

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

The bill creates new driver's licenses for certain foreign nationals, and requires DHSMV to conduct fingerprint-based identity checks and background checks on certain applicants for the driving permit created by this bill.

Safeguard Individual Liberty

The bill requires certain Cuban nationals to submit to fingerprinting and criminal background checks to be eligible for the driving permit created by this bill. It is unclear whether such persons would be eligible for a Florida driver's license under current law.

Maintain Public Security

The bill requires fingerprinting, criminal history background checks and security checks of certain individuals applying for a driving permit created under the provisions of this bill. These individuals are likely to have criminal histories that would have required them to be deported but for the absence of diplomatic relations with Cuba. Under current law, such persons may theoretically be eligible for a Florida driver's license without such fingerprinting and criminal history and security checks.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

DHSMV does not currently maintain driving records for non-resident foreign nationals who travel to Florida as tourists and do not obtain a Florida driver's license. Because no permanent driving history is maintained for such persons, automobile insurers may charge them a higher premium because they are unable to examine records to determine the risk posed by the particular driver. After September 11, 2001, the Legislature changed the laws relating to driver's licenses to require the expiration of a Florida driver's license obtained by a foreign tourist within two years of issuance or upon the expiration of the documents authorizing lawful presence in the United States, whichever period is shortest.

Because a foreign tourist who wants a Florida driver's license must apply for a new license whenever he or she leaves the country and returns, a continuing driving history is not maintained for that person. The lack of a continuing driving history on record with DHSMV may cause automobile insurance rates to be higher for frequent foreign visitors who own an automobile in this state than for residents having similar driving habits and risk profiles.

Cuban-born persons who have entered the United States and subsequently been found to have engaged in conduct warranting deportation, but who are not subject to deportation under the Cuban Adjustment Act because of a lack of foreign relations with Cuba, may theoretically be eligible for a Florida driver's license under current law. According to DHSMV, such persons are deemed to have legal presence in the United States, and could prove identification via proof of nonimmigrant classification provided by the United States Department of Homeland Security. In order to prove such nonimmigrant classification, applicants may produce the following documents:

- A notice of hearing from an immigration court scheduling a hearing on any proceeding;
- A notice from the Board of Immigration Appeals acknowledging pendency of an appeal;

- A notice of the approval of an application for adjustment of status issued by the United States Bureau of Citizenship and Immigration Services;
- Any official documentation confirming the filing of a petition for asylum status or any other relief issued by the United States Bureau of Citizenship and Immigration Services;
- A notice of action transferring any pending matter from another jurisdiction to Florida, issued by the United States Bureau of Citizenship and Immigration Services; or
- An order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States including, but not limited to asylum.

In addition, according to DHSMV, the department will accept many additional forms of documentation to prove nonimmigrant classification or identity from Cuban immigrants. Since they are in the United States lawfully, and since they may be able to show documentation proving identity or nonimmigrant classification, such Cuban persons not subject to deportation may currently be eligible for a Florida driver's license.

Effect of HB 1147

HB 1147 w/CS provides for issuance of a two-year driver's license to non-immigrant foreign nationals who visit this state frequently. The license would be valid for two years or for the duration of an applicant's nonimmigrant visa. The bill also requires these applicants to submit certain documents to the Department of Highway Safety and Motor Vehicles (DHSMV) prior to the issuance or renewal of the driver's license. Documents required for submission must include:

- A valid passport from the home country of the applicant;
- For an applicant entering the U.S. from a country that is not identified by the Bureau of Citizenship and Immigration Services as a visa waiver country, a valid multiple-entry nonimmigrant visa issued to the applicant by the United States Government;
- A valid and current I-94 U.S. Citizenship and Immigration Services form issued to the applicant by the United States Government; and
- A valid driver's license from the home country of the applicant.

HB 1147 w/CS also authorizes the issuance of driving permits to certain Cuban immigrants who have entered this state and may not be deported to their country of citizenship under the Cuban Adjustment Act due to the absence of foreign relations between Cuba and the United States. The bill requires applicants to meet certain criteria to be eligible for such a driving permit and requires DHSMV to provide for criminal history background checks of the applicants for the permit. Eligibility criteria include:

- Meeting all requirements for a Florida driver's license except ability to prove identity by the forms required in s. 322.08(2)(c), F.S.;
- Submission of a form of identification acceptable to DHSMV;
- Submission of fingerprints; and
- Affirmation that the applicant is free of convictions for certain crimes, warrants, or designation as a terrorist or leader of an illegal drug enterprise and that he or she will not travel to designated terrorist nations while the driving permit is valid

The applicant must not have committed, or have outstanding warrants for, the following crimes:

- A violent felony;
- Terrorism;
- Money laundering; or
- Conspiracy to commit the above.

