

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 891 Hillsborough County
SPONSOR(S): Community & Military Affairs Subcommittee, Harrison
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	13 Y, 1 N, As CS	Nelson	Hoagland
2) Economic Affairs Committee	17 Y, 0 N	Nelson	Tinker

SUMMARY ANALYSIS

The Hillsborough County Public Transportation Commission, an independent special district, was created by the Florida Legislature to regulate and supervise the operation of public vehicles upon the highways of Hillsborough County and its municipalities. The commission is unique in that it is the only special district in the state that regulates vehicles for hire.

The CS for HB 891 creates a special act, which supersedes all other acts pertaining to the Hillsborough County Public Transportation Commission, providing that any taxicab certificate of public convenience and necessity or any taxicab permit issued by the commission is the private property of the holder. The holder of a certificate or permit may transfer such by pledge, sale, assignment, sublease, devise, or other means to another person, and the commission is authorized to specify this procedure by rule.

This bill also requires the commission to create a "Driver Ownership Program" to assist eligible taxicab drivers in acquiring a certificate and one or more permits.

The bill provides an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Local Governments/Regulation of Taxis

Under s. 125.01(1)(n), F.S., a county commission has the power to license and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county; except that Miami-Dade was authorized to issue a number of permits to operate taxis, which is no less than the ratio of one permit for each 1,000 county residents, with new permits issued after June 4, 1988, to be distributed by lottery among individuals with such experience as a taxi driver as the county may determine.

Cities can regulate taxis within their jurisdiction.¹ “The right to use the streets and highways of a municipality for the conduct of a strictly private business is not inherent; it can be acquired by permission or license from the city, whose power to withhold or grant it in the manner and to the extent it may see fit is an essential prerogative of municipal government.”²

The Hillsborough County Public Transportation Commission

The Hillsborough County Public Transportation Commission, an independent special district, has its origins in the Taxicab Commission of the City of Tampa, created by special act in 1947 (ch. 24921, L.O.F.). Until 1976, Hillsborough County and the municipalities of Tampa, Plant City and Temple Terrace had separate taxicab ordinances, resulting in duplication and jurisdictional problems. To resolve these problems and create a more centralized system of taxicab regulation, in 1976 the Legislature authorized the establishment of a countywide taxicab regulatory agency, the Hillsborough County Consolidated Taxicab Commission. In 1982, the Legislature added vans, handicabs³ and limousines to the commission's regulatory scope. To reflect this additional authority, the name of the commission was changed in 1983 to the Hillsborough County Public Transportation Commission (ch. 83-423, L.O.F.). In 1987-88, the Legislature added basic life support ambulances and government wreckers to the commission's oversight. The commission is unique in that it is the only special district in the state that regulates for hire vehicles.⁴

The commission consists of seven members, including three members from the Hillsborough Board of County Commissioners, two members from the Tampa City Council, one member from the Plant City Commission, and one member from the Temple Terrace City Council. All members are appointed to the commission by their respective public bodies for two-year terms, and serve without compensation. The commission has broad authority to adopt rules in conformance with ch. 120, F.S.⁵

The commission's yearly budget of approximately \$1.1 million is primarily funded through fees, with some revenue derived from civil penalties.⁶

¹ *Pratt v. City of Hollywood*, 78 So. 2d 697 (Fla. 1955), but see, *Duck Tours Seafari, Inc. v. City of Key West*, 875 So. 2d 650, 655+ (Fla. 3d DCA 2004).

² *Jarrell v. Orlando Transit Co.*, 167 So. 664 (1936); 2011 Senate Staff Analysis for SB 884.

³ Handicab” means a vehicle designed, constructed, reconstructed, or operated for the transportation of a person with non-emergency conditions where no medical assistance is needed or anticipated; or for a person who is unable to comfortably use a standard means of conveyance; or a person who cannot enter, occupy or exit a vehicle without extensive assistance; or where specialized equipment is used for wheelchair or stretcher service; and where the chauffeur/driver serves as both a chauffeur/driver and attendant to assist in door-to-door or bed-to-bed service. Section 3. (13) of ch. 2001-299, L.O.F.

⁴ Office of Program Policy Analysis and Government Accountability Policy Review of the Hillsborough County Public Transportation Commission, Report 99-12.

⁵ Section 5. (1)(b) of ch. 2001-299, L.O.F.

