

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 325

Uniform Traffic Control

SPONSOR(S): Finance & Tax Council; Roads, Bridges & Ports Policy Committee; Reagan and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 294

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|---|------------------|----------------|----------------|
| 1) | Roads, Bridges & Ports Policy Committee | 12 Y, 0 N, As CS | Brown | Miller |
| 2) | Health Care Regulation Policy Committee | 14 Y, 0 N | Guy | Calamas |
| 3) | Finance & Tax Council | 12 Y, 1 N, As CS | Diez-Arguelles | Langston |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

CS/CS/HB 325 creates the "Mark Wandall Traffic Safety Act," expressly preempting to the state regulation of the use of cameras to enforce the provisions of Chapter 316, Florida Statutes, and authorizing the Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities to use cameras to enforce violations of ss. 316.074(1) and 316.075(1)(c)1., F.S., for a driver's failure to stop at a traffic signal.

The bill provides a transitional period for those counties and municipalities instituting a traffic infraction detector program on or before October 1, 2010. These counties and municipalities may continue to use equipment acquired under an agreement entered into on or before October 1, 2011. These counties and municipalities are not required to meet the specifications provided by the bill until July 1, 2011 or 180 days after Florida Department of Transportation specifications are issued, whichever is later.

The bill requires signage at intersections using traffic infraction detectors, and provides that traffic infraction detectors may not be used to enforce violations when the driver is making a right or left turn, where such turns are allowed.

The bill provides processes regarding required notifications, the issuance of citations to registered owners of motor vehicles, and defenses available to vehicle owners. The bill provides a \$150 penalty for any violations of ss. 316.074(1) or 316.075(1)(c)1., F.S., regardless of the method of enforcement. If the penalty is paid within 30 days of notification, the total penalty is \$150. However, if the penalty is not paid within 30 days of notification and a traffic citation is issued, the total penalty is \$150, plus court costs and fees of up to \$98, depending on the county where the offense occurs.

Each governmental entity that operates a traffic infraction detector must submit an annual report to DHSMV which details the results of the detectors and the procedures for enforcement. DHSMV must subsequently submit an annual summary report to the Governor and Legislature. The report must include a review of the information submitted by the counties and municipalities and any recommendations or necessary legislation.

The bill provides a severability clause and is effective July 1, 2010.

The Revenue Estimating Conference has estimated that the provisions of this bill will increase state revenues by \$29.2 million in FY 2010-11, increasing to \$94.8 million in FY 2013-14, and local government revenues by \$10.1 million in FY 2010-11, increasing to \$65.7 million in FY 2013-14. .

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0325e.FTC.doc

DATE: 4/19/2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

According to the Department of Highway Safety and Motor Vehicles (DHSMV), in 2008 there were 76 fatalities related to motor vehicle drivers who disregarded a traffic signal in Florida.¹ This represents approximately 3 percent of all fatal accidents in 2008, the sixth-highest cause of traffic fatalities.²

Traffic Infraction Detectors

Traffic infraction detectors, or "red light cameras," are used to enforce traffic laws by automatically photographing vehicles whose drivers run red lights. A red light camera is connected to the traffic signal and to sensors that monitor traffic flow at the crosswalk or stop line. The system continuously monitors the traffic signal, and the camera is triggered by any vehicle entering the intersection above a pre-set minimum speed and following a specified time after the signal has turned red. A second photograph typically shows the red light violator in the intersection. In some cases video cameras are used. Cameras record the license plate number, the date and time of day, the time elapsed since the beginning of the red signal, and the vehicle speed. Over 110 cities and towns in 20 states across the country currently participate in a red light camera program.³ Red light cameras have been used in at least 33 foreign countries since the 1970s.⁴

An Insurance Institute for Highway Safety review of international red light camera studies concluded that cameras reduce red light violations by 40-50 percent and reduce injury crashes by 25-30 percent.⁵ A 2005 study of red light camera programs in seven metropolitan communities by the Federal Highway Administration concluded that there was a 25 percent reduction in right-angle collisions, but a 15

¹ *Florida Traffic Crash Statistics Report 2008*, Department of Highway Safety and Motor Vehicles, June 30, 2009.

² Careless driving represented 20 percent of 2008 traffic fatalities; DUI, 17 percent; excessive speed, 6 percent; driving left-of-center, 6 percent; and failure to yield right of way, 6 percent.

³ National Campaign to Stop Red Light Running, http://www.stopredlightrunning.com/get_the_facts.htm

⁴ Insurance Institute for Highway Safety website (www.iihs.org/research/qanda/rlr.html) citing Blackburn, R.R. and Glibert, D.T., *Photographic enforcement of traffic laws*. Washington, DC, National Academy Press, 1995.

