

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 357 Photographic Enforcement of School Zone Speed Limits

SPONSOR(S): Duran and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	16 Y, 0 N	Mathews	Hall
2) Tourism, Infrastructure & Energy Subcommittee			
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Section 316.1895, F.S., authorizes the Department of Transportation to adopt a uniform system of traffic and pedestrian control devices for use on streets and highways surrounding schools. Such devices may be used to establish school zone speed limits. Section 316.1895(10), F.S., prohibits a driver from driving in a designated school zone at a speed greater than the posted school speed zone limit. A law enforcement officer (LEO) may issue a citation for a moving violation to a person who violates a school zone speed limit. Such a violation carries twice the civil penalty normally imposed for speeding.

Traditionally, a LEO who witnesses a traffic violation issues the driver a citation. However, Florida permits the use of electronic traffic infraction detectors to enforce red light violations, including violations for illegal right turns. Currently, Florida law does not authorize the use of electronic traffic infraction detectors for use in a school speed zone.

HB 357 creates s. 316.1896, F.S., to authorize the governing body of a county or municipality to contract with a vendor to install cameras to enforce school zone speed limits by recording photographs. Under the bill, the registered owner of a vehicle that is recorded violating the school zone speed limit by more than 10 mph is subject to a \$132 civil penalty for a non-moving violation and the fine must be dispersed to specific state and local funds.

The bill establishes citation procedures for a violation of the school zone speed limit. The law enforcement agency authorized to enforce the school zone speed limit, or an authorized agent, must send a notice of violation (NOV) which provides evidence of the violation and information informing the vehicle owner of the associated penalty and right to contest the violation. Liability for a violation is determined by a preponderance of the evidence and the bill specifies that a photograph is prima facie evidence of a violation. Such prima facie evidence may be overcome by proof that the vehicle was reported stolen prior to the violation.

The vehicle owner may pay the civil penalty or contest the violation. If, within 30 days after the NOV is mailed, no action is taken, the law enforcement agency or agent must send a final notice informing the registered owner that a failure to pay the penalty will result in a referral to the Department of Highway Safety and Motor Vehicles (DHSMV). When a violation is referred to DHSMV, the owner may not renew his or her vehicle registration or transfer the title of the vehicle to another person in the state until the civil penalty is paid.

The bill may have a positive indeterminate impact on state and local government by increasing enforcement of school speed zones and the collection of associated penalties, portions of which are remitted to the General Revenue Fund and to counties, municipalities, and school districts.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

School zone speed limits increase student and pedestrian safety near schools during high pedestrian traffic times, particularly during arrival and departure from school. Section 316.1895(1)(a), F.S., authorizes the Department of Transportation (DOT) to adopt a uniform system of traffic and pedestrian control devices for use on streets and highways surrounding schools. Such devices may be used to establish school zone speed limits to protect children and pedestrians during high-traffic times. DOT and each county and municipality are responsible for installing and maintaining such devices.¹ DOT must maintain a school zone located on a state-maintained primary or secondary road.² A county is responsible for maintaining any school zone located outside of a municipality and on a county road.³ A municipality is responsible for maintaining any school zone located within the municipality.⁴

A school zone speed limit may be set by DOT, the county, or the municipality but may not be less than 15 miles per hour or more than 20 miles per hour in an urbanized area.⁵ A school zone speed limit may only be in force 30 minutes before, during, and 30 minutes after the periods of time when students are arriving at or leaving school.⁶ Automatic traffic control devices may be utilized to control vehicle and pedestrian traffic in a school zone.⁷ Section 316.1895(10), F.S., prohibits a driver from driving in a designated school zone at a speed greater than the posted school zone speed limit. A violation of a school zone speed limit is cited as a moving violation. A moving violation for unlawful speed in a school zone carries the following fines:

Speed Exceeding the Limit By	Fine
1-9 mph	\$50
10-14 mph	\$200
15-19 mph	\$300
20-29 mph	\$350
30+ mph	\$500 ⁸

Currently, the law enforcement agency with jurisdiction over the school speed zone may enforce the speed limit and issue citations for violations.

