

2021 Regular Session

HOUSE BILL NO. 701 (Substitute for House Bill 636 by Representative Pierre)

BY REPRESENTATIVE PIERRE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

HIGHWAYS: Provides relative to the Department of Transportation and Development's authority over high-occupancy vehicle lanes on state highways

1 AN ACT

2 To enact R.S. 32:57.3 and R.S. 47:820.5.9, relative to the Department of Transportation and
3 Development's authority over high-occupancy vehicle lanes on state highways; to
4 establish a high-occupancy vehicle; to provide for violations; to provide for
5 definitions; to provide for an effective date; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 32:57.3 is hereby enacted to read as follows:

8 §57.3. Failure to respond to an HOV violation

9 A.(1) When the office of motor vehicles receives notice from the Department
10 of Transportation and Development to not renew or reissue the driver's license or
11 vehicle registration of a frequent violator as provided in R.S. 47:820.5.9(J)(2), the
12 office of motor vehicles shall issue a notice to the violator at the address listed on the
13 violator's driver's license, unless a more current address is on file, that shall identify
14 the vehicle or vehicles subject to HOV violations by vehicle identification number
15 and the assigned license plate number. The notice shall also advise the registered
16 owner that his registration privileges and driver's license will be blocked against
17 renewal or reissuance, including any request for a duplicate registration or driver's
18 license. The office of motor vehicles shall obtain a certificate of mailing at the time
19 the notice is mailed to the frequent violator.

1 (2) The notice shall also state that the person shall pay a reinstatement fee to
2 the office of motor vehicles in addition to providing proof of compliance from the
3 Department of Transportation and Development to remove the block against renewal
4 or reissuance, including any request for a duplicate registration or driver's license.

5 (3) The reinstatement fee due under this Section shall be one hundred dollars.

6 B. The Department of Transportation and Development shall provide the
7 complete record on all violations of the frequent violator including all notices,
8 evidence, or other records used in determining the violation or conducting any
9 hearing or appeal.

10 Section 2. R.S. 47:820.5.9 is hereby enacted to read as follows:

11 §820.5.9. High-occupancy vehicle (HOV) lane violations

12 A. The secretary of the Department of Transportation and Development is
13 authorized to maintain the peace and accomplish the orderly handling of the
14 establishment of high-occupancy vehicle (HOV) lanes, subject to the provisions of
15 this Section.

16 B. Terms as defined in R.S. 48:345 and R.S. 32:1 shall retain their
17 definitions, unless such term or terms are specifically defined in this Subsection. As
18 used in this Section, unless the context indicates otherwise, the following terms shall
19 have the following meanings:

20 (1) "Department" means the Department of Transportation and
21 Development.

22 (2) "Electronic mail" means a message, file, or other information that is
23 transmitted through a local, regional, or global computer network.

24 (3) "Electronic mail address" means a destination, commonly expressed as
25 a string of characters, to which electronic mail may be sent or delivered.

26 (4) "HOV monitoring system" means equipment installed for use with a
27 designated HOV lane to automatically produce records for use in enforcing the
28 provisions of this Section, such as video recordings, photographs, or other electronic
29 data sufficient to establish the existence of an HOV violation and identifying

1 information for the motor vehicle involved.

2 (5) "HOV violation" means use of an HOV lane in a manner not authorized
3 by this Section or any regulation promulgated pursuant to this Section.

4 (6) "Registered owner" means a person in whose name a motor vehicle is
5 registered under the law of a jurisdiction, including a person issued a dealer or
6 transporter registration plate or a lessor of motor vehicles for public lease.

7 (7) "Qualified HOV" means an HOV motorcycle that meets all requirements
8 for use of a designated HOV lane.

9 C. Any travel lane designated as an HOV lane shall be for the exclusive use
10 of qualified HOVs.

11 D. The department may establish permitting requirements for motor vehicles
12 on one or more designated HOV lanes, including registration of the HOV with the
13 department, prior to using an HOV lane. A motor vehicle that has not fulfilled
14 applicable permitting requirements established by the department shall not be
15 considered a qualified HOV.

16 E. Where a record generated by an HOV monitoring system shows an HOV
17 violation by a motor vehicle, the vehicle's registered owner shall be liable to make
18 payment to the department of the applicable penalty and administrative fee of
19 twenty-five dollars to recover the cost of collecting the penalty subject to the
20 provisions of this Section.

21 F. The penalty for an HOV violation shall be a fine of not more than one
22 hundred dollars. The department may establish increasing penalties for multiple
23 HOV violations, but in no instance shall any penalty for a single HOV violation
24 imposed pursuant to this Section exceed one hundred dollars.

25 G. The ownership status of the motor vehicle is prima facie evidence of
26 liability. However, the registered owner may rebut the prima facie evidence by
27 providing proof that the vehicle was sold, or otherwise transferred prior to the HOV
28 violation, by providing a copy of a police report indicating the motor vehicle was
29 stolen prior to the HOV violation, or other evidence sufficient to rebut the prima

1 facie evidence.

2 H. For the purpose of educating the public and promoting proper use of HOV
3 lanes, the department shall promulgate rules and regulations governing the issuance
4 of warning letters in lieu of HOV violation notices in appropriate circumstances not
5 involving frequent violators. Warning letters shall provide the information required
6 for HOV violation notices, but shall not result in the assessment of penalties or fees
7 against the registered owner.

8 I. The following procedures shall apply to the collection of penalties,
9 administrative fees, and late charges assessed pursuant to this Section:

10 (1) The department shall send notice of an HOV violation by first-class mail
11 to the registered owner of the motor vehicle at the address shown on the records of
12 the Department of Public Safety and Corrections, office of motor vehicles, or such
13 other address as may be provided by the owner or determined through other reliable
14 means. The department may aggregate multiple HOV violations in one HOV
15 violation notice. A manual or automatic record of the mailing prepared in the
16 ordinary course of business of the department is prima facie evidence of the mailing
17 of the notice.

18 (2) The HOV violation notice shall include the name and address of the
19 person alleged to be liable as a registered owner for the HOV violation, the amount
20 of the penalty to be paid, identifying information for the motor vehicle involved, the
21 date and approximate time of the HOV violation, the administrative fees due, an
22 electronic mail address and physical or post office box mailing address to which an
23 appeal may be sent, and any other information as the department may deem
24 appropriate.

25 (3) The violation notice shall also include a warning that the registered
26 owner must either pay the penalty and administrative fees specified in the notice or
27 appeal the HOV violation by making a request for a hearing to the department within
28 thirty days after issuance and describe the means and content of the response for
29 payment or appeal. The HOV violation notice shall also include a statement

1 notifying the registered owner that he may waive his right to a hearing by notifying
2 the department that he is waiving this right and appealing the HOV violation by
3 request for a written disposition. The failure of the registered owner to appeal the
4 violation in one of the manners provided and within the delays allowed shall be
5 deemed to be an admission of liability and a waiver of available defenses.

6 (4) Within thirty calendar days after the date of issuance of the HOV
7 violation notice, the registered owner to whom the HOV violation notice is issued
8 must either pay the penalties and administrative fees or appeal the HOV violation as
9 provided by this Section.

10 (5) The registered owner may, without waiving judicial review, appeal an
11 HOV violation by notifying the department in writing, by either regular mail or
12 electronic mail, that he is waiving the right to a hearing and requesting a review and
13 written disposition of the HOV violation from a department violation clerk by
14 regular mail or electronic mail.

15 (a) This appeal shall contain a signed statement from the registered owner
16 explaining the basis for the appeal. The signed statement shall be accompanied by
17 signed statements from witnesses, police officers, government officials, or other
18 relevant parties or photographs, diagrams, maps, or other relevant documents
19 submitted by the registered owner.

20 (b) Statements or materials sent to a violation clerk for review shall have
21 attached to them the name, address, and electronic mail address of the registered
22 owner as well as the number of the HOV violation notice and the date of the HOV
23 violation. All information submitted by the registered owner shall become part of
24 the violation record.

25 (c) The violation clerk shall, within sixty days of receipt of such material,
26 review the material and dismiss or uphold the HOV violation and notify the
27 registered owner of the disposition of the HOV violation in writing by regular mail
28 or electronic mail. If the appeal by request for written disposition is denied, the
29 violation clerk shall explain the reasons for the determination.

1 (d) The violation clerk shall have the authority to waive the administrative
2 fee, in whole or in part, for good cause shown.

3 (6) A registered owner that is issued an HOV violation notice may make a
4 written statement for an appeal hearing before an agent designated by the
5 department. The violation clerk shall, within thirty days of receipt of a request for
6 an appeal, notify the registered owner in writing by first-class mail of the date, time,
7 and place of the hearing.

8 (a) The hearing shall be informal and may be conducted by telephone. The
9 rules of evidence and the Administrative Procedure Act shall not apply. The
10 decision of the agent shall be final, subject to judicial review. The parties to the
11 appeal hearing shall be notified, in person or by regular mail or electronic mail, of
12 the decision following the hearing.

13 (b) Each written appeal decision shall contain a statement of reasons for the
14 decision, including a determination of each issue of fact necessary to the decision.
15 Failure to appear at the date, time, and place specified on the hearing notice shall
16 automatically result in denial of the appeal.

17 (7) Electronic mail sent by the registered owner to the address provided in
18 the HOV violation notice shall be presumptive evidence of receipt by the
19 department. Electronic mail sent by the department to the address provided by the
20 registered owner shall be presumptive evidence of receipt by the registered owner.

21 J.(1) The department may impose charges and sanctions against a registered
22 owner for late payment, failure to pay, or otherwise failing to respond to an HOV
23 violation notice as follows:

24 (a) A registered owner who fails to submit payment or otherwise respond to
25 an HOV violation notice as provided by in this Section within thirty calendar days
26 after the date of the issuance of the HOV violation notice may incur a late charge of
27 five dollars to cover additional costs of collection of the penalty.

28 (b) If the registered owner fails to submit payment or otherwise respond to
29 an HOV violation notice as provided by this Section within sixty calendar days after

1 the date of issuance of the violation notice, the department may pursue civil action
2 against the registered owner as it deems appropriate to collect the penalties and
3 administrative fees assessed in the HOV violation notice. The violation clerk shall
4 notify the registered owner by first-class mail of this delinquency and consequences
5 of the delinquency.

6 (2)(a) In addition to the procedures described above, the department shall
7 promulgate rules and regulations for the identification of motor vehicles that
8 frequently engage in HOV violations and for providing notice to registered owners
9 of motor vehicles meeting such criteria as established by the department. A
10 registered owner's appeal of his classification as a frequent violator shall be
11 conducted in the same manner as an appeal of an HOV violation, but the provisions
12 of the Administrative Procedure Act shall not apply in regards to notice of the
13 hearing decision, any request for rehearing, and any petition for judicial review. Any
14 registered owner of a motor vehicle classified by the department as a frequent
15 violator who fails to submit payment or otherwise respond to an HOV violation
16 notice as provided by this Section, within sixty calendar days after the date of
17 issuance of the notice of classification as a frequent violator is issued, shall be
18 prohibited from any renewal or reissuance of his driver's license and the vehicle's
19 registration until after all matters regarding HOV violations have been disposed of
20 in accordance with law.

21 (b) The violation clerk shall notify the office of motor vehicles of the
22 registered owner's delinquency and status as a frequent violator. Upon notice from
23 a violation clerk, the office of motor vehicles shall block the renewal or reissuance,
24 including any duplicates, of the violator's driver's license and vehicle registration
25 pursuant to R.S. 32:57.3.

26 (3) A video recording, photograph, or other electronic data produced by an
27 HOV monitoring system shall be admissible in a proceeding to collect a penalty,
28 administrative fee, or other charge of the department for an HOV violation.

29 (4) An original or facsimile of a certificate, sworn to or affirmed by an agent

1 of the department that specifies that an HOV violation has occurred and is based
2 upon a personal inspection of a video recording, photograph, or other electronic data
3 produced by an HOV monitoring system, as defined in this Section, is prima facie
4 evidence of the facts contained in the certificate.

5 (5) Notwithstanding any other provision of law to the contrary, a video
6 recording, photograph, or other electronic data prepared for enforcement of HOV
7 lane requirements shall be exclusively for the use of the department and the office
8 of motor vehicles in the discharge of their duties under this Section.

9 K. The department shall from time to time designate one or more violation
10 clerks and agents to perform the functions specified in this Section at the discretion
11 of the department and for such time as shall be necessary. The department shall
12 supervise and coordinate the processing of an HOV violation notice in accordance
13 with this Section. The department may hire or designate such personnel and
14 organize such sections as the department may deem necessary, or contract for such
15 services, in order to carry out the provisions of this Section. Hearing agents and
16 violation clerks shall have the authority to waive late fees, in whole or in part, in
17 accordance with standards established by the department.

18 L. The provisions of this Section are intended to supplement the laws
19 governing motor vehicles and traffic regulation appearing in Title 32 of the
20 Louisiana Revised Statutes of 1950, and nothing contained in this Section shall be
21 construed as precluding any police officer from enforcing these laws within a
22 designated HOV lane. It shall be a defense to enforcement by the department
23 pursuant to this Section that the registered owner of the motor vehicle received a
24 citation from a law enforcement officer for the same conduct that resulted in an HOV
25 violation.

26 Section 3. This Act shall become effective upon signature by the governor or, if not
27 signed by the governor, upon expiration of the time for bills to become law without signature
28 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If
29 vetoed by the governor and subsequently approved by the legislature, this Act shall become

1 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 701 Reengrossed

2021 Regular Session

Pierre

Abstract: Vests power in the Department of Transportation and Development's over high-occupancy vehicle lanes on state highways, provides for violations, and provides for definitions.

Proposed law authorizes the secretary of the Dept. of Transportation and Development (DOTD), or his designee, to exercise police powers of the state necessary to maintain the peace and accomplish the orderly handling of the authority to establish high occupancy vehicle (HOV) lanes, subject to the provisions of proposed law.

Proposed law provides the regulations for a frequent violator failure to respond to high-occupancy vehicle violation when the office of motor vehicles receives notice from the DOTD to not renew or reissue driver's license or vehicle registration pursuant to R.S. 47:820.5.9(J)(2). Requires the office of motor vehicles to issue a notice at the address listed on the violator's driver's license unless a more current address is on file. Requires the vehicle be identified by the vehicle identification number and assigned license plate number; in addition, advise the registered owner of his registration privileges. Further requires the violator to pay a \$100 restatement fee.

Proposed law provides for definitions.

Proposed law requires any travel lane designated as an HOV lane be for the exclusive use of qualified HOVs.

Proposed law authorizes the DOTD to establish permitting requirements for motor vehicles on one or more designated HOV lanes, including registration of the HOV with the department, prior to using an HOV lane. Proposed law requires a motor vehicle that has not fulfilled applicable permitting requirement established by the DOTD not be considered a qualified HOV.

Proposed law requires the vehicle's registered owner be liable to make payment to the department of the proper penalty and, except as provided in proposed law, a \$25 administrative fee to recover the cost of collecting the penalty subject to provisions of this Section where a record generated by an HOV monitoring system shows the HOV violation.

Proposed law establishes an HOV violation fine of not more than \$100. Authorizes the department to establish increasing penalties for multiple HOV violations, not to exceed \$100 penalty for a single HOV violation imposed pursuant to proposed law.

Proposed law provides a presumption that the ownership status of the motor vehicle is prima facie evidence of liability. However, there is a rebuttable presumption by providing proof the vehicle was sold, or otherwise transferred prior to the HOV violation.