⁵ *Id.*, citing Retting, R.A. et al., *Effects of red light cameras on violations and crashes: a review of the international literature*, Traffic Injury Prevention 4:17-23, 2003.

percent increase in rear-end collisions.⁶ It is possible that the volume of rear-end collisions will decline as drivers get used to the idea that the vehicle in front of them will stop at a red light.⁷

Other studies, including a 7-jurisdiction study conducted by the Virginia Department of Transportation⁸ and a USDOT-funded study by the Urban Transit Institute at North Carolina A&T University,⁹ have reached conflicting results regarding crash reduction. The results of these studies are best summarized by this excerpt from the North Carolina study:

The results do not support the conventional wisdom expressed in recent literature and popular press that red light cameras reduce accidents.... Our findings are more pessimistic, finding no change in angle accidents and large increases in rear-end crashes and many other types of crashes relative to other intersections. We did find a decrease in accidents involving a vehicle turning left and a vehicle on the same roadway, which may have been included as an angle accident in some other studies. However, given that these left turn accidents occur only one third as often as angle accidents, and the fact that we find no benefit from decreasing severity of accidents suggests that there has been no demonstrable benefit from the RLC [red light camera] program in terms of safety. In many ways, the evidence points toward the installation of RLCs as a detriment to safety.

Critics on each side of the debate raise concerns about the scientific methodology of opposing studies and potential bias of researchers. Criticisms have focused on issues such as sample size, control of variables (weather, similarity of intersections, etc), and other possible control methods (e.g., failure to analyze intersections before and after detectors are placed).

Currently there are no recognized independent standards or certifications for the red light camera industry. The Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA) have developed guidelines for the use of state and local agencies on the implementation and operation of red light camera systems. These guidelines were most-recently updated in January 2005.¹⁰ Although not a regulatory requirement, the guidance is intended to provide critical information for state and local agencies on relevant aspects of red light camera systems in order to promote consistency and proper implementation and operation. The guidelines present research that suggests engineering improvements, safety education and increased enforcement by law enforcement officers can significantly reduce red light violations.

Examples of engineering improvements include:

- *Improving signal head visibility.* Signal head visibility can be improved by increasing the size of the traffic signal lamps from 8 to 12 inches. The addition of backplates can also make signals more visible.
- *All-red interval.* An all-red clearance interval, where the traffic signals on all sides are red for a period of time, provides additional time for motorists already in the intersection to proceed through the intersection on the red indication while holding cross traffic on the cross street approaches. The red clearance interval is not intended to reduce the incidence of red light running; rather it is a safety measure.
- *Appropriate yellow times.* The likelihood of a motorist running a red light increases as the yellow interval is shortened. Lengthening the yellow interval, within appropriate guidelines, has been shown to significantly reduce the number of inadvertent red light violations.

⁶ *Safety Evaluation of Red-Light Cameras*, Federal Highway Administration, Publication No. FHWA-HRT-05-048, available online here: <http://www.tfsrc.gov/safety/pubs/05048/>

⁷ *Id.*

⁸ Available online here: <http://www.thenewspaper.com/rlc/docs/05-vdot.pdf>

⁹ Available online here: <http://www.thenewspaper.com/rlc/docs/burkeyobeng.pdf>

¹⁰ U.S. Department of Transportation, *Red Light Camera Systems Operational Guidelines*, Publication No. FHWA-SA-05-002, January 2005.

- *Traffic signal coordination.* A coordinated traffic signal operation where motorists are able to move smoothly in platoons from intersection to intersection reduces the risk of red light violations and collisions.

Cameras are permitted by current Florida law to enforce violations of payment of tolls.¹¹ For example, toll facility operators use a digital camera to capture an image of the vehicle's license plate as the vehicle travels through the tolling zone. If the system receives payment from a SunPass, the image is deleted. If no payment is received, the image is processed for video tolling or is considered a toll violation and a Uniform Traffic Citation is issued.

In response to the city of Pembroke Pines' inquiry regarding the use of unmanned cameras to enforce violations of traffic signals, the Attorney General issued an advisory legal opinion on July 12, 2005.¹² The opinion concluded that it was within the local government's scope of authority "to enact an ordinance authorizing the city:

- to monitor violations of traffic signals within the city and to use unmanned cameras to monitor intersections and record traffic violations;
- to monitor violations of traffic signals within the city and to use unmanned cameras to record the license tag numbers of cars involved in such violations; and
- to advise a car owner that his or her license tag number has been recorded in a violation of the traffic laws."

