsite.shtml](http://www.afdc.doe.gov/refueling_mapsite.shtml).

required to issue decals to be placed on ILEVs indicating the authorization to operate in HOV lanes.

The bill takes effect on October 1, 2003.

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

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

None.

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

None.

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

None.

#### **V. Economic Impact and Fiscal Note:**

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

The bill authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to charge a fee of up to \$5 to cover its costs for a decal permitting an inherently low-emission vehicle (ILEV) to travel on an high occupancy vehicle (HOV) lane.

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

The bill authorizes inherently low-emission vehicles (ILEVs) with a single occupant to travel in high occupancy vehicle lanes.

##### **C. Government Sector Impact:**

The bill requires DHSMV to design, produce, and distribute decals reflecting that a particular vehicle is authorized to travel in an HOV lane with a single occupant. The DHSMV has not estimated its costs to produce and distribute the required decals. According to DHSMV, the bill will require \$40,500 of contracted programming modifications to the Motor Vehicle Software System to implement.

Under s. 316.0741, F.S., the Department of Transportation may have to update signs along HOV lanes to signify that ILEVs may travel in the lanes. The Department of Transportation estimates that the cost to update signs marking HOV lanes will be insignificant.

#### **VI. Technical Deficiencies:**

The bill may take effect after the termination of federal authority for single-occupant inherently low-emission vehicles (ILEVs) to travel on high occupancy vehicle (HOV) lanes. The bill takes

effect on October 1, 2003. According to the interpretation of 23 U.S.C. s. 102(a)(2) by the Federal Highway Administration, single-occupant ILEVs are not permitted in HOV lanes after September 29, 2003. Title 23 U.S.C. s. 102(a)(2) states in pertinent part:

[B]efore September 30, 2003, a State may permit a vehicle with fewer than 2 occupants to operate in high occupancy vehicle lanes if the vehicle is certified as an Inherently Low-Emission Vehicle.

Assuming, however, that 23 U.S.C. s. 102(a)(2) merely sets a deadline by which a state must act or be foreclosed from acting to authorize single-occupant ILEVs to travel on HOV lanes, the bill should be amended to take effect before September 30, 2003.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Commerce, Economic Opportunities, and Consumer Services:  
Changes the effective date of the bill from October 1, 2003, to July 1, 2003.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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