

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: CS/SB 1500

INTRODUCER: Committee on Transportation and Senator Harrell

SUBJECT: Transportation

DATE: March 11, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	Fav/CS
2.			ATD	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1500 is an omnibus transportation bill that 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;
- Provides the DHSMV with the power of subpoena and the ability to administer oaths or affirmations, examine witnesses, require affidavits, take depositions, and compel the attendance of witnesses and the production of documents and other evidence for 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;
- Clarifies 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;

- Dissolves the inactive Northwest Florida Transportation Corridor Authority and provides for distribution of the authority's assets;
- Replaces an affidavit with an attestation on a form provided by the DHSMV as a requirement for an insurance company to receive a salvage certificate of title or certificate of destruction from the DHSMV;
- Revises provisions relating to the operation of radios or other soundmaking devices in vehicles following a Florida Supreme Court decision finding portions of the relevant statute unconstitutional;
- Provides that payments to the Department of Transportation Financing Corporation from the FDOT under a service contract for debt service must be made prior to other obligations, aside from debt service for other bond programs, and adds a borrowing limit to the Department of Transportation Financing Corporation of \$100 million in annual debt service;
- Amends statute to test economic feasibility of a project's estimated net revenues based on the average annual debt service of the proposed bonds; and
- Exempts airports from the requirement that the same entity may not performing both design and construction engineering and inspection services.

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

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).

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 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.

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

⁷ Section 316.2397(4) and (5), F.S.

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.

- 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 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

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).

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.

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 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.

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.*

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 *Elliot*, 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).

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 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

³¹ *Elliot*, 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).

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.

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 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

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.

⁴⁸ Section 320.27, F.S.

⁴⁹ Section 320.27(3), F.S.

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

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

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.*

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.

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

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

Northwest Florida Transportation Corridor Authority

The Northwest Florida Transportation Corridor Authority (NFTCA), is an agency of the State of Florida, created in 2005 pursuant to ch. 343, Part IV, F.S. One of several transportation authorities in Florida, the governing body consists of eight voting members, one each from Escambia, Santa Rosa, Walton, Okaloosa, Bay, Gulf, Franklin, and Wakulla Counties, appointed by the Governor to a 4-year term. The appointees are residents of their respective counties and

⁵⁷ *Supra* FN50, p. 5.

⁵⁸ *Ibid*, p. 6.

⁵⁹ *Supra* FN50, p. 5.

⁶⁰ Section 348.754, F.S.

may not hold an elected office. The district secretary of the FDOT serving Northwest Florida also serves as an ex officio, nonvoting member of the NFTCA governing body.⁶¹

The primary purpose of the NFTCA is to improve mobility on the U.S. 98 corridor in Northwest Florida, enhance traveler safety, identify and develop hurricane evacuation routes, promote economic development, and implement transportation projects to alleviate current or anticipated traffic congestion.⁶²

The NFTCA met on September 20, 2018, and during the meeting, the NFTCA Board voted unanimously, approving Resolution 18-02, to become inactive as an authority. The NFTCA Board also voted unanimously to approve their 2019 Budget which utilized all of their remaining funds of \$1,016. They placed \$1,015 under Board Expenses and \$1 in Total Reserves for the 2019 Budget before going inactive.⁶³

Salvage Certificate of Title or Certificate of Destruction

Under current law, an insurance company is required to provide an affidavit to the DHSMV to receive a salvage certificate of title or certificate of destruction for a motor vehicle or mobile home if the insurance company is unable to obtain a properly assigned certificate of title from the owner or lienholder of the motor vehicle or mobile home, if the motor vehicle or mobile home does not carry an electronic lien on the title.

Section 319.30(3)(b), F.S., provides:

(b) The owner, including persons who are self-insured, of a motor vehicle or mobile home that is considered to be salvage shall, within 72 hours after the motor vehicle or mobile home becomes salvage, forward the title to the motor vehicle or mobile home to the department for processing. However, an insurance company that pays money as compensation for the total loss of a motor vehicle or mobile home shall obtain the certificate of title for the motor vehicle or mobile home, make the required notification to the National Motor Vehicle Title Information System, and, within 72 hours after receiving such certificate of title, forward such title by the United States Postal Service, by another commercial delivery service, or by electronic means, when such means are made available by the department, to the department for processing. The owner or insurance company, as applicable, may not dispose of a vehicle or mobile home that is a total loss before it obtains a salvage certificate of title or certificate of destruction from the department. Effective January 1, 2020:

1. Thirty days after payment of a claim for compensation pursuant to this paragraph, the insurance company may receive a salvage certificate of title or certificate of destruction from the department if the insurance company is unable to obtain a properly assigned certificate of title from the owner or lienholder of the motor vehicle or mobile home, if the motor vehicle or mobile home does not carry an electronic lien on the title and the insurance company:

a. Has obtained the release of all liens on the motor vehicle or mobile home;

⁶¹ Section 343.81(2), F.S.

