

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 947 Tests for Alcohol, Chemical Substances, or Controlled Substances
SPONSOR(S): Planas
TIED BILLS: **IDEN./SIM. BILLS:** SB 2430

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation</u>	<u>17 Y, 2 N</u>	<u>Garner</u>	<u>Miller</u>
2) <u>Public Safety & Crime Prevention</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The District Court of Appeal of Florida, Second District, held that in administering Florida's implied consent law, the Florida Department of Law Enforcement (FDLE) is required to adopt rules in accordance with the Florida Administrative Procedures Act (FLAPA) governing the collection, preservation, and analysis of urine samples obtained by law enforcement pursuant to the implied consent law. In the operative case, the defendant successfully moved to exclude the results of a urine test because it was taken pursuant to the implied consent law, but had not been approved by FDLE pursuant to FLAPA. As a result of that decision, DUI Convictions based on a urine test administered under the implied consent law may now be subject to challenge and reversal. Furthermore, until FDLE adopts rules approving urine tests, additional convictions based upon the implied consent law as they relate to urine tests will be in doubt.

HB 947 separates urine test provisions in the implied consent law from the provisions relating to tests to detect the alcoholic content of the blood or breath, thereby eliminating the requirement that urine tests must be approved by FDLE.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Current Situation

Any person who accepts the privilege extended by the laws of Florida of operating a motor vehicle or a vessel in this state, is deemed by so operating a motor vehicle or vessel to have given his or her consent to submit to an *approved* chemical or physical test including, but not limited to, certain tests to detect the presence of alcohol, and a urine test for the purpose of detecting the presence of certain chemical substances or controlled substances. The urine test must be incidental to a lawful arrest, and must be administered at a detention facility, or any other facility equipped to administer the tests, at the request of a law enforcement officer who has reasonable cause to believe that the person tested was driving or was in actual physical control of a motor vehicle in Florida while under the influence of controlled substances.

In a recent case, the District Court of Appeal of Florida, Second District, held that in administering Florida's implied consent law, the Florida Department of Law Enforcement (FDLE) is required to adopt rules in accordance with the Florida Administrative Procedures Act (FLAPA) governing the collection, preservation, and analysis of urine samples obtained by law enforcement pursuant to the implied consent law. State v. Bodden, 2002 WL 31421575 (Fla. 2nd DCA 2002). In the Bodden case, the defendant successfully moved to exclude the results of a urine test because it was taken pursuant to the implied consent law, but had not been approved by FDLE pursuant to FLAPA. As a result of the Bodden decision, DUI Convictions in the Second District and elsewhere based on a urine test administered under the implied consent law may now be subject to challenge and reversal. Furthermore, until FDLE adopts rules approving urine tests, additional convictions based upon the implied consent law as they relate to urine tests will be in doubt.

In addition, although the urine test may be administered for the purpose of detecting the presence of either specified chemical substances or controlled substances, the plain language of the law appears to authorize the testing only in cases where a law enforcement officer has reasonable cause to believe that the suspect was driving or was in actual physical control of a motor vehicle while under the influence of controlled substances. The statute is silent as to whether the officer may order the urine test upon a reasonable belief that the suspect was driving under the influence of specified chemical substances.

Effect of Proposed Changes

HB 947 separates urine test provisions in the implied consent law from the provisions relating to tests to detect the alcoholic content of the blood or breath, thereby eliminating the requirement that urine tests must be approved by FDLE. In addition, the bill clarifies that an officer may order a urine test

upon a reasonable belief that the suspect was driving a vehicle or vessel under the influence of chemical substances or controlled substances.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.1932, F.S., to clarify that urine tests need not be approved by FDLE, and that a urine test may be ordered upon a reasonable belief that a suspect was driving a vehicle under the influence of chemical substances or controlled substances.

Section 2. Amends s. 327.352, F.S., to clarify that urine tests need not be approved, and that a urine test may be ordered upon a reasonable belief that a suspect was operating a vessel under the influence of chemical substances or controlled substances.

Section 3. Provides that the act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

HB 947 does not require the exercise of any rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES