Transportation Committee

Tuesday, November 8, 2005
1:15 PM - 3:15 PM
404 HOB

Allan G. Bense
Speaker

Ray Sansom
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Transportation Committee

Start Date and Time:	Tuesday, November 08, 2005 01:15 pm
End Date and Time:	Tuesday, November 08, 2005 03:15 pm
Location:	404 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 23 CS Bicycle Safety by Jordan
HB 121 Road Designations by Bendross-Mindingall
HB 149 DUI Education Courses by Mahon
HB 155 Vehicle Crashes by Ross
HB 179 Road Designations by Hays
HB 201 Nonjudicial Sale of Vessels by Poppell

Workshop on long-range transportation funding issues

NOTICE FINALIZED on 10/28/2005 13:35 by Rousseau.Tiffany

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 23 CS Bicycle Safety
SPONSOR(S): Jordan and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 188

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	7 Y, 0 N, w/CS	Kramer	Kramer
2) Transportation Committee		Thompson J.T.	Miller P.M.
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Under current law bicycle riders or passengers less than sixteen years of age are required to wear a bicycle helmet that meets certain standards. HB 23 will require that bicycle helmets comply with federal safety standards. The use of helmets purchased before October 1, 2006 that comply with current standards will be permitted until January 1, 2010.

Currently every bicycle that is in use between sunset and sunrise must be equipped with a white light visible from at least 500 feet from the front and a lamp and reflector exhibiting a red light visible from 600 feet from the rear. Current law does not specifically allow a law enforcement officer the option of issuing a bicycle safety brochure and a verbal warning to a bicycle rider who violates these lighting provisions. Mirroring the current law relating to bicycle helmets, this bill specifically authorizes verbal warnings and the issuance of safety brochures for violations of bicycle lighting equipment requirements and requires the court to dismiss the charge against a bicycle rider for a first violation relating to bicycle lighting equipment if proof is provided that proper lighting equipment has been installed.

There could be an economic impact on the private sector to the extent that some bicycle riders or passengers may have to replace helmets to comply with the proposed regulation. Passage of this bill may increase the number of warnings issued for bicycle violations concerning reflectors and headlamps, thereby reducing the number of traffic citations issued. To the extent that this occurs, there could be a reduction in revenue collected by the state and local government.

This bill takes effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill will require that bicycle helmets worn by riders and passengers under the age of 16 comply with federal standards.

Promote Personal Responsibility—The bill allows law enforcement officers to issue a bicycle safety brochure and a verbal warning to a bicycle rider who violates s. 316.2065(8) F.S. The court must dismiss the charge against a bicycle rider for a first violation upon proof of purchase and installation of proper lighting equipment.

B. EFFECT OF PROPOSED CHANGES:

Bicycle Helmet Standards

Under current law, a bicycle rider or passenger who is less than 16 years of age must wear a bicycle helmet that is properly fitted and is fastened securely upon the passenger's head by a strap.[1] The helmet must meet the standards of the American National Standards Institute (ANSI Z 90.4 Bicycle Helmet Standards), the standards of the Snell Memorial Foundation (1984 Standard for Protective Headgear for Use in Bicycling), or any other nationally recognized standards for bicycle helmets adopted by the Department of Highway Safety and Motor Vehicles. The term "passenger" includes a child who is riding in a trailer or semitrailer attached to a bicycle.

A law enforcement officer or school crossing guard is specifically authorized to issue a bicycle safety brochure and a verbal warning to a rider or passenger who violates the helmet law.[2] A law enforcement officer is authorized to issue a citation and assess a $15 fine[3], plus applicable court costs and fees.[4] The minimum fine is $40.50. Optional additions to the base can equal up to $24, causing the maximum amount paid for a bicycle infraction to be $64.50 in some counties. An officer may issue a traffic citation for a violation of this provision only if the violation occurs on a bicycle path or road.[5] A court is required to dismiss the charge against a bicycle rider or passenger for a first violation of the provision upon proof of purchase of a bicycle helmet that complies with the law.[6] Further, a court is authorized to waive, reduce or suspend payment of any fine imposed for a violation of the helmet law.[7]

This bill amends bicycle helmet regulations effective October 1, 2006, to require compliance with the federal safety standard for bicycle helmets, contained in 16 C.F.R., part 1203. Helmets purchased prior to October 1, 2006, that meet the current statutory standards may continue to be worn by riders or passengers until January 1, 2010.

Bicycle Lighting

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[1] s. 316.2065(3)(d) F.S.
[2] s. 316.2065(3)(e), F.S.
[3] s. 318.18(1)(b) F.S.
[4] s. 316.2065(3)(e) F.S.
[5] s. 316.2065(20), F.S. A citation may not be issued to a person on private property except any part that is open to the use of the public for purposes of vehicular traffic.
[6] *Id.*
[7] s. 316.2065(17), F.S.

Currently every bicycle in use between sunset and sunrise must be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a lamp and reflector on the rear each exhibiting a red light visible from a distance of 600 feet to the rear.[8] A bicycle or its rider may be equipped with lights or reflectors in addition to those required by law. Violation of bicycle lighting requirements is a non-criminal traffic infraction punishable as a pedestrian violation[9] by a $15 fine, plus applicable court costs and fees.[10] The minimum fine is $40.50. Optional additions to the base fine can equal up to $24, causing the maximum amount paid for a bicycle infraction to be $64.50 in some counties.

In conformity with the helmet law discussed above, this bill would allow law enforcement officers to issue bicycle safety brochures and verbal warnings to bicycle riders who violate bicycle lighting equipment standards. Alternatively, at the discretion of the law enforcement officer a bicycle rider who violates the bicycle lighting equipment standards may be issued a citation and assessed a fine as described above. Also, the bill requires the court to dismiss the charge against a bicycle rider for a first violation of this offense upon proof of purchase and installation of the proper lighting equipment.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.2065, F.S.; revising safety standard requirements for bicycle helmets that must be worn by certain riders and passengers; providing for enforcement of certain bicycle lighting equipment requirements; providing penalties for violations; providing for dismissal of a first offense.

Section 2. This act takes effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See fiscal comments.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See fiscal comments.

2. Expenditures:

   See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

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[8] s. 316.2065(8) F.S.
[9] s. 316.2065(20), F.S.
[10] s. 318.18(1)(b) F.S.

According to information obtained from the Florida Department of Highway Safety and Motor Vehicles, in 2004 there were 10,947 citations issued for violations of s. 316.2065 F.S., which contains the current bicycle regulations. Passage of this bill may increase the number of warnings issued for bicycle violations concerning reflectors and headlamps, thereby reducing the number of traffic citations issued. To the extent that this occurs, there could be a reduction in revenue collected by the state and local government.

The bill will require that by January 1, 2010, all bicycle helmets worn by riders and passengers meet the federal safety standard in addition to the current safety standards. There could be an economic impact on the private sector to the extent that some bicycle riders or passengers may have to replace helmets to comply with the proposed regulation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Committee adopted two amendments to the bill. As filed, the bill provided that helmets purchased prior to October 1, *2005* and meeting current standards, may continue to be worn for a certain length of time. The provision was presumably intended to correspond to the effective date of the bill – October 1, *2006.* The first amendment adopted by the committee corrected this error. The second amendment removed reference to traffic infraction enforcement officers from the bill. Current law already gives these personnel the authority to issue traffic citations. As a result, the reference in the bill was unnecessary.

CHAMBER ACTION

The Criminal Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to bicycle safety; amending s. 316.2065, F.S.; revising safety standard requirements for bicycle helmets that must be worn by certain riders and passengers; providing for enforcement of certain bicycle equipment requirements; providing penalties for violations; providing for dismissal of a first offense; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (3) and subsection (8) of section 316.2065, Florida Statutes, are amended to read:

316.2065 Bicycle regulations.--

(3)

(d) A bicycle rider or passenger who is under 16 years of age must wear a bicycle helmet that is properly fitted and is fastened securely upon the passenger's head by a strap, and that meets the federal safety standard for bicycle helmets, final

24 rule, 16 C.F.R. part 1203. Helmets purchased prior to October 1,
25 2006, and meeting standards of the American National Standards
26 Institute (ANSI Z 90.4 Bicycle Helmet Standards), the standards
27 of the Snell Memorial Foundation (1984 Standard for Protective
28 Headgear for Use in Bicycling), or any other nationally
29 recognized standards for bicycle helmets adopted by the
30 department may continue to be worn by riders or passengers until
31 January 1, 2010. As used in this subsection, the term
32 "passenger" includes a child who is riding in a trailer or
33 semitrailer attached to a bicycle.
34 (8) Every bicycle in use between sunset and sunrise shall
35 be equipped with a lamp on the front exhibiting a white light
36 visible from a distance of at least 500 feet to the front and a
37 lamp and reflector on the rear each exhibiting a red light
38 visible from a distance of 600 feet to the rear. A bicycle or
39 its rider may be equipped with lights or reflectors in addition
40 to those required by this section. Law enforcement officers may
41 issue a bicycle safety brochure and a verbal warning to a
42 bicycle rider who violates this subsection. A bicycle rider who
43 violates this subsection may be issued a citation by a law
44 enforcement officer and assessed a fine for a pedestrian
45 violation, as provided in s. 318.18. The court shall dismiss the
46 charge against a bicycle rider for a first violation of this
47 subsection upon proof of purchase and installation of the proper
48 lighting equipment.
49 Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 121 Road Designations
SPONSOR(S): Bendross-Mindingall
TIED BILLS: **IDEN./SIM. BILLS:** SB 308

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee		Rousseau	Miller
2) Transportation & Economic Development Appropriations Committee			
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

Section 334.071, F.S., provides for legislative designations of transportation facilities for honorary or memorial purposes, or to distinguish a particular facility. The legislative designations do not "officially" change the current names of the facilities, nor does the statute require local governments and private entities to change street signs, mailing addresses, or 911 emergency telephone-number system listings.

HB 121 designates two honorary roads. They are:

- A portion of N.W. 7th Avenue between N.W. 54th Street and N.W. 60th Street in Miami-Dade County is designated as "Osun's Village."
- A portion of N.W. 7th Avenue between N.W. 36th Street and N.W. 79th Street in Miami-Dade County is designated as "African Caribbean Cultural Arts Corridor."

The Florida Department of Transportation (FDOT) is directed to erect suitable markers to denote the honorary designations. The markers will cost an estimated $400 each, so the estimated fiscal impact to FDOT will be $1,600. This does not include maintenance or installation costs.

HB 121 does not create any constitutional or other legal issues. It takes effect July 1, 2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

HB 121 does not implicate any House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation
Section 334.071, F.S., provides for legislative designations of transportation facilities for honorary or memorial purposes, or to distinguish a particular facility. The legislative designations do not "officially" change the current names of the facilities, nor does the statute require local governments and private entities to change street signs, mailing addresses, or 911 emergency telephone-number system listings.

The statute requires FDOT to place a marker at each terminus or intersection of an identified road or bridge, and to erect other markers it deems appropriate for the transportation facility. The statute also provides that a city or county must pass a resolution in support of a particular designation before road markers are erected. Additionally, if the designated road segment extends through multiple cities or counties, a resolution must be passed by each affected local government.

Based on FDOT records, some 1,079 honorary road and bridge designations have been approved since 1922, most of them by the Legislature. Some public roads and bridges have multiple or overlapping designations.

Effect of HB 121
The bill proposes two honorary road designations. They are:

- A portion of N.W. 7th Avenue between N.W. 54th Street and N.W. 60th Street in Miami-Dade County is designated as "Osun's Village." The Osun Village is a cultural, tourism destination, which will serve as a sustainable tool for Afro-centric community and economic development.
- A portion of N.W. 7th Avenue between N.W. 36th Street and N.W. 79th Street in Miami-Dade County is designated as "African Caribbean Cultural Arts Corridor."