The problem identified by a 1997 Attorney General opinion¹³ was whether unmanned electronic traffic infraction detectors may independently be used as the basis for issuing citations for violations of traffic laws. Current statute requires that citations be issued when an officer "observes the commission of a traffic infraction."¹⁴ The 1997 Attorney General opinion concluded that nothing precludes the use of unmanned cameras to record violations of s. 316.075, F.S., but "a photographic record of a vehicle violating traffic control laws may not be used as the basis for issuing a citation for such violations." The 2005 opinion reached the same conclusion, stating, "legislative changes are necessary before local governments may issue traffic citations and penalize drivers who fail to obey red light indications on traffic signal devices" as collected from a photographic record from unmanned cameras monitoring intersections.

Several local governments in Florida have participated in the use of red light cameras enforcement of red light violations. Due to the Attorney General's advisory opinions, the majority of local governments have used the cameras in pilot projects solely for data collection purposes or as a warning system to motorists, by sending a letter and attaching no penalty. Sarasota County, Manatee County, Palm Beach County, Polk County, and the cities of Orlando and Melbourne are examples of local governments that have at one time participated in a red light camera pilot project. The Palm Beach County Commission reported that their two-month pilot project using traffic cameras at a test intersection in Palm Beach County showed alarming results. One fifth of those who ran a red light did so two seconds after the light had changed. On average, fifty cars a day ran the light at the test site during the first month of the pilot project. During the second month of the project, following publicity about the program, that number dropped to less than twenty.¹⁵

The city of Gulf Breeze passed a local ordinance in 2005 allowing use of red light cameras. A violation by any motor vehicle running a red light that is recorded by a traffic enforcement photographic system is a civil code violation¹⁶ and a \$100 civil fee is assessed against the motor vehicle owner. The city has installed one red light camera at Daniel Drive and U.S. 98 in front of Gulf Breeze Middle School. The Gulf Breeze City Council adopted the ordinance despite the opinion issued by the Attorney General.

¹¹ s. 316.1001(2)(d), F.S.

¹² Attorney General Opinion 05-41.

¹³ Attorney General Opinion 97-06.

¹⁴ s. 316.640(5)(a), F.S.

¹⁵ Palm Beach County Board of County Commissioners, "FY 2007 State Legislative Program", available online here:

<http://www.pbcgov.com/legislativeaffairs/pdf/LegProg.pdf>

¹⁶ Section 18-113, Code of Ordinances, City of Gulf Breeze, Florida.

The Gulf Breeze Police Chief said that after the signs went up, violations dropped from 150 a month to 95 in a little over a year.¹⁷ The camera was installed by “Traffipax.” According to the police chief, the vendor paid for the initial cost of setting up the program. In return, the vendor is paid a percentage of the \$100 fine. “Peek Traffic”, the vendor who donated the equipment and monitoring for Sarasota County’s pilot project, states that a camera is valued at approximately \$50,000 and costs \$10,000 to install.

From 2008 to the present, approximately 50 municipalities have joined Gulf Breeze in enacting red light camera ordinances and placing cameras at intersections. The ordinances are broadly similar, and vary only in the amount of the fine (from \$50 to \$150, with some jurisdictions enacting multiple-offense increases up to \$500), the nature of required signage (none, at the entrance to the city, or at the intersection), whether or not to engage in education before “going live,” variations on the notice requirements sent to the motor vehicle owner, and variations on the process whereby a motor vehicle owner may challenge the violation.

Trauma Centers

A verified trauma center (center) is a hospital with an established trauma program which includes health care practitioners who specialize in the treatment of emergent conditions and facilities appropriate to treat those patients.¹⁸ Part II of Chapter 395, F.S., provides for a tiered system of center verification within the 19 trauma service areas established in s. 395.402, F.S. The Florida Department of Health (DOH) selects hospitals for center designation through an application process. Standards for designation are based on national guidelines established by the American College of Surgeons.¹⁹ Standards for designation as a pediatric center are developed in conjunction with Children's Medical Services.²⁰ Florida’s centers treat over 40,000 patients annually.²¹

There are three types of centers:

- Level I centers which have formal trauma care research and education programs; provide support to Level II and pediatric centers and general hospitals; and participate in an inclusive system of trauma care.²²
- Level II centers which serve as a resource for general hospitals and participate in an inclusive system of trauma care.²³
- Pediatric centers must be in substantial compliance with DOH rules relating to pediatric trauma center operation.²⁴

There are a total of 21 verified centers in Florida: 7 Level I; 12 Level II; and 6 Pediatric centers.²⁵ A center may have more than one designation, for example, St. Mary’s Medical Center in Delray Beach carries both a Level II and a Pediatric center designation. Additionally, one provisional center exists in Ft. Pierce, Florida.

Centers are partially funded by traffic infraction fines deposited into the Administrative Trust Fund (Trust Fund) within the DOH. In particular, s. 318.18(15), F.S., requires \$65 of the \$125 traffic citation

¹⁷ Ginny Laroe, “Police Research Traffic Cameras,” *Sarasota Herald Tribune*, March 26, 2007.

¹⁸ Florida Department of Health, *The Costs of Trauma Center Readiness*, July 17, 2002 (on file with the Committee).

¹⁹ s. 395.401(2), F.S. Section 395.4025, F.S., delineates the DOH verified trauma center designation process. Detailed DOH standards for designation are found in *Trauma Center Standards, Department of Health, Pamphlet 150-9, January 2008*, see <http://www.doh.state.fl.us/DEMO/Trauma/PDFs/TraumaCntrStandards-DOHPamphlet150-9Jan2008.pdf> (last visited March 6, 2010).

²⁰ *Id.*

²¹ Florida Department of Health, Division of Emergency Medical Operations, Office of Trauma, see <http://www.doh.state.fl.us/DEMO/Trauma/index.html> (last visited March 6, 2010).

²² s. 395.4001(6), F.S.

²³ s. 395.4001(7), F.S.

²⁴ s. 395.4001(9), F.S.

²⁵ Florida Department of Health, Division of Emergency medical Operations, Office of Trauma, see <http://www.doh.state.fl.us/DEMO/Trauma/PDFs/TextEquivforTraumaCentersMap.doc> (last visited March 6, 2010).

fine for failure to stop at a traffic signal be deposited into the Trust Fund.²⁶ DOH distributes money to centers on a quarterly basis²⁷ under a formula established in s. 395.4036, F.S. The formula requires:

- Twenty percent to Centers that have a local funding contribution as of December 31. Distribution is based on a Center's trauma caseload for the most recent calendar year for which data is available.²⁸
- Twenty percent to Centers based on a Center's trauma caseload for the most recent calendar year for which data is available. The determination of caseload volume for distribution of funds is based on DOH's Trauma Registry data²⁹
- Forty percent to Centers based on the severity of a Center's caseload. Severity determination is made by DOH according to the International Classification Injury Severity Scores.³⁰

Verified trauma centers are either subject to audit under s. 215.97, F.S., the Florida Single Audit Act, or, if not subject to audit requirements, must annually attest to DOH that proceeds from distributions under 395.4036, F.S., were used in compliance with that section.³¹ Currently, traffic fine revenues do not directly fund any other type of health care facility or entity.

Effect of Proposed Changes

Mark Wandall Traffic Safety Act, Preemption

The bill creates the "Mark Wandall Traffic Safety Act," expressly preempting to the state regulation of the use of cameras for enforcing the provisions of Chapter 316, Florida Statutes.

The bill defines a traffic infraction detector in s. 316.003, F.S., as a device to record "two or more sequenced photographic or electronic images or streaming video" of vehicles "at the time the vehicle fails to stop behind the stop bar or clearly marked stop line" when facing a steady red light.

The bill allows DHSMV, counties, and municipalities to authorize traffic infraction enforcement officers to issue uniform traffic citations for violations of ss. 316.074(1) and 316.075(1)(c)1., F.S., for a driver's failure to stop at a traffic signal when identified by traffic infraction detectors.

Jurisdiction, Installation, and Awareness

Any traffic infraction detector installed on the highways, roads, and streets must meet requirements established by the FDOT and must be tested at regular intervals according to procedures prescribed by FDOT.

Municipalities may install or authorize installation of traffic infraction detectors on streets and highways in accordance with FDOT standards, and on state roads within the incorporated area when permitted by FDOT. Counties may install or authorize installation of traffic infraction detectors on streets and highways in unincorporated areas of the county in accordance with FDOT standards, and on state roads in unincorporated areas of the county when permitted by FDOT. DHSMV may install or authorize installation of traffic infraction detectors on any state road under the original jurisdiction of FDOT, when permitted by FDOT.

The bill provides a transitional period for those counties and municipalities instituting a traffic infraction detector program on or before October 1, 2010. These counties and municipalities may continue to use equipment acquired under an agreement entered into on or before October, 2011. These counties and

²⁶ s. 316.074(1) and s. 316.075(1)(c)1, F.S.

²⁷ Rule 64J-2.019(2), F.A.C.

²⁸ s. 395.4036(1)(a)1, F.S.

²⁹ s. 395.4036(1)(a)2, F.S.

³⁰ s. 395.4036(1)(a)3, F.S. The International Classification Injury Severity Score (ICISS) is a mathematical ratio used to predict and score patient survival from severe injuries. Rule 64J-2.019, F.A.C., provides for classifications of trauma patients based on the ICISS scoring system.

³¹ s. 395.4036(2), F.S., and Rule 64J-2.019(3), F.A.C.

municipalities are not required to meet the specifications provided by the bill until July 1, 2011 or 180 days after FDOT specifications are issued, whichever is later.

If DHSMV, a county, or a municipality installs a traffic infraction detector at an intersection, the respective governmental entity must notify the public that a traffic infraction device may be in use at that intersection, including specific notification of enforcement of violations concerning right turns. Such signage must meet the specifications for uniform signals and devices adopted by FDOT pursuant to s. 316.0745, F.S.

The bill provides that violations of ss. 316.074(1) and 316.075(1)(c)1., F.S., when the driver fails to stop at a traffic signal prior to turning right or left, where such turns are allowed, may not be enforced by the use of a traffic infraction detector.

Traffic Infraction Enforcement Officers

Traffic infraction enforcement officers must meet training and qualifications standards developed by the Florida Department of Law Enforcement (FDLE). The bill requires officers to successfully complete FDLE's Selective Traffic Enforcement Program, which is currently used to train traffic infraction or parking enforcement officers.

Traffic infraction enforcement officers employed or contracted by a sheriff's office or police department must be physically located in the county of that sheriff's office or police department, and they may not receive a commission from any revenue collected from violations of a traffic infraction detector.

Notifications and Citations

If a traffic infraction detector identifies a person violating ss. 316.074(1) or 316.075(1)(c)1., F.S., the visual information is captured and reviewed by a traffic infraction enforcement officer. The bill provides that a notification must be issued to the registered owner of the vehicle within 30 days of the alleged infraction. The notice must be accompanied by a photograph or other recorded image of the violation, and must include a statement of the vehicle owner's right to review images or video of the violation, and the time, place, and Internet location where the evidence may be reviewed.

If the registered owner of the vehicle does not submit payment within 30 days of receipt of the notification described above, the traffic infraction enforcement officer must issue a traffic citation to the owner. A citation must be mailed by certified mail, and must be issued no later than 60 days after the violation. The citation must also include the photograph and statements described above regarding review of the photographic or video evidence. The report of an officer and images provided by a traffic infraction detector are admissible in court and provide a rebuttable presumption the vehicle was used in a violation.

The bill requires the traffic infraction enforcement officer to provide by electronic transmission a replica of the citation data when issued under s. 316.0083, F.S. to the court having jurisdiction over the alleged offense or its traffic violations bureau within 5 days after the issuance date of the citation to the violator.

Defenses

The registered owner of the motor vehicle is responsible for payment of the fine unless the owner can establish that the vehicle:

- Passed through the intersection to yield the right-of-way to an emergency vehicle or as part of a funeral procession;
- Passed through the intersection at the direction of a law enforcement officer;
- Was, at the time of the violation, in the care, custody, or control of another person;
- Passed through the intersection because the operator, under the circumstances at the time of the infraction, feared for his or her safety; or
- Received a Uniform Traffic Citation (UTC) for the alleged violation issued by a law enforcement officer.

To establish any of these defenses, the owner of the vehicle must furnish an affidavit to the appropriate governmental entity that provides detailed information supporting an exemption as provided above, including relevant documents such as a police report (if the car had been reported stolen) or a copy of the UTC, if issued. If the owner submits an affidavit that another driver was behind the wheel, the affidavit must contain the name, address, date of birth, and if known, the driver's license number, of the driver. A traffic citation may be issued to this person, and the affidavit from the registered owner may be used as evidence in a further proceeding regarding that person's alleged violation of ss. 316.074(1) or 316.075(1)(c)1., F.S. Submission of a false affidavit is a second degree misdemeanor.

If a vehicle is leased, the owner of the leased vehicle is not responsible for paying the citation, nor required to submit an affidavit, if the motor vehicle is registered in the name of the lessee. The bill provides that if a person presents documentation from the appropriate governmental entity that the citation was issued in error, the clerk of course may dismiss the case, and may not charge for such service.

Fines

The bill increases the penalty for violations of ss. 316.074(1) or 316.075(1)(c)1., F.S., when a driver has failed to stop at a traffic signal, from \$125 to \$150.

For violations detected through the use of a traffic infraction detector, the total penalty is \$150, if the penalty is paid within 30 days of notification. However, if the penalty is not paid within 30 days of notification and a traffic citation is issued, the total penalty is \$150, plus court costs and fees of up to \$98, depending on the county where the offense occurs.

If the citation is issued by a traffic infraction enforcement officer, through the use of a traffic infraction detector authorized by DHSMV, the \$150 penalty is distributed as follows:

- \$75 to the General Revenue Fund,
- \$25 to the Department of Health's Administrative Trust Fund, and
- \$50 to the county or municipality in which the violation occurred.

If the citation is issued by a traffic infraction enforcement officer, through the use of a traffic infraction detector authorized by a municipality of county, the \$150 penalty is distributed as follows:

- \$50 to the General Revenue Fund,
- \$25 to the Department of Health's Administrative Trust Fund, and
- \$75 to the county or municipality in which the violation occurred.

