

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 Transportation Committee

BILL: PCB 7030

INTRODUCER: For Consideration by the Transportation Committee

SUBJECT: Enforcement of Tolls

DATE: January 12, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Meyer		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This Proposed Committee Bill (bill) makes a number of statutory changes related to the enforcement of highway and bridge tolls. The bill:

- clarifies the notification requirements to be used when a citation is issued for violation of s. 316.1001, F.S., which prohibits a person from using any toll facility without paying all required tolls;
- includes clerks of courts in the governmental entities that may provide the Department of Highway Safety and Motor Vehicles (DHSMV) with a list of persons who have one or more violations of s. 316.1001, F.S.;
- changes the directive “shall” to the permissive “may” in regards to the suspension of the driver’s license of a person convicted of ten violations of s. 316.1001, F.S, within a 36-month period; and
- excludes violations of s. 316.1001, F.S., from the violations for which points are imposed against a driver’s license under s. 322.27, F.S.

This bill substantially amends the following sections of the Florida Statutes: 316.1001, 318.18, 320.03, and 322.27.

II. Present Situation:

Toll Payments Enforcement

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.¹ Paragraph (2) also establishes the legal admissibility of photographic evidence to prove the required toll was not paid and such evidence raises a rebuttable presumption a vehicle was used in violation of s. 316.1001, F.S.

Camera Enforcement and Notification

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-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

¹ 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 district, a special road and bridge district, and a regional governmental unit.

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,² 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 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.

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.

² 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 the Florida Department of Transportation.

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).

III. Effect of Proposed Changes:

Generally, the bill revises the notification process used by toll agencies and the courts to alert toll violators when citations are issued. The bill also revises penalties for toll violations.

Specifically, the bill amends s. 316.1001, F.S., which prohibits a person from using a toll facility without paying all required tolls.

- Paragraph (2) is amended to clarify the notification requirements to be used when a citation is issued for violations. The bill requires citations issued to be sent to a violator by first class mail, return receipt requested within 14 days of the issuance of the citation. The bill also specifies the proof of receipt, rather than the proof of mailing, constitutes legal notification.
- Paragraph (4) is amended to allow clerks of court (in addition to tolling agencies) to provide information to DHSMV identifying persons who have one or more toll violations. The DHSMV may not issue a license plate or registration revalidation to persons with outstanding toll violations.

Section 318.18(7), F.S., is amended to remove the directive to DHSMV to automatically suspend the driver's license of a person convicted of ten violations of s. 316.1001, F.S., within a 10-month period. The bill makes this a permissive action and transfers this authority to the court. Thus, instead of DHSMV automatically suspending a violator's drivers license, such action may only be taken upon the direction of a judge.

Section 320.03(8), F.S., is amended to clarify the receipt showing that outstanding fines have been paid may be issued by either the tolling agency or the clerk of court.

Section 322.27, F.S., which establishes the driver's license point system for violations of motor vehicle laws, is amended to include violations of s. 316.1001, F.S., (toll violations) in those moving violations for which points are not imposed.

The bill has an effective date of July 1, 2010.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Given that current statute provides an option of notifying violators using either first-class mail or certified mail, return receipt requested, the bill's requirement for citations to be issued by first-class mail, return receipt requested will result in higher costs to tolling agencies and other governmental entities currently issuing citations without return receipt. Agencies currently using certified mail, return receipt requested will experience lower notification costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.