



The Florida Senate

Interim Report 2010-130

October 2009

Committee on Transportation

HIGHWAY TOLL COLLECTION AND VIOLATION PENALTIES

Issue Description

As Florida toll roads move toward the full implementation of the open road tolling concept, the advent of various electronic and video-based toll collection technologies has resulted in making the payment of tolls more efficient for tolling agencies and safer, easier, and faster for drivers. There are, however, some negative consequences associated with these changes as enforcement procedures adapt to the new technology.

Florida Statutes prohibit drivers from traveling on any toll road or bridge in the state without paying the required toll. Failure to pay a toll is a moving violation and, in addition to being required to pay the toll and a fine if convicted, drivers may be assessed points on their driver's licenses for not paying the toll. Section 318.18, F.S., further directs the Department of Highway Safety and Motor Vehicles (DHSMV) to suspend, for 60 days, the driver's license of any person convicted of 10 violations of failure to pay a toll (s. 316.1001, F.S.), within a 36 month period. Additionally, DHSMV is prohibited from issuing a license plate to any person reported by a tolling agency as having outstanding toll violations.

Background

Highway and bridge tolls represent a direct user fee charged for a driver's use of a particular facility. The future income stream from tolls provides backing for revenue bonds, which can be issued to accelerate the up-front funding needed to construct a road project (or bridge). Equally if not more important, tolls provide a dedicated ongoing revenue stream to fund ongoing operations, maintenance, and improvements over the life of the toll facility and a mechanism for recovering those costs from the drivers who directly benefit from their use of the toll facility.

A 2006 survey of state transportation officials conducted by the Government Accountability Office¹ indicates 31 of the 50 states and the District of Columbia had or were planning toll roads, including 24 states with existing toll operations and seven states planning to introduce tolling. Toll activity has been highly correlated with areas experiencing significant population and traffic growth, e.g. in states like Texas, California, Virginia, and Florida.

According to the Report of the National Surface Transportation Policy and Revenue Study Commission (December 2007), more tolling is needed if the United States is to upgrade its existing transportation system to a state of good repair and create a more advanced surface transportation system to sustain and ensure strong economic growth. Like all roads, toll facilities must endure the capital costs of designing, building, and maintaining the roadway. Unlike non-tolled roads, toll facilities also experience the additional cost of collecting the tolls. The report notes administrative costs of tolling are higher than the costs of administering the fuel tax, but the move toward greater use of open road tolling and electronic toll collection should reduce collection costs.

Open Road Tolling (ORT)

Open road tolling (ORT) is the practice of collecting tolls on toll roads without the use of toll booths. ORT systems typically have overhead gantries at predetermined points and levy tolls based on the highway segments

¹ "States' Expanding Use of Tolling Illustrates Diverse Challenges and Strategies", GAO Report to Congressional Requestors, GAO-06-554, June 2006

each patron travels. On ORT facilities, conventional toll plazas are removed from mainline lanes. ORT is dependent upon either some form of electronic toll collection (ETC), video tolling, or both to collect revenue.

Electronic Toll Collection (ETC) Systems use vehicle-to-roadside communication technologies (via microwave, infrared, or GPS technology) to perform an electronic monetary transaction between a vehicle passing through a toll station and the toll agency. Essentially, ETC equipment substitutes for having a person (or coin machine) manually collect tolls at toll booths. ETC techniques can be employed on conventionally tolled, as well as ORT facilities, (*i.e.*, ETC is often implemented in select lanes in existing conventional toll plazas).

Most ETC systems use radio-frequency automatic vehicle identification (AVI) transponders to automatically identify vehicles. Common transponders are stickers with a very small silicon chip that uses the windshield for an antenna. There are also hard-case transponders with a chip and a small internal antenna that may also have a battery, display, and/or audio feature. The transponders work with roadside equipment consisting of an antenna and reader hardware to read and communicate with the transponder.

Generally, tolls are differentiated by vehicle class. A vehicle's class can be determined by its physical attributes, number of occupants, emissions, or the purpose for which it is being used (or some combination of these characteristics). Most toll agencies use physical attributes of the vehicle and typically have 5–10 vehicle classes. Although the transponder is normally programmed with the vehicle class, most agencies confirm the class at the time of toll collection. Axle counting devices, vehicle profilers, and vehicle separators are used in the pavement and overhead for classification.

