

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 4087 Traffic Infraction Detectors  
**SPONSOR(S):** Economic Affairs Committee, Corcoran and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 672

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Affairs Committee	10 Y, 8 N, As CS	Brown	Tinker
2) Appropriations Committee			

### SUMMARY ANALYSIS

HB 4087 repeals authorization to use traffic infraction detectors, commonly known as “red light cameras”, to enforce traffic safety laws, while retaining the state preemption to regulate the use of cameras for enforcing such laws.

Specifically, the bill repeals s. 316.008(8), F.S., authorizing local governments to install traffic infraction detectors, and s. 316.0083, F.S., which provides local ordinance requirements, installation, signage and notification-of-violation processes, as well as distribution requirements for fines collected by traffic infraction detector programs. The bill also repeals s. 316.0776, F.S., which provides engineering specifications for installation of traffic infraction detectors.

The bill repeals portions of other sections in Chapter 316, Florida Statutes, in order to conform to the repealed sections described above, and it repeals two statutes relating to the implementation of the traffic infraction detector bill passed in 2010.

HB 4087 leaves intact s. 316.0076, F.S., which was enacted in 2010 and expressly preempts to the state regulation of the use of cameras for enforcing the traffic safety provisions of Chapter 316, Florida Statutes.

To the extent that the bill eliminates a potential fine, the bill has an indeterminate positive fiscal impact on motor vehicle owners and operators.

The bill will reduce revenues received by local governments that have implemented traffic infraction detector programs, will reduce one-time and/or recurring costs related to maintaining such programs, and will reduce expenses related to ongoing enforcement and legal challenges. The bill also reduces revenues received by the state.

HB 4087 is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Traffic Infraction Detectors generally**

Traffic infraction detectors, or “red light cameras,” are used to enforce traffic laws by automatically photographing vehicles whose drivers run red lights. A red light camera is connected to the traffic signal and to sensors that monitor traffic flow at the crosswalk or stop line. The system continuously monitors the traffic signal, and the camera is triggered by any vehicle entering the intersection above a pre-set minimum speed and following a specified time after the signal has turned red. A second photograph typically shows the red light violator in the intersection. In some cases video cameras are used. Cameras record the license plate number, the date and time of day, the time elapsed since the beginning of the red signal, and the vehicle speed.

##### **Traffic Infraction Detectors in Florida**

In 2010, the Florida Legislature enacted Chapter 2010-80, Laws of Florida. The law expressly preempted to the state regulation of the use of cameras for enforcing the provisions of Chapter 316, Florida Statutes.<sup>1</sup> The law authorized the Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities to authorize officials to issue notices of violations of ss. 316.074(1) and 316.075(1)(c)1., F.S., for a driver’s failure to stop at a traffic signal when such violation was identified by a traffic infraction detector.<sup>2</sup>

##### *Jurisdiction, Installation, and Awareness*

Any traffic infraction detector installed on the highways, roads, and streets must meet requirements established by the Florida Department of Transportation (FDOT) and must be tested at regular intervals according to procedures prescribed by FDOT.<sup>3</sup> Municipalities may install or authorize installation of traffic infraction detectors on streets and highways in accordance with FDOT standards, and on state roads within the incorporated area when permitted by FDOT.<sup>4</sup> Counties may install or authorize installation of traffic infraction detectors on streets and highways in unincorporated areas of the county in accordance with FDOT standards, and on state roads in unincorporated areas of the county when permitted by FDOT.<sup>5</sup> DHSMV may install or authorize installation of traffic infraction detectors on any state road under the original jurisdiction of FDOT, when permitted by FDOT.<sup>6</sup>

If DHSMV, a county, or a municipality installs a traffic infraction detector at an intersection, the respective governmental entity must notify the public that a traffic infraction device may be in use at that intersection, including specific notification of enforcement of violations concerning

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<sup>1</sup> Section 316.0076, F.S.

<sup>2</sup> *See generally* s. 316.0083, F.S.

<sup>3</sup> Section 316.0776, F.S.

