

# 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: CS/SB 1934

SPONSOR: Banking and Insurance Committee and Senator Atwater

SUBJECT: State Vehicles

DATE: March 30, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	<u>Kynoch</u>	<u>Hayes</u>	<u>AGG</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	<u>Withdrawn: Favorable</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The Committee Substitute expands the definition of the term, “official state business,” for state law enforcement officers using motor vehicles to permit the use of the vehicle during normal duty hours going to and from lunch or meal breaks and incidental stops for personal errands, but not substantial deviations from official state business. This change would expand liability, property damage, and workers’ compensation coverage for such employees using vehicles for such purposes since the state Risk Management Program currently provides liability coverage for operators of state-owned vehicles if the operator is acting in the course and scope of employment, which does not generally include travel to and from lunch breaks or meal breaks, and incidental stops for personal errands. Each state agency retains financial responsibility for property damage to a vehicle that is used for “official state business” which would also include such expanded use.

This bill also provides that if the law enforcement officer uses the vehicle for off-duty work for which the employee is required to reimburse the state, the reimbursement must include a reimbursement to cover the actual costs for property damage coverage on the vehicle that is used for off-duty work. Currently, such employees are required to secure their own liability and property coverage for a state vehicle used for off-duty work. The Division of Risk Management is required to adopt rules for determining the reimbursement.

This bill amends section 287.17 of the Florida Statutes, and creates section 287.311 of the Florida Statutes.

## II. Present Situation:

The State Risk Management Trust Fund (Risk Management Program), administered by the Division of Risk Management of the Department of Financial Services, is required to provide liability coverage for state employees operating state-owned vehicles.<sup>1</sup> This has been interpreted to include personal injury protection (PIP) coverage with coverage limits of \$10,000 as well as liability coverage with coverage limits of \$100,000 per person, \$200,000 per occurrence (i.e., the sovereign immunity limits). This liability coverage is provided for an employee when the vehicle is used for “official state business” or “in the course and scope of employment.” This restriction is primarily based on the waiver of sovereign immunity in s. 768.28, F.S., which covers negligent acts of agency employees while acting within the scope of the employment. Further guidance is provided by s. 287.17, F.S., which limits the use of state motor vehicles to “official state business.”

The Risk Management Program does not provide coverage for damage to the state-owned vehicles, such as collision or comprehensive coverage. The state agency that owns the vehicles is responsible for assuming this risk as part of its budget appropriated by the Legislature. State agencies are prohibited from purchasing insurance for physical damage to their motor vehicles.<sup>2</sup>

### Official State Business

Section 287.17, F.S., provides that state-owned vehicles are available for official state business only as authorized by agency heads. The section provides the following criteria for appropriate use of state vehicles:

1. Carrying out state official or employee job assignments.
2. Transporting an employee, state official, or other person conducting official state business.
3. Providing security. This pertains to situations in which the Department of Law Enforcement is providing security under the direction of an agency head.
4. To protect life or property in any emergency situation which requires the use of a state vehicle.

An agency head is authorized to assign motor vehicles to state officers and employees that perform law enforcement. Section 287.17, F.S., also provides that the term, “official state business,” does not include commuting to and from home unless special assignment of the vehicle is authorized as a perquisite by the Department of Management Services, required by an employee after normal duty hours to perform duties of the position to which assigned, or authorized for an employee whose home is the official office. Rule 60B-1, F.A.C., addresses the use of state vehicles and places specific limits on the use of state vehicles and does not authorize use of state vehicles for personal purposes.

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<sup>1</sup> Section 284.31, F.S.

<sup>2</sup> Section 287.025(1)(a), F.S. (2003)

## Use of State Vehicles by Law Enforcement Officials

State agencies have adopted policies and procedures governing the use of state vehicles. According to the Florida Department of Law Enforcement's (FDLE) Policy 1.4, Use of FDLE's Resources, dated February 27, 2003: "Members may not use FDLE owned or provided vehicles for unauthorized purposes and shall not permit unauthorized persons to operate or ride in such vehicles. The State of Florida and FDLE assume no liability or responsibility for injuries or property damage that occurs during the unauthorized use of vehicles in a manner other than authorized."