Video Tolling is a technique for toll collection using still images of a vehicle's license plate to identify the vehicle for payment. This technique, which is sometimes called video billing, uses specialized cameras and lighting units to capture images at the toll zone. In a video tolling system, the identification of customers without transponders is accomplished using the vehicle's license plate number extracted from an image either by using automatic number plate recognition (ANPR) technology or manual data-entry clerks. Often, video tolling rates are higher than AVI rates due to the extra costs associated with verifying license plate data and determining the identity and contact information of the vehicle's registered owner.

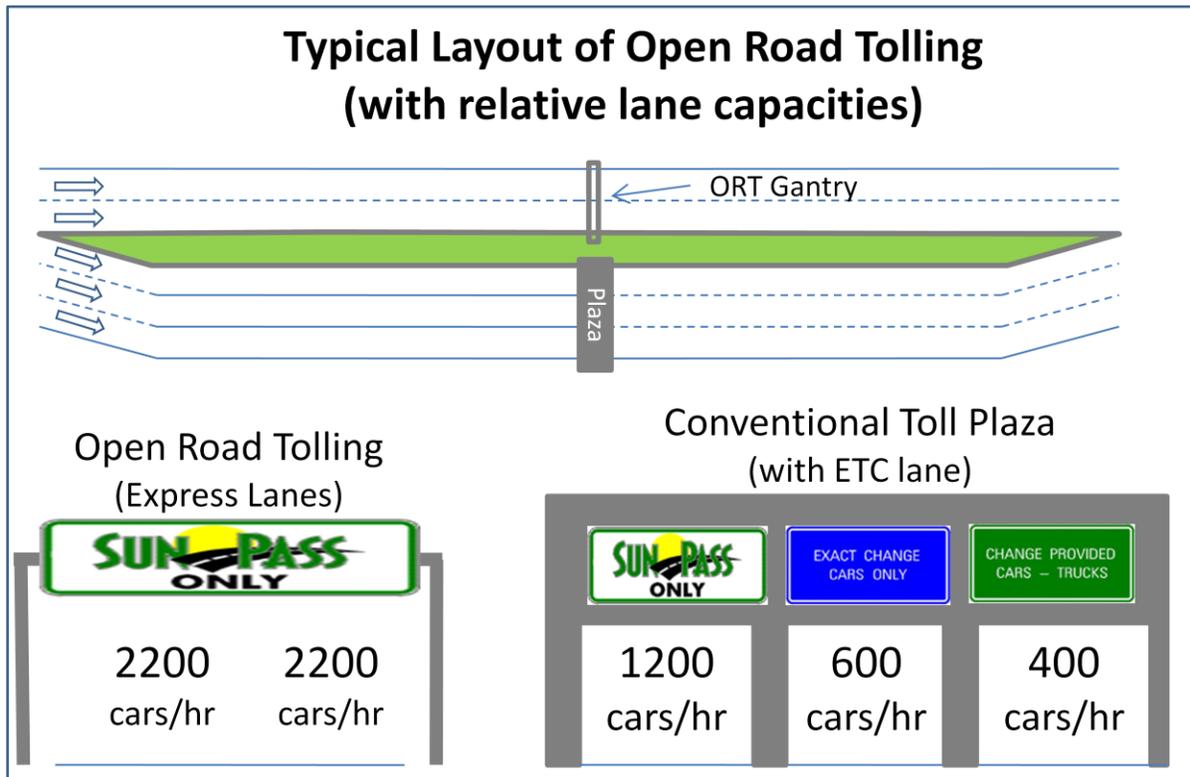
ORT's most important benefit is the enhanced safety derived by removing toll booths and queued vehicles from the right-of-way. Even without the full implementation of ORT, the use of ETC or video billing can result in safer toll facilities. For example, in 2001, the Orlando-Orange County Expressway Authority (OOCEA) implemented a partial ORT concept on State Road 429. The design provides separate lanes on the right allowing express ETC traffic to remain on the mainline highway. Conventional payment customers, cash and ACM (Automatic Coin Machine), exit to the right and use a traditional plaza. Then these vehicles return to the mainline highway and must merge back into the main stream of traffic. A University of Central Florida analysis of crash data showed a 22% drop in total crashes at the plaza and 26% drop within the plaza's area of influence.²

Other benefits of ORT (and ETC/video tolling) center around the ability of toll facility patrons to travel through the tolling point at, or near, highway speeds without having to slow down to pay the toll. Using ETC/video billing:

- Increases fuel economy and reduces environmentally harmful emissions 16 percent to 63 percent at toll plazas by reducing or eliminating waiting times and unnecessary deceleration/acceleration;
- Increases toll lane capacity;
- Reduces motorist waiting time; and
- Provides convenient/alternative payment techniques for toll payers.