⁶² Section 343.81(1), F.S.

⁶³ Northwest Florida Transportation Corridor Authority, Board Meeting Minutes, September 20, 2018 (on file with the Senate Transportation Committee).

- b. Has provided proof of payment of the total loss claim; and
- c. Has provided an affidavit on letterhead signed by the insurance company or its authorized agent stating the attempts that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail. The affidavit must include a request that the salvage certificate of title or certificate of destruction be issued in the insurance company's name due to payment of a total loss claim to the owner or lienholder. The attempts to contact the owner may be by written request delivered in person or by first-class mail with a certificate of mailing to the owner's or lienholder's last known address.
 2. If the owner or lienholder is notified of the request for title in person, the insurance company must provide an affidavit attesting to the in-person request for a certificate of title.
 3. The request to the owner or lienholder for the certificate of title must include a complete description of the motor vehicle or mobile home and the statement that a total loss claim has been paid on the motor vehicle or mobile home.

Excessive Noise

Section 316.3045, F.S., provides that it is unlawful for any person operating or occupying a motor vehicle on a street or highway to operate or amplify the sound produced by a radio, tape player, or other mechanical soundmaking device or instrument from within the motor vehicle so that the sound is:

- Plainly audible at a distance of 25 feet or more from the motor vehicle; or
- Louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals.

The provisions of s. 316.3045, F.S., do not apply to any law enforcement or emergency vehicles equipped with any communication device necessary for the performance of their duties, or to motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices.

Richard T. Catalano and another man were cited in 2007 and 2008, respectively, in separate incidents in Pinellas County, Florida, for violating the sound standards of s. 316.3045, F.S. (playing music too loudly in their vehicles) and both men challenged the constitutionality of the law, arguing that the statute is facially unconstitutional. The circuit court agreed and invalidated the law, and the Second District Court of Appeal upheld that decision.

On appeal, the Florida Supreme Court first determined that the "plainly audible at a distance of 25 feet or more" standard "provides fair warning of the prohibited conduct and provides an objective guideline – distance – to prevent arbitrary and discriminatory enforcement so that basic policy matters are not delegated to policemen, judges, and juries for resolution on an ad hoc and subjective basis.... This is not a standard that calls for police officers to judge whether sound is excessive, raucous, disturbing, or offensive; if the officer can hear the amplified sound more than

twenty-five feet from its source, the individual has violated the statute.”⁶⁴ The court then held that the “plainly audible” standard is not unconstitutionally vague.⁶⁵

Next turning to whether the statute is unconstitutionally overbroad or an unreasonable restriction on the freedom of expression, the court noted that “the right to play music, including amplified music, in public fora is protected under the First Amendment...Limitations are reasonable if they are “justified without reference to the content of the regulated speech,...narrowly tailored to serve a significant governmental interest, and...leave open ample alternative channels for communication of the information.”...If the time, place, and manner of the limitations are content based, a strict standard of scrutiny is applied.”⁶⁶

With respect to s. 316.3045, F.S., the court noted:

“Initially, it would appear that section 316.3045(1)(a) does not regulate expression based on the content of the message as it bans all amplified sound coming from within the interior of a motor vehicle that is “plainly audible” beyond twenty-five feet from the source. In short, the statute proscribes excessive sound emanating from vehicles on public thoroughfares. Subsection (3), however, except “motor vehicles” used for business or political purposes, which in the normal course of conducting such business use [sound-making] devices” from this broad proscription.

