

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Transportation

BILL: SB 1500

INTRODUCER: Senator Harrell

SUBJECT: Transportation

DATE: March 9, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	Pre-meeting
2.			ATD	
3.			AP	

I. Summary:

SB 1500 includes the following provisions:

- Adds road and bridge maintenance or construction vehicles to the list of vehicles subject to the Move Over Law;
- Removes a reporting date requirement in law to allow more complete collection from law enforcement agencies of all texting and driving data for an annual report;
- Updates statute to reflect that the Department of Highway Safety and Motor Vehicles (DHSMV) has statutory authority to adopt rules for the safe operation of nonpublic sector buses and conduct compliance reviews;
- Authorizes law enforcement officers of the DHSMV or a duly appointed agent of the DHSMV to inspect nonpublic sector buses and remove them from service if continued operation would present an unduly hazardous operating condition;
- Establishes the power of subpoena and to administer oaths or affirmations, examine witnesses, require affidavits, take depositions, and compel the attendance of witnesses and the production of books, papers, documents, records, and other evidence for the DHSMV to use in conducting investigations or examinations;
- Requires specified licensed dealers to provide proof of a renewal, continuation, or change of insurance liability coverage or surety bonds within ten calendar days of any issuance to the DHSMV; and
- Provides that the Central Florida Expressway Authority may not, without the prior consultation of the secretary of the Florida Department of Transportation (FDOT), construct any extensions, additions, or improvements to the expressway system in Lake County

The bill has an effective date of July 1, 2021.

II. Present Situation:

Move Over Law

Under Florida's Move Over Law, if an emergency vehicle, a sanitation vehicle, a utility service vehicle, or a wrecker is working along the side of the road, every other driver must vacate the lane closest to the vehicle when driving on a highway with two or more lanes traveling in the direction of the vehicle. If such movement cannot be safely accomplished, the driver must reduce his or her speed to a speed that is 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater, or travel at 5 miles per hour when the posted speed limit is 20 miles per hour or less, when driving on a two-lane road.¹ The purpose of the Move Over Law is to protect workers stopped along the road performing their jobs.²

A violation of the Move Over Law is a noncriminal traffic infraction, punishable as a moving violation.³ The statutory base fine for a moving violation is \$60, but with additional fees assessed by the state and local governments, the total fine increases to \$158.⁴

According to the FDOT, for the safety of both workers and the public, temporary traffic control⁵ is required for maintenance and construction activities. However, due to the risks associated with setting up traffic controls for short duration work activities, such as fence repair, ditch repair, or tree trimming, such controls may be omitted. This places road and bridge maintenance or construction vehicles in situations similar to vehicles identified in the Move Over Law,⁶ where they are working along the road without any protection from adjacent traffic.

Section 316.2397, F.S., prohibits certain lights on vehicles and provides certain exceptions. With regard to road and bridge construction or maintenance vehicles, the statute provides that:

- Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles may show or display amber lights when in operation or a hazard exists.
- Road maintenance and construction equipment and vehicles may display flashing white lights or flashing white strobe lights when in operation and where a hazard exists.⁷

Texting and Driving Report Date

When a law enforcement officer issues a citation for operating a motor vehicle while using a wireless communications device, the law enforcement officer must record the race and ethnicity of the violator. All law enforcement agencies must maintain such information and report the

¹ Section 316.126(1)(b), F.S.

² Florida Driver Handbook, 2019, p. 44, available at <https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf> (last visited February 17, 2021).

³ Section 316.126(6), F.S.

⁴ Florida Court Clerks and Comptrollers Association, *2019 Distribution of Court Related Filing Fees, Service Charges, and Fines*, available at https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2019 (last visited February 17, 2021).

⁵ Temporary traffic control is considered the devices and personnel that change road conditions for a work zone or following an incident. Email from John Kotyk, Deputy Director Legislative Affairs, FDOT, Questions, January 31, 2020 (Copy on file with Transportation & Infrastructure Subcommittee).

⁶ FDOT Legislative Proposal, Move Over Law (Copy on file with the Committee on Transportation).