² "Evaluation of Impacts from Deployment of an Open Road Tolling Concept for a Mainline Toll Plaza," Klodzinski, Gordin, and Al-Deek, Paper Presented at the 86th Annual Meeting of the Transportation Research Board, January 2007

These benefits are realized even when ETC/video tolling is incrementally implemented in a phased deployment (*i.e.*, a facility need not be fully converted to ORT to take advantage of the benefits). For example, converting a lane from a conventional toll booth to a dedicated ETC lane increases the capacity of the toll plaza. The potential increase in capacity is significant, even if only a fraction of the existing tolling points are converted. A typical ORT tolling point and the general capacities of various toll collection methods (*i.e.*, the number of vehicles that can pass through a tolling point, are shown in the diagram below).



Additionally, by eliminating plaza barriers, the open road design better enables variable pricing and innovative lane management systems such as High Occupancy Tolling (HOT), Truck Only Tolling (TOT), and Bus Rapid Transit (BRT).

There are a number of costs associated with the implementation of ETC and video billing:

- Installation and maintenance of ETC vehicle-to-roadside communication and video enforcement technologies can be capital intensive;
- Onboard units (transponders) require investment and maintenance by users;
- Standardization and technical interoperability of systems impose costs; and
- Marketing and stakeholder involvement efforts require investment.

Florida Toll Roads

As shown in the following table, most of the approximately 750 miles of toll roads in Florida are owned or operated by the Florida Department of Transportation (FDOT) and 95 percent of the state’s toll facilities are included in the Florida Strategic Intermodal System (SIS). In fiscal year (FY) 2008, Florida toll facilities generated over \$1.1 billion in annual toll revenues, the financial equivalent of approximately 14.0 cents in gasoline tax. Ten percent (\$3.75 billion) of the FY 2010-2014 FDOT Work Program is funded by toll revenues.³

³ FDOT Office of Financial Development Data

		Year of Bond Sale/ Authorizing Legislation	Year Toll Collection Started	Centerline Miles
DEPARTMENT OWNED AND OPERATED SYSTEMS				
1	Sunshine Skyway Bridge	1951 ¹	1954	17
2	Florida's Turnpike	1953 ²	1957	460
3	Pinellas Bayway	1960 ¹	1962	15
4	Alligator Alley (Everglades Parkway)	1963 ¹	1969	78
5	Beachline East	1968 ^{1,3}	1974	15
DEPARTMENT OPERATED SYSTEMS				
6	Lee Roy Selmon Crosstown Expressway	1963 ⁴	1976	15
7	Mid-Bay Bridge	1986 ⁴	1993	4
8	Garcon Point Bridge	1984 ⁴	1999	4
OTHER MAJOR TOLL SYSTEMS				
9	Miami-Dade Expressway System (MDX)	1994 ⁵	1961	34
10	Orlando-Orange County Expressway System (OOCEA)	1963 ^{4,8}	1966	100
OTHER TOLL SYSTEMS				
11	Lee County (Sanibel Causeway, Cape Coral & Midpoint Bridges)	1960s ⁶	1964 ⁷	5
12	Card Sound Bridge	1960s	1969	3
13	Bob Sikes Bridge			2
14	Rickenbacker Causeway	1940s	1947	3
15	Venetian Causeway		1926	1
16	Broad Causeway	1940s-50s	1951	1
17	Osceola Parkway	1992	1996	12

¹ Constructed with proceeds from bonds sold in year indicated.

² The Florida State Turnpike Authority was created by the 1953 Florida Legislature and reorganized into the Department in 1969.

³ The Beachline East toll is collected by the OOCEA at their Beachline Expressway main plaza.

⁴ Authority created by the Florida Legislature in the year indicated.