If the citation is issued by a law enforcement officer at the intersection, \$125 is distributed as provided in current law,³² and the additional \$25 is directed to the General Revenue Fund.

The bill provides that violations of ss. 316.074(1) or 316.075(1)(c)1., F.S., when a driver has failed to stop at a traffic signal, which are enforced by traffic infraction enforcement officers may not result in points assessed against the operator's driver's license, and may not be used for the purpose of setting motor vehicle insurance rates.

Oversight and Accountability

Beginning in 2012, each county or municipality that operates a traffic infraction detector is required to submit an annual report to DHSMV containing the following:

- the results of using the traffic infraction detector;
- the procedures for enforcement; and
- statistical data and information required by DHSMV.

³² Under current law, \$60 is distributed pursuant to s. 318.21, F.S. which in turn distributes funds to a large number of judicial and healthcare-related subjects, and \$65 is distributed to the Department of Health Administrative Trust Fund.

By December 31, 2012, and annually thereafter, DHSMV must submit a summary report to the Governor and Legislature which must contain:

- a review of the information, described above, received from the counties and municipalities;
- a description of the enhancement of the traffic safety and enforcement programs; and
- recommendations, including any necessary legislation.

The bill provides a severability clause and is effective July 1, 2010.

B. SECTION DIRECTORY:

- Section 1.** Citing the act as the “Mark Wandall Traffic Safety Act.”
- Section 2.** Amending s. 316.003, F.S.; defining the term “traffic infraction detector.”
- Section 3.** Creating s. 316.0076, F.S.; preempting to the state the use of cameras to enforce traffic laws.
- Section 4.** Amending s. 316.008, F.S.; authorizing counties and municipalities to use traffic infraction detectors under certain circumstances.
- Section 5.** Creating s. 316.0083, F.S.; creating the “Mark Wandall Traffic Safety Program,” authorizing the Department of Highway Safety and Motor Vehicles, a county, or a municipality to use traffic infraction detectors.
- Section 6.** Amending s. 316.0745, F.S.; revising a provision that requires certain remotely operated traffic control devices to meet certain specifications.
- Section 7.** Creating s. 316.07456, F.S.; requiring traffic infraction detectors to meet specifications established by the Department of Transportation.
- Section 8.** Creating s. 316.0776, F.S.; providing for the placement and installation of traffic infraction detectors certain roads when permitted by and under the specifications of the department; requiring that if the state, county, or municipality installs a traffic infraction detector at an intersection, the state, county, or municipality shall notify the public that a traffic infraction device may be in use at that intersection; requiring that such signage posted at the intersection meet the specifications for uniform signals and devices adopted by the Department of Transportation; requiring that traffic infraction detectors meet specifications established by the Department of Transportation; requiring a public awareness campaign if such detectors are to be used.
- Section 9.** Amending s. 316.640, F.S., requiring the Department of Transportation to develop training and qualification standards for traffic infraction enforcement officers; authorizing counties and municipalities to use independent contractors as traffic infraction enforcement officers.
- Section 10.** Amending s. 316.650, F.S., requiring a traffic enforcement officer to provide to the court a replica of the citation data by electronic transmission under certain conditions.
- Section 11.** Amending s. 318.14, F.S., providing an exception from provisions requiring a person to sign and accept a citation indicating a promise to appear.
- Section 12.** Amending s. 318.18, F.S., increasing certain fines; providing for distribution of fines;
- Section 13.** Creating s. 321.50, F.S., authorizing the Department of Highway Safety and Motor Vehicles to use traffic infraction detectors under certain circumstances.
- Section 14.** Amending s. 322.27, F.S., providing that no points may be assessed against the driver's license for infractions enforced by a traffic infraction enforcement officer; providing that infractions enforced by a traffic infraction enforcement officer may not be used for purposes of setting motor vehicle insurance rates.
- Section 15.** Providing a severability clause.
- Section 16.** Providing an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that the provisions of this bill will increase state revenues by \$29.2 million (\$19.3 G.R., \$9.9 Trust) in FY 2010-11, increasing to \$94.8 million (\$63.2 G.R., \$31.6 Trust) in FY 2013-14.

2. Expenditures:

See Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments, below. The Revenue Estimating Conference has estimated that the provisions of this bill will increase local government revenues by \$10.1 million in FY 2010-11, increasing to \$65.7 million in FY 2013-14.

2. Expenditures:

See Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent local governments choose to enact ordinances to permit the use of traffic infraction detectors there may be a fiscal impact to the private sector. Traffic infraction detectors will increase the scope of a local government's enforcement of red light violations, therefore increasing the possibility of a motor vehicle owner receiving a ticket for a red light violation. The fine for the ordinance violation, as determined by a traffic infraction detector, is \$150.