⁷ Section 316.2397(4) and (5), F.S.

information to the DHSMV in a form and manner determined by the DHSMV. Beginning February 1, 2020, the DHSMV is required to annually report the data collected to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The data collected must be reported at least by statewide totals for local law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies. The statewide total for local law enforcement agencies must combine the data for the county sheriffs and the municipal law enforcement agencies.⁸

Nonpublic Sector Buses

Senate Bill 2000 (2011) moved responsibility for Motor Carrier Compliance (to include nonpublic sector buses) from the FDOT to the DHSMV.⁹ However, some statutes were not amended at the time to reflect the corresponding changes. The FDOT no longer revises standards for the safe operation of nonpublic sector buses.

The statutes currently direct the FDOT to establish and revise standards contained in federal law¹⁰ to ensure the safe operation of nonpublic sector buses. The standards must be directed toward ensuring that:

- Nonpublic sector buses are safely maintained, equipped, and operated.
- Nonpublic sector buses are carrying the insurance required by law and carrying liability insurance on the checked baggage of passengers not to exceed the standard adopted by the United States Department of Transportation.
- Florida license tags are purchased for nonpublic sector buses pursuant to state law.
- Employers check the driving records of their drivers of nonpublic sector buses at least once each year to ascertain whether the driver has a suspended or revoked driver license.

The statutes currently provide that FDOT personnel may conduct compliance reviews for determining compliance with these requirements. A civil penalty not to exceed \$5,000 in the aggregate may be assessed against any person who violates any provision of this section or who violates any rule or order of the FDOT. A civil penalty not to exceed \$25,000 in the aggregate may be assessed for violations found in a follow-up compliance review conducted within a 24-month period. A civil penalty not to exceed \$25,000 in the aggregate may be assessed and the motor carrier may be enjoined pursuant to s. 316.3026, F.S., if violations are found after a second follow-up compliance review within 12 months after the first follow-up compliance review.

Subpoena Authority

A subpoena is a written order to compel an individual to give testimony on a particular subject, often before a court, but sometimes in other proceedings.¹¹ A subpoena duces tecum is a type of subpoena that requires the witness to produce a document or documents pertinent to a proceeding.¹² Section 27.04, F.S., “allows the state attorney to issue subpoenas duces tecum for

⁸ Section 316.305(5), F.S.

⁹ Chapter 2011-69, L.O.F.

¹⁰ 49 C.F.R. parts 382, 385, and 390-397.

¹¹ *Subpoena*, Legal Information Institute (available at <https://www.law.cornell.edu/wex/subpoena>).

¹² *Subpoena duces tecum*, Legal Information Institute, (available at https://www.law.cornell.edu/wex/subpoena_duces_tecum).

records as part of an ongoing investigation.”¹³ The state does not need to establish the relevance and materiality of the information sought through an investigative subpoena,¹⁴ but the subject matter of the investigation must be confined to violations of criminal law.¹⁵

Section 92.605(2), F.S., describes subpoenas, court orders, and warrants issued in compliance with the Electronic Communications and Privacy Act.¹⁶ The federal act and its Florida counterpart, s. 934.23, F.S., authorize a law enforcement officer, state attorney, or judge to subpoena the records of an out-of-state corporation that provides electronic communication services or remote computing services to the public. A corporation must comply within 20 days after receipt of the subpoena. However, if the recipient cannot comply within that time period, it must notify the law enforcement officer who sought the subpoena within the 20-day time period that the records cannot be provided and comply as soon as possible.¹⁷ An “out-of-state corporation,” i.e., any corporation qualified to do business in Florida under s. 607.1501, F.S.,¹⁸ is “properly served,” by subpoena or otherwise, when service is effected on that corporation’s registered agent.¹⁹

Subpoenas in General

A subpoena is an order directed to a person requiring attendance at a particular time and place. A subpoena ad testificandum requires attendance to testify as a witness, while a subpoena duces tecum orders a witness to appear and bring certain documents, records, or other tangible evidence that may be introduced as evidence in a case.²⁰ Subpoenas may be issued in a criminal investigation,²¹ a criminal prosecution during discovery,²² or for trial²³ by a defendant, his or her counsel,²⁴ or the state attorney. Generally, a subpoena must state the name of the court, title of action, and time and place the witness is ordered to give testimony or produce other evidence.²⁵

¹³ *State v. Investigation*, 802 So. 2d 1141, 1144 (Fla. 2d DCA 2001).