⁵ The Dade County expressway system was operating in 1961. It subsequently reverted to the Department. The Miami-Dade County Expressway Authority was created by resolution of the Miami-Dade County Commission in 1994. The Department transferred operational and financial control of the system to the Authority on December 10, 1996.

⁶ The Sanibel Causeway was built in the 1960s. Bonds were sold in 1987 to replace the outstanding debt on the Causeway and to build the Cape Coral Bridge. Bonds were sold in 1991 for ROW and design of the Midpoint Memorial Bridge and in 1995 for the construction of the Midpoint Memorial Bridge.

While the use of ETC has been prolific, no Florida toll facility currently operates as a fully ORT system, although some components of select systems (*e.g.*, Selmon Expressway Reversible Express Lanes) operate without toll booths. Toll facility customers continue to have the choice of either physically paying the required toll in cash at a toll booth or they may choose to make use of ETC thus requiring the use of a transponder.

Florida's SunPass is a voluntary ETC system used throughout Florida. Before use, SunPass users must establish a billing account which can be funded by automatic credit card replenishment, or manually using the internet, telephone, mail, or in person. When the SunPass user's transponder is detected passing through a SunPass-enabled tolling point, an automatic transaction bills the user's account. Originally created by Florida's Turnpike Enterprise, the SunPass transponder is operable on all FDOT-owned toll facilities and is fully interoperable with E-Pass (from the Orlando-Orange County Expressway Authority), O-Pass (operated by Osceola County; operations have been absorbed by E-Pass), LeeWay (from Lee County toll bridges) and the Miami-Dade Expressway Authority (MDX) toll roads. SunPass Plus may also be used at the Orlando International Airport and Tampa International Airport to pay for parking, with plans for other major Florida airports to utilize the SunPass system for parking fees in the near future.

As the use of ETC proliferated, the Florida Turnpike Enterprise and the expressway authorities reported an upswing in the numbers of motorists, particularly repeat offenders, passing through toll plazas without transponders and failing to pay tolls. In response, the 2007 Legislature adopted House Bill 985 implementing a number of measures aimed at reducing the cost of recovering toll revenues from violators. Those changes established the fine system and remedies currently in statute.

Statutory Toll Payment Requirements

Section 316.1001, F.S., establishes the requirement for the payment of tolls, the penalty for violating the requirement, and enforcement provisions. Specifically, s. 316.1001(1), F.S., effectively prohibits a person from using any toll facility without paying all required tolls. Failure to do so is defined as a noncriminal traffic infraction, punishable as a moving violation. However, under s. 338.155, F.S., the following are exempt from the requirement to pay tolls:

- Toll agency employees when using the toll facility on official business;
- State military personnel when using the toll facility on official military business;
- Persons exempted by the authorizing resolution for bonds issued to finance the facility;
- Persons using the toll facility as required by a detour;
- Law enforcement, firefighter, and rescue personnel when using the toll facility on official business;
- Any person participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty;
- Persons driving Department of Military Affairs vehicles transporting military personnel, stores, and property; and
- Disabled drivers with certified impairments to the ability to deposit coins in a toll basket.

Section 338.155, F.S., also classifies the failure to pay a required toll as a noncriminal traffic infraction, punishable as a moving violation under s. 318.18, F.S.

Section 316.640, F.S., vests the Florida Highway Patrol, local police officers, sheriffs offices, and officers of various state agencies with the authority to enforce traffic laws wherever the public has the right to travel by motor vehicle. Any such law enforcement officer may issue a uniform traffic citation (UTC) for an alleged violation of s. 316.1001, F.S. Also, s. 316.1001(2), F.S., authorizes toll enforcement officers designated by a governmental entity owning or operating a toll facility to issue a uniform traffic citation for a violation of the section.⁴ Paragraph (2) also establishes the legal admissibility of photographic evidence to prove the required toll

⁴ Under s. 334.03, F.S., "government entity" means a unit of government, or any officially designated public agency or authority of a unit of government, that has the responsibility for planning, construction, operation, or maintenance or jurisdiction over transportation facilities; the term includes the Federal Government, the state government, a county, an incorporated municipality, a metropolitan planning organization, an expressway or transportation authority, a road and bridge

was not paid and such evidence raises a rebuttable presumption a vehicle was used in violation of s. 316.1001, F.S.

Under s. 316.1001(2)(c), F.S., the registered owner of a vehicle involved in a toll violation is responsible and liable for payment of a toll violation citation entered by photographic evidence unless the owner submits an affidavit showing the vehicle was in the care, custody, or control of another person at the time of the violation. Such affidavit must be submitted within 14 days of the issuance of the citation and identify the person who was responsible for the vehicle who may then be issued a citation. If the vehicle was stolen, the affidavit must include the police report filed in relation to the theft. Submission of a false affidavit is a second degree misdemeanor punishable by up to 60 days in jail and \$500 fine.

Camera Enforcement and Notification

Similar to the video tolling concept, camera-enforced toll violations use specialized cameras and lighting units to capture images of a vehicle's license plate at the tolling point. If a sensor detects a vehicle passing through the tolling point when no payment is received, an image or video is stored and transmitted for further processing. A toll enforcement officer, who can be a designated employee of the tolling agency or an independent contractor,⁵ then reviews the image(s) to identify the vehicle and issue a citation to the registered owner.

A citation may be issued and mailed to the identified vehicle's registered owner by either first class mail or by certified mail, return receipt requested, to the address of the registered owner of the vehicle involved within 14 days of the violation. Such mailing constitutes notification. Due to the higher cost of certified mail, most agencies issuing citations do so by first class mail. However, in addition to the citation, the notification must include remedies available under ss. 318.14(12) and 318.18(7), F.S., (outlined below).

Fine System, Penalties, and Available Remedies

Section 318.18(7), F.S., establishes the fine for citations issued under s. 316.1001, F.S., (i.e., for nonpayment of tolls) as \$100 for each violation plus the amount of the unpaid toll. Section 318.18(7), F.S., also provides that a violator who pleads out before the case goes to court must pay a mandatory fine of no less than \$50 and no more than \$100, plus the amount of the unpaid toll. The court will forward \$25 and the amount of the unpaid toll to the appropriate toll agency, with the remaining funds distributed to the General Revenue Fund, local governments, and various trust funds, as provided in s. 318.21, F.S. The court has the authority to consolidate multiple citations for the same defendant for the purpose of sentencing and aggregate jurisdiction.

In addition to fines, violators of s. 316.1001, F.S., face potentially more severe penalties. Section 318.18(7), F.S., requires the driver's license of any person who receives 10 convictions of s. 316.1001, F.S., within a 36-month period be suspended for 60 days. Additionally, being convicted of a moving violation may result in the assessment of points (in this case, 3 points per violation) against the motorist's driver's license under s. 322.27, F.S. Current statutes authorize DHSMV to suspend the license of a driver who accumulates:

- 12 points within a 12-month period for up to 30 days;
- 18 points within a 24-month period for up to 3 months; and
- 24 points within a 36-month period for up to one year.

Under s. 316.1001(4), F.S., a tolling agency may submit to DHSMV a listing of persons having one or more toll violations. If such information were to be transmitted, DHSMV is prohibited under s. 320.03(8), F.S., from issuing a license plate for any motor vehicle belonging to a person having one or more outstanding toll violations.

district, a special road and bridge district, and a regional governmental unit. Under s. 316.640(1)(b)2.b., a toll enforcement officer may be an employee of the governmental entity or an independent contractor; however any officer must successfully meet the training and qualifications standards for toll enforcement officers established by FDOT.

⁵ Regardless of whether the toll enforcement officer is an employee or an independent contractor, every toll enforcement officer must successfully meet the training and qualifications standards established by FDOT under s. 316.640(1)(b), F.S.

The treatment of citations issued under s. 316.1001, F.S., differs from other noncriminal infractions. Under s. 318.14(4), F.S., a person charged with a noncriminal infraction other than a toll violation has two choices: pay the fine within 30 days or choose to appear in court. Toll violation citations issued on the roadside by a law enforcement officer adhere to this process.

However, citations issued for nonpayment of tolls by automatic camera-enforcement systems are processed differently. Most importantly, an alleged offender is usually presented with the opportunity to simply pay the toll without penalty either by mail, phone, or electronically before a citation is issued. This “courtesy notice” process differs by toll agency but as an example, on toll facilities operated by the Florida Turnpike Enterprise, if a vehicle is identified as traveling through a tolling point without payment, an Unpaid Toll Violation (UTV) is sent within a week to the registered owner of the vehicle, who has 21 days to pay the toll without penalty. Most recipients of UTVs rectify the non-payment within the allotted time. However, after 21 days a UTC is issued for any transaction listed on the UTV remaining unpaid. After the UTC is issued, the cited motorist has the following three options:

Option A. *Elect to pay a \$25 fine plus the unpaid toll directly to the toll agency under s. 318.14(12), F.S.*

By making this choice, the cited motorist avoids a court hearing (and court costs) and points are not assessed against the motorist’s driver’s license. This election must be completed within 30 days of the issuance of the citation. If not accomplished within 30 days, the cited motorist may exercise one of the two following options within 45 days.

Option B. *Elect to pay the fine prescribed under s. 318.18(7), F.S. (i.e., \$100 plus the unpaid toll)*

This must be completed within 45 days of the close of the 30-day period in Option A. The payment of the prescribed fine is made to the court. The clerk of the court forwards \$25 of the fine plus the amount of the unpaid toll to the toll agency. This option results in the assessment of 3 points against the violator’s driver’s license for each violation.

Option C. *Request a court hearing.*

A person electing to challenge a toll violation citation must request a court hearing within 45 days of the close of the 30-day period in Option A (75 days from the issuance of the UTC). If a judge adjudicates the violator guilty, violators are subject to a \$100 fine plus the unpaid toll plus court fees for each violation. Additionally, three points may be assessed at the judge’s discretion against the motorist’s driver’s license for each violation. If a plea arrangement is reached between the cited motorist and the toll agency prior to the scheduled hearing, the court may levy a fine of between \$50 and \$100 plus the amount of the unpaid toll. In most plea arrangements, points are not assessed.

Under s. 316.650(3)(a), F.S., most traffic citations must be reported by the issuing traffic enforcement officer to the appropriate court within five days of the citation’s issuance. However, s. 316.650(3)(b), F.S., authorizes a traffic enforcement officer to withhold notification to the court for up to 45 days for violations of s. 316.1001, F.S. The extra time allows toll agencies to issue courtesy Unpaid Toll Violations (or similar notices) and subsequently cited motorists to make use of the election available in s. 318.14(12), F.S., (i.e., Option A - to pay a fine of \$25 and the amount of the unpaid toll directly to the governmental entity issuing the citation within 30 days of the issuance of the citation).

Findings and/or Conclusions

The use of ETC has proliferated in recent years. The following table shows the level of ETC as a percentage of total transactions and the volume of toll violations as a percentage of total revenue on selected Florida toll facilities since 2004.

System		2004	2005	2006	2007	2008
Florida Turnpike	ETC transactions	45%	52%	55%	62%	65%
	Violations	2.91%	3.55%	5.41%	3.71%	4.29%
Sunshine Skyway	ETC transactions	26%	30%	34%	37%	40%

	Violations	0.64%	0.72%	1.48%	1.06%	1.65%
Alligator Alley	ETC transactions	21%	26%	30%	36%	40%
	Violations	1.44%	1.94%	3.94%	2.65%	3.04%
Beachline	ETC transactions	38%	41%	47%	51%	53%
	Violations	1.96%	1.53%	1.33%	1.76%	1.78%
Pinellas Bayway	ETC transactions	45%	46%	49%	50%	50%
	Violations	0.33%	1.77%	2.07%	1.46%	2.34%
Mid-Bay Bridge	ETC transactions	56%	56%	59%	63%	64%
	Violations	2.52%	3.13%	4.69%	3.16%	4.10%
Miami Dade Expressway	ETC transactions	45.5%	52.4%	60.2%	64.2%	72.7%
	Violations	na	3.53%	3.14%	2.77%	3.33%
OOCEA	ETC transactions	55.1%	58.0%	61.7%	65.9%	68.6%
	Violations	na	2.23%	2.64%	2.68%	2.64%
THEA	ETC transactions	38.7%	52.0%	57.4%	64.0%	68.8%
	Violations	2.50%	2.52%	4.35%	4.14%	4.75%

Revenue variance from toll violations, *i.e.*, the uncollected toll revenue from drivers who fail to pay the required toll, can be a significant amount of money. Turnpike facilities alone were shorted \$28,513,408 in 2008 and the Tampa Hillsborough County Expressway Authority (THEA) reported over \$2 million in lost revenue from toll violations the same year on one facility, the Selmon Expressway. Losses due to the variance are compounded by a reduction in bonding capacity and in turn, reduces the ability to maintain the existing facility or develop new projects.