“...The regulation, however, treats commercial and political speech more favorably than noncommercial speech...Regardless of the intent of the Legislature, section 316.3045 is a sweeping ban on amplified sound that can be heard beyond twenty-five feet of a motor vehicle, unless that sound comes from a business or political vehicle, which presumably uses sound-making devices for the purpose of expressing commercial and political viewpoints...Thus, the statute is content based because it does not apply equally to music, political speech, and advertising.”⁶⁷

Pointing to the State’s argument that the statute serves the State’s interest in traffic safety and protecting the public from excessively loud noise, the court agreed that protecting the public from excessively loud noise is a compelling state interest, but that traffic safety generally is not a compelling state interest.⁶⁸

The court then held:

“Accordingly, we find that the statute is an unreasonable restriction on First Amendment rights. Likewise, the restriction of the constitutionally protected right to amplify sound, despite the State’s acknowledgement that this level of noise is tolerable and safe if the source is a commercial or political vehicle, is not narrowly tailored to achieve the government’s interests in improving traffic safety and protecting the citizenry from excessive noise. Thus, we also find that the statute is unconstitutionally overbroad

⁶⁴ State of Florida, Appellant, vs. Richard T Catalano, et al., Appellees, 104 So. 3d 1069 (Fla. 2012).

⁶⁵ Id. at 9-10.

⁶⁶ Id. at 13-14, citations omitted.

⁶⁷ Id. at 15-16, citations omitted.

⁶⁸ Id. at 16.

because it restricts the freedom of expression in a manner more intrusive than necessary.”⁶⁹

Department of Transportation Financing Corporation

Section 339.0809(4), F.S., created the Department of Transportation Financing Corporation which serves as a conduit issuer of indebtedness secured by amounts payable to the Department of Transportation Financing Corporation by the FDOT under service contracts. The Department of Transportation Financing Corporation is authorized to issue debt, payable from and secured by the contractual payments by the FDOT, and to provide the proceeds of the debt to the FDOT for the purpose of financing identified transportation projects contained in the FDOT’s Work Program. The FDOT’s commitments to make payments under service contracts and which secure bonds issued by the Department of Transportation Financing Corporation are subject to annual appropriation by the legislature.

Generally, bonding programs authorized under the Florida Statutes contain debt limitations, either on the amount of debt that can be issued or on the amount of annual debt service that can be obligated. For example, s. 206.46, F.S., imposes a debt service limit on Right-of-Way bonds of 7% of the revenues deposited into the State Transportation Trust Fund (STTF) or \$275 million, whichever is less. However, there is no debt limit on the amount of debt the Department of Transportation Financing Corporation can issue on behalf of the FDOT.

To date, the Department of Transportation Financing Corporation has issued \$319.6 million in bonds to fund improvements to I-95 and I-595 in Broward County. A third issuance of \$122.6 million for this project is anticipated in fiscal year 2021-2022.

Turnpike Economic Feasibility

Florida Statute mandates that prior to the issuance of turnpike revenue bonds for a project, the estimated net revenues of the proposed project must be sufficient to pay at least 50 percent of the annual debt service on bonds associated with the project by the end of the 12th year of operation and to pay 100 percent of the debt service on the bonds by the end of the 30th year of operation.⁷⁰

However, the test of ‘economic feasibility’⁷¹, in its current form, does not reflect the project’s ability to generate enough revenue to cover annual debt service on the associated bonds and typically shows no debt service in the 30th year of operation of the project. The current test for determining ‘economic feasibility’ begins when the project being financed becomes operational and therefore, runs well past the final maturity date of the 30 year bonds issued to finance construction.⁷²

⁶⁹ Id. at 19.

⁷⁰ Section 338.221(8), F.S.

⁷¹ Ibid.

⁷² Alexis Lambert, Chief of Staff, Florida Division of Bond Finance, FW: DBF Analysis, March 8, 2021.

Construction Engineering and Inspection

The FDOT construction engineering and inspection (CEI) program includes the activities and resources required to review and inspect highway and bridge construction projects. Inspection of these projects includes review of plans, specifications, and working drawings; control of materials used and review of material testing reports; supervision of utility relocation; supervision of contract subletting; control of contract time and time extensions; and maintenance of a project diary. The FDOT utilizes consultant CEI services on all construction projects using in-house project administrators or project managers in charge of the construction.⁷³

The post design occurs during construction where the engineer-of-record will modify, add, delete or change the original plan to meet field conditions or address construction changes requested by the contractor and is programmed on a construction inspection engineering phase.⁷⁴

Under current law only a seaport listed in s. 3119.09, F.S.⁷⁵, is exempt from the requirement that the same entity may not performing both design and CEI services for a project that is wholly or partially funded by the FDOT and administered by a local governmental entity.⁷⁶

III. Effect of Proposed Changes:

Move Over Law (Sections 1 and 19)

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.