¹⁴ *Id.*

¹⁵ *Morgan v. State*, 309 So. 2d 552, 553 (Fla. 1975).

¹⁶ 18 U.S.C. § 2701 et seq.

¹⁷ Section 92.605(2)(b), F.S. If the entity seeking the subpoena shows and the court finds that failure to produce the requested records would produce an “adverse result,” i.e., physical harm, flight from prosecution, destruction of evidence, intimidation of witnesses, or jeopardy to the investigation, the court may order the records be produced earlier than 20 days.

Section 92.605(c), (1)(a), F.S. The court may also extend the time to comply with a subpoena if doing so will not cause an adverse result.

¹⁸ Section 92.605(1)(e), F.S.

¹⁹ Section 92.605(1)(h), F.S. Per s. 607.0505, F.S., a foreign corporation doing business in Florida must have a registered agent, and per s. 607.1507, F.S., such agent must be located in or authorized to transact business in Florida.

²⁰ *Black’s Law Dictionary* (11th ed. 2019).

²¹ Florida law authorizes certain entities to use subpoenas to conduct criminal investigations, including, but not limited to, s. 409.920, F.S. (authorizing the Attorney General to subpoena witnesses or materials, including medical records, during an investigation for Medicaid fraud); s. 415.107, F.S. (authorizing a criminal justice agency investigating a report related to abuse, neglect, or exploitation of a vulnerable adult to subpoena related records); and s. 414.411, F.S. (authorizing the Department of Financial Services to subpoena witnesses and records related to a public assistance fraud investigation).

²² Fla. R. Civ. P. 3.220(h) allows any party to conduct a deposition by oral examination of any person authorized by the rule, generally including listed witnesses, co-defendants, or unlisted witnesses who have information relevant to the offense charged.

²³ A subpoena for testimony before the court and subpoenas for production of tangible evidence before the court may generally be issued by the clerk of the court or by any attorney of record in the case. Fla. R. Civ. P. 3.361(a).

²⁴ The United States Constitution guarantees a defendant in a criminal case the right to compulsory processes for obtaining witnesses in his or her favor; U.S. Const. amend. 6.

²⁵ *Id.*

When a witness is subpoenaed by either party in a criminal case, he or she must remain available for attendance until the case is resolved or until he or she is excused by the court.²⁶ If a witness departs without permission of the court or intentionally fails to produce requested tangible evidence, he or she may be held in contempt of court.²⁷

Contempt of Court

Contempt is a refusal to obey a court's legal order, mandate or decree.²⁸ There are two main types of contempt: civil and criminal. Civil contempt occurs when a person intentionally fails to do something ordered by the court in a civil case. Civil contempt is intended to compel a party's compliance or compensate a party for losses resulting from the contemptuous conduct.²⁹ Criminal contempt results from conduct that tends to intentionally obstruct or interfere with the administration of justice, and its purpose is to punish offensive conduct, vindicate the court's authority, and deter such conduct.³⁰ Both main types of contempt may also be:

- Direct: when committed in the immediate presence of the court, such as an assault of a testifying witness; or
- Indirect: when committed away from the presence of the court, such as disobeying a court order.

A person commits indirect criminal contempt when he or she intentionally obstructs or interferes with the administration of justice by violating a court order, such as an investigative subpoena.³¹ While authorized by statute,³² criminal contempt is not specifically classified as a felony or misdemeanor, and is instead classified as a common law crime,³³ punishable by up to twelve months in county jail and a fine up to \$500.^{34 35} Due process of law requires that a party accused of indirect contempt be advised of the charge and provided an opportunity to defend himself or herself.³⁶

Investigative Subpoenas in Criminal Cases

Within the criminal justice system, law enforcement is typically responsible for investigating a crime and an assistant state attorney (ASA) prosecutes the offender. However, the State is often called upon to conduct or assist in an investigation which may lead to the filing of criminal charges. Under these circumstances, an ASA is authorized to issue an investigative subpoena.³⁷ Specifically, s. 27.04, F.S., allows an ASA to issue a subpoena for records³⁸ as part of any

²⁶ S. 914.03, F.S.

²⁷ *Id.*

²⁸ S. 38.23, F.S.; *See also Black's Law Dictionary*, (11th ed. 2019).

²⁹ *Elliott v. Bradshaw*, 59 So. 3d 1182 (Fla. 4th DCA 2011); *Bowen v. Bowen*, 471 So. 2d 1274 (Fla. 1985).

³⁰ *Elliott*, 59 So. 3d at 1184; *Berlow v. Berlow*, 21 So. 3d 81 (Fla. 3d DCA 2009); *In re Steffens*, 988 So. 2d 142 (Fla. 5th DCA 2008).

³¹ *Elliott*, 59 So. 3d at 1184; *Sando v. State*, 972 So. 2d 271 (Fla. 4th DCA 2008).

³² S. 38.22, F.S.

³³ A common law crime is one which is not separately reclassified by statute as either a felony or a misdemeanor, *See S. 775.01, F.S.* (2005).

³⁴ S. 775.02, F.S.

³⁵ County courts and circuit courts possess the same power to punish contempt. S. 900.04, F.S.

³⁶ U.S. Const. amend. 5; Fla. R. Civ. P. 3.840.

³⁷ *State v. Investigation*, 802 So. 2d 1141, 1144 (Fla. 2d DCA 2001).

³⁸ *See Imparato v. Spicola*, 238 So. 2d 503 (Fla. 2d DCA 1970).

ongoing investigation.³⁹ An investigative subpoena allows the State to obtain information necessary to determine whether criminal activity is occurring or has occurred. When issuing an investigative subpoena, the State is not required to prove relevancy or materiality of the records sought,⁴⁰ but may only gather information that may lead to criminal charges.⁴¹

Records Subpoenas to Florida Businesses and Out-Of-State Corporations

When investigating a crime relating to the use of electronic communications, such as homicide involving electronically stored surveillance footage, internet child pornography, or vehicular homicide due to careless cell phone usage, ASAs frequently require out-of-state corporations (OOSCs)⁴² to produce electronic records under strict time constraints. If such records are not produced timely, electronic records may be destroyed, witnesses' memories may fade, and public safety may be compromised. Under these circumstances, s. 92.605, F.S., permits an ASA, or other qualified law enforcement personnel, to issue an investigative subpoena to an OOSC.⁴³

If an ASA issues an investigative subpoena to an OOSC providing electronic communication services or remote computing services to the public, and such records reveal a customer's identity, stored data, or usage of such services, or the destination or recipients of communications sent to or from a customer, the following requirements apply:⁴⁴

- An OOSC's registered agent must be properly served with a subpoena.⁴⁵
- An OOSC's response to the subpoena is due within 20 business days of receipt, unless a longer time period is provided.
 - If a court finds that failing to produce records within 20 business days will cause an adverse result,⁴⁶ a shorter time period may be provided.⁴⁷
 - A court may also reasonably extend the time period provided if an extension will not cause an adverse result.
- If an OOSC cannot produce the requested records within the time period provided, it must notify the ASA within the 20-day time period and agree to produce the documents at the earliest possible time.

While explicitly requiring compliance or notification of inability to comply within 20 days, the law does not provide a specific consequence for when an OOSC fails to comply with a subpoena issued under s. 92.605, F.S. As such, contempt of court is the only available remedy an ASA may seek. Because an OOSC is not a single, identifiable person who may be sent to jail, and a

³⁹ S. 16.56(3), F.S., provides the same authority to a statewide prosecutor.

⁴⁰ *State*, 802 So. 2d 1141 at 1144.

⁴¹ *Morgan v. State*, 309 So. 2d 552 (Fla. 2d DCA 1975).

⁴² Out-of-state corporation means any corporation that is qualified to do business in this state under s. 607.1501, F.S.; S. 92.605(1)(e), F.S.

⁴³ Section 92.605, F.S. permits service on an OOSC by any law enforcement officer seeking a court order or subpoena under ss. 16.56, 27.04, 905.185, or 914.04, F.S., or who is issued a search warrant under s. 933.01, or anyone who is authorized to issue a subpoena under the Florida Rules of Criminal Procedure.

⁴⁴ S. 92.605(2), F.S.

⁴⁵ Properly served means delivery by hand or in a manner reasonably allowing for proof of delivery if delivered by mail or facsimile. S. 92.605(1)(h), F.S.

⁴⁶ An adverse result includes the potential: danger to the life or physical safety of an individual; risk of flight from prosecution; destruction of or tampering with evidence; intimidation of potential witnesses; or serious jeopardy to an investigation or undue delay of a trial. S. 92.605(1)(a), F.S.

⁴⁷ S. 92.605(2)(c), F.S.

one-time \$500 fine is unlikely to incentivize timely compliance by a large corporation, a contempt proceeding is neither practical nor useful in punishing or deterring an OOSC's intentional violation or untimely compliance with a subpoena.

Garage Liability Insurance

Motor vehicle dealers are required to have garage liability insurance or general liability insurance coupled with a business automobile policy in order to ensure a licensed dealer⁴⁸ has coverage for the day-to-day operations of businesses in the automotive industry that are not covered under most commercial or business liability insurance, including providing coverage for all dealer- owned vehicles driven by prospective purchasers.⁴⁹

While the Florida law requires a dealer to provide at the time of licensure application proof of the required coverage for the duration of the licensure period and again at the beginning of each licensure renewal period, the statute doesn't cover the issue of a gap in coverage during the licensure period. Gaps in coverage can, and do, occur as a result of various actions - a dealer may cancel a policy in the middle of the term or the insurer itself may cancel the policy in the middle of the term for nonpayment of the premium or for other reasons.

This technicality may allow a motor vehicle dealer to meet the requirement of proof of coverage at the beginning of the licensure period but allow the coverage to lapse during the licensure period and then reinstate coverage at the beginning of the next licensure period. The cancellation and later reinstatement of a policy creates a gap wherein the dealer has no insurance coverage. A gap in insurance coverage at any time during the licensure period has the potential to result in direct consumer harm, as any dealer-owned vehicles taken for test drives or driven as program models by the dealer, or any consumer-owned vehicles damaged while on the dealer's lot, or any other property or personal injury situations that would otherwise be covered under a garage liability policy are not otherwise covered. Currently, over 14,500 dealers are required to carry appropriate insurance coverage.⁵⁰

The DHSMV currently advises vehicle dealers and recreational vehicle dealers about upcoming policy expirations by generating a list of dealers whose policies are set to expire. The DHSMV then sends out three separate notices that ask each dealer to submit an updated or current policy to the DHSMV. Additionally, after the policy has expired, the DHSMV sends a follow-up letter that indicates the DHSMV will take administrative action against the licensee for non-compliance with the insurance requirement if an updated policy is not received within fourteen days. In addition to this written communication, the DHSMV field offices follow up with telephone calls and emails to the dealers, attempting to bring them into compliance with the insurance requirement. Ultimately, if the dealer is unresponsive and does not provide the DHSMV with proof of the required coverage, the Bureau of Dealer Services forwards the relevant information to the Office of the General Counsel with a request to initiate an administrative action against the dealer under ch. 120, F.S.⁵¹

⁴⁸ Section 320.27, F.S.

⁴⁹ Section 320.27(3), F.S.

⁵⁰ Department of Highway Safety and Motor Vehicles, *2021 Legislative Bill Analysis for SB 1500*, (March 5, 2021), p. 4 (on file with the Senate Committee on Transportation).

⁵¹ *Ibid.*

Currently, the DHSMV has no enforcement authority permitting it to take administrative action against a dealer's license for not timely providing proof of coverage. The only enforcement authority available lies in the ability to seek administrative action if the dealer has a gap in coverage or does not obtain and maintain coverage.⁵²

Surety Bond Requirements for Motor Vehicle, Mobile Home and Recreational Vehicle Dealers

Several entities are required to provide the DHSMV a surety bond or irrevocable letter of credit to ensure customers who suffer losses or are otherwise harmed by them in the course of doing business have an avenue to file a claim against the surety bond or irrevocable letter of credit in order to be made whole or compensated for any loss or harm. Those entities are:

- Motor vehicle dealer in the sum of \$25,000;⁵³
- Mobile home dealers in the sum of \$25,000, or, if the dealer has more than four supplemental locations, in the sum of \$50,000;⁵⁴
- Mobile home manufacturers in the sum of \$50,000;⁵⁵ and
- Recreational vehicle manufacturers, importers, and distributors in the sum of \$10,000.⁵⁶

While Florida law requires these entities to provide proof of the required surety bond or irrevocable letter of credit at the time of licensure application and again at the beginning of any licensure renewal period, the statute doesn't cover the issue of a gap in coverage during the licensure period. Gaps in coverage can, and do, occur as a result of various actions – an entity may cancel their bond or letter of credit in the middle of the term, or the insurer itself may cancel the bond or letter of credit in the middle of the term for nonpayment of the premium or for other reasons.

This technicality may allow an entity to meet the requirement of proof of coverage at the beginning of the licensure period but allow the coverage to lapse during the licensure period and then reinstate coverage at the beginning of the next licensure period. The cancellation and then later reinstatement of a policy creates a gap during which the entity has no bond or letter of credit coverage. A gap in the surety bond coverage at any time during the licensure period has the potential to result in direct consumer harm, as a customer who has suffered loss or harm as a result of an entity's actions would have no bond or letter of credit through which to make a claim. Currently, there are over 14,500 motor vehicle dealers and approximately 1,376 mobile home dealers and brokers that are required to carry an appropriate surety bond or letter of credit coverage.⁵⁷

The DHSMV currently advises these entities about upcoming surety bond expirations in the same manner as they do for upcoming garage insurance liability policy expirations.⁵⁸

⁵² *Ibid.*

⁵³ Section 320.27(10), F.S.

⁵⁴ Section 320.77(16), F.S.

⁵⁵ Section 320.8225(5)(a) F.S.

⁵⁶ Section 320.8225(5)(b) F.S.

⁵⁷ *Supra* FN50, p. 5.

⁵⁸ *Ibid*, p. 6.

Currently, the DHSMV has no enforcement authority permitting it to take administrative action against a dealer's license for not timely providing proof of coverage. The only enforcement authority available lies in the ability to seek administrative action if the dealer has a gap surety bond coverage or does not obtain and maintain surety bond coverage.⁵⁹

Lake County Central Florida Expressway Authority Enabling Language

Section 348.754, F.S., provides that to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the FDOT, the Central Florida Expressway Authority may not, without the prior consent of the secretary of the FDOT, construct any extensions, additions, or improvements to the expressway system in Lake County.⁶⁰

III. Effect of Proposed Changes:

Move Over Law (Section 1)

The bill amends s. 316.126, F.S., to add road and bridge maintenance or construction vehicles displaying warning lights and operating on the roadside without advance signs and channelizing devices (such as traffic cones or barricades) to the list of vehicles subject to the Move Over Law. This will require drivers to move over to a different lane or decrease their speed when road and bridge maintenance or construction vehicles are displaying warning lights on the roadside.

Texting and Driving Report Date (Section 2)

The bill amends s. 316.305, F.S., to remove the February 1 reporting date requirement in law to allow more complete collection from law enforcement agencies of all texting and driving data required to be included in the annual report. The DHSMV will still report the texting and driving data on an annual basis once all data from law enforcement agencies is received. This is the current process utilized by the DHSMV for the annual seat belt usage report.⁶¹

Nonpublic Sector Buses (Section 3)

The bill amends s. 316.70, F.S., to update the statute to reflect that DHSMV, not the FDOT, has statutory authority to adopt rules for the safe operations of nonpublic sector buses and conduct compliance reviews. This change acknowledges that the DHSMV is the agency responsible for the safe operations of nonpublic sector buses.

The bill cross-references the applicable Code of Federal Regulations, removes duplicative standards for nonpublic sector buses, and removes the time periods for follow-up compliance investigations. The bill also authorizes law enforcement officers of the DHSMV or a duly appointed agent of the DHSMV with a current safety inspector certification from the Commercial Vehicle Safety Alliance to inspect nonpublic sector buses and remove them from service if continued operation would present an unduly hazardous operating condition. However,

⁵⁹ *Supra* FN50, p. 5.

⁶⁰ Section 348.754, F.S.

⁶¹ Section 316.614(9), F.S.

if continuous operation would not be unduly hazardous, the officer or agent may give written notice requiring correction of the condition within 15 days after the inspection.