There are a number of providers of traffic infraction detectors in Florida. These providers and others may realize a significant positive fiscal impact, depending on how each provider structures its services and negotiates with a given the county or municipality.³³ The fine for a violation of current municipal traffic infraction detector ordinances in Florida ranges from \$50 to \$150. The amount of the fine received by the vendor varies based on negotiations between the vendor and the local government. Two important factors in the negotiation are whether the vendor will bear the up-front installation costs of the equipment, and the eventual ownership of the equipment. In the case where the vendor bears the costs of the initial installation, that vendor may receive a large percentage of the fine during the early years of the contract, in order to recoup its initial outlay. The local government may receive a larger share in later years, and will also ultimately own the equipment outright. Other jurisdictions may elect to negotiate a different arrangement whereby the vendor retains ownership of the equipment, and receives a fixed percentage of the fine over the course of the contract. A third arrangement involves a relatively large flat-fee monthly payment to the vendor, and a larger percentage of the fine retained by the local government.³⁴

During the 2008 Legislative session, a bill similar to CS/CS/HB 325 provided that local governments would receive \$30 per violation instead of the \$75 per violation allowed by CS/CS/HB 325.³⁵ The Florida League of Cities noted at the time that "capital and maintenance costs of these camera systems are significant and there are few, if any, vendors that would be able to provide the systems at this price."³⁶

³³ A 2002 audit by the California State Auditor noted that "[t]he fees and fee structures that local governments pay their vendors differ significantly." The audit indicated that some cities paid anywhere from \$25 to \$106 per citation to the vendor, with larger cities like San Francisco and Los Angeles paying additional flat fees to cover certain costs. The audit suggested that "[t]hese variances may be due to the relative size differences among the programs and each local government's negotiating ability." *Red Light Camera Programs: Although They Have Contributed to a Reduction in Accidents, Operational Weaknesses Exist at the Local Level*, Report No. 2001-125, California State Auditor, Bureau of State Audits, July 2002.

³⁴ The California audit cited in Footnote 19 summarizes the varying business cases as follows: "The advantage of paying a fee for each paid citation is that the local government does not have to pay a large amount all at once. The downside of this method is that increasing profits by maximizing the number of citations issued might become an incentive for vendors—and create a poor perception of the red light camera program by the public. Conversely, paying the vendor a flat fee removes any incentive to maximize the number of citations issued to bolster profits but makes the local government susceptible to the risk that, should the number of citations issued decrease, it would not receive enough revenue to pay the vendor."

³⁵ Committee Substitute for House Bill 351 (2008) by the Economic Expansion & Infrastructure Council and Reagan.

³⁶ *League of Cities, Inc. Legislative Briefs - Traffic Enforcement*, Scott Dudley, March 21, 2008.

FISCAL COMMENTS:

There may be an increase in fine revenue for the local governments that choose to enact ordinances permitting the use of traffic infraction detectors, the amount of which is indeterminate and reliant on driver awareness and future behavior. There may be a decrease in fine revenues to local governments who are now collecting fines from traffic infraction detector ordinances adopted prior to this bill becoming effective.

The bill provides that \$75 of the revenue generated by each fine is retained by the local jurisdiction, when the local jurisdiction has installed or authorized the installation of, traffic infraction detectors. Local governments receive \$50 of fine revenue when DHSMV installs or authorizes installation of traffic infraction detectors on state roads within the county or municipality. As a result, there may be an increase in fine revenue for any local governments that choose to enact ordinances permitting the use of traffic infraction detectors. The amount of revenue is indeterminate, as the number of ordinance violations to be issued is unknown and depends on driver awareness and future behavior.

To the extent local governments choose to enact ordinances to permit the use of traffic infraction detectors they will incur the cost of the acquisition, installation and maintenance of the devices, the amount of which will vary depending on the negotiated agreement between the local government and any private vendor providing the equipment and service. The price of a traffic infraction detector ranges from \$50,000 to \$100,000. There may also be installation, maintenance and monitoring fees, based on the negotiated agreement.

Local court systems may see a caseload increase, in the event that vehicle operators choose to contest tickets as permitted under the bill. This could result in an indeterminate cost to the local court system.

The state will incur administrative expenses as a result of this legislation. The bill requires DHSMV to collect reports from municipalities and to prepare an annual report for the Legislature. The bill also requires FDOT to prepare standards for traffic infraction detectors.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Article VII, section 18, paragraph (b) of the Florida Constitution states that the Legislature must pass by a two-thirds vote any general law that will “reduce the authority that municipalities and counties have to raise revenues in the aggregate....” Paragraph (d) states that laws “creating, modifying, or repealing noncriminal infractions are exempt from the requirements of this section.”

If a municipality enacted a traffic infraction detector ordinance prior to this legislation becoming effective, and if the local ordinance allows the local government to retain a greater portion of the fine than allowed under this bill, then it could be argued that the bill reduces the authority that the municipality has to raise revenues in the aggregate. However, the bill creates a noncriminal infraction which counties and cities may choose to enforce by enacting a local ordinance; therefore the bill is exempt from the mandate provisions.

Also, it is not clear that municipalities and counties have the authority to enforce traffic violations by means of a traffic infraction detector in the absence of legislative authorization. There are pending lawsuits in multiple jurisdictions regarding the legality of municipal ordinances permitting traffic infraction detectors.³⁷

³⁷ “West Palm Beach attorney Jason Weisser [will] sue the city. It would be the lawyer’s ninth such suit against cities throughout Florida using red-light cameras, including Orlando, Miami Gardens and Aventura.” *Bradenton facing red-light camera lawsuit*, Bradenton Herald, August 25, 2009. See also, *Pembroke Pines sued over red light cameras*, Sun-Sentinel, November 14, 2009 (A class-action suit with “roughly two dozen drivers,” also represented by Weisser); *Lawsuit filed against city’s red-light camera program*, Tampa Tribune, Aug. 7, 2009 (driver suing Temple Terrace).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that a portion of the penalties imposed by a DHSMV traffic enforcement officer will be distributed to the county or municipality in which the violation occurred. When a violation occurs within a municipality it also occurs within a county. The bill should further specify which entity receives the distribution in such situations.

Also, the transitional period allows counties and municipalities instituting a program by October 1, 2010 to continue to use equipment acquired under an agreement entered into before October 1, 2011. The October 1, 2011 date seems to conflict with the requirement that programs must meet DOT specifications by July 1, 2011 or 180 days after the specifications are issued, whichever is later.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On January 13, 2010, the Roads, Bridges and Ports Policy Committee favorably adopted a strike-all amendment. The strike-all:

- Increases the amount of the fine from \$150 to \$155;
- Includes "leased" properties of a municipality or county as allowable locations to install traffic infraction detectors;
- Replaces the word "person" with "registered owner," in the appeals provision;
- Clarifies that cities are not responsible for payments to the state when the fine is not actually collected from the motor vehicle owner;
- Removes an explicit exception for medical emergencies, and subsequent language requiring affidavits from health care providers in the event a medical emergency is claimed;
- Modifies the revenue amounts received by certain health care providers, and adds both the "Miami Project to Cure Paralysis," and children's crisis-stabilization units to the groups receiving revenue under the bill;
- Clarifies that reports from local governments to FDOT are due biannually, not annually;
- Clarifies language regarding DOH funds to ensure that funding is available to both trauma center public hospitals and non-trauma center public hospitals; and
- Provides that the healthcare funds in the bill are not subject to s. 215.97, the Florida Single Audit Act, and that DOH, in conjunction with the Agency for Health Care Administration, "shall maximize resources for trauma services whenever possible."

The strike-all was amended to clarify that the ratification and validation in Section 9 applies to traffic infraction detectors 'grandfathered in' by Section 5 of the bill.

The bill as amended was reported favorably as a committee substitute.

On April 14, 2010, the Finance & Tax Council favorably adopted a strike-all amendment, with one amendment to that strike-all amendment. The strike-all amendment:

- Removes the requirement that local jurisdictions enact a traffic infraction detector ordinance, and removes the specifications for such traffic infraction detector ordinances.
- Allows DHSMV, counties, and municipalities to authorize traffic infraction enforcement officers to issue uniform traffic citations for violations of ss. 316.074(1) and 316.075(1)(c)1., F.S., for a driver's failure to stop at a traffic signal when so directed and when identified by traffic infraction detectors.

- Provides a transitional period for those counties and municipalities instituting a traffic infraction detector program on or before July 1, 2010, or entered into an agreement to acquire such equipment on or before July 1, 2011. These counties and municipalities are not required to meet the specifications provided by the bill until July 1, 2011 or 180 days after FDOT specifications are issued, whichever is last.
- Requires signage at intersections using traffic infraction detectors.
- Provides statutory processes regarding required notifications, the issuance of citations to registered owners of motor vehicles, and defenses available to vehicle owners.
- Provides a \$150 fine for any violations of ss. 316.074(1) or 316.075(1)(c)1., F.S., regardless of the method of enforcement, and provides for distribution of the fine to the General Revenue Fund, the Department of Health's Administrative Trust Fund, and the local government in which the traffic infraction detector is located. These distributions vary, based on the entity installing or authorizing the installation of the traffic infraction detector.
- Requires DHSMV, not FDOT, to prepare annual summary reports based on information received from local governments.

The amendment to the strike-all amendment provides that traffic infraction detectors may not be used to enforce violations when the driver is making a right or left turn, where such turns are allowed. This analysis reflects the amendments adopted by the Finance and Tax Council.