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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
TRANSPORTATION
ANALYSIS**

BILL #: HB 249
RELATING TO: Transportation
SPONSOR(S): Representative(s) Gardiner

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) TRANSPORTATION YEAS 13 NAYS 0
- (2) CRIME PREVENTION, CORRECTIONS & SAFETY
- (3) FISCAL POLICY & RESOURCES
- (4) READY INFRASTRUCTURE COUNCIL
- (5)

I. SUMMARY:

This bill addresses a number of highway safety and motor vehicles issues. Many of the provisions in the bill are related to programs administered by the Department of Highway Safety and Motor Vehicles (DHSMV). Included are provisions that deal with:

- Traffic Control – The bill authorizes certain vehicles of the Department of Health, like other “authorized emergency vehicles,” to use flashing red lights when responding to an emergency. The bill clarifies existing law to provide that the penalty for allowing a vehicle load to escape onto the highway is a moving violation;
- Motor Vehicle Titles and Registration – The bill revises the definition of “major component parts” to provide specificity regarding the disposition of salvage and rebuilt vehicles. Also, the bill authorizes DHSMV to affix a decal to rebuilt vehicles to identify the vehicles as being rebuilt from parts, and provides that removal of the decal is a third-degree felony. The bill provides that it is illegal to transfer a motor vehicle title unless the purchaser’s name appears on the certificate, and a person who knowingly or willfully violates this provision with an intent to commit fraud commits a first-degree misdemeanor;
- Electronic Transfer of Funds – The bill provides that applicable fees and charges collected by county tax collectors must be electronically transferred to DHSMV within five days from the close of the business day in which the tax collector receives the funds; and
- Motor Vehicles Dealers and Manufacturers – The bill amends provisions relating to the suspension or revocation of a motor vehicle dealer license.

This bill is expected to have a negligible fiscal impact on state and local governments. For more detail see the FISCAL COMMENTS section.

On December 18, 2001, the Committee on Transportation adopted four amendments to the bill. The bill was reported favorably as amended, and the amendments are traveling with the bill. For description of the amendments, see the AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES section.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less Government

Although the bill creates an additional optional process by which certain homeowners' associations can acquire control and ownership of roads from a county, it also provides for new requirements that must be complied with, subject to criminal penalties, in the transfer of motor vehicle titles. In addition, the bill also authorizes law enforcement and DHSMV to inspect the records of towing and storage companies to enforce new requirements regarding certificates of destruction.

Individual Freedom

The bill restricts the number of times a person may re-assign a certificate of destruction. Under current law, a person who owns a totaled motor vehicle for which a certificate of destruction has been issued can transfer that certificate an unlimited number of times before the vehicle must be disassembled or destroyed. The bill limits the number of re-assignments allowed to two. In addition, the bill requires that in the casual sale of a motor vehicle, the purchaser's name must appear on the certificate of title when it is transferred. This requirement does not exist under current law. Both the buyer and seller may be subject to criminal liability for violation of this provision.

B. PRESENT SITUATION:

Because of the comprehensive nature of the changes contained in this bill, the present situation relating to each issue is set out in the Section-by-Section portion of this analysis.

C. EFFECT OF PROPOSED CHANGES:

Because of the comprehensive nature of the changes contained in this bill, the proposed changes relating to each issue is set out in the Section-by-Section portion of this analysis.

D. SECTION-BY-SECTION ANALYSIS:

Sections 1 & 2. Traffic Control Jurisdiction/Abandonment of Roads.

Current Situation:

Under current law, county commissioners are invested with the general superintendence and control of county roads. They may establish new roads, change and discontinue old roads, and keep the roads in good repair in the manner provided by law. In addition, general law authorizes county commissioners to vacate, abandon, discontinue or close any existing public or private roadway that is under the county's control after notice and a public hearing.

In the event that a county commission closes or abandons any county controlled road, or renounces any claims to land recorded as such a road, it is required to cancel any public easements and free the title of appurtenant owners. Where the property interest in the road space had been vested in the county, that interest will be surrendered to the abutting property owners. Under this process for abandonment of county controlled roads, each property owner abutting the roadway becomes a partial owner of the road, and centralized control or responsibility for the road no longer exists.

In addition, counties have original traffic control jurisdiction over all streets and local highways not controlled by state or municipal governments. This jurisdiction gives the counties the authority to place and maintain any traffic control devices they deem necessary to carry out the provisions of the State Uniform Traffic Control laws. The county may exercise jurisdiction over private roads and limited access roads of special districts if a written agreement has been reached that provides for indemnification, reimbursement for traffic control and enforcement costs, and for costs of liability insurance.

According to proponents, some subdivisions that conveyed platted roads to their counties, for public use and maintenance, have expressed an interest in becoming gated communities, and have sought a standardized process for re-acquiring those roads that will place ownership and control of the roads in the association rather than each property owner individually. Such a process would eliminate the need for many transactions between the association and each individual member-owner following abandonment by a county.

Effect of Proposed Changes:

The bill creates s. 316.00825, F.S., providing for an optional method of conveyance of roads and rights of way to a homeowner's association in the event a county chooses to abandon any road abutting the property of residents of a subdivision. The bill also provides that a homeowners association taking over ownership and control of such roads shall have traffic control jurisdiction over the roads unless an agreement stating otherwise has been entered into with the county.

Such a conveyance may only occur if:

- i. The homeowner's association has requested the abandonment and conveyance in writing for the purpose of converting the subdivision into a gated community;
- ii. At least four-fifths (80 percent) of the subdivision's recorded property owners consent in writing;
- iii. The homeowner's association is an active non-profit corporation and is also a "homeowner's association" as defined in statute with the power to levy and collect assessments for routine and periodic major maintenance and operation of street lighting, drainage, sidewalks, and pavement in the subdivision;
- iv. The homeowner's association has executed the necessary instruments, provided assurance of funding, and satisfied other conditions imposed by the county with respect to the ongoing operation, maintenance, and repair, and the periodic reconstruction or replacement of the roads, drainage, street lighting, and sidewalks in the subdivision;
- v. The homeowner's association assumes traffic control jurisdiction over the roads within the subdivision/gated community or enters an agreement with the county to maintain traffic control jurisdiction.

Upon abandonment of the roads, rights-of-way, and drainage facilities and conveyance to the homeowner's association, the association will hold them in trust for the benefit of the property owners, and will operate and maintain them.

Section 3. Loads on Vehicles.

Section 316.520, F.S., currently provides that failure to prevent the load on a vehicle from escaping is a traffic infraction. The last time this section was amended by the Legislature it was amended twice in the same bill, with one reference to this infraction being a moving violation and another reference to the infraction being a non-moving violation. The bill amends this section to clarify that these infractions are moving violations.

Sections 4, 5, 7 & 9. Component Parts/Rebuilt Vehicles.

Current Situation:

Current law requires that a salvage motor vehicle dealer who purchases materials or major component parts from salvaged motor vehicles must document the purchase. In addition, all motor vehicles that are declared to be salvage and are then rebuilt must be inspected by DHSMV to assure the identity of the vehicle. This essentially involves identifying all major component parts that were replaced or repaired on the vehicle.

Current law also provides that it is illegal to knowingly sell or exchange a rebuilt vehicle until DHSMV has stamped on the vehicle title certificate words stating that the vehicle has been rebuilt, assembled from parts, is a combined vehicle, or is a kit car, glider kit, replica, or flood vehicle, unless application has been made for vehicle title reflecting the vehicle's correct status. A "combined" vehicle is one assembled from two motor vehicles not previously branded unrebuildable, and a vehicle "assembled from parts" is one built from parts of new or used cars.

When a salvage motor vehicle dealer takes possession of a motor vehicle, the vehicle must be accompanied by a properly endorsed certificate of title, salvage certificate, or certificate of destruction. In the event that the certificate has already been surrendered to DHSMV, the vehicle must be accompanied by a notarized affidavit signed by the owner stating that title has been returned to the State of Florida. It is a third-degree felony to deliberately falsify such an affidavit. No penalty currently exists for salvage dealers who encourage owners to falsely sign these affidavits.

Any owner of a vehicle deemed a salvage vehicle must forward the vehicle title to DHSMV for processing within 72 hours of the vehicle being deemed salvage. However, If an insurance company pays money as compensation for the total loss of a vehicle, it must obtain the certificate of title and forward it to DHSMV within 72 hours of obtaining it. According to DHSMV, self-insured companies may read current law as not requiring them to forward the title for processing when they own a salvage vehicle, and they may simply rebuild the vehicle and return it to the road.

Current law also prohibits the removal of manufacturer's vehicle identification number (VIN) plates, but does not prohibit the removal of those assigned by DHSMV. DHSMV assigns the plates for kit cars and other similar vehicles which do not bear a manufacturer's VIN plate.

Effect of Proposed Changes:

The bill amends ss. 319.001 and 319.30, F.S., to include details about major component parts of motor vehicles to provide guidance regarding the disposition of salvage and rebuilt motor vehicles. This will help to identify rebuilt vehicles before they are titled to ensure clear ownership and also to ensure that such vehicles are not rebuilt with stolen parts. The bill also amends s. 319.14, F.S., to authorize DHSMV to affix a decal to rebuilt vehicles to identify the vehicle as being rebuilt from parts, and to provide that removal of the decal is a third degree felony.

In addition, the bill deletes references to the word "combined" from s. 319.14, F.S. According to DHSMV, a separate classification for "combined vehicles" is unnecessary because that type of vehicle is subsumed within the class of vehicles known as vehicles assembled from parts. The term, "combined from parts" is also clarified to include those vehicles which have been assembled from parts of new or used motor vehicles.

The bill also makes it a third-degree felony for any salvage motor vehicle dealer to have a person falsely sign an affidavit that a vehicle title has been surrendered to DHSMV. In addition, the bill clarifies that a self-insured person (the term "person" includes a corporation) must forward title to DHSMV within 72 hours of its vehicle becoming salvage.

The bill prohibits the removal, sale or exchange, manufacture or counterfeiting of state assigned VIN plates, and clarifies that VIN plates may be removed from vehicles for which a certificate of destruction has been obtained. It is not unlawful to remove such plates in the course of performing repairs on a vehicle

Section 6. Transfer of Title.

Current Situation:

A purchaser of a motor vehicle or mobile home cannot obtain marketable title until he or she is issued a certificate of title. The law ceases to recognize the seller as owner or co-owner when the title is properly endorsed and delivered to the purchaser or DHSMV. In the case of a private or casual sale (a sale between persons not licensed as dealers or insurers), the state will not transfer title unless the name of the seller is shown as the owner on the face of the title. In addition, the state will not transfer title unless the sales price is entered in the appropriate place on the face of the certificate.

Thus, when a motor vehicle is sold in a bona fide casual sale, the certificate of title is endorsed by the seller and the sales price is entered on the face of the certificate. The certificate is then submitted to the tax collector or DHSMV for transfer with an application for a new certificate of title and remittance of sales tax. A new certificate of title is then issued to the purchaser named in the application. This process allows both for recording of ownership of the motor vehicle and provides an opportunity for sales tax to be assessed on the purchase.

However, since there is no requirement that the transferred title in a casual sale contain the name of the purchaser, it is DHSMV's contention that a motor vehicle could be sold in private or casual sales more than once before a new certificate of title is issued to the ultimate purchaser. In such a case, it is difficult or impossible to enforce remittance of sales tax owed on the intervening transactions. Also, when the ownership chain is broken like this, it is difficult for DHSMV to address the illegal practice of "curb-stoning" – or engaging in unlicensed dealership of motor vehicles.

In addition, once a title certificate is endorsed and the sales price is entered on its face, any bearer of that title certificate other than the seller may submit the certificate for transfer and receive a new certificate of title for the vehicle.

Effect of Proposed Changes:

The bill makes it a first-degree misdemeanor, punishable by up to one year in jail and fines of up to \$1,000, for a buyer or seller of a motor vehicle to knowingly and willfully, with the intent to commit fraud, transfer the vehicle's title without the purchaser's name appearing on it.

This change is designed primarily to allow DHSMV to "attack the inventory" of curb-stoners by tracing additional documented links in the chain of ownership.

Sections 8, 10 & 13. Tax Collectors/Electronic Transfer of Funds.

Current Situation:

County tax collectors collect motor vehicle and vessel titling and registration fees paid to the state (DHSMV). Under s. 116.01, F.S., state and county officers who collect funds on behalf of the state are required to deposit them directly into the account of the State Treasury no later than 7 working days from the close of the week in which the officer received the funds. Currently, however, tax collectors pay the sums collected for titling and registration to DHSMV, which then pays them to the Treasury. Tax collectors make payments to DHSMV by check, wire transfer, or electronic funds transfer.

Currently, funds collected by tax collectors on behalf of the Department of Revenue are remitted by electronic funds transfer.

Effect of Proposed Changes

The bill requires that motor vehicle and vessel titling and registration fee monies collected by tax collectors be paid to into the State Treasury by electronic funds transfer, and that notwithstanding s. 116.01, F.S., payment to the Treasury be made no later than 5 working days after the close of the business day in which the tax collector received the funds.

According to DHSMV, the bill improves the state's cash management efficiency. Although quicker payments into the State Treasury may shorten the amount of time tax collectors can collect interest on the funds, and lengthen the amount of time the state can collect interest, DHSMV estimates that there will be negligible fiscal impact on either party because titling and registration fees are already being paid to the state within the time frame required by the bill.