Subpoena Authority (Sections 4, 5, 9, and 10)

The bill creates ss. 319.1414 and 322.71, F.S., to establish the power of subpoena and to administer oaths or affirmations, examine witnesses, require affidavits, take depositions, and compel the attendance of witnesses and the production of books, papers, documents, records, and other evidence for the DHSMV to use in conducting investigations or examinations into authorized private rebuilt inspection providers, and persons suspected of violating or of having violated any provision of ch. 322, F.S., dealing with unlawful issuances of driver licenses and identification cards, or any rule or order issued or adopted pursuant to ch. 322, F.S.

The bill amends ss. 319.25 and 320.861, F.S., to establish the power of subpoena and to administer oaths or affirmations, examine witnesses, require affidavits, take depositions, and compel the attendance of witnesses and the production of books, papers, documents, records, and other evidence for the DHSMV to use in conducting investigations or examinations into persons suspected of violating or of having violated any provision of ch. 319, F.S., dealing with motor vehicle title certificates, or any rule or order issued or adopted pursuant to ch. 319, F.S., and persons suspected of violating or of having violated any provision of ch. 320, F.S., dealing with motor vehicle licenses, or any rule or order issued or adopted pursuant to ch. 320, F.S.

The bill provides that subpoenas may be served by an authorized representative of the DHSMV, and creates a judicial enforcement mechanism related to the subpoena authority and creates entitlement to witness fees for those subpoenaed under the section. If a person refuses to obey the subpoena, the DHSMV may petition a court in the county in which the person or business is located. The court will direct the person to obey the subpoena, and award any costs incurred by the DHSMV to obtain the order.

The DHSMV advised scenarios where subpoena authority could be utilized to potentially lead to the discovery of pertinent information would be investigations or examinations into odometer rollbacks, fraudulent repair and storage title transactions, and driver license fraud.⁶²

Garage Liability Insurance and Surety Bond (Sections 6, 7 and 8)

The bill amends ss. 320.27(3), 320.77(16), and 320.8225(5)(a), F.S., to require motor vehicle, mobile home, and recreational vehicle dealers, manufacturers, distributors, and importers to deliver to the DHSMV, in the manner prescribed by the DHSMV, proof of continuous insurance coverage during the licensure period and notification to the DHSMV of any change during the licensure period. The bill provides that a licensee must deliver to the DHSMV a new policy or copy of the policy within ten calendar days of a renewal, continuation, or change in policy.

The bill amends ss. 320.27(10) and 320.8225(5)(b), F.S., to require continuous bond coverage during the licensure period and notification to the DHSMV of any change during the licensure

⁶² Kevin Jacobs, Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, FW: Subpoena Explanation, February 16, 2021.

period. The licensee is required to provide proof, in a manner prescribed by the DHSMV, of a renewal, continuation, or change of a surety bond or irrevocable letter of credit or surety bond and cash bond within ten calendar days of any issuance of such surety bond or irrevocable letter of credit.

Lake County Central Florida Expressway Authority Enabling Language (Section 11)

The bill amends s. 348.754, F.S., to provide that to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the FDOT, the Central Florida Expressway Authority may not, without the prior consultation of the secretary of the FDOT, construct any extensions, additions, or improvements to the expressway system in Lake County.

The bill has an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There is a potential impact to the nonpublic sector bus industry associated with changes to the commercial motor vehicle regulations contained in the bill; however, the impact is indeterminate at this time.

Those who receive a subpoena from the DHSMV may be entitled to witness fees. In addition, if a person refuses to obey the subpoena, the DHSMV may petition a court in the county in which the person or business is located and the court may direct the person to obey the subpoena, and award any costs incurred by the DHSMV to obtain the order.

C. Government Sector Impact:

The bill authorizes the DHSMV to exercise the power of subpoena as it relates to the investigation of fraud involving motor vehicle registrations, titles, driver licenses, motor vehicle dealers, and other areas of jurisdictional responsibility. All costs related to this new function can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.126, 316.305, 316.70, 319.25, 320.27, 320.77, 320.8225, 320.861, and 348.754.

This bill creates the following sections of the Florida Statutes: 319.1414 and 322.71.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.