The Florida Department of Transportation (FDOT) is directed to erect suitable markers to denote the honorary designations.

This designation will be to honor the OSUN shrine in the Oshogbo-Osun State of Nigeria West Africa. The Osun's Village and African Caribbean Cultural Arts Corridor will revitalize a targeted section of Miami-Dade County to create a vibrant urban center fueled by the arts, culture, international trade and entertainment, and a community and economic development plan for social change. These initiatives tie into the focus areas of Enterprise Florida and Miami-Dade County's International Trade Board, facilitating commercial exchange of products and goods and services between the South Florida Region and West Africa.

C. SECTION DIRECTORY:

Sections 1-2: Designates two honorary roads in Miami-Dade County.

Section 3: Specifies an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   FDOT estimates that the cost to erect suitable road designating markers is approximately $800, for a marker at each end of the designated road area. The total signage cost of HB 121 is $1,600. The expenditure is from the State Transportation Trust Fund. FDOT also is responsible for any future maintenance and replacement cost, which is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

FDOT has sufficient rulemaking authority to implement this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to road designations; designating Osun's
3 Village and African Caribbean Cultural Arts Corridor in
4 Miami-Dade County; directing the Department of
5 Transportation to erect suitable markers; providing an
6 effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Osun's Village designated; Department of
11 Transportation to erect suitable markers.--
12 (1) That portion of N.W. 7th Avenue between N.W. 54th
13 Street and N.W. 60th Street in Miami-Dade County is designated
14 as "Osun's Village."
15 (2) The Department of Transportation is directed to erect
16 suitable markers designating Osun's Village as described in
17 subsection (1).
18 Section 2. African Caribbean Cultural Arts Corridor
19 designated; Department of Transportation to erect suitable
20 markers.--
21 (1) That portion of N.W. 7th Avenue between N.W. 36th
22 Street and N.W. 79th Street in Miami-Dade County is designated
23 as "African Caribbean Cultural Arts Corridor."
24 (2) The Department of Transportation is directed to erect
25 suitable markers designating African Caribbean Cultural Arts
26 Corridor as described in subsection (1).
27 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 149 DUI Education Courses
SPONSOR(S): Mahon
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee		Thompson J.T.	Miller P.M.
2) Criminal Justice Committee			
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

HB 149 requires that DUI education courses be conducted only by certified DUI instructors. The bill calls for face to face instruction and for interaction in the classroom among offenders and instructors. The bill prohibits DUI education courses from being conducted via the Internet, remote electronic technology, home study, distance learning, or any other method in which the instructor and all offenders are not physically present in the same classroom.

DUI programs are provided by private organizations that provide education, evaluation and treatment referral services to DUI offenders as required by court order or by the Department of Highway Safety & Motor Vehicles (DHSMV). The programs are governed by administrative rules which require certain minimum hours of classroom instruction with certified instructors and interactive educational techniques. While DUI program classroom instruction is required under department rules, no specific provision in the Florida Statutes requires the program to be delivered in this manner.

The bill has the potential to impact those providers that would propose to conduct DUI courses via the Internet or by other alternative methods. The bill has no fiscal impact on state or local governments and becomes effective July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government- The bill would prevent private organizations that could potentially offer alternative methods of DUI educational courses from providing such services in the state. However, these alternative methods are not currently allowed by DHSMV rules.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

DUI programs are provided by private organizations that provide education, evaluation, and treatment referral services to DUI offenders as required by court order or by the Department of Highway Safety & Motor Vehicles (DHSMV). The programs are governed by administrative rules which require certain minimum hours of classroom instruction with certified instructors and interactive educational techniques. While DUI program classroom instruction is required under department rules, no specific provision in the Florida Statutes requires the program to be delivered in this manner.

Current law requires that in order to satisfy criteria at minimum, DUI program applicants must have a classroom in each county in the circuit, which is located in a permanent structure that is readily accessible by public transportation, if transportation is available. However, a classroom is not required in any county where the total number of DUI convictions in the most recent calendar year is less than 100.

Chapter 15A-10 of the Florida Administrative Code outlines the standards for DHSMV's DUI program. Currently, the rules require the following for DUI education classes:

- DUI programs are only to employ instructors, Special Supervision Services evaluators, clinical supervisors and evaluators who are certified by DHSMV.
- Each organization conducting a DUI program shall have sufficient classroom space to comfortably accommodate all students with a minimum of twenty (20) square feet of space per student unless otherwise authorized by local officials.
- Courses shall be taught by using primarily interactive educational techniques.

Effect of Proposed Changes

HB 149 incorporates current DUI program standards from the Florida Administrative Code into law. The bill amends s. 322.292, F.S., requiring that DUI education courses be conducted only by certified DUI instructors. The bill requires face-to-face instruction and interaction in the classroom among offenders and instructors. The bill specifically prohibits DUI education courses from being conducted via the Internet, remote electronic technology, home study, distance learning, or any other method in which the instructor and all offenders are not physically present in the same classroom.

The last requirement prohibits DUI courses outside of the traditional classroom setting. No specific language in the rules prohibits DUI education courses from being conducted via the Internet, remote electronic technology, home study, distance learning, or any other method. However, it is implied in the Florida Administrative Code that the only method for DUI education courses will be in a classroom .

[1] [1] See Rule 15A-10.023(1)

C. SECTION DIRECTORY:

Section 1. Creates subsection (4) of s. 322.292, F.S., requiring DUI certified instructors in the classroom and prohibiting alternative methods for DUI education courses.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would prevent private organizations that might specialize in alternative methods of DUI educational courses from providing such services in the state. HB 149 will allow DUI educational courses to be conducted only by organizations that are registered with DHSMV's DUI program and meet its classroom only guidelines.

D. FISCAL COMMENTS:

According to a representative of the Florida Association of DUI Programs, Inc., the fee for Level I DUI program courses (first offense) is $210 and the fee for Level II courses (second offense) is $320.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to DUI education courses; amending s.
3 322.292, F.S.; providing additional requirements for DUI
4 education courses; providing an effective date.
5
6 Be It Enacted by the Legislature of the State of Florida:
7
8 Section 1. Subsection (4) is added to section 322.292,
9 Florida Statutes, to read:
10 322.292 DUI programs supervision; powers and duties of the
11 department.--
12 (4) All DUI education courses must be conducted by a
13 certified DUI instructor in a classroom with face-to-face
14 instruction and provide for interaction in the classroom among
15 offenders and the instructor. DUI education courses may not be
16 conducted via the Internet, remote electronic technology, home
17 study, distance learning, or any other method in which the
18 instructor and all offenders are not physically present in the
19 same classroom.
20 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 155 Vehicle Crashes
SPONSOR(S): Ross and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 276

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee		Thompson J.T.	Miller P.M.
2) Criminal Justice Committee			
3) Justice Appropriations Committee			
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

HB 155 creates the "Justin McWilliams 'Justice For Justin' Act." Currently a driver of a vehicle involved in a crash that results in an injury or death and that occurs on a public road or elsewhere open to public travel, must immediately stop and remain at the scene of the crash to give information and render aid. The bill provides that the driver has this duty regardless of whether the crash occurred on public or on private property. Violations of this provision are punishable as a third degree felony if the crash resulted in an injury and are punishable as a second degree felony if the crash resulted in a death.

The bill extends the duty of a driver of a vehicle involved in a crash to stop and remain at the scene of the crash, from crashes occurring on public roads or other locations open to public travel, to include crashes occurring on private property. It also changes the offense from a second degree felony to a first degree felony when the crash results in a death.

The Criminal Justice Impact Conference has determined that this bill will have an insignificant prison bed impact on the Department of Corrections.

This bill has no significant fiscal impact and will take effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility— The bill extends the duty of a driver of a vehicle involved in a crash to stop and remain at the scene of the crash, from crashes occurring on public roads or other locations open to public travel, to include crashes occurring on private property. It also changes the offense from a second degree felony to a first degree felony when the crash results in a death.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Under s. 316.027, F.S., the driver of a vehicle involved in a crash resulting in an injury of a person must immediately stop the vehicle at the scene of the crash, or as close as possible, and remain at the scene of the crash. The driver is required by s. 316.062, F.S., to give their name, address, vehicle registration number, and, upon request, show their driver's license to any person injured in the crash, to the driver or occupant of a vehicle involved in the crash or person attending any vehicle, or police officer at the scene. The driver is also required to render reasonable assistance to the injured person, including carrying or making arrangements for carrying the injured person to a doctor or hospital for treatment.

Generally, the provisions of chapter 316, the Florida Uniform Traffic Control Law, apply to vehicles, bicycles and pedestrians on all public highways, roads and streets, and wherever vehicles have the right to travel. State law enforcement agencies, county sheriff's offices and city police departments are authorized to enforce the state's traffic laws, (Chapter 316, F.S.), on all public roads, and elsewhere wherever the public has the right to travel by motor vehicle. See ss. 316.072 and 316.640, F.S.

Under current law, violations of s. 316.027, F.S., resulting in injury are punishable as a third degree felony and those resulting in death are punishable as a second degree felony. A third degree felony is punishable by up to five years in prison and a maximum $5,000 fine and a second degree felony is punishable by up to 15 years in prison and a maximum $10,000 fine.[1]

Proposed Changes:

The bill creates the "Justin McWilliams 'Justice for Justin' Act, "[2] extending the duty of a driver of a vehicle involved in a crash to stop and remain at the scene of the crash, from crashes occurring on public roads or other locations open to public travel, to include crashes occurring on private property.

The bill also changes the offense from a second degree felony to a first degree felony when the crash results in a death. As a result, the sanction would be up to 30 years in prison and a maximum fine of $10,000, rather than up to 15 years in prison and a maximum $10,000 fine. The bill would also amend s. 921.0022, F.S., the "Offense Severity Ranking Chart," to provide that failure to stop or leaving the scene of an accident involving death, would result in a first degree felony.

C. SECTION DIRECTORY:

Section 1. Gives the act the name "Justin McWilliams 'Justice For Justin' Act."

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[1] *See* ss. 775.082 and 775.083, Fla. Stat. (2004)

[2] According to newspaper reports, Justin McWilliams, age 20, was struck and killed by a driver on private property on April 7, 2002. The driver was charged with leaving the scene of an accident involving injuries. The case was dismissed by the circuit judge because the incident occurred on private property which was fenced and locked. Orlando Sentinel, March 13, 2004.

Section 2. Amends s. 316.027, F.S., to revise provisions for a driver of a vehicle involved in a crash to stop and remain at the scene of the crash, increasing penalties.

Section 3. Section 3. Amends s. 921.0022, F.S., to revise felony classification in the Criminal Punishment Code offense severity ranking chart for leaving the scene of accidents involving death.

Section 4. Provides that the act will take effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   On April 15, 2005, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a significant direct economic impact on the private sector.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to vehicle crashes; creating the "Justin
3 McWilliams 'Justice For Justin' Act"; amending s. 316.027,
4 F.S.; requiring the driver of a vehicle involved in a
5 crash occurring on public or private property that results
6 in injury of a person to immediately stop the vehicle and
7 remain at the scene; providing that failure to stop the
8 vehicle and remain at the scene by the driver of a vehicle
9 involved in a crash occurring on public or private
10 property that results in the death of a person is a first
11 degree felony; providing penalties; amending s. 921.0022,
12 F.S.; revising felony classification in the Criminal
13 Punishment Code offense severity ranking chart for
14 specified violations; providing an effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. <u>This act may be cited as the "Justin McWilliams</u>
19 <u>'Justice For Justin' Act."</u>
20 Section 2. Subsection (1) of section 316.027, Florida
21 Statutes, is amended to read:
22 316.027 Crash involving death or personal injuries.--
23 (1)(a) The driver of any vehicle involved in a crash
24 <u>occurring on public or private property that results</u> ~~resulting~~
25 in injury of any person must immediately stop the vehicle at the
26 scene of the crash, or as close thereto as possible, and must
27 remain at the scene of the crash until he or she has fulfilled
28 the requirements of s. 316.062. Any person who willfully

29 violates this paragraph commits ~~is guilty of~~ a felony of the
30 third degree, punishable as provided in s. 775.082, s. 775.083,
31 or s. 775.084.
32 (b) The driver of any vehicle involved in a crash
33 occurring on public or private property that results ~~resulting~~
34 in the death of any person must immediately stop the vehicle at
35 the scene of the crash, or as close thereto as possible, and
36 must remain at the scene of the crash until he or she has
37 fulfilled the requirements of s. 316.062. Any person who
38 willfully violates this paragraph commits ~~is guilty of~~ a felony
39 of the first ~~second~~ degree, punishable as provided in s.
40 775.082, s. 775.083, or s. 775.084.
41 Section 3. Paragraph (g) of subsection (3) of section
42 921.0022, Florida Statutes, is amended to read:
43 921.0022 Criminal Punishment Code; offense severity
44 ranking chart.--
45 (3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
46		
		(g) LEVEL 7
47		
316.027(1)(b)	1st ~~2nd~~	Accident involving death, failure to stop; leaving scene.
48		
316.193(3)(c)2.	3rd	DUI resulting in

			serious bodily injury.
49	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
50	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
51	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm,

			permanent disfiguration, permanent disability, or death.
52			
	409.920(2)	3rd	Medicaid provider fraud.
53			
	456.065(2)	3rd	Practicing a health care profession without a license.
54			
	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
55			
	458.327(1)	3rd	Practicing medicine without a license.
56			
	459.013(1)	3rd	Practicing osteopathic medicine without a license.
57			

58	460.411(1)	3rd	Practicing chiropractic medicine without a license.
59	461.012(1)	3rd	Practicing podiatric medicine without a license.
60	462.17	3rd	Practicing naturopathy without a license.
61	463.015(1)	3rd	Practicing optometry without a license.
62	464.016(1)	3rd	Practicing nursing without a license.
63	465.015(2)	3rd	Practicing pharmacy without a license.
64	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
	467.201	3rd	Practicing midwifery

			without a license.
65	468.366	3rd	Delivering respiratory care services without a license.
66	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
67	483.901(9)	3rd	Practicing medical physics without a license.
68	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
69	484.053	3rd	Dispensing hearing aids without a license.
70	494.0018(2)	1st	Conviction of any violation of ss.

			494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
71	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by money transmitter.
72	560.125(5)(a)	3rd	Money transmitter business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
73	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but

			less than $20,000 by financial institution.
74	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
75	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
76	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
77	782.051(3)	2nd	Attempted felony murder of a person by a person other

			than the perpetrator or the perpetrator of an attempted felony.
78	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
79	782.071	2nd	Killing of human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
80	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
81			

	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
82			
	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
83			
	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
84			
	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
85			
	784.048(7)	3rd	Aggravated stalking; violation of court order.
86			
	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
87			
	784.074(1)(a)	1st	Aggravated battery

			on sexually violent predators facility staff.
88	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
89	784.081(1)	1st	Aggravated battery on specified official or employee.
90	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
91	784.083(1)	1st	Aggravated battery on code inspector.
92	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
93			

	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
94			
	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
95			
	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
96			
	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
97			
	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while

			committing or attempting to commit a felony.
98	796.03	2nd	Procuring any person under 16 years for prostitution.
99	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
100	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
101	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
102	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed;

			no assault or battery.
103	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
104	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
105	812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more; property stolen while causing other property damage; 1st degree grand theft.
106	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
107	812.014(2)(b)3.	2nd	Property stolen,

			emergency medical equipment; 2nd degree grand theft.
108	812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
109	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
110	812.131(2)(a)	2nd	Robbery by sudden snatching.
111	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
112	817.234(8)(a)	2nd	Solicitation of motor vehicle

			accident victims with intent to defraud.
113	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
114	817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
115	817.2341(2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
116	825.102(3)(b)	2nd	Neglecting an

			elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
117	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.
118	827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
119	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
120	837.05(2)	3rd	Giving false information about

			alleged capital felony to a law enforcement officer.
121	838.015	2nd	Bribery.
122	838.016	2nd	Unlawful compensation or reward for official behavior.
123	838.021(3)(a)	2nd	Unlawful harm to a public servant.
124	838.22	2nd	Bid tampering.
125	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
126	872.06	2nd	Abuse of a dead human body.
127	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine

			(or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
128	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified

			business site.
129	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
130	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
131	893.135(1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
132	893.135(1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
133	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less

			than 200 grams.
134	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
135	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
136	893.135(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
137	893.135(1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
138	893.135(1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more,

			less than 5 kilograms.
139	893.135(1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
140	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
141	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
142	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure

			to comply with reporting requirements.
143	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
144	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
145	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
146	943.0435(14)	3rd	Sexual offender; failure to report and reregister;

			failure to respond to address verification.
147	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
148	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
149	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
150	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address

verification.

151

152 Section 4. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 179 Road Designations
SPONSOR(S): Hays
TIED BILLS: **IDEN./SIM. BILLS:** SB 254

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee		Rousseau	Miller
2) Transportation & Economic Development Appropriations Committee			
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

Section 334.071, F.S., provides for legislative designations of transportation facilities for honorary or memorial purposes, or to distinguish a particular facility. The legislative designations do not "officially" change the current names of the facilities, nor does the statute require local governments and private entities to change street signs, mailing addresses, or 911 emergency telephone-number system listings.

HB 179 designates the portion of Old U.S. Highway 441 between David Walker Drive and Eudora Road in Lake County as "Leighton Lee Baker Memorial Highway."

The Florida Department of Transportation (FDOT) is directed to erect suitable markers to denote the honorary designation. The markers will cost an estimated $400 each, so the estimated fiscal impact to FDOT will be $800. This does not include maintenance or installation costs.

HB 179 does not create any constitutional or other legal issues. It takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

HB 179 does not implicate any House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation
Section 334.071, F.S., provides for legislative designations of transportation facilities for honorary or memorial purposes, or to distinguish a particular facility. The legislative designations do not "officially" change the current names of the facilities, nor does the statute require local governments and private entities to change street signs, mailing addresses, or 911 emergency telephone-number system listings.

The statute requires FDOT to place a marker at each terminus or intersection of an identified road or bridge, and to erect other markers it deems appropriate for the transportation facility. The statute also provides that a city or county must pass a resolution in support of a particular designation before road markers are erected. Additionally, if the designated road segment extends through multiple cities or counties, a resolution must be passed by each affected local government.

Based on FDOT records, some 1,079 honorary road and bridge designations have been approved since 1922, most of them by the Legislature. Some public roads and bridges have multiple or overlapping designations.

Effect of HB 179
HB 179 designates the portion of Old U.S. Highway 441 between David Walker Drive and Eudora Road in Lake County as "Leighton Lee Baker Memorial Highway."

This designation will be to honor former State Representative Leighton Lee Baker, the late father of State Senator Carey Baker. Leighton Lee Baker served in the Florida House of Representatives as Lake County's first Republican to be elected to the House since the Civil War.

C. SECTION DIRECTORY:

Section 1: Designates Leighton Lee Baker Memorial Highway in Lake County.
Section 2: Specifies an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   FDOT estimates that the cost to erect two suitable road designating markers is approximately $800, this assumes the placement of a marker at each end of the designated road segment. The

expenditure is from the State Transportation Trust Fund. FDOT also is responsible for any future maintenance and replacement cost, which is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

FDOT has sufficient rulemaking authority to implement this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to road designations; designating Leighton
3 Lee Baker Memorial Highway in Lake County; directing the
4 Department of Transportation to erect suitable markers;
5 providing an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Leighton Lee Baker Memorial Highway designated;
10 Department of Transportation to erect suitable markers.--
11 (1) That portion of Old U.S. Highway 441 between David
12 Walker Drive and Eudora Road in Lake County is designated as
13 "Leighton Lee Baker Memorial Highway."
14 (2) The Department of Transportation is directed to erect
15 suitable markers designating Leighton Lee Baker Memorial Highway
16 as described in subsection (1).
17 Section 2. This act shall take effect July 1, 2006.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 201 Nonjudicial Sale of Vessels
SPONSOR(S): Poppell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee		Rousseau TR	Miller P.M.
2) Civil Justice Committee			
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

HB 201 makes revisions to the notification and procedural requirements involving the nonjudicial sale of vessels by marinas. It requires marinas with a possessory lien upon a vessel to undergo certain notification steps in order to satisfy that lien. Furthermore, it requires certain procedures for marinas to abide by in the notification process. The bill specifies the timeframe for sending a notice and shortens the time period vessel owners and lien holders are able to respond to a notice of a nonjudicial sale of a vessel.

The bill primarily benefits marinas with possessory liens on vessels and certain additional lien holders.

The bill appears to have no fiscal impact to state or local governments.

The bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—This bill increases the notification procedure for marinas engaged in nonjudicial sales of vessels

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Current law provides that any vessel held for unpaid costs, storage charges, dockage fees, or failure to pay costs related to removal due to unsanitary condition, may be sold at a nonjudicial sale.[1]
A marina has a possessory lien for storage fees, dockage fees, repairs, improvements, work-related storage charges, expenses necessary for preservation of the vessel, and expenses reasonably incurred in the sale or other disposition of the vessel. The lien attaches on the date the vessel is brought to the marina or first occupies rental space there. Upon default, the marina is required to notify any perfected lien holders.

The marina may satisfy its possessory lien by complying with the following requirements:

• The marina gives written notice to the vessel's owner by personal service or certified mail (presumed delivered when properly deposited with the postal service) to the owner's last known address and by posting notice at the marina and on the vessel. This notice must be given 30 days prior to the sale. The notice must include:

- an itemized statement of the claim containing the amount due at the time of notice and the date that amount became due;
- a description of the vessel;
- a demand for payment;
- a conspicuous statement warning that the vessel will be advertised for sale and sold at a particular time and place; and
- a name, address, and phone number of the marina that the owner may contact to respond.

• If the costs resulting in a lien remain due 120 days after written notice, the marina may advertise the sale of the vessel. The advertisement must be published once a week for 2 weeks in a general circulation newspaper or, if no such newspaper exists, be posted conspicuously in at least 3 locations in the neighborhood surrounding the marina at least 10 days prior to the sale.

• The advertisement must also include a general description of the vessel; the address of the marina and the name of the vessel owner; and the time, place, and manner of the sale, which is to occur no sooner than 15 days after first publication of the advertisement.

• The sale must conform with the notice requirements of this section and be conducted in a "commercially reasonable manner," as that phrase is defined by the Uniform Commercial Code (UCC).

• Prior to the sale, the owner may redeem the vessel by paying the amount required to satisfy the lien and any reasonable expenses incurred. After redemption, the lien holder is not liable to the owner. Unless otherwise provided by the law, a good faith purchaser takes the vessel unencumbered, even if the marina does not comply with the law relating to nonjudicial sale of vessels. However, the vessel is still subject to prior liens perfected under the UCC.

[1] Section 328.17, F.S.

The marina may apply the proceeds derived from the sale toward satisfaction of its lien unless another lien has priority. If the proceeds are subject to liens first in priority, the marina must notify the lien holders. If any proceeds remain after prior liens are satisfied, the marina may satisfy its lien. If any proceeds remain thereafter, the marina must deliver the balance to the previous owner. In the event priority liens exist or a balance remains after satisfaction of the marina's lien, the marina is required to hold the proceeds or balance for 1 year from the date of notification. If the proceeds are not claimed after 1 year, they are deemed abandoned and the marina has no further obligation with regard to payment.

The levy of an attachment on personal property binds the attached property except against pre-existing liens.[2] Successive liens levied against the same property, take precedence in the order in which they were made. A bona fide purchaser who gives valuable consideration in exchange for property without knowledge of an outstanding interest in the property is protected against any claims of prior possessory interest in the property[3].

Effect of Proposed Changes

HB 201 makes revisions to the notification requirements of s. 328.17, F.S., for the nonjudicial sale of vessels by marinas. It allows marinas to place possessory liens on vessels that are in a wrecked, junked, or substantially dismantled condition. The bill will also affect vessels that are docked, grounded, beached or abandoned at a marina without the consent of the marina owner. The owner of such vessels would be liable for expenses incurred for the removal and disposal of the vessel. It requires marinas with a possessory lien upon a vessel to undergo certain notification procedures in order to satisfy the lien.

The bill deletes a provision requiring marina owners to provide notice to lien holders of a vessel under the UCC in case of default. Instead, the bill requires that a marina owner give notice to the vessel owner and each person or entity that:

- Holds a security interest on the vessel as shown in the records of the Department of Highway Safety and Motor Vehicles (DHSMV).
- Holds a preferred ship mortgage or has filed a claim of lien with the United States Coast Guard Vessel Documentation Center.
- Holds a security interest against the vessel under the UCC.
- Has filed a judgment lien certificate in order to perfect a lien against the vessel.

In instances where a vessel displays either foreign country identification or a registration from a state other than Florida, a marina is required to conduct a reasonable lien search of the vessel registration records in the jurisdiction where the vessel is registered in order to determine if there is a lien holder entitled to notice. If the result of the search shows that there is no foreign or non-Florida lien holder, the vessel may be sold or removed and a purchaser of the vessel would not be prohibited from taking the title of the vessel.

A marina with a possessory lien on a vessel, in order to satisfy a lien, can obtain a copy of the ownership documentation for the vessel and trailer from DHSMV or an agency where the vessel is registered; obtain an abstract from the United States Coast Guard for vessels that are documented; conduct a current UCC lien and Florida judgment lien certificate search; comply with the requirements

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[2] Section 76.14, F.S.

[3] 44 Fla. Jur. 2d Real Property Sales and Exchanges, s. 137, 155 (2205).

for a lien search of vessel registration records for vessels either displaying foreign country identification or registration numbers from a state other than Florida.

A written notice has to be made at least 60 days prior to the sale of the vessel. In addition, the lien holder and vessel owner has 60 days to pay the costs giving rise to the lien, including late payment interest, after the written notice is given or the marina may sell the vessel, including its machinery, rigging, and other accessories. The marina owner also has the option of removing the vessel from the marina or the waters of the state at the vessel owner's expense. If the funds recovered from the sale of the vessel are inadequate to cover the expenses incurred by the marina, the amount in excess can be recovered from the owner of the vessel.

This bill allows the marina to provide the purchaser of a vessel through a nonjudicial sale a title subject only to prior liens under state and federal law. However, the owner or holder of any perfected lien who is entitled to possession of the vessel may defray the lien, reasonable expenses and late payment interest incurred in order to redeem and take possession of the vessel. Once payment is received, the marina must return the property to the owner or lien holder making the payment and the marina is released from any liability for the vessel.

C. SECTION DIRECTORY:

Section 1. Amends subsections (4), (5), (7), (10), (11) and (12) of s. 328.17, F.S., relating to the nonjudicial sale of vessels.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill reduces the response time given to lien holders from 120 to 60 days, therefore creating a potential positive impact for lien holders seeking to satisfy their liens by nonjudicial sales. The amount of this impact is unknown

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

HB 201 does not require the exercise of rule-making authority to implement its provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to nonjudicial sale of vessels; amending
3 s. 328.17, F.S.; revising notice requirements of a marina
4 having a possessory lien on a vessel for unpaid costs,
5 charges, or fees prior to nonjudicial sale of the vessel,
6 including expenses for the removal and disposal of certain
7 vessels in a wrecked, junked, or substantially dismantled
8 condition; reducing the time allowed to pay the fees,
9 charges, and costs giving rise to the lien prior to sale
10 of the vessel; revising requirements with respect to
11 perfection of and priority over prior or other liens;
12 providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Subsections (4), (5), (7), (10), (11), and (12)
17 of section 328.17, Florida Statutes, are amended to read:
18 328.17 Nonjudicial sale of vessels.--
19 (4) A marina, as defined in s. 327.02(19), shall have:
20 (a) A possessory lien upon any vessel for storage fees,
21 dockage fees, repairs, improvements, or other work-related
22 storage charges, and for expenses necessary for preservation of
23 the vessel or expenses reasonably incurred in the sale or other
24 disposition of the vessel. The possessory lien shall attach as
25 of the date the vessel is brought to the marina~~,~~ or as of the
26 date the vessel first occupies rental space at the marina
27 facility. ~~However, in the event of default, the marina must give~~
28 ~~notice to persons who hold perfected security interests against~~

29 ~~the vessel under the Uniform Commercial Code in which the owner~~
30 ~~is named as the debtor.~~
31 (b) A possessory lien upon any vessel in a wrecked,
32 junked, or substantially dismantled condition, which has been
33 left docked, grounded, beached, or otherwise abandoned at a
34 marina without consent of the marina owner, for expenses
35 reasonably incurred in the removal and disposal of the vessel.
36 The possessory lien shall attach as of the date the vessel is
37 discovered at the marina facility. If the funds recovered from
38 the sale of such a vessel, or from the scrap or salvage value of
39 such a vessel, are insufficient to cover the expenses reasonably
40 incurred by the marina in removing and disposing of the vessel,
41 all costs in excess of recovery shall be recoverable against the
42 owner of the vessel.
43 (5) A marina's possessory lien may be satisfied as
44 follows:
45 (a)1. The marina shall provide written notice to the
46 vessel's owner, delivered in person or by certified mail to the
47 owner's last known address. The notice shall also be ~~and~~
48 conspicuously posted at the marina and on the vessel.
49 2. In addition to notice provided to the vessel owner
50 under subparagraph 1., the marina shall provide written notice
51 to each person or entity that:
52 a. Holds a security interest on the vessel as shown in the
53 records of the Department of Highway Safety and Motor Vehicles
54 with respect to state-titled vessels.
55 b. Holds a preferred ship mortgage or has filed a claim of
56 lien with the United States Coast Guard Vessel Documentation

57 Center.
58 c. Holds a security interest against the vessel under the
59 Uniform Commercial Code.
60 d. Has perfected a lien against the subject vessel by
61 filing a judgment lien certificate pursuant to ss. 55.201-
62 55.209.
63 3. When a vessel displays a foreign country identification
64 or displays registration numbers from a state other than
65 Florida, the marina shall conduct a reasonable lien search of
66 the vessel registration records in the jurisdiction of registry
67 to determine if there is a lienholder who is entitled to notice
68 pursuant to subparagraph 2. Failure to discover a foreign
69 national or non-Florida United States lienholder after a good
70 faith effort to conduct such a lien search shall not prevent the
71 sale or removal of a vessel from the marina to satisfy the
72 marina's possessory lien or a purchaser, in good faith, from
73 taking title of the vessel, pursuant to subsections (7) and
74 (11).
75 4. The requirements of subparagraph 2. shall be satisfied
76 if the marina:
77 a. Obtains ownership documentation for the vessel and
78 trailer, if applicable, from the Department of Highway Safety
79 and Motor Vehicles or other agency with which the vessel is
80 registered;
81 b. Obtains an abstract from the United States Coast Guard
82 for a vessel that is documented as defined in 46 U.S.C. s.
83 301.01;
84 c. Performs a current Uniform Commercial Code lien search;

85 d. Performs a current Florida judgment lien certificate
86 search; and
87 e. Complies with subparagraph 3. with regard to vessels
88 registered in a foreign country or in a state other than
89 Florida.
90 5. The written notice to the vessel owner and lienholders
91 required by this paragraph shall be made at least 60 days prior
92 to any sale of the vessel under this section ~~recorded lienholder~~
93 ~~of such vessel registered with this state as shown by the~~
94 ~~records of the Department of Highway Safety and Motor Vehicles,~~
95 ~~at least 30 days prior to the proposed sale~~.
96 (b) The notice shall include:
97 1. An itemized statement of the marina's claim, showing
98 the sum due at the time of the notice and the date upon which
99 the sum became due.
100 2. A description of the vessel.
101 3. A demand for payment.
102 4. A conspicuous statement that, unless the claim is paid
103 within the time stated in the notice, the vessel will be
104 advertised for sale or other disposition and will be sold or
105 otherwise disposed of at a specified time and place.
106 5. The name, street address, and telephone number of the
107 marina that the owner may contact to respond to the notice.
108 (7) If the fees, ~~and~~ costs, and late payment interest that
109 give rise to such a lien are due and unpaid 60 ~~120~~ days after
110 the vessel owner and lienholder are ~~is~~ given written notice, the
111 marina may sell the vessel, including its machinery, rigging,
112 and accessories as provided for in subsection (8); or the marina

113 may, at its option, remove the vessel from the marina or from
114 the waters of the state at the owner's expense pursuant to
115 paragraph (4)(b).
116 (10) Before any sale or other disposition of the vessel
117 pursuant to this section, the owner or the lienholder may pay
118 the amount necessary to satisfy the lien and the reasonable
119 expenses and late payment interest incurred under this section
120 and thereby redeem and take possession of the vessel. Upon
121 receipt of such payment, the marina shall return the property to
122 the owner or lienholder making such payment and thereafter shall
123 have no liability to any person with respect to such vessel.
124 (11) Unless otherwise provided by law, a purchaser in good
125 faith of a vessel sold to satisfy a lien provided for in this
126 section takes the property free of any claims other than a prior
127 lien perfected under state or federal law ~~the Uniform Commercial~~
128 ~~Code, despite noncompliance by the marina with the requirements~~
129 ~~of this section~~.
130 (12) In the event of a sale under this section, the marina
131 may satisfy its lien from the proceeds of the sale, provided the
132 marina's lien has priority over all other liens on the vessel
133 ~~other than a prior lien perfected under the Uniform Commercial~~
134 ~~Code~~. The lien rights of secured lienholders ~~are~~ automatically
135 also attach ~~transferred~~ to the remaining proceeds of the sale.
136 The balance, if any, shall be held by the marina for delivery on
137 demand to the owner. A notice of any balance shall be delivered
138 by the marina to the owner in person or by certified mail to the
139 last known address of the owner. If the owner does not claim the
140 balance of the proceeds within 1 year after the date of sale,

141 the proceeds shall be deemed abandoned, and the marina shall
142 have no further obligation with regard to the payment of the
143 balance. In the event that the marina's lien does not have
144 priority over all other liens, the sale proceeds shall be held
145 for the benefit of the holders of those liens having priority. A
146 notice of the amount of the sale proceeds shall be delivered by
147 the marina to the owner or secured lienholder in person or by
148 certified mail to the owner's or the secured lienholder's last
149 known address. If the owner or the secured lienholder does not
150 claim the sale proceeds within 1 year after the date of sale,
151 the proceeds shall be deemed abandoned, and the owner or the
152 secured lienholder shall have no further obligation with regard
153 to the payment of the proceeds.
154 Section 2. This act shall take effect July 1, 2006.