According to FDLE Policy 3.25, dated March 6, 2000, "Incidental use of FDLE owned, rented, or leased vehicles is permitted only when such use does not create an appreciable divergence from the most direct or practical route to an official or authorized destination. Members assigned Class C vehicles (which includes sworn law enforcement subject to be on call on a 24 hour basis) on travel status may use their assigned vehicle for meals and other incidental travel. However, this should be minimized and confined to the general area of the travel destination."

Many law enforcement officers engage in some form of supplemental employment, such as off-duty and secondary employment. Off-duty police employment or extra-duty employment is a form of secondary employment which is conditioned on the actual or potential use of law enforcement powers by an officer. Hire-back programs are a form of off-duty police employment administered by a law enforcement agency, pursuant to contractual agreements or grants awarded to an agency by other governmental entities.<sup>3</sup> Secondary employment is employment other than with the law enforcement agency. Officers participating in the hire-back program are afforded the same workers' compensation benefits and automobile liability insurance benefits as are provided for officers serving in an on-duty status.

Banking and Insurance Committee staff contacted several state law enforcement agencies to determine whether internal policies exist addressing the use of state vehicles while engaging in off-duty or secondary employment. The Florida Department of Law Enforcement (FDLE) requires any agent who seeks to utilize a state car in his or her off-duty employment to provide FDLE with proof of personal insurance coverage or a signed commitment to be solely and exclusively liable for all damages that may occur by reason of the use of the vehicle. The Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles requires officers seeking authorization to work private sector off-duty employment using a state vehicle to provide vehicle liability and property damage coverage.<sup>4</sup> The Fish and Wildlife Conservation Commission requires officers requesting authorization for dual employment that requires the use of a vehicle to provide proof of liability insurance coverage.<sup>5</sup> According to the Motor Carrier Compliance Office of the Department of Transportation, officers utilizing their state patrol vehicles for extra-duty police employment are required to submit proof of vehicle liability and property damage insurance coverage with any request to work private-sector extra-duty

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<sup>3</sup> As an example, the Department of Transportation contracts with law enforcement officers to provide security at rest areas on turnpikes or interstates.

<sup>4</sup> Florida Highway Patrol Policy Manual Policy 5.10-1, dated January 1, 2003.

<sup>5</sup> Fish and Wildlife Conservation Commission General Order 6, dated April 1, 2003.

employment if the state vehicle is used.<sup>6</sup> These agencies employ approximately 3,500 of the 5,000 sworn law enforcement officers.

Concerns have been raised by officers that engage in off-duty employment regarding the availability of extended non-owned vehicle coverage for the state-owned vehicle. Banking and Insurance Committee staff contacted representatives of automobile insurers regarding the availability of riders or endorsement on personal auto policies that provide such coverage for non-owned vehicles. Presently, Allstate provides comprehensive coverage; Nationwide, State Farm, and USAA provide liability only coverage. Currently, Progressive does not offer such coverage.

### **Course and Scope of Employment**

The term, “within the scope of employment” is a term found in chs. 440 and 768, F.S., which is commonly employed in deciding workers’ compensation and tort claims against the state or its agencies. Section 768.28(9)(a), F.S., provides in part that no officer, employee, or agent of the state or any of its subdivision is liable in tort or may be named as a defendant in any action for injury or damages as a result of any act in the scope of her or his employment (subject to certain exceptions). The section also provides that the state is not liable in tort for the acts of an officer or employee committed while acting outside the course and scope of employment.

Under current Florida law, an employee’s injury is compensable for purposes of workers’ compensation coverage only if the injury arises out of and occurs within the course and scope of employment.<sup>7</sup> An employee is not considered to be acting within the course and scope of employment when “going to or coming from” work, unless engaged in a special errand or mission for the employer (this is known as the “going or coming” rule). An employee’s conduct is “within the scope of his employment” only if it occurs substantially within the time and space limits authorized by the employment when the accident occurred.<sup>8</sup> Generally, an employee who deviates from his employment to engage in a personal errand is not within the scope of his employment if an accident occurs before he returns to the course he was pursuing in the interest of the employer.<sup>9</sup>

For purposes of workers’ compensation, law enforcement officers are considered on duty when they are carrying out their primary responsibility to prevent or detect crime or enforce the penal, criminal, traffic, or highway laws of the state. If an officer is injured while carrying out his or her primary responsibility, whether off-duty or on-duty, the officer is deemed by operation of s. 440.091, F.S., to have been injured within the course of employment, and therefore covered by workers’ compensation. Also, s. 440.092, F.S., provides that an injury to a law enforcement officer during the officer’s assigned work period or while going to or coming from work, is deemed to be an injury arising out of and in the course of employment unless the injury occurred during a distinct deviation for a nonessential personal errand.

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<sup>6</sup> Policy 2.6, dated January 16, 2003.

<sup>7</sup> Section 440.092, F.S. (2003).

<sup>8</sup> *Rabideau v. State*. 391 So.2d.283 (Fla1st DCA 1981).

<sup>9</sup> *Maroney v. Edward A. Kelly & Sons, Inc.*, 195 So.2d 208 (Fla. 1967).

According to the Division of Risk Management (Division), the facts involving an employee's activities at the time of the accident or event are controlling in determining whether the employee was in the course of employment. For example, coverage is in effect for a driver of a state vehicle to and from work who is subject to emergency calls from his residence, assuming that no deviations from travel directly to and from work occur, and the emergency calls fall within state rule requirements for law enforcement or protection of life or property. Personal errands or other personal use of state vehicles removes a state employee from being in the course and scope of employment so that state coverage does not apply. According to the Division, coverage is not in effect for a sworn law enforcement officer solely because he is subject to respond to emergency calls. Being "on-call" does not constitute being in the course and scope of employment until actually called to an emergency.

### III. Effect of Proposed Changes:

**Section 1** amends s. 287.17, F.S., to expand the definition of the term, "official state business," for state law enforcement officers using motor vehicles to permit the use of the vehicle during normal duty hours going to and from lunch or meal breaks and incidental stops for personal errands, but not substantial deviations from official state business. This change would expand liability, property damage, and workers' compensation coverage for a vehicle used for such purposes since the state Risk Management Program currently provides liability coverage for operators of state-owned vehicles only if the operator is acting in the course and scope of employment, which does not generally include travel to and from lunch breaks, meal breaks, and incidental stops. Each agency retains financial responsibility for property damage to vehicles used for official state business, which would include such expanded use.

**Section 2** creates s. 284.311, F.S., to provide that if the law enforcement officer uses the vehicle for off-duty work for which the employee is required to reimburse the state, the reimbursement must include a reimbursement for property damage coverage on the vehicle for the off-duty work. Currently, such employees are required to secure their own liability and property coverage for a state vehicle used for off-duty work. The Division of Risk Management is required to adopt rules for determining the reimbursement for actual costs of coverage associated with the property damage coverage. An officer would still be responsible for any liability or property damages associated with the use of the vehicle after normal duty hours excluding periods of time the officer was not engaged in this off-duty employment.

**Section 3** provides that this act will take effect July 1, 2004.

### 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:

None.

B. Private Sector Impact:

Law enforcement officers using state-owned vehicles to engage in off-duty or private employment could benefit from securing coverage through the Division of Risk Management for property damage coverage for the state vehicle used for off duty work since such the coverage is not readily available from all insurers. The state officer would be responsible for reimbursing the state for the actual costs of coverage associated with off-duty coverage.

C. Government Sector Impact:

According to the Division of Risk Management of the Department of Financial Services, the forecasted risk exposure for the state would be \$419,980 for FY 2004-05 and \$432,580 for FY 2005-06. These costs are associated with additional liability and workers' compensation coverage attributable to the expansion of the definition of "official state business" to include going to and from lunch breaks or meal breaks and incidental trips previously considered to be personal use claims. It is anticipated the forecasted risk exposure of \$69,830 for FY 2004-05 and \$71,925 for FY 2005-06 for property damage attributable to the expansion of the definition of "official state business" will be absorbed by law enforcement agencies within existing resources. The financial responsibility for property damage to a vehicle used for "official state business" is currently the responsibility of the agency. In order to administer the reimbursement program for property damage coverage for off-duty work, the Division estimates it would need two positions at an annual cost of \$87,321. The estimated forecasted risk exposure for property damage coverage for off-duty use is \$83,886 for FY 2004-05 and \$86,403 for FY 2005-06. These costs would be recoverable under the reimbursement for property damage coverage for off duty work.

The Division provided the following fiscal note concerning the impact of Senate Bill 1934:

**Revenues:** Revenues are indeterminate at this time. A consultant would determine premiums or assessments for off-duty employment necessary to provide reimbursement for the actual costs of property damage coverage associated with off-duty coverage. The Division would adopt rules to implement deductibles.