Proposed law requires the department, for the purpose of educating the public and promoting proper use of HOV lanes, promulgate rules and regulations governing the issuance of warning letters in lieu of HOV violation notices to drivers who are not frequent violators. Requires warning letters not result in the assessment of penalties or fees against the

registered owner and provide the information required for HOV violation notices.

Proposed law provides that the following procedures be taken for the collection of penalties, administrative fees, and late charges assessed pursuant to this Section:

- (1) The department must send notice of an HOV violation by first-class mail to the registered owner of the motor vehicle at the address shown on the records of the Dept. of Public Safety and Corrections, office of motor vehicles (OMV), or such other address as may be provided by the owner or determined through other reliable means. Authorizes the department to aggregate multiple HOV violations in one HOV violation notice. Specifies that a manual or automatic record of the mailing prepared in the ordinary course of business of the department is prima facie evidence of the mailing of the notice.
- (2) The HOV violation notice must include the name and address of the person alleged to be liable for the HOV violation, the amount to be paid, identifying information for the motor vehicle involved, the date and the approximate time of the HOV violation, the administrative fees due, an electronic mail address and physical or post office box mailing address to which an appeal may be sent, and any other information as the department may deem appropriate.
- (3) The violation notice must include a warning that the registered owner has to pay the penalty and administrative fees specified in the notice or appeal the HOV violation by making a request for a hearing to the department within 30 days after issuance and describe the means and content of the response for payment or appeal. Requires the HOV violation notice also include a statement notifying the registered owner that he may waive his right to a hearing by notifying the department that he is waiving this right and appealing the HOV violation by request for a written disposition. Specifies that the failure of the registered owner to appeal the violation in one of the manners provided and within the delays allowed will be deemed to be an admission of liability and a waiver of available defenses.
- (4) The registered owner may, without waiving judicial review, appeal an HOV violation by notifying the department in writing, by either regular mail or electronic mail, that he is waiving the right to a hearing and requesting a review and written disposition of the HOV violation from a department violation clerk by mail or electronic mail. Requires the appeal be signed and explain the basis for the appeal. Require the signed statement be accompanied by signed statements from witnesses, police officers, government officials, or other relevant parties or photographs, diagrams, maps, or other relevant documents submitted by the registered owner. Requires statements or materials sent to a violation clerk for review have attached to them the name, address, and electronic mail address of the registered owner as well as the number of the HOV violation notice and the date of the HOV violation. Specifies that the violation clerk must, within 60 days of receipt of such material, review the material and dismiss or uphold the HOV violation and notify the registered owner of the disposition by regular mail or electronic mail. Specifies that if the appeal by request for written disposition is denied, the violation clerk must explain the reasons for the determination. Authorizes the violation clerk to waive the administrative fee, in whole or in part, for good cause shown.
- (5) A registered owner issued an HOV violation notice can make a written statement for an appeal hearing before an agent designated by the department. Requires the violation clerk, within 30 days of receipt of a request for an appeal, notify the registered owner in writing by first-class mail of the date, time, and place of the hearing. Specifies the hearing is informal, may be conducted by phone, the rules of evidence will not apply, the Administrative Procedure Act will not apply, and the decision of the agent will be final, subject to judicial review. Provides for notice and requires each written appeal decision contain a statement of reasons for the decision,

including a determination of each issue of fact necessary to the decision. Specifies that failure to appear at the date, time, and place specified on the hearing notice will automatically result in denial of the appeal.

- (6) The electronic mail sent by the registered owner to the address provided in the HOV violation notice will be presumptive evidence of the receipt by the department. Specifies that electronic mail sent by the department to the address provided by the registered owner will be presumptive evidence of receipt by the registered owner.

Proposed law authorizes the department to impose charges and sanctions as follows:

- (1) A registered owner who fails to submit payment or otherwise respond to an HOV violation notice as provided in proposed law within 30 calendar days after the date of the issuance of the HOV violation notice may incur a \$5 late charge to cover additional costs of collecting the penalty.
- (2) If the registered owner fails to submit payment or otherwise respond to an HOV violation notice as provided in proposed law within 60 calendar days after the date of issuance, the department may pursue civil action against the registered owner as it deems appropriate to collect penalties and administrative fees assessed in the notice. Requires the violation clerk notify the registered owner by first class mail of the delinquency and consequences.
- (3) In addition to the above procedures, the department will promulgate rules and regulations for the identification of motor vehicles that frequently engage in HOV violations and for providing notice to registered owners of motor vehicles meeting such criteria. Requires a frequent violator who fails to submit payment or respond to a notice within 60 days of the notice be prohibited from any renewal or reissuance of their driver's license and vehicle registration until all HOV violations are disposed of pursuant to proposed law.

Proposed law requires a registered owner's appeal of his classification as a frequent violator be conducted in the same manner as an appeal of an HOV violation, but not applicable to the provisions of the Administrative Procedure Act as it relates to notice of the hearing decision, any request for rehearing, and any petition for judicial review.

Proposed law requires the violation clerk notify the OMV of the violation record, place the matter on record, and block the renewal or reissuance, including any duplicated, of the violator's driver's license and vehicle registration pursuant proposed law.

Proposed law requires a video recording, photograph, or other electronic data produced by an HOV monitoring system be admissible in a proceeding to collect a penalty, administrative fee, or other charge of the department for an HOV violation.

Proposed law provides an original or facsimile of a certificate, sworn to or affirmed by an agent of the department specifying an HOV violation occurred and is based upon a personal inspection of a video recording, photograph, or other electronic data produced by an HOV monitoring system, as defined in proposed law, is prima facie evidence of the facts contained in the certificate. Proposed law provides any other provision of present law to the contrary, a video recording, photograph, or other electronic data prepared for enforcement of HOV lane requirements is for the exclusive use of the department and the office of motor vehicles in the discharge of their duties under proposed law.

Proposed law requires the department from time to time designate one or more violation clerks and agents to perform functions specified in proposed law at the discretion of the department and for a time deemed necessary. Requires the department supervise and coordinate the processing of HOV violation notices in accordance with proposed law. Authorizes the department to hire or designate personnel and organize sections or contract

for such services to carry out the provisions in proposed law. Requires hearing agents and violation clerks have the authority to waive late fees.

Proposed law provides the provisions of proposed law are intended to supplement the laws governing motor vehicles and traffic regulation appearing in present law (Title 32), and requires nothing contained in proposed law be construed as precluding any police officer from enforcement within a designated HOV lane. Requires a defense from enforcement by the department for a registered owner of a motor vehicle be a previously issued citation from law enforcement for the same conduct that resulted in an HOV violation.

Effective upon signature of the governor.

(Adds R.S. 47:820.5.9)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Delete a provision of proposed law that provides it is not a defense to liability that a registered owner was not operating the motor vehicle at the time of the failure to pay.
3. Delete a prohibition of proposed law that prohibits a registered owner from being liable under proposed law if a report that the motor vehicle was stolen is given to a law enforcement officer or agency before the HOV violation occurs or within 48 hours after the registered owner becomes aware of the theft.
4. Require a \$25 administrative fee to recover the cost of collecting the penalty subject to provisions.
5. Add a provision to include a presumption that the ownership status of the motor vehicle is prima facie evidence of liability. However, there is a rebuttable presumption by providing proof the vehicle was sold, or otherwise transferred prior to the HOV violation.
6. Require a \$5 late charge to cover additional costs of collecting the penalty for a registered owner who fails to submit payment or respond within 30 days after the date of issuance of the HOV violation notice.
7. Add a provision that requires a registered owner's appeal of his classification as a frequent violator be conducted in the same manner as an appeal of an HOV violation, but not applicable to the provisions of the Administrative Procedure Act as it relates to notice of the hearing decision, any request for rehearing, and any petition for judicial review.
8. Delete a provision that provides after notice to the OMV, the department will not be required to send additional notices; however, penalties and administrative fees will continue to accumulate.