Toll Collection Costs

When comparing toll collection administrative costs, it might be expected that those facilities with greater use of ETC would also have a lower overall cost. However, an analysis⁶ of several toll facilities with varying degrees of ETC around the nation shows a fairly close range when comparing toll collection costs as a percentage of annual toll revenue, irrespective of the toll collection technology employed. For example, seven Caltrans-operated bridges in the San Francisco Bay Area have heavy traffic, high toll rates, and relatively low ETC use, whereas the Tobin Bridge in Boston is a smaller operation with moderate ETC use. However, the toll collection cost percentages are quite close for all of these facilities. More to the point, SR 91 in Orange County, California is a 100%-ETC facility (no toll booths), yet the high rate of violations erodes the operational cost savings that might otherwise be seen.

On toll facilities owned or operated by the Florida Turnpike Enterprise, the average cost to collect a toll rose from 14.9 cents in 2004 to 18.3 cents per transaction in 2008 when the total number of transactions declined due to fuel prices and the declining economy.⁷ Note, however, the SunPass participation rate for these facilities increased over the same period from 43.5% to 64.2%.

Changes to Court Process

Prior to 2007, upon receiving a citation for a violation of s. 316.1001, F.S., a cited person could pay a \$100 fine and \$30 court fee to avoid a conviction for the moving violation. Adjudication would be withheld and no points would be assessed against the cited persons driver's license. Upon HB 985 becoming law in 2007, the provision allowing adjudication of guilt to be withheld was removed from statute. Thus, cited persons who for whatever reason, failed to make the election offered by s. 318.14(12), F.S., (*i.e.*, Option A - elect to pay a \$25 fine plus the unpaid toll directly to the toll agency) are forced to either pay \$130 and be assessed 3 points on their driver's license for each violation (Option B), or elect to appear in court to challenge the citation (Option C) and risk higher financial penalties, as well as the possible assessment of points at the judge's discretion.

⁶ "Comparative Analysis Of Toll Facility Operational Costs", Washington State Department of Transportation, February 2007

⁷ Annual Performance and Production Review of the Department of Transportation, Fiscal Year 2007/08 by the Florida Transportation Commission, October 2008.

The number of citations for violations of s. 316.1001, F.S., filed in Florida courts increased significantly between 2007 and 2008. Statewide, courts disposed 214,434 citations in 2007 and 463,751 in 2008 representing a 116 percent annual increase.⁸ Miami-Dade County, which accounted for 72 percent of all citations filed statewide in 2008, experienced an increase of 171 percent for the same period.⁹ However, readers should note MDX began electronically reporting toll violations to the court for the first time during this period. Also, the addition of new tolling points on previously untolled sections of the MDX system, as well as the implementation of an ORT pilot project on the State Road 836 (Dolphin Expressway) Extension, may have led to additional violations, indicating the increase may have been due to operational changes rather than enhanced enforcement techniques. The Florida Turnpike Enterprise has reported a decrease in the number of toll violations it has filed with Florida courts in the same time period.

Notification Failures

The value of a deeply automated citation system is only as robust as the process afforded to alleged violators for rebutting the allegations. Due process under the current notification system is wholly dependent upon an automated mailing to the address of the violating vehicle's owner. Although s. 322.19, F.S., requires licensed drivers to notify the DHSMV within 10 days of changing their residence or mailing address, and s. 320.02(4), F.S., requires the owner of any motor vehicle registered in the state to notify DHSMV of any change of address within 20 days of such change, evidence shows these requirements are routinely violated. For example, DHSMV reported 27,493 persons were convicted in 2008 of violating s. 322.19, F.S., by failing to obtain a replacement driver's license within 10 days of a name or address change.