⁶ February 1, 2012, e-mail from Cesar H. Padilla, executive director of the commission.

A person who desires to engage in the business of operating any public vehicle in Hillsborough County must acquire a certificate from the commission. First, applicants must complete an application for a "Certificate of Public Convenience and Necessity."⁷ The application requires a criminal background check, fingerprinting, a credit report, information regarding the financial status of a business, an individual's driving history, a description of a proposed service's operations, and justification as to why the service is needed considering the adequacy of existing service providers. The application also requires a request for a specific number of vehicle permits.⁸ A filing fee of \$1,000 must be submitted with the completed application.

Applicants also pay a public hearing fee. This fee is a minimum of \$600, and based on the complexity and amount of time the "public hearing takes to arrive at a conclusion." At these public hearings, applicants must be prepared to present and discuss information contained in an application. The applicant has the burden of establishing whether public convenience and necessity require the operation of a proposed public vehicle. In making a determination of public convenience and necessity, the following factors are considered:

1. The adequacy of existing service and other forms of transportation for passengers.
2. The probable permanence and quality of the service offered by the applicant.
3. The character of service proposed by the applicant as demonstrated by the proposed use of any two-way voice communications, the proposed use of terminals and private and public hack stands, the time of day and night when service is to be offered, and the proposed number and character of vehicles.
4. The financial status, character and responsibility of the applicant as demonstrated by the applicant's ability to provide, maintain and operate the number of vehicles proposed to be operated in accordance with the type of service proposed in the application, the applicant's criminal and traffic record, and the applicant's credit record.
5. The experience of the applicant in the operation as an owner or manager or as a driver for the type of service proposed.
6. Any other facts or circumstances that would indicate whether the proposed service is in the public interest.⁹

A hearing officer reviews the application, asks questions about the application, and hears testimony from any opponents to the application. He or she then prepares a recommendation to be presented at a public hearing in front of the full commission at their next available monthly meeting.

If approved, the applicant must pay the fees for the number of permits approved. Following approval and prior to beginning service, a company is required to present each vehicle for inspection, provide an insurance certificate to the commission, and have each driver properly licensed by the commission to operate a vehicle for hire. The process takes approximately 60 days to complete.

A total of 23 taxi certificates are currently issued by the commission.¹⁰ All certificates expire on September 30 of each year, and must be renewed.¹¹ The fee for the annual renewal of a certificate is \$300. The filing fee for ownership change/transfer is \$500. Other fees include an annual fee for each taxicab permit of \$550.¹²

⁷ Section 3. (5) of ch. 2001-299, L.O.F., provides that the term "certificate" means the written authority granted by the commission by its order to operate one or more public vehicles in the county and its municipalities.

⁸ Section 3. (20) of ch. 2001-299, L.O.F., provides that "permit" means a license issued by the commission to allow the operation of a particular public vehicle for which a certificate has been issued.

⁹ Section 7. (2), ch. 2001-299, L.O.F.

¹⁰ *Supra*, note 6.

¹¹ Commission Rule 2.6.

¹² Commission Rules, Appendix 1.

Pursuant to commission's rules, it may not authorize more than one taxicab permit per 1,900 residents of Hillsborough County.¹³ That number presently is set at 633 taxicabs.¹⁴ This figure is adjusted annually based upon a census update, and has resulted in an average of 15 new available permits per year since 2005.¹⁵ The theory of limiting the permits is based on the thought that there should be enough taxicabs to serve the public adequately but not so many as to cause taxicab drivers to operate at a loss.¹⁶ In the normal course of operation, the commission "endeavor[s] to process and consider applications in the order in which they are received." However, if applicant demand exceeds the number of available permits, a random drawing process ("lottery") is held.¹⁷

Effect of Proposed Changes

The CS for HB 891 supersedes any provisions of ch. 2001-299, L.O.F., as amended, the charter for the Hillsborough County Public Transportation Commission,¹⁸ to the extent these provisions are inconsistent. The bill provides that any taxicab certificate of public convenience and necessity or any taxicab permit previously or hereafter issued by commission is the private property of the holder.

The holder of a certificate or permit may transfer such by pledge, sale, assignment, sublease, devise, or other means to another person. The commission expects to increase that portion of its fee revenues for regulatory review of these transfers,¹⁹ and is authorized to specify the procedure by rule.

Except for a transfer by devise or intestate succession, the transfer must be approved, in advance, by the commission, and the proposed transferee must qualify to be a certificate or permit holder under commission rules. A proposed transferee by devise or intestate succession must conditionally qualify as a certificate or permit holder under commission rules within 120 days after the transfer, unless otherwise extended by the commission. The conditional nature of the qualification is removed upon a probate court's final adjudication that the proposed transferee is entitled to the ownership of the certificate or permit.

The bill also requires the Hillsborough County Public Transportation Commission to create by rule a "Driver Ownership Program" to assist eligible taxicab drivers in acquiring a certificate and one or more permits, within the existing and authorized population cap and limits for permits. This program may reserve up to one-third of the additional permits authorized due to an increase in the population cap for seven years after the effective date of the bill for distribution to eligible taxicab drivers. Any certificate or permit issued under the Driver Ownership Program is nontransferable, except to other eligible taxicab drivers as authorized by commission rules, and after the certificate or permit has been actively and continuously used by the taxicab driver for at least five years following the date of issuance.

The term "eligible taxicab driver" means a taxicab driver who is eligible to be issued a certificate and permit under the Driver Ownership Program, who holds a valid driver's license issued by the commission, who has continuously operated as a full-time taxicab driver in Hillsborough County for a minimum of three years immediately preceding the date of the transfer, and who has not been found by the commission to have violated the requirements of ch. 2001-299, L.O.F., as amended, or rules of the commission. In order to qualify as a full-time driver, a person must drive a taxicab for at least 40 hours per week, for a minimum of 48 weeks per year.

The eventual effects of the bill on the taxicab industry are unknown. According to a November 2010 report, entry into the Miami taxi market is severely restricted by the city's medallion²⁰ system of taxicab

¹³ Commission Rule 2.4.3.

¹⁴ *Supra*, note 6.

¹⁵ *Ibid*.

¹⁶ <http://www.hillsboroughcounty.org/publictransportation/faq/>.

¹⁷ Commission Rule 2.4.5.

¹⁸ Chapter 2001-299, L.O.F., codified previous special acts and subsequently has been amended by chs. 2007-297, 2008-290, 2010-265 and 2010-272, L.O.F.

¹⁹ *Supra*, note 6.

licensing. For drivers who don't win the lottery, the cost of buying an existing medallion on the secondary market is prohibitive—medallions can sell for \$200,000 or more.²¹ The bill's proposed "Driver Ownership Program," which limits any reservation of permits to a seven-year period, does not appear to offer protection against this possibility.

Also, it is unclear how the proposed system of private ownership will interact with the commission's authority to revoke certificates and permits as a penalty for violation of various laws, rules and standards of conduct.²²

The bill has an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Creates a new special act that supersedes conflicting provisions of ch. 2001-299, L.O.F., as amended, relating to the Hillsborough County Public Transportation Commission.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? October 12, 2011

WHERE? The *Tampa Tribune*, a daily newspaper of general circulation published in Tampa, 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:

The Commission has broad authority to adopt rules in conformance with ch. 120, F.S., pursuant to its special act. This bill requires the commission to create a "Driver Ownership Program" by rule. The bill also provides that the commission may specify the procedure by which certificates or permits can be transferred by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

²⁰ The Miami-Dade County taxicab for-hire license system is a medallion system. This system deems a taxicab for-hire license to be intangible property. The owner of a taxicab medallion can use the medallion as collateral to secure a loan from a bank or any other financial institution. See, http://www.miamidade.gov/csd/taxicab_for-hire_faqs.asp#medallion.

²¹ Paul Sherman, *Miami's Vice: Overregulating Entrepreneurs*, Institute for Justice (November 2010).

²² See, Section 12 of the Commission Rules.

Drafting Issues

None.

Other Comments

Proponents of the bill include the Tampa Taxi Coalition and the Hillsborough County Public Transportation Commission.

While this proposal could enrich current certificate and permit holders, the cost of buying an existing certificate or permit on the market may be prohibitive for those who want to enter this business.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2012, the Community & Military Affairs Subcommittee adopted a strike-all amendment that:

- limits the provisions of the bill to taxicab certificates and permits;
- deletes a reference to a “successor entity” to the Hillsborough County Public Transportation Commission; and
- corrects a drafting error.

This analysis is drafted to the Committee Substitute.