<sup>4</sup> Section 316.008(7), F.S.; s. 316.0776(1), FS

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

<sup>6</sup> Section 321.50, F.S. As of January 2011, HSMV has not undertaken any effort to install or authorize traffic infraction detectors itself.

right turns.<sup>7</sup> Such signage must meet the specifications for uniform signals and devices adopted by FDOT pursuant to s. 316.0745, F.S.<sup>8</sup>

### *Notifications and Citations*

If a traffic infraction detector identifies a person violating ss. 316.074(1) or 316.075(1)(c)1., F.S., the visual information is captured and reviewed by a traffic infraction enforcement officer. A notification must be issued to the registered owner of the vehicle within 30 days of the alleged infraction.<sup>9</sup> The notice must be accompanied by a photograph or other recorded image of the violation, and must include a statement of the vehicle owner's right to review images or video of the violation, and the time, place, and Internet location where the evidence may be reviewed.<sup>10</sup> Violations may not be issued if the driver is making a right-hand turn "in a careful and prudent manner."<sup>11</sup>

If the registered owner of the vehicle does not submit payment within 30 days of receipt of the notification described above, the traffic infraction enforcement officer must issue a traffic citation to the owner.<sup>12</sup> A citation must be mailed by certified mail, and must be issued no later than 60 days after the violation.<sup>13</sup> The citation must also include the photograph and statements described above regarding review of the photographic or video evidence.<sup>14</sup> The report of an officer and images provided by a traffic infraction detector are admissible in court and provide a rebuttable presumption the vehicle was used in a violation.<sup>15</sup>

A traffic infraction enforcement officer must provide by electronic transmission a replica of the citation data when issued under s. 316.0083, F.S., to the court having jurisdiction over the alleged offense or its traffic violations bureau within 5 days after the issuance date of the citation to the violator.<sup>16</sup>

### *Defenses*

The registered owner of the motor vehicle is responsible for payment of the fine unless the owner can establish that the vehicle:

- Passed through the intersection to yield the right-of-way to an emergency vehicle or as part of a funeral procession;
- Passed through the intersection at the direction of a law enforcement officer;
- Was, at the time of the violation, in the care, custody, or control of another person;
- Passed through the intersection because the operator, under the circumstances at the time of the infraction, feared for his or her safety; or
- Received a Uniform Traffic Citation (UTC) for the alleged violation issued by a law enforcement officer.<sup>17</sup>

To establish any of these defenses, the owner of the vehicle must furnish an affidavit to the appropriate governmental entity that provides detailed information supporting an exemption as

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<sup>7</sup> Section 316.0776(2), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 316.0083(1)(b), F.S.

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

<sup>11</sup> Section 316.0083(2), F.S.

<sup>12</sup> Section 316.0083(1)(c), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Section 316.0083(1)(e), F.S.

<sup>16</sup> Section 316.650(3)(c), F.S.

<sup>17</sup> Section 316.0083(1)(d), F.S.

provided above, including relevant documents such as a police report (if the car had been reported stolen) or a copy of the UTC, if issued.<sup>18</sup> If the owner submits an affidavit that another driver was behind the wheel, the affidavit must contain the name, address, date of birth, and if known, the driver's license number, of the driver.<sup>19</sup> A traffic citation may be issued to this person, and the affidavit from the registered owner may be used as evidence in a further proceeding regarding that person's alleged violation of ss. 316.074(1) or 316.075(1)(c)1., F.S.<sup>20</sup> Submission of a false affidavit is a second degree misdemeanor.

If a vehicle is leased, the owner of the leased vehicle is not responsible for paying the citation, nor required to submit an affidavit, if the motor vehicle is registered in the name of the lessee.<sup>21</sup> If a person presents documentation from the appropriate governmental entity that the citation was issued in error, the clerk of court may dismiss the case and may not charge for such service.<sup>22</sup>

### *Oversight and Accountability*

Beginning in 2012, each county or municipality that operates a traffic infraction detector is required to submit an annual report to DHSMV containing the following:

- the results of using the traffic infraction detector;
- the procedures for enforcement; and
- statistical data and information required by DHSMV.<sup>23</sup>

By December 31, 2012, and annually thereafter, DHSMV must submit a summary report to the Governor and Legislature which must contain:

- a review of the information, described above, received from the counties and municipalities;
- a description of the enhancement of the traffic safety and enforcement programs; and
- recommendations, including any necessary legislation.<sup>24</sup>

### *Fines*

A fine of \$158 is levied on violators who fail to stop at a traffic signal as required by ss. 316.074(1) or 316.075(1)(c)1., F.S. When the \$158 fine is the result of a local government's traffic infraction detector, \$75 is retained by the local government and \$83 is deposited with the Department of Revenue (DOR).<sup>25</sup> DOR subsequently distributes the fines by depositing \$70 in the General Revenue Fund, \$10 in the Department of Health Administrative Trust Fund, and \$3 in the Brain and Spinal Cord Injury Trust Fund.<sup>26</sup>

If a law enforcement officer cites a motorist for the same offense, the fine is still \$158, but the revenue is distributed from the local clerk of court to DOR, where \$30 is distributed to the General Revenue Fund, \$65 is distributed to the Department of Health Administrative Trust

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Section 318.18(15), F.S.