Absent adequate citation notification processes, it is likely a heavily automated system will eventually test the concept of due process or result in consequences of unforeseen magnitude. As an albeit imperfect example, an April 2008 opinion¹⁰ filed in the Circuit Court of the 18th Judicial Circuit, Seminole County, relates the case of a vehicle owner who, although having duly notified the DHSMV of an address change, did not receive notification of toll violations stemming from a malfunctioning transponder in a vehicle driven primarily by his wife. Initially denied the opportunity to challenge the citations issued due to failure of the notification process, the owner paid \$1448 in fines (as well as additional court costs) to clear his record only to have 48 points assessed against his driver's license, which was then suspended (and potentially caused the vehicle owner to lose his job as a firefighter/paramedic). Upon appeal, the owner prevailed and all points and fines were rescinded. However, the Circuit Court enjoined FDOT and OOCEA from filing any UTCs in the 18th Judicial Circuit for a violation of s. 316.1001, F.S., against any prepaid or guaranteed account holder who has entered an agreement for SunPass or E-Pass services. On October 10, 2008, the 5th District Court of Appeals, quashed the 18th Judicial Circuit's injunctive remedy without affecting that court's decision granting relief to the vehicle owner.¹¹ Regardless, the Circuit Court's decision exemplifies the potential system failures that can result from excessive reliance upon an automated process.

In the last 18 months, Florida's Turnpike Enterprise has instituted multiple new processes and steps to improve notification of offenders, and reports very positive results. Use of the registered owner's address as listed on the owners driver's license (as opposed to the address on the vehicle registration) has reportedly been particularly beneficial.

Options and/or Recommendations

Under current statutes, motorists convicted of violations of s. 316.1001, F.S., can suffer multiple penalties including:

⁸ Traffic Citation Accounting Transmission System (TCATS) data provided by the Florida Association of Court Clerks.

⁹ Ibid.

¹⁰ *Baird vs. Dep't of Transp.*, No. 08-32AP (Fla. Cir. Ct. 2008). available at http://www.flcourts18.org/PDF/Galluzzo/Baird_Appellate_Opinion.pdf

¹¹ *Dep't of Transp. v. Baird*, 992 So.2d 378 (Fla. Dist. Ct. App. 2008).

- the suspension of their driver's license (through two different processes – the assessment of too many points or by conviction of 10 or more toll violations within a 36-month period);
- the payment of fines up to and exceeding \$100 for each violation; and
- the inability to register any vehicle in their possession if the owner has one or more outstanding violations.

The detection and enforcement of toll violations relies on a deeply automated and technologically elaborate system which has at its core, the worthy goal of maximizing the efficiency of the toll collection process. Given the tremendous growth of court cases related to toll violations and demonstrated lapses in notification, staff questions whether the goal is met at the expense of creating inefficiencies in other governmental functions and creating undue hardships on users of the toll facility. Therefore, the following recommendations are offered:

1. *The Legislature may wish to amend s. 322.27, F.S., to remove authorization for the assessment of points against a driver's license for toll violations.* Under current statutes, the owner of a vehicle driven through as few as four tolling points without payment is at risk of losing the ability to legally drive. Granted, the remedy available under s. 318.14(12), F.S., *i.e.*, paying a fine to the tolling agency prior to the citation being filed with the court, would preclude such a suspension. However, it is possible to envision scenarios in which a vehicle owner is unable to take such action within the statutory timeframe. Thus, vehicle owners could risk penalties as severe as imprisonment¹² for a trip along a toll facility with a malfunctioning transponder or pre-paid SunPass account credit card which is delinquent due to a cancelled credit card.
2. *The Legislature may wish to amend s. 318.18(7), F.S., to require a judge's ruling to suspend a violator's driver's license based on the number of toll violation convictions.* Rather than an automatic suspension as is currently authorized, a judge's discretion would be required to suspend the license of repeat offenders.
3. In order to ensure alleged toll violators are afforded ample notification and the opportunity to be heard by an officer of the judiciary, *the Legislature may wish to amend s. 316.1001, F.S., to require the mailing of citations by certified mail, return receipt requested, signature confirmation, or some combination, to ensure adequate notification.*
4. *Staff recommends no changes to s. 316.1001(4), F.S., which authorizes DHSMV to withhold the registration of a vehicle owned by a person with one or more outstanding violations of the section.* The withholding of a vehicle's registration for non-payment of tolls presents a cost-effective method of enforcing the payment of tolls. However, adequate notification processes must be in place to inform motorists of toll violations.

¹² Section 322.34, F.S., classifies a third or subsequent conviction for driving with a suspended license as a third degree felony punishable by up to five years imprisonment and \$5,000 fine.