

**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 1629

Hillsborough County

**SPONSOR(S):** Glorioso

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2814

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Military & Local Affairs Policy Committee	12 Y, 0 N	Rojas	Hoagland
2)	Economic Development & Community Affairs Policy Council			
3)				
4)				
5)				

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**SUMMARY ANALYSIS**

Chapter 2001-299, L.O.F., created the Hillsborough County Public Transportation Commission (PTC) to regulate and supervise the operation of public vehicles on the public highways of Hillsborough County and its municipalities, and all other matters affecting the relationship between the operation of public vehicles and the traveling public.

Recent challenges to Hillsborough County Public Transportation Commission rules filed at Division of Administrative Hearings (DOAH), have been dismissed for lack of jurisdiction.

The bill amends ch. 2001-299, L.O.F., so that any person substantially affected by a rule or proposed rule of the Hillsborough County Public Transportation Commission may challenge the validity of the rule at DOAH pursuant to s. 120.56, F.S.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Background

Chapter 2001-299, L.O.F., created the Hillsborough County Public Transportation Commission (PTC) to regulate and supervise the operation of public vehicles on the public highways of Hillsborough County and its municipalities, and all other matters affecting the relationship between the operation of public vehicles and the traveling public.

The PTC is an independent special district, and except as otherwise provided by ch. 2001-299, L.O.F., the PTC must comply with all applicable provisions of ch. 189, F.S.,<sup>1</sup> and any other general law relating to special districts.

In ch. 2001-299, L.O.F., which creates the PTC and sets forth its powers and duties, the Legislature defined 34 different terms. However, it appears that the PTC separately has defined 19 of these 34 terms in its rules. Several of the rule definitions are identical to the legislative definitions or contain very minor grammatical changes. However, some of the definitions substantively differ from the legislative definitions.

The Joint Administrative Procedures Committee (JAPC) has advised the PTC that the differing provisions may be within the PTC's authority, but they are being implemented in a way that appears to attempt to modify legislative definitions. The PTC does not have the authority to amend ch. 2001-299, L.O.F., or modify its statutory provisions however in some instances it has attempted to amend provisions of ch. 2001-299, L.O.F., by rule.

The PTC was also advised by the Office of the Attorney General<sup>2</sup> that as an administrative agency, the PTC may not exercise any power that has not been expressly granted by statute or that is necessarily implied from an express grant of power. The Attorney General's opinion concluded that any reasonable doubt as to the lawful existence of a particular power sought to be exercised must be resolved against the exercise of such power.

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<sup>1</sup> Chapter 189, F.S., addresses "Special Districts: General Provisions."

<sup>2</sup> AGO 2007-01

In short, it would appear that the PTC's rules include some improper and confusing provisions that could confuse the citizens of Florida and lead to litigation.

### Membership

The PTC currently consists of seven elected public officials representing the municipalities and governments within Hillsborough County. The membership consists of three members from the Hillsborough County Board of County Commissioners appointed by this board, two members from the Tampa City Council appointed by this council, one member from the Plant City Commission appointed by this commission, and one member from the Temple Terrace City Council appointed by this council. Each member must serve without compensation, and the term of the office is for a period of two years. In addition, each governing body must also appoint an alternate member to the PTC to serve during the absence of any regular member.

### Application and Licensing Process

The PTC requires companies, their owners and operators, and their vehicles and drivers, to submit to an application and review process that requires minimum standards, as set forth by the PTC, before obtaining a "permit" or "certificate" from the PTC to operate. These "Operator Permit" rules include a "Certificate Of Public Convenience and Necessity" (COPCN) application process that includes a business plan, good credit, insurance, a valid Florida driver's license and driver history, Florida Department of Law Enforcement (FDLE) and National Crime Information Center (NCIC) criminal history background checks for business owners, and other requirements such as minimum vehicle standards. An independent "Hearing Master" at an advertised public hearing reviews COPCN operator permit applications. The Hearing Master then submits the findings and recommendations to the full PTC Board at the PTC monthly public Commission meeting for final approval.

### Administrative Procedure Act

The Administrative Procedure Act (APA) is found in ch. 120, F.S. Florida followed the example of the federal government and other states by adopting its first extensive APA in 1961 in an effort to provide comprehensive and standardized administrative procedures pertaining to executive branch agency actions. The APA provides a "check and balance" function by increasing administrative agency accountability to the legislature and Florida's citizens. The modern version of Florida's APA was enacted in 1974 and has been amended almost every year since, while maintaining its basic components. The applicability of two key sections of the APA to the PTC are currently at question, and are detailed below.

### Challenges to PTC Rules

As a special district with jurisdiction within only one county, the PTC is a state agency for purposes of the APA only to the extent that it is expressly made subject to the APA by chapter 2001-299, L.O.F. That act requires the PTC to adopt rules pursuant to the APA but it does not address rule challenges under s. 120.56, F.S.

There have been some recent challenges<sup>3</sup> to the PTC rules filed at Division of Administrative Hearings (DOAH), but these cases were dismissed for lack of jurisdiction. One of the DOAH dismissal orders instructed the petitioner to seek redress in an appellate court pursuant to s. 120.68, F.S., which is for judicial review. However, s. 120.68, F.S., explicitly forbids the use of that section to initiate a rule challenge. Section 120.68, F.S. is intended for the review of decisions from lower tribunals, but the DOAH order would place the appellate court in the position of the fact-finder with no decision to review.

Pursuant to s. 11.60(4), F.S., JAPC is charged with maintaining a continuous review of statutes that authorize agencies to adopt rules and makes recommendations to the appropriate standing committees of the Senate and the House of Representatives as to the advisability of considering changes to the delegated legislative authority to adopt rules in specific circumstances. In its 2009 annual review JAPC

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<sup>3</sup> Case No. 08-0855RU and Case No. 08-5857RX

advised that the Legislature might consider amending ch. 2001-299, L.O.F., to specify how a person can legally challenge a PTC rule.

**Effect of the Bill**

The bill amends ch. 2001-299, L.O.F., so that any person substantially affected by a rule or proposed rule of the PTC may challenge the validity of the rule at DOAH pursuant to s. 120.56, F.S.

**B. SECTION DIRECTORY:**

Section 1. Amends ch. 2001-299, L.O.F., so that rules may be challenged pursuant to s. 120.56, F.S.

Section 2. Provides an effective date.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? February 17, 2010

WHERE? The Tampa Tribune, Tampa, Hillsborough County, Florida

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**