Excessive Noise (Section 2)

The bill amends s. 316.3045, F.S., to:

- Repeal current paragraph (b) of subsection (1), which prohibits sound from a soundmaking device or instrument from with a motor vehicle so that the sound is louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals;
- Repeal the exclusion in subsection (3) of motor vehicles used for business or political purposes, which in the normal course of conducting business use soundmaking devices; and
- Make editorial and clarifying changes.⁷⁷

⁷³ FDOT Work Program Instructions FY 21/22 - 25/26, September 18, 2020, Part III - Chapter 6, p. 1 of 2, available at <https://fdotewp1.dot.state.fl.us/fmsupportapps/Documents/development/WorkProgramInstructions.pdf> (last visited March 9, 2021).

⁷⁴ *Ibid.*

⁷⁵ The list includes the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.

⁷⁶ Section 337.14(7), F.S.

⁷⁷ The Supreme Court noted the opinion of one of the lower court judges that paragraph "... (b) of the statute suffers constitutional infirmity as it "permits citations, at least `in areas adjoining churches, schools, or hospitals,' for sound that is `louder than necessary for the convenient hearing by persons inside the vehicle.'" *Supra* FN 64 at 6, citations omitted.

Having removed those portions of the statute rejected by the court, the statute is then presumably constitutional.

Texting and Driving Report Date (Section 3)

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.⁷⁸

Nonpublic Sector Buses (Sections 4 and 20)

The bill amends s. 316.70, F.S., 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, 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 5, 6, 12, and 13)

The bill creates ss. 319.1414 and 322.71, F.S., and amends ss. 319.25 and 320.861, F.S., providing the DHSMV with the power of subpoena and the ability 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 use in conducting investigations or examinations into:

- Authorized private rebuilt inspection providers in ch. 319, F.S. (title certificates);
- Persons suspected of violating or of having violated any provision of ch. 322, F.S. (driver licenses);
- Dealing with unlawful issuances of driver licenses and identification cards, or any rule or order issued or adopted pursuant to ch. 322, F.S. (driver licenses);
- 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. (title certificates); and

⁷⁸ Section 316.614(9), F.S.

- 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. (motor vehicle licenses).

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.⁷⁹

Salvage Certificate of Title or Certificate of Destruction (Section 7)

The bill amends s. 319.30(3)(b), F.S., to provide that an insurance company may receive a salvage certificate of title or certificate of destruction from the DHSMV if the insurance company is unable to obtain a properly assigned certificate of title from the owner or lienholder of a motor vehicle or mobile home, if the motor vehicle or mobile home does not carry an electronic lien on the title and the insurance company:

- Has obtained the release of all liens on the motor vehicle or mobile home;
- Has attested on a form provided by the department that payment of the total loss claim has been distributed; and
- Has attested on a form provided by the department and signed by the insurance company or its authorized agent stating the attempts that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail. The form must include a request that the salvage certificate of title or certificate of destruction be issued in the insurance company's name due to payment of a total loss claim to the owner or lienholder. The attempts to contact the owner may be by written request delivered in person or by first-class mail with a certificate of mailing to the owner's or lienholder's last known address.

Garage Liability Insurance and Surety Bond (Sections 8, 9, 10, and 11)

The bill amends ss. 320.27(3), 320.77(16), 320.771(3)(j) 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.

⁷⁹ Kevin Jacobs, Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, FW: Subpoena Explanation, February 16, 2021.

The bill amends ss. 320.27(10), 320.771(16)(a) and 320.8225(5)(b), F.S., to require continuous bond coverage by motor vehicle, mobile home, and recreational vehicle dealers, manufacturers, distributors, and importers during the licensure period and notification to the DHSMV of any change during the licensure 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.

Construction Engineering and Inspection (Section 14)

The bill amends s. 337.14(7), F.S., to exempt airports as defined in s. 332.004, F.S.⁸⁰, from the requirement that the same entity may not performing both design and CEI services for a project that is wholly or partially funded by the FDOT and administered by a local governmental entity.

Turnpike Economic Feasibility (Sections 15 and 21)

The bill amends s. 338.221(8), F.S., to revise the economic feasibility test utilized in connection with Turnpike projects. The revised test would ensure that estimated net revenues of the proposed Turnpike project would cover the debt service on the associated bonds, and provides a more reliable test of a project's ability to generate sufficient revenues to pay debt service. It would require the estimated net revenues of the proposed turnpike project, excluding feeder roads and turnpike improvements, to be sufficient to pay at least 50 percent of the average annual debt service on the bonds associated with the project by the end of the 12th year of operation and to pay at least 100 percent of the average annual debt service on the bonds by the end of the 30th year of operation.

Department of Transportation Financing Corporation (Section 16)

The bill amends s. 339.0809(4), F.S., to provide that payments to the Department of Transportation Financing Corporation from the FDOT under a service contract for debt service must be made prior to other obligations of the STTF, aside from debt service for other bond programs of the FDOT (e.g. Right-of-Way, GARVEE and Seaports). The bill also adds a borrowing limit to the Department of Transportation Financing Corporation of \$100 million in annual debt service which is estimated to provide \$1.1 to \$1.6 billion in bonding capacity depending on the term of the debt.

Northwest Florida Transportation Corridor Authority (Sections 17 and 22)

The bill repeals Part III of ch. 343, F.S., consisting of ss. 343.80, 343.805, 343.81, 343.82, 343.83, 753 343.835, 343.836, 343.84, 343.85, 343.87, 343.875, 343.88, 754 343.881, 343.884, and 343.89, F.S.

Notwithstanding any other law, the bill dissolves the inactive NFTCA. The NFTCA must discharge or make provisions for the their debts, obligations, and other liabilities; settle and close

⁸⁰ Section 332.004, F.S., defines "airport" to mean any area of land or water, or any manmade object or facility located therein, which is used, or intended for public use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for public use, for airport buildings or other airport facilities or rights-of-way.

the NFTCA's activities and affairs; and provide for distribution of the their assets (estimated to be \$1,016),⁸¹ or the proceeds of such assets, such that each local general-purpose government represented on the NFTCA's board receives a distribution generally in proportion to each entity's contribution to the acquisition of the assets.

Lake County Central Florida Expressway Authority Enabling Language (Section 18)

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.

⁸¹ *Supra*, FN 63.

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.

A citizen found to have violated the sound standard of s. 316.3045, F.S., for sound which is plainly audible at a distance of 25 feet or more from the citizen's motor vehicle, is subject to a \$30 penalty for a nonmoving traffic violation.⁸²

Exempting airports from the requirement that the same entity may not performing both design and CEI services for a project that is wholly or partially funded by the FDOT and administered by a local governmental entity may allow a single entity to be awarded both design and CEI services for a project.

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.

The bill adds a borrowing limit to the Department of Transportation Financing Corporation of \$100 million in annual debt service which is estimated to provide \$1.1 to \$1.6 billion in bonding capacity depending on the term of the debt, should the program be fully utilized.⁸³ Under current law there is no borrowing limit.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.126, 316.3045, 316.305, 316.70, 319.25, 319.30, 320.27, 320.77, 320.771, 320.8225, 320.861, 337.14, 338.221, 339.0809 and 348.754.

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

The bill repeals part III of ch. 343, F.S.

⁸² Section 318.18(2), F.S.

⁸³ *Supra*, FN 72.

The bill reenacts the following sections of the Florida Statutes: 318.18, 316.3026 and 338.2276.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Committee on Transportation on March 10, 2021:

- Dissolves the inactive Northwest Florida Transportation Corridor Authority and provides for distribution of the authority’s assets;
- Replaces an affidavit with an attestation on a form provided by the DHSMV as a requirement for an insurance company to receive a salvage certificate of title or certificate of destruction from the DHSMV;
- Revises provisions relating to the operation of radios or other soundmaking devices in vehicles following a Florida Supreme Court decision finding portions of the relevant statute unconstitutional;
- Provides that payments to the Department of Transportation Financing Corporation from the FDOT under a service contract for debt service must be made prior to other obligations, aside from debt service for other bond programs, and adds a borrowing limit to the Financing Corporation of \$100 million in annual debt service;
- Amends statute to test economic feasibility of a project’s estimated net revenues based on the average annual debt service of the proposed bonds;
- Exempts airports from the requirement that the same entity may not performing both design and CEI services; and
- Adds mobile home dealers to the garage liability provisions of the bill.

B. Amendments:

None.