Traffic Infraction Detectors

In 2010, the Florida Legislature enacted s. 316.0776, F.S., which authorized the Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities to issue a traffic citation for a driver's failure to stop at a traffic signal when such violation was identified by a traffic infraction detector or "red light camera."⁹ The law expressly preempts to the state regulation of the use of cameras for enforcing the provisions of ch. 316, F.S.¹⁰

A municipality may install or authorize the installation of traffic infraction detectors on streets and highways in accordance with DOT standards, and on state roads within the incorporated area when

¹ S. 316.1895(1)(b), F.S.

² S. 316.1895(3)(a), F.S. Nothing prohibits DOT from entering into an agreement with a county or a municipality whereby the local governmental entity would maintain such school zones.

³ S. 316.1895(3)(b), F.S.

⁴ S. 316.1895(3)(c), F.S.

⁵ S. 316.1895(5), F.S.

⁶ *Id.*

⁷ S. 316.1895(8), F.S.

⁸ S. 318.18(3)(c), F.S.

⁹ See generally s. 316.0083, F.S.

¹⁰ S. 316.0076, F.S.

permitted by DOT.¹¹ A county may install or authorize installation of traffic infraction detectors on streets and highways in unincorporated areas of the county in accordance with DOT standards, and on state roads in unincorporated areas of the county when permitted by DOT.¹² The DHSMV may install or authorize installation of traffic infraction detectors on any state road under the original jurisdiction of DOT, when permitted by DOT.¹³

If the DHSMV, a county, or a municipality installs a traffic infraction detector at an intersection, the respective governmental entity must install signage notifying the public that a traffic infraction device may be in use at that intersection, including specific notification of enforcement of violations concerning right turns.¹⁴ Such signage must meet the specifications for uniform signals and devices adopted by DOT under s. 316.0745, F.S.¹⁵

Traffic Infraction Detector Litigation

In 2018, the Florida Supreme Court held that the review of red light camera images authorized by Florida law allows a city's vendor, as its agent, to review and sort red light camera images to forward to a LEO when:

- The vendor's decisions are essentially ministerial and non-discretionary in that such decisions are strictly circumscribed by the contract language, guidelines promulgated by the city, and actual practices;
- Such ministerial decisions are additionally restricted by a broad policy that requires the vendor to automatically forward "close calls" to law enforcement for review;
- The LEO, not the vendor, makes the actual decision whether probable cause exists and whether a notice and citation should be issued; and
- The LEO's decision that probable cause exists and that the citation should be issued are supported by the responsible LEO's full, professional review which does not merely acquiesce to any decision by the vendor.¹⁶

As such, s. 316.0083(1), F.S., authorizes a local government to contract with a third-party vendor to review and sort information and images from red light cameras before sending that information to a trained LEO. The LEO then reviews the information and determines whether probable cause exists and a citation should be issued.

Effect of Proposed Changes

HB 357 creates s. 316.1896, F.S., to authorize a county or municipality to contract with a vendor to install cameras to enforce school zone speed limits within the county or municipality by recording photographic images. The bill does not specify whether the cameras will continue to operate outside of the specified school zone speed enforcement window.

Under the bill, a person recorded violating a school zone speed limit may be cited under s. 316.1895(5), F.S., which authorizes a civil penalty. The registered owner of a vehicle that is photographed violating a school speed zone by more than 10 mph is subject to a civil penalty of \$132. Under the bill, the civil penalty must be distributed in the following manner:

¹¹ Ss. 316.008(8), F.S. and 316.0776(1), F.S.

¹² *Id.*

¹³ S. 321.50, F.S.

¹⁴ S. 316.0776(2), F.S.

¹⁵ *Id.*

¹⁶ *Jimenez v. State*, 246 So. 3d 219 (Fla. 2018).

Allocation Destination	Portion of Penalty
General Revenue Fund	\$65
Governing body of the county or municipality where the violation occurred to fund law enforcement and public safety initiatives	\$59
Florida Department of Law Enforcement Criminal Justice Standards and Training Fund	\$4
School district in which the violation occurred to fund school security initiatives or teacher salaries	\$2
Specialty-licensed children's hospitals that are certified as Level II pediatric trauma centers but not certified as Level II adult trauma centers	\$2

A violation recorded by the camera is not considered a moving violation for the purpose of assessing points on the driver's license. The violation is noncriminal and may not be made a part of the owner's driving record or used for any purpose related to motor vehicle insurance coverage.

The bill requires a 30-day grace period in a location where cameras are newly installed in a school zone. Within the first 30 days after a camera is installed in a school speed zone, a driver who violates s. 316.1895(10), F.S., must be issued a warning and is not subject to the civil penalty.

For a violation occurring after the initial 30-day grace period, a law enforcement agency authorized to enforce the school zone speed limit or its authorized agent must mail the registered owner of the vehicle a notice of violation (NOV) via first-class mail within 60 days of the violation. The NOV must include:

- A photograph recorded by the camera showing the vehicle involved in the violation;
- A citation for the violation, including the:
 - Date, time, and location of the alleged violation;
 - Maximum speed at which the vehicle was traveling at the time the photograph was recorded; and
 - Maximum speed authorized in the school zone;
- The amount of the civil penalty imposed and the date by which the penalty must be paid¹⁷;
- A copy of a certificate sworn to or affirmed by a LEO employed by a law enforcement agency authorized to enforce the school zone speed limit stating that, based upon an inspection of recorded images, the vehicle violated the school zone speed limit;
- A statement of inference that the registered vehicle owner recorded was the driver at the time of the violation and the means by which the owner may rebut the inference;
- Information advising the owner of the manner in which he or she may contest liability through an administrative hearing;
- A warning that failure to pay the civil penalty or contest liability within 30 days after the NOV is mailed waives the person's right to contest liability; and
- A website address where the person may access and view recorded photographs showing the vehicle involved in the violation and duplicate information provided in the NOV.

Under the bill, such a NOV provided to the vehicle's owner by first-class mail is sufficient notice and no other notice is required.

Liability for a school speed zone violation must be determined based upon a preponderance of the evidence. A photograph produced by a camera in a school zone constitutes evidence of the violation and copy of the LEO's sworn certificate is prima facie evidence of the facts contained in the NOV. The photograph and proof of ownership of the vehicle at the time of the violation permits the trier of fact to make an inference that the vehicle owner was driving the vehicle at the time of the violation. A vehicle owner may rebut the inference by showing that the vehicle had been reported to law enforcement as stolen prior to the violation.

¹⁷ The penalty must be paid no later than 30 days after the notice is mailed.

If the vehicle owner does not contest the violation or pay the civil penalty within 30 days after the NOV is mailed, the law enforcement agency or an authorized agent must mail a final notice of the unpaid civil penalty to the vehicle owner via registered mail. The final notice must inform the owner that he or she has 30 days to pay the civil penalty before a referral is made to the DHSMV.

If a referral is made to the DHSMV, the vehicle owner is prohibited from renewing the vehicle's registration or transferring the title to another person within the state until the penalty is paid. A referral sent to the DHSMV must include:

- Any information known or available to the referring law enforcement agency concerning the vehicle's license plate number, year of registration, and registered owner information;
- The date of the violation;
- The dates on which the required NOV and final notice were mailed; and
- The seal, logo, emblem, or electronic seal of the law enforcement agency.

The DHSMV must enter the referral into the motor vehicle database within five days after receipt and mail the registered owner a notice, by first-class mail, stating that:

- The registration of the vehicle involved in the violation cannot be renewed within the state;
- The title of the vehicle involved cannot be transferred within the state;
- Such penalties are being imposed due to failure to pay the civil penalty for a violation of s. 316.1895(10), F.S.; and
- The procedure for removing such penalties.

The DHSMV must remove the penalties upon receiving proof that the vehicle owner has paid the civil penalty.

The bill specifies that photographic enforcement is supplemental to existing enforcement measures and does not prevent or prohibit a LEO from enforcing school zone speed limits. If a LEO issues a driver a citation or a notice to appear for violating a school speed zone, the driver may not also be subject to a civil penalty for the same violation captured by photographic enforcement.

The bill does not include a requirement for posting a warning that the school zone speed limit is being enforced by a camera or cameras

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Creates s. 316.1896, F.S., relating to school speed zones; photographic enforcement; penalties.

Section 2: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a positive fiscal impact on state government revenues by increasing enforcement of school speed zone limits resulting in more fines being remitted to the General Revenue Fund.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a positive fiscal impact on local governments by increasing enforcement of school speed zone limits resulting in more fines being remitted to the county or municipality and school district where the violation occurred.

2. Expenditures:

The bill may have a negative fiscal impact on local governments due to the cost to install and maintain the photographic enforcement cameras in school zones but such expenditures may be offset by the fines collected for violations under the bill.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES