

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** CS/HB 1439 Hillsborough County Public Transportation Commission/Transportation Network Companies

**SPONSOR(S):** Local Government Affairs Subcommittee; Raulerson and Young

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	12 Y, 0 N, As CS	Darden	Miller
2) Economic Affairs Committee	15 Y, 1 N	Johnson	Pitts

### SUMMARY ANALYSIS

The Hillsborough County Public Transportation Commission (PTC) was created by the Legislature in 1983 to regulate the operation of vehicles for-hire in Hillsborough County. Among its many duties, the PTC conducts safety inspections and sets rates, fares, zones, and charges for taxicabs, limousines, vans, wreckers, and basic life support ambulances.

The bill provides a streamlined regulatory framework for the PTC to regulate the operations of transportation network companies (TNC). The bill provides a permitting process for TNCs to operate in Hillsborough County, sets insurance requirements, requires background checks for drivers, and sets other requirements.

The bill is expected to have a positive fiscal impact on Hillsborough County due to an increase in the number of applications for public vehicle driver licenses.

The bill takes effect upon becoming law.

**According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### State Law Concerning Taxi Companies

Chapter 316, F.S., is the Florida Uniform Traffic Control Law, the purpose of which is to make uniform the traffic laws throughout the state.<sup>1</sup> Provisions in Ch. 316, F.S., relate to, but are not limited to, traffic laws, traffic infraction detectors, parking regulations, and driving under the influence.

Currently, most regulation of taxis and limousines is controlled by local governments. Florida law currently provides the following requirements relating to limousines and taxis:

- Taxis and limousines must maintain a motor vehicle liability policy with minimum limits of \$125,000 per person for bodily injury, up to \$250,000 per incident for bodily injury, and \$50,000 for property damage;<sup>2</sup>
- An owner or lessee who is required to maintain insurance under s. 324.021(9)(b), F.S., and who operates at least 300 taxicabs, limousines, jitneys, or any other for-hire passenger vehicles is authorized to fulfill the requirement through self-insurance as provided by s. 324.171, F.S.;<sup>3</sup>
- With respect to workers' compensation, the driver of a taxicab, limousine, or other passenger vehicle-for-hire who operates the vehicles pursuant to a written agreement with a company providing any dispatch, marketing, insurance, communications, or other services and fees or charges pursuant to that agreement are not conditioned upon or expressed as a proportion of the driver's fare revenues is not an employee.<sup>4</sup>
- The child restraint requirements imposed by s. 316.613, F.S., do not apply to a chauffeur-driven taxi, limousine, sedan, van, bus, motor coach, or other passenger vehicle if the operator and the motor vehicle are hired and used for the transportation of persons for compensation;<sup>5</sup> and
- To the extent not inconsistent with general or special law, the legislative and governing body of a county must have the power to carry on county government, including, but not restricted to, the power to license and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county; except that any constitutional charter county as defined in s. 125.011(1), F.S.,<sup>6</sup> must on July 1, 1988, have been authorized to have issued a number of permits to operate taxis which is no less than the ratio of one permit for each 1,000 residents of said county, and any such new permits issued after June 4, 1988, must be issued by lottery among individuals with such experience as a taxi driver as the county may determine.<sup>7</sup>

While the Municipal Home Rule Powers Act<sup>8</sup> does not expressly provide for regulation of taxis and limousines, municipalities have the authority to enact legislation concerning any subject matter upon which the Legislature may act, except:

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<sup>1</sup> Section 316.002, F.S.

<sup>2</sup> Section 324.032(1), F.S.

<sup>3</sup> Section 324.032(2), F.S.

<sup>4</sup> Section 440.02(15)(d)10., F.S.

<sup>5</sup> Section 316.613(6), F.S. The statute provides that it is the parent's or other caregiver's responsibility to meet the child restraint requirements.

<sup>6</sup> Section 125.011(1), F.S., defines "county" as "any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions must include "board of county commissioners" of such county."

<sup>7</sup> Section 125.01(1)(n), F.S.

<sup>8</sup> Ch. 166, F.S.

- The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to art. VIII, s. 2(c), of the Florida Constitution;
- Any subject expressly prohibited by the constitution;
- Any subject expressly preempted to state or county government by the constitution or by general law; and
- Any subject preempted to a county pursuant to a county charter adopted under the authority of art. VIII, ss. 1(g), 3, and 6(e), of the constitution.<sup>9</sup>

Since the regulation of taxis, limousines, and other for-hire vehicles has not been expressly preempted to the state or county government, municipalities may regulate these vehicles under their broad home rule powers.