<sup>23</sup> Section 316.0083(4), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 318.18(15), F.S., s. 316.0083(1)(b)3., F.S.

<sup>26</sup> *Id.*

Fund, and \$3 is distributed to the Brain and Spinal Cord Injury Trust Fund. The remaining \$60 is distributed in small percentages to a number of funds pursuant to s. 318.21, F.S.<sup>27</sup>

Violations of ss. 316.074(1) or 316.075(1)(c)1., F.S., enforced by traffic infraction detectors may not result in points assessed against the operator's driver's license and may not be used for the purpose of setting motor vehicle insurance rates.<sup>28</sup>

The following chart details amounts remitted from participating local governments to the Department of Revenue as a result of traffic infraction detector programs in place from July 2010 through February 2011:<sup>29</sup>

JURISDICTION	COUNTY	Grand Total
COCOA BEACH	Brevard	\$218,207
PALM BAY	Brevard	\$117,445
FORT LAUDERDALE	Broward	\$376,717
HALLANDALE BEACH	Broward	\$54,697
PEMBROKE PINES	Broward	\$90,087
HOLLYWOOD	Broward	\$3,486
COLLIER COUNTY BOCC	Collier	\$270,165
PALM COAST	Flagler	\$103,086
HILLSBOROUGH BOCC	Hillsborough	\$807,406
TEMPLE TERRACE	Hillsborough	\$66,566
CAMPBELLTON	Jackson	\$54,780
TALLAHASSEE	Leon	\$326,273
BRADENTON	Manatee	\$134,228
DUNNELLON	Marion	\$97,525
AVENTURA	Miami-Dade	\$810,246
HOMESTEAD	Miami-Dade	\$179,861

JURISDICTION	COUNTY	Grand Total
MIAMI BEACH	Miami-Dade	\$268,090
MIAMI GARDENS	Miami-Dade	\$640,594
NORTH MIAMI	Miami-Dade	\$570,459
OPA LOCKA	Miami-Dade	\$196,673
WEST MIAMI	Miami-Dade	\$152,388
SWEETWATER	Miami-Dade	\$120,931
APOPKA	Orange	\$468,120
MAITLAND	Orange	\$5,312
OCOOEE	Orange	\$314,736
ORLANDO	Orange	\$927,442
PALM SPRINGS	Palm Beach	\$195,963
WEST PALM BEACH	Palm Beach	\$113,365
PORT RICHEY	Pasco	\$345,446
HAINES CITY	Polk	\$24,651
LAKELAND	Polk	\$358,311
WINTER SPRINGS	Seminole	\$39,342

**Grand Total** **\$8,452,598**

**\$70 General Revenue portion** **\$7,132,152**

**\$10 Health Admin. Trust Fund** **\$1,018,859**

**\$3 Brain & Spinal Cord Injury TF** **\$305,654**

### *Litigation*

Prior to the passage of Ch. 2010-80, Laws of Florida, some cities in Florida implemented camera enforcement programs of their own as local ordinances, notwithstanding concerns stated by the Attorney General's office. A 1997 Attorney General opinion concluded that nothing precludes the use of unmanned cameras to record violations of s. 316.075, F.S., but "a

<sup>27</sup> Section 318.18(15), F.S.

<sup>28</sup> Section 322.27(3)(d)6., F.S.

<sup>29</sup> Data accurate as of March 11, 2011. The Department of Revenue makes its most-recent data available online at [http://dor.myflorida.com/dor/taxes/red\\_light\\_camera\\_coll/rldr.xls](http://dor.myflorida.com/dor/taxes/red_light_camera_coll/rldr.xls).

photographic record of a vehicle violating traffic control laws may not be used as the [sole] basis for issuing a citation for such violations.”<sup>30</sup> A 2005 Attorney General opinion reached the same conclusion, stating that, “legislative changes are necessary before local governments may issue traffic citations and penalize drivers who fail to obey red light indications on traffic signal devices” as collected from a photographic record from unmanned cameras monitoring intersections.<sup>31</sup>

In at least some cases, lawsuits were successful in attacking pre-2010 traffic infraction detector ordinances on the grounds that a camera cannot “observe” a driver’s commission of a traffic infraction to the extent necessary to issue a citation. Other lawsuits were unsuccessful, on the grounds that the violation was merely a violation of a municipal ordinance, not a uniform traffic citation.

A lawsuit filed in the 15<sup>th</sup> Judicial Circuit (Palm Beach) argues that as a result of ch. 2010-80 Laws of Florida, the ‘burden of proof’ has been unconstitutionally shifted from the state to the motorist, because the statute provides that “if the state is able to prove that a vehicle registered to the Petitioner was involved in the commission of a red light camera violation, [the owner] is presumed to be guilty.”<sup>32</sup> The suit further asserts that “the State is not required to prove the identity of the driver of the vehicle who committed the red light camera violation.”<sup>33</sup> In its Motion to Dismiss, the state (among other defenses) argues that the law affords adequate due process to violators by creating a “rebuttable presumption” that the owner was also the operator. The burden-shifting created by this rebuttable presumption is appropriate in “noncriminal situations... [that] contemplate reasonable notice and an opportunity to hear and be heard.”<sup>34</sup> The court has ordered the case to the county court on procedural grounds, although a rehearing on this decision is scheduled for April 8, 2011.

### Proposed Changes

HB 4087 repeals portions of Chapter 316, F.S., created by Ch. 2010-80, Laws of Florida. The bill repeals s. 316.008(8), F.S., which authorizes local governments to install traffic infraction detectors, and s. 321.50, F.S., which authorizes DHSMV to install traffic infraction detectors. The bill repeals s. 316.0083, F.S., which details ordinance requirements, installation and notification processes, and fine distributions related to traffic infraction detectors. The bill also repeals s. 316.0776, F.S., which provides engineering specifications for installation of traffic infraction detectors.

In order to conform to these repealed sections, HB 4087 also:

- Repeals portions of ss. 316.640 and 316.650, F.S., authorizing “traffic infraction enforcement officers” to enforce s.316.0083, F.S.;
- Repeals a sentence from the definition of “traffic infraction detector,” at s. 316.003(87), F.S., dealing with notifications of violations;
- Repeals a portion of s. 318.14, F.S., which provides distribution requirements for fines collected from traffic infraction detector programs;
- Repeals portions of s. 318.18, F.S., which provide (i) distribution requirements for fines collected from traffic infraction detector programs, (ii) an exemption process for those

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<sup>30</sup> Attorney General Opinion AGO 97-06.

<sup>31</sup> Attorney General Opinion AGO 2005-41.

<sup>32</sup> Action for Declaratory Judgment, *Salvatore Altamari vs. State of Florida; City of West Palm Beach*, 2010 CA 022083, (15<sup>th</sup> Cir.) A copy of this pleading is on file with the subcommittee.

<sup>33</sup> *Id* at 2.

<sup>34</sup> Defendant State of Florida’s Motion to Dismiss, *Salvatore Altamari vs. State of Florida; City of West Palm Beach*, 2010 CA 022083, (15<sup>th</sup> Cir.) A copy of this pleading is on file with the subcommittee.

motor vehicle owners who have successfully appealed a violation from a traffic infraction detector, and (iii) a provision that individuals may not receive commissions or per-ticket fees from the installation of traffic infraction detector programs; and

- Repeals a sentence from s. 316.27(3)(d)6., F.S., providing that points are not placed on the license of a person receiving a violation from a traffic infraction detector.

The bill repeals two additional statutes relating to the implementation of Ch. 2010-80, Laws of Florida. It repeals s. 316.00831, F.S., which authorizes local governments to retain traffic infraction detector fines until such time as DOR creates a specific accounting process for receiving such remittances,<sup>35</sup> and repeals s. 316.07456, F.S., which provides a “transitional implementation” period during which traffic infraction detectors installed prior to the passage of the 2010 law are permitted to operate, and allows such non-compliant operation only until July 1, 2011.

HB 4087 leaves intact s. 316.0076, F.S., which expressly preempts to the state regulation of the use of cameras for enforcing provisions of Chapter 316, Florida Statutes.

The bill is effective upon becoming a law.

#### B. SECTION DIRECTORY:

- Section 1** amends s. 316.003, F.S.; revising the definition of "traffic infraction detector" to remove requirements for issuance of notifications and citations.
- Section 2** repeals s. 316.008(8), F.S., relating to the installation and use of traffic infraction detectors by local governments to enforce specified provisions when a driver fails to stop at a traffic signal.
- Section 3** repeals s. 316.0083, F.S., relating to the installation and use of traffic infraction detectors to enforce specified provisions when a driver fails to stop at a traffic signal.
- Section 4** repeals s. 316.00831, F.S., removing provisions that authorize the Department of Highway Safety and Motor Vehicles, a county, or a municipality to retain traffic infraction detector program fines until the Department of Revenue is capable of receiving such fines.
- Section 5** repeals s. 316.07456, F.S., relating to transitional implementation of traffic infraction detectors.
- Section 6** amends s. 316.0776, F.S., relating to placement and installation of traffic infraction detectors.
- Section 7** repeals s. 321.50, F.S., relating to the Department of Highway Safety and Motor Vehicles authorization to install traffic infraction detectors.
- Section 8** amends s. 316.640, F.S., to remove certain traffic infraction detector enforcement provisions.

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<sup>35</sup> The Department of Revenue notified local governments and HSMV that it was prepared to accept remittances from traffic infraction detectors as of August 1, 2010.

- Section 9** amends 316.650, F.S., to remove certain traffic infraction detector enforcement provisions.
- Section 10** amends s. 318.14, F.S., removing a reference to traffic infraction detector enforcement.
- Section 11** amends s. 318.18, F.S., removing references to traffic infraction detector enforcement and procedures for disposition of citations or penalties.
- Section 12** amends s. 322.27, F.S., removing references to traffic infraction detector penalties.
- Section 13** Provides an effective date of July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

As indicated in the body of the analysis, from July 2010 through January 2011, fines collected from violations of traffic infraction detectors have resulted in approximately \$8.4 million, distributed as follows: \$7.1 million to the General Revenue Fund; \$1 million to the Department of Health Administrative Trust Fund; and \$305,000 to the Brain and Spinal Cord Injury Program Trust Fund.

HB 4087's repeal of fines levied by traffic infraction detectors would eliminate the amount going into these funds. Revenue from fines levied as a result of a law enforcement officer's citation, as opposed to a traffic infraction detector, would continue to be distributed to these funds.

#### 2. Expenditures:

Any expenditures using the revenues noted above would have to be eliminated or funded using another source of revenue.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

Current law requires \$83 out of each \$158 traffic infraction fine (approximately 52.5 percent) to be remitted to the Department of Revenue, with local governments retaining \$75 (approximately 47.5 percent). Based on the \$8.4 million actually received by DOR between July 2010 and February 2011, approximately \$7.6 million has been retained by local governments that have installed traffic infraction detectors. HB 4087 would eliminate the source of this revenue.

#### 2. Expenditures:

See Fiscal Comments, below.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill removes the possibility of private motor vehicle operators being issued a \$158 fine for violating a red light camera ordinance.



#### D. FISCAL COMMENTS:

As noted above, approximately \$7.6 million has been retained by local governments with traffic infraction detector ordinances since July 2010. It is likely that in each jurisdiction, some percentage of the revenue raised by detectors was used to recover initial costs of implementing the program and some percentage is used on monthly maintenance or other program costs.

According to recent news reports, the revenue may also be used by local prosecutors and law enforcement officers. On February 19, 2011, the South Florida *Sun-Sentinel* reported that “[c]ities have been forced to devote extra attorneys and cops to pursue tickets, and to readjust budgets ....”<sup>36</sup> The newspaper goes on to detail Fort Lauderdale’s experience with traffic infraction detectors, as follows:

Fort Lauderdale's Police Department is spending more time than planned reviewing tapes and preparing evidence files for court. There is now a backlog of 1,000 cases. The city also has had to assign attorneys to prosecute cases at the court's direction instead of relying on police officers as is done with other traffic citations.

City commissioners are closely monitoring the situation because their budget depended on bringing in \$3 million from red-light camera tickets. Now they think they may collect as little as just \$500,000 in light of the higher costs and fewer-than-expected tickets.

For those local governments that have implemented traffic infraction detector programs as a result of the 2010 legislation, HB 4087 would decrease the revenues currently expected by those governments, but would also reduce expenses related to ongoing enforcement and legal challenges.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take 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:

The Department of Health has determined that ch. 64J-2.019, Fla. Admin. Code, would need to be amended by the administrative rulemaking process to remove existing references to the traffic infraction detector program.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

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<sup>36</sup> Wyman, Scott, “Red light cameras plagued by problems across South Florida,” *Sun-Sentinel*, February 19, 2011.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 17, 2011, the Economic Affairs Committee reported the bill favorably with one amendment. The amendment modified the effective date of the bill from July 1, 2011 to “upon becoming a law.”