<b>Recurring Expenses</b>	<b>2004-05</b>	<b>2005-06</b>
<b>Crashes (Liability)</b>		
Personal Use	\$217,723	\$224,255
<b>Property Damage</b>		
Personal Use (Responsibility of each agency to fund)	\$69,830	\$71,925
Off-Duty Use	83,886	86,403
Combined	\$153,716	\$158,328
<b>Workers' Compensation</b>		
Personal Use	\$202,257	\$208,325
<b>Other Expenditures Associated with Providing Property Damage Coverage for Off-Duty Work</b>		
2 Accountant II's	\$64,283	\$66,211
Expenses	16,038	\$10,832
Operating Capital Outlay	4,000	0
Actuarial Consultant	3,000	3,600
<b>Total Other Expenditures</b>	<b>\$87,321</b>	<b>\$80,643</b>
<b>TOTALS - Recurring Expenditures</b>	<b>\$661,017</b>	<b>\$671,551</b>
<b>Nonrecurring Expenditures</b>	<b>2004-05</b>	<b>2005-06</b>
Expenses	\$5,206	0
Operating Capital Outlay	4,000	0
<b>Total - Nonrecurring Expenditures</b>	<b>\$9,206</b>	<b>0</b>

**Division of Risk Management Narrative Regarding the Fiscal Impact of CS/SB 1934**

This bill would result in increased expenditures from the State Risk Management Trust Fund to pay auto claims resulting from off-duty and personal use of state vehicles by law enforcement officers. This analysis assumes that liability coverage and property damage coverage would be provided for this use and workers' compensation coverage will be provided for personal use. It is estimated that an average vehicle will be used an additional 25 percent for personal use and an additional 30 percent each week for off-duty use. This bill allows the Division to assess the law enforcement officer a reasonable premium for off-duty use and a per accident deductible up to \$500 which will reduce the net expenditures by the Division for off-duty related accidents.

The Division estimates it will need an additional two full-time positions to assess and collect insurance premiums for off-duty use and the deductible amount per accident. It will also be necessary to retain the services of an actuarial consultant to calculate premiums and deductible amounts on an annual basis. The estimated, initial annual cost of these services is \$3,000. The Division will also have to adjust the additional auto claims resulting from this additional use, which would be done with existing staff. Expenditures are increased 3 percent per year for inflation.

**Increased cost of personal use law enforcement accident (liability):** The Division estimates that a law enforcement vehicle would be used an additional 30 percent for off-duty use and 25 percent for personal use if this bill becomes law. To determine the number of expected personal use crashes per year, 37.6 off-duty crashes x 25 percent/30 percent = 31.3 crashes. The increased yearly cost for personal use liability coverage is projected to be 31.3 crashes x \$6,956 = \$217,723.

**Increased cost of off-duty law enforcement accident (property damage to state vehicle):** Since the Division of Risk Management has historically only provided automobile liability coverage, the Division does not have any data on the cost of repairs to state law enforcement vehicles involved in off-duty accidents. In addition, the Division was unable to document complete off-duty repair costs at this time for law enforcement vehicles. Assuming the cost of property damage claims paid to third party claimants is essentially the same as damage to the state vehicles, the Division can calculate an estimate of the increased costs to repair the state vehicles.

For Fiscal Year 2000-01, 2001-02 and 2002-03, the average cost of an auto liability claim (property damage only) was approximately \$2,231. If this average auto claim is multiplied by the projected number of crashes, 37.6, the increased cost to The Division of Risk Management for one year to pay property damage to law enforcement vehicles for off-duty use would be approximately \$83,886.

**Increased cost of personal use law enforcement accidents (property damage to state vehicle):** The increased yearly cost for personal use property damage is projected to be 31.3 crashes x \$2,231 = \$69,830.

**Workers' Compensation:** The average cost of a workers' compensation claim resulting from a motor vehicle accident for the period 1998-2002 was \$6,462. The Division estimates that this bill would result in increased workers' compensation costs for personal use accidents. Increased annual costs are estimated to be 31.3 crashes x \$6,462 = \$202,257.

**Additional Comments:** As previously noted, the Division has historically only provided automobile liability coverage and does not have the data on collision damage to state vehicles. Consequently, the Division cannot certify that the data related to the amount of property damage for law enforcement vehicles is complete and comprehensive.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.