For-hire vehicle services are undergoing changes with respect to models most often associated with the provision of transportation to individuals, such as by taxi. Technological advances are resulting in new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, e-mail, and text messages. Some states and local governments have taken steps to recognize and regulate companies using these new technologies, which describe themselves as “transportation network companies” (TNCs) and not vehicles for hire. Currently, Florida law does not recognize TNCs, but some local governments are in various stages of imposing regulations on TNCs and the regulations vary by jurisdiction.

### National Criminal Database

A National Criminal Database, or Multi-Jurisdictional Search, is a database of criminal records collected by a commercial entity from a patchwork of state, local, and other criminal records. These resources are generally created by large background screening firms and other data aggregators who have specialized in the collection of criminal data for resale purposes. The information collected by individual background screening firms is unique to the company hosting the database. Although many records are similar, providers use different mixes of sources and methods to match results. No National Criminal Database has all criminal records to date.<sup>10</sup>

### The Dru Sjodin National Sex Offender Public Website (NSOPW)

The Dru Sjodin National Sex Offender Public Website contains public information regarding individuals who are required to register through a State Sex Offender Registry, and consists of the individual registries and public registry websites operated by all 50 States, the District of Columbia, four of the principal U.S. Territories, as well as over 70 federally-recognized Indian Tribes. The NSOPW contains information on those who have committed sexually violent offenses against adults and children, as well as certain sexual contact and other crimes against victims who are minors. Information about individuals who appear on these lists depends on the individual states’ registry requirements. The NSOPW, as well as more detailed databases for law enforcement, are administered through the United States Department of Justice.<sup>11</sup>

### Hillsborough County Public Transportation Commission

The Hillsborough County Public Transportation Commission (PTC) is an independent special district created in 1983.<sup>12</sup> The PTC regulates the operation of vehicles for-hire in Hillsborough County, including taxicabs, limousines, vans, basic life support ambulances, and wrecker services used by both

<sup>9</sup> Section 166.021(3), F.S.

<sup>10</sup> NATIONAL ASSOCIATION OF PROFESSIONAL BACKGROUND SCREENERS (NAPBS), [http://portal.napbs.com/files/public/Consumer\\_education/Resources/standardization\\_of\\_common\\_industry\\_terms.pdf](http://portal.napbs.com/files/public/Consumer_education/Resources/standardization_of_common_industry_terms.pdf) (last visited Jan. 26, 2016).

<sup>11</sup> UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING (SMART), <https://www.nsopw.gov/en/Home/About> (last visited Jan. 26, 2016).

<sup>12</sup> Ch. 2001-299, Laws of Fla., codifying ch. 83-423, Laws of Fla. and subsequent special acts.

public and private entities.<sup>13</sup> The PTC conducts safety inspections, controls the number of taxicab permits issued, and sets rates, fares, zones, and charges for taxicabs and other vehicles for-hire.<sup>14</sup>

Each operator of a vehicle for-hire must receive a certificate from the PTC.<sup>15</sup> The PTC is required to hold a public hearing on granting the certificate and other certificate holders may intervene in the process.<sup>16</sup> When makes its determination on granting the certificate, the PTC considers the adequacy of existing service, the quality of service being offered by the applicant, the type of service the applicant intends to offer, the applicant's ability to manage the number of vehicles allowed under the certificate, as well as personal information about the applicant, such as criminal, traffic, and credit records.<sup>17</sup>

In addition to a certificate, each driver is required to have a public vehicle driver license (PVDL) issued by the PTC.<sup>18</sup> Applicants for a PVDL must submit health information and answer questions about their traffic and criminal records.<sup>19</sup> The PTC may not grant a PVDL to a person currently on probation, who doesn't have a Florida driver's license, or who has less than six months of driving experience.<sup>20</sup> The PTC may reject PVDL applicants who have multiple violations of motor vehicle laws or who have committed a felony, sexual offense, or other crimes involving moral turpitude.<sup>21</sup> A PVDL is good for one year and may be renewed as long the driver has not committed criminal or traffic violations during the license period.<sup>22</sup> A PVDL is revoked upon conviction or a plea of nolo contendere to a felony, sex offense, prostitution, any crime involved in narcotics, and any crime for which the penalty includes revocation of driver's license.<sup>23</sup> The PTC may suspend or revoke the PVDL of a driver who has repeated violated motor vehicle laws, is convicted of reckless driving, fails to report an accident, drives a vehicle known to not be in good order and repair, or who knowing makes a false statement on the PVDL application.<sup>24</sup>

Applicants for a certificate or a PVDL are subject to a background check.<sup>25</sup>

The PTC is governed by a seven member board.<sup>26</sup> The board consists of two members of the Tampa City Council, one member of the City Commission for Plant City, and one member of the Temple Terrace City Council, each selected by their respective governing boards, and three members selected by the board.<sup>27</sup> Members serve two-year terms and receive no compensation.<sup>28</sup>

## **Proposed Changes**

### **Definitions**

The bill both adds and amends definitions in ch. 2001-299, Laws of Fla. These definitions include:

- "Transportation network company" (TNC) is a company which uses a digital network to connect TNC riders to TNC drivers who provide prearranged rides. Companies providing non-emergency medical transportation to individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or an HMO are not included.

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<sup>13</sup> Hillsborough County, Public Transportation Commission, <http://www.hillsboroughcounty.org/ptc> (last visited Jan. 25, 2016).

<sup>14</sup> Ch. 2001-299, s. 5(1)-(2), Laws of Fla.

<sup>15</sup> Ch. 2001-299, s. 7(1), Laws of Fla.

<sup>16</sup> Ch. 2001-299, s. 7(2), Laws of Fla.

<sup>17</sup> Ch. 2001-299, s. 7(2)(c), Laws of Fla.

<sup>18</sup> Ch. 2001-299, s. 8, Laws of Fla.

<sup>19</sup> Ch. 2001-299, s. 8, Laws of Fla.

<sup>20</sup> Ch. 2001-299, s. 8(4), Laws of Fla.

<sup>21</sup> Ch. 2001-299, s. 8(3)(b), Laws of Fla.

<sup>22</sup> Ch. 2001-299, s. 8(5), Laws of Fla.

<sup>23</sup> Ch. 2001-299, s. 8(6)(b), Laws of Fla.

<sup>24</sup> Ch. 2001-299, s. 8(6)(a), Laws of Fla.

<sup>25</sup> Ch. 2008-290, s. 1, Laws of Fla.

<sup>26</sup> Ch. 2001-299, s. 4, Laws of Fla.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

- “Transportation network company driver” is a person who receives connections to potential riders from a TNC in exchange for a fee to the TNC and who use a TNC driver vehicle to offer prearranged rides to riders.
- “Transportation network company driver vehicle” is a vehicle used by a TNC driver in connection with providing TNC service and that is owned, leased, or otherwise authorized for use by the TNC and is not a taxi, jitney, limousine, or any other type of public vehicle.
- “Digital network” is any online-enabled application, software, website or other digital system that enables or facilitates the prearrangement of rides with TNC drivers.
- “Prearranged ride” is any transportation arranged through a digital network controlled by a TNC starting from when a rider requests a ride through when the rider exits the vehicle. Prearranged rides do not include using a taxi, jitney, limousine, street hail service, carpool, or any other type of service in which the driver receives a fee that does not exceed the individual’s costs associated with providing the ride.
- “Transportation network company rider” is a person who uses a TNC digital network to connect with a TNC driver to provide transportation services in a TNC driver vehicle.
- “Trip” is the duration of TNC service from the point where the passenger enters the TNC driver vehicle to the point the passenger exits the vehicle.
- “Certificate” now includes the written authority granted by the PTC to the operator of a TNC.
- “Type of service” now includes TNC services.
- “Certified automobile mechanic” is an automobile mechanic certified by the National Association of Certified Mechanics or the National Institute for Automotive Service Excellence.
- “Liability insurance” includes insurance against legal liability for bodily injury, instead of only those incidents which result in disability.
- “Taximeter” does not include a mobile phone mounted in TNC driver vehicle.
- “Limousine” and “taxicab” do not include TNC driver vehicles and low speed vehicles operating within the Downtown Tampa Special District.
- “Public vehicle” does not include TNC driver vehicles, low speed vehicles operating within the Downtown Tampa Special District, sightseeing cars/buses, streetcars, and motor buses.
- “For hire” includes TNC driver vehicles and low speed vehicles operating within the Downtown Tampa Special District.

### TNC Regulation

The bill authorizes the PTC to regulate the operation of TNCs in Hillsborough County, in accordance with the section added to the PTC’s charter by the bill.

The bill establishes a separate permitting system for TNCs. A TNC must apply to the PTC for a certificate, which the PTC must issue if the TNC pays an application fee of \$5,000 and shows proof of:

- Insurance meeting the requirements of the bill;
- Maintenance of a resident agent for service of process in Florida; and
- Registration to do business in Florida.

The bill requires a TNC driver, or a TNC on the driver’s behalf, to maintain primary automobile insurance recognizing that the driver is a TNC driver or uses a TNC driver vehicle to transport riders for compensation. The insurance must cover the driver at all times, including when the driver is engaged in a prearranged ride. The level of required coverage depends on the driver’s network status, as follows:

	Available to receive TNC requests, but not engaged in prearranged ride	During prearranged ride
Death and bodily injury per person	\$50,000	\$1,000,000
Death and bodily injury per incident	\$100,000	\$1,000,000
Property damage	\$25,000	\$50,000

The insurance policy must meet the minimum requirements of ss. 627.730-627.7405, F.S. during either period. These requirements may be met by a policy held by the TNC driver, the TNC, or any combination of the two. If the driver's policy lapses or does not provide the required coverage, the TNC is required to maintain insurance covering the full amount and requiring the insurer to defend the claim. Coverage under a policy maintained by the TNC may not depend on a personal automobile liability insurance policy first denying the claim.

The automobile insurance required by this section, notwithstanding any other provisions of law, may be purchased from an insurer authorized to do business in the state or placed with a surplus lines insurer eligible under the Surplus Lines Law.<sup>29</sup> Insurance satisfying the requirements of the bill is deemed to also satisfy the financial responsibility requirements for motor vehicles under ch. 324, F.S.

Before a driver may accept requests for prearranged rides on a TNC's digital network, the TNC must disclose, in writing, the insurance coverage and limit for each coverage the TNC provides for the driver using a TNC vehicle in connection with the TNC's digital network. The TNC must also disclose in writing that the driver's personal automobile policy may not provide coverage while the driver is logged into the TNC's digital network and is available to receive transportation requests or is engaged in TNC service.

Insurers are authorized to exclude from coverage any loss or injury that occurs while a TNC driver is logged into a TNC's digital network or while the driver is engaged in a prearranged ride. A TNC driver may be excluded in these circumstances notwithstanding any financial responsibility requirement under ch. 324, F.S. Insurers who exclude TNC drivers during these periods do not have a duty to defend or indemnify an excluded claim and have a right of contribution against other insurers that provide automobile insurance to the same driver if the insurer defends or indemnifies an excluded claim.

This right to exclude applies to any coverage, including but not limited to:

- Liability coverage for bodily injury and property damage;
- Personal injury protection coverage under s. 627.736, F.S.;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage; and
- Collision physical damage coverage.

A TNC driver is required to carry proof of insurance meeting the legal requirements at all times while use a TNC driver vehicle in connection with the TNC's digital network. The bill requires a TNC driver involved in an accident to provide insurance information and, upon request, disclose if the driver was logged into a TNC's digital network, to the other parties in the accident, insurance carriers, and investigating police officers.

The bill requires a TNC to cooperate in the insurer's claims investigation, including providing information about:

<sup>29</sup> Sections 626.913-626.937, F.S.

- The precise times the driver logged on and off the TNC's digital network during the twelve-hour period immediately before and after the accident; and
- A clear description of the coverage, any exclusions, and limitations provided under any automobile insurance maintained under this section.

The bill requires a TNC, before allowing a driver on its digital platform and at least once a year thereafter, to:

- Require the driver to submit an application containing the driver's address, date of birth, driver license number, driving history, motor vehicle registration, automobile liability insurance, and other information required by the company;
- Conduct, or have a third party conduct, a background check on the driver, including a Multi-State/Multi-Jurisdiction Criminal Records Locator, or similar commercial database with validation, and the Dru Sjodin National Sex Offender Public Website; and
- Obtain and review a driving history research report for the applicant.

A TNC must prohibit a driver from its digital network if the above checks reveal:

- The driver has had more than three moving violations or has been convicted of fleeing or attempting to elude a law enforcement officer, reckless driving, or driving with a suspended or revoked license in the preceding three-year period;
- The driver has been convicted of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage or theft, acts of violence, or acts of terror in the preceding seven-year period;
- The driver is a match in the Dru Sjodin National Sex Offender Public Website;
- The driver does not possess a valid driver license;
- The driver does not provide proof of registration for the vehicle used to provide TNC service;
- The driver does not provide proof of automobile liability insurance for the vehicle used to provide TNC service; or
- The driver is less than 19 years of age.

The bill also requires a TNC driver vehicle, within sixty days after beginning service, to be inspected by a certified automobile mechanic operating in Florida. The inspection shall verify a checklist of items to ensure safe operating conditions and a copy of the inspection form must be provided to the TNC within the sixty day time frame.

The bill prohibits TNCs from discriminating against drivers and passengers on the basis of race, color, national origin, religious belief or affiliation, sex, disability, age, or sexual orientation. The bill requires TNCs to adopt a policy to assist drivers who believe they have a negative rating from a passenger for one of these reasons. Drivers must comply with the non-discrimination policy and must comply with applicable laws relating to the accommodation of service animals. A TNC may not impose additional charges for providing service to persons with physical disabilities because of those disabilities.

The bill prohibits TNC drivers from accepting rides other than ones arranged through a digital network, soliciting or accepting street hails, or soliciting or accepting cash payments from passengers.

The bill requires payments for TNC service to be made electronically through the company's digital network. The TNC must disclose the fare calculation method on its website or software application and given passengers the option to view an estimated fare before the passenger enters the driver's vehicle. The TNC must provide an electronic receipt within a reasonable time period. The receipt must include the origin and destination of the trip, the total time and distance of the trip, and an itemization of the total fare paid.

The bill requires the TNC service's website or software application to display a picture of the driver and the license plate number of the vehicle used to provide TNC service.

The bill requires TNCs to maintain records relating to TNC service as required by local, state, and federal laws.

The bill allows the PTC to request records necessary for investigating any violation of this section. The TNC is required to make the requested records available at a mutually agreeable location in the county. The PTC is also authorized to conduct an annual inspection of a TNCs records to ensure compliance with this section. The annual inspection shall be an audit, and not a comprehensive review.

The bill amends the requirement for safety and equipment marks and identifiers of public vehicles to exclude TNC driver vehicles.

The bill provides that the new section concerning TNCs shall be the exclusive expression of the PTC's authority over TNCs.

The bill provides that a TNC driver and vehicle authorized to operate in another jurisdiction of the state is authorized to operate in Hillsborough County.

The bill exempts handicab operators from the public convenience and necessity requirements that apply to other public vehicles. The PTC may establish reasonable financial, equipment, and safety requirements by rule.

**According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.**

B. SECTION DIRECTORY:

- Section 1: Amends s. 3, ch. 2001-299, Laws of Fla., providing definitions for the PTC's charter.
- Section 2: Amends s. 5, ch. 2001-299, Laws of Fla., authorizing the PTC to adopt rules concerning safety and equipment requirements for all public vehicles.
- Section 3: Amends s. 7, ch. 2001-299, Laws of Fla., exempting transportation network companies and transportation network company drivers from the certificate requirements of the section.
- Section 4: Amends s. 9, ch. 2001-299, Laws of Fla., concerning safety and equipment marks and identification for public vehicles
- Section 5: Creates s. 10, ch. 2001-299, Laws of Fla., concerning transportation network companies.
- Section 6: Provides that the act shall take effect upon becoming law.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? December 24, 2015

WHERE? *The Tampa Tribune*, a daily newspaper published in Hillsborough County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 339-341 of the bill require a TNC driver engaged in a prearranged ride to carry primary automobile liability insurance of at least \$1 million for death and bodily injury, but does not specify if this amount is per person, per incident, or both. Lines 330-331, requiring a TNC driver to carry primary automobile liability insurance while connected to the TNC's digital network, but not engaged in a prearranged ride, provides separate levels of coverage for "per person" and "per incident."

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Local Government Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment exempts handicab operators from the public convenience and necessity requirements that apply to other public vehicles. The amendment allows the PTC to establish reasonable financial, equipment, and safety requirements by rule.

This analysis is drawn to the bill as amended.