Section 11. Motor Vehicle Dealers/Denial, Suspension or Revocation of License.

Current Situation:

Current law provides a number of conditions by which licensed motor vehicle, mobile home and RV dealers must abide. Violation of these conditions may result in an administrative action by DHSMV against a dealer denying, suspending or revoking the license. However, DHSMV cannot take such administrative action against a dealer for wrongdoing unless the dealer's proscribed actions occur with sufficient frequency to establish a pattern of wrongdoing.

Proscribed infractions include behaviors as benign as requiring a customer to finance a purchase with a particular financial institution, and as egregious as fraud.

Effect of Proposed Changes:

The bill deletes the requirement that a dealer's actions must occur with sufficient frequency so as to establish a pattern of wrongdoing before administrative action may be taken. The change would make a single occurrence of a proscribed act sufficient grounds for DHSMV to deny, suspend or revoke a dealer's license.

Section 12. Motor Vehicle Dealers and Manufacturers/Definitions.

Current Situation:

For the purposes of the laws regulating the licensing of motor vehicle dealers and manufacturers, the term "motor vehicle" is defined to include new automobiles, motorcycles, or trucks that have not been sold to a consumer or that have been only been leased (so long as disclosure is made in writing to the subsequent purchaser).

Effect of Proposed Changes:

The bill amends the definition of "motor vehicle" to include new heavy trucks and buses. According to DHSMV, this change is needed to reflect the changing driving habits of the public, which include the use of larger vehicles as personal vehicles.

Section 14. Recovery Liens, Towing or Storing Vehicles and Undocumented Vessels/Reassignment of Certificates of Destruction.

Current Situation:

Businesses that recover, tow or store vehicles and vessels, and that take possession of a vehicle or vessel and sell it at auction for salvage, are required to apply for a certificate of destruction. That certificate of destruction is re-assignable, and in lieu of a certificate of title, accompanies the vehicle or vessel when it is sold. DHSMV is not currently authorized to inspect the records of towing and recovery businesses to ensure that they comply with the legal requirements concerning certificates of destruction. Since these certificates are re-assignable an unlimited number of times, vehicles and vessels that should be destroyed sometimes survive after multiple sales and re-assignment of certificates.

Effect of Proposed Changes:

The bill limits the number of times a certificate of destruction can re-assigned to two before dismantling or destruction of the vehicle or vessel is required. The bill also allows law enforcement officers and employees of DHSMV to inspect records of towing, recovery, and storage businesses to ensure compliance with the laws pertaining to certificates of destruction. Failure to maintain the required records would be a first-degree misdemeanor punishable by up to one year in jail and a fine of up to \$1,000.

Sections 15 & 16. Technical Changes

The bill amends two cross-references which will change as a result of other changes made in this bill.

Section 17. Effective Date

The bill takes effect upon becoming law.

III. **FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

A. **FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

None.

B. **FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill provides that certain fees and charges (titling and registration) collected by county tax collectors must be transferred to DHSMV within five days from the close of the business day in which the tax collector received the funds. Applicable funds must be transferred electronically to DHSMV. This will enable DHSMV to distribute funds to various payees more quickly, as well as earn more interest income from the earlier investment of those funds. However, according to DHSMV, tax collectors already transfer these funds within the timeframe contemplated by the bill, so any increased interest earnings are likely to be minimal. In addition, because funds collected by tax collectors on behalf of the Department of Revenue must be transferred electronically, tax collectors currently have the capability to comply with this provision.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require cities or counties to expend funds or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On December 18, 2001, the Committee on Transportation adopted four amendments to this bill.

Amendment 1. Adds a new subsection to s. 316.061, F.S., authorizing employees and agents of law enforcement, the Department of Transportation, or an expressway authority to remove broken down or crashed vehicles and their debris from the roadway when a crash only involves property damage. This amendment also limits the liability of persons who move such a vehicle or debris.

Amendment 2. Adds a new paragraph to s. 318.18(3), F.S., doubling the fines for speeding in a toll collection zone. The fines cannot be doubled unless a DOT approved sign has been installed warning speeders than fines will be doubled.

Amendment 3. Deletes the provision in the bill which includes heavy trucks and buses among those vehicles defined as "motor vehicles" in s. 320.60, F.S.

Amendment 4. Provides that a homeowners' association that assumes control of county roads after the neighborhood is converted into limited access community must assume responsibility for all traffic control devices on those roads unless an agreement is made between the association and the county.

The bill was then reported favorably as amended, with the amendments traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:

Staff Director:

William C. Garner

Phillip B. Miller