Prior to issuing a driving permit to a person under this new provision, DHSMV must:

- Conduct a criminal background check through the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI);
- Verify through FDLE and the FBI that the applicant is not a security risk to the state or to the United States;
- Verify the applicant's identity using the fingerprints collected with the application for the driving permit;

Pursuant to the provisions of the bill, the driving permit must have a background that distinguishes it from a regularly issued Florida driver's license, must meet the statutory image requirements that currently exist for driver's licenses, must remain valid for no more than 2 years, and is valid only for use in Florida. A statement must be prominently displayed that the permit is only valid for use in Florida.

Each time a permit holder renews this driving permit, he or she is subject to all of the requirements for initial issuance. DHSMV is authorized to cancel the driving permit upon determining that the permit holder no longer meets the eligibility requirements for the permit.

DHSMV must establish fees for initial issuance and renewal. The fees are to be determined by the costs related to conducting background checks and verifying whether an applicant is a security risk. All fees collected are deposited into the department's Highway Safety Operating Trust Fund.

C. SECTION DIRECTORY:

Section 1. Creates s. 322.073, F.S., providing for licensing of foreign nationals who visit Florida.

Section 2. Creates s. 322.075, F.S., providing for issuance of driving permits for persons entering the United States under the Cuban Adjustment Act.

Section 3. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section, below.

2. Expenditures:

See FISCAL COMMENTS section, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill authorizes the Department to assess fees from permit applicants to recoup costs relating to conducting criminal background checks and verifying security risks. Although the number of permits

that may be issued, and the revenue that will be collected as a result is unknown, the number is expected to be very small. DHSMV expects the cost to conduct state and federal criminal history background checks and to conduct a fingerprint identification check will cost the applicant approximately \$100.

D. FISCAL COMMENTS:

This bill authorizes the Department to assess fees from permit applicants to recoup costs relating to conducting criminal background checks and verifying security risks. However, the number of permits that may be issued and resulting revenue that will be collected is unknown. DHSMV estimates that implementation of these new driver's licensing programs will require approximately 900 hours of contracted database programming to update the current system. The current contract rate is \$180 per hour. Therefore, the estimated cost to DHSMV to reprogram its database is approximately \$162,000.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action 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 1147 w/CS authorizes DHSMV to adopt the rules necessary to administer the provisions of the bill. Such rules must be adopted pursuant to procedures set forth in ss. 120.536(1), F.S., and 120.54, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of the bill authorizes DHSMV to issue a driver's license to an applicant who is a foreign national and who legally visits the state on a frequent basis, but who has not immigrated to the United States. The bill does not provide guidance as to what amount of visitation constitutes visitation on a "frequent basis."

In addition, the bill requires a license issued pursuant to section 1 of the bill to be valid for the longer of 2 years or the period of validity of the foreign visitor's visa. Such requirement would extend the current maximum period that a nonimmigrant foreign national could maintain a valid driver's license from 2 years to 6 years. A nonimmigrant visitor from a country designated as a visa waiver country would be eligible for a license that is only valid for 2 years, since that person is not required to have a visa to travel to the United States. Therefore, a disparity exists under the provisions of the bill which would enable a nonimmigrant visitor with a multiple entry visa to hold a license for up to 6 years without renewing, while a nonimmigrant visitor traveling from a nation such as Great Britain, Germany, Canada, or France would only be able to have a license that is valid for 2 years without renewing, because such nations are visa waiver nations.

Section 2 of the bill provides that a driving permit issued under that section would only be valid in Florida, and that such permit must state that fact on its face. Although another state may choose not to recognize the permit as a valid driver's license, it is beyond the power of the Florida Legislature to determine for another state what it may or may not deem a valid driver's license or permit.

Section 2 of the bill also requires DHSMV to conduct a "security check" through FDLE and the FBI, to verify through those agencies that the applicant is not a security risk to the state or the United States. It is unclear from the text of the bill what constitutes a "security check." According to FDLE, neither it nor the FBI conducts such checks. Furthermore, according to FDLE, neither that agency nor the FBI would likely be at liberty to divulge the existence of a flag for a suspected terrorist subject. Furthermore, FDLE may have some difficulty in accomplishing comprehensive checks for warrants from other states, and determining who has been designated as a terrorist or the leader of an illegal drug enterprise by the United States Department of Justice.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES