

2021 Regular Session

HOUSE BILL NO. 636

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

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 47:820.5.9 is hereby enacted to read as follows:

8 §820.5.9. High-occupancy vehicle (HOV) lane violations

9 A. In the exercise of his authority to designate high-occupancy vehicle
10 (HOV) lanes on any highway in the state highway system, the secretary of the
11 Department of Transportation and Development, or his designee, is authorized to
12 exercise so much of the police powers of the state as shall be necessary to maintain
13 the peace and accomplish the orderly handling of this authority, subject to the
14 provisions of this Section.

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

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

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

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

5 (4) "HOV monitoring system" means equipment installed for use with a
6 designated HOV lane to automatically produce records for use in enforcing the
7 provisions of this Section, such as video recordings, photographs, or other electronic
8 data sufficient to establish the existence of an HOV violation and identifying
9 information for the motor vehicle involved.

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

13 (6) "Qualified HOV" means an HOV motorcycle that meets all requirements
14 for use of a designated HOV lane.

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

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

19 D. The department may establish permitting requirements for motor vehicles
20 on one or more designated HOV lanes, including registration of the HOV with the
21 department, prior to using an HOV lane. Notwithstanding any other provision of this
22 Section to the contrary, use of an HOV lane by a motor vehicle that has not fulfilled
23 permitting requirements established by the department shall constitute an HOV
24 violation.

25 E. Where a record generated by an HOV monitoring system shows an HOV
26 violation by a motor vehicle, the vehicle's registered owner shall be liable to make
27 prompt payment to the department of the proper penalty and, except as provided in
28 this Section, an administrative fee to recover the cost of collecting the penalty.
29 Administrative fees shall not be assessed against the registered owner of a motor

1 vehicle that has fulfilled permitting requirements established by the department for
2 use of the HOV lane.

3 F. The penalty for an HOV violation shall be a fine of not more than one
4 hundred dollars.

5 G. The registered owner is responsible for payment of penalties,
6 administrative fees, and late charges assessed in accordance with this Section, and
7 it is not a defense to liability that a registered owner was not operating the motor
8 vehicle at the time of the failure to pay. The ownership status of the motor vehicle
9 is prima facie evidence of liability. However, if a report that the motor vehicle was
10 stolen is given to a law enforcement officer or agency before the HOV violation
11 occurs or within forty-eight hours after the registered owner becomes aware of the
12 theft, the registered owner shall not be liable under this Section.

13 H. The following procedures shall apply to the collection of penalties,
14 administrative fees, and late charges assessed pursuant to this Section:

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

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

1 (3) The violation notice shall also include a warning that the registered
2 owner must pay the penalty and administrative fees stated in the notice or the
3 registered owner must appeal the HOV violation by making a request for a hearing
4 to the department within thirty days after issuance and describe the means and
5 content of the response for payment or appeal. The HOV violation notice shall also
6 include a statement notifying the registered owner that he may waive his right to a
7 hearing by notifying the department that he is waiving this right and appealing the
8 HOV violation by request for a written disposition. The failure of the registered
9 owner to appeal the violation in one of the manners provided and within the delays
10 allowed shall be deemed to be an admission of liability and a waiver of available
11 defenses.

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

16 (5) The registered owner may, without waiving judicial review, appeal an
17 HOV violation by notifying the department in writing, by either regular mail or
18 electronic mail, that the right to a hearing is being waived and requesting a review
19 and written disposition of the HOV violation from a department violation clerk by
20 regular mail or electronic mail. This appeal shall contain a signed statement from
21 the registered owner explaining the basis for the appeal. The signed statement shall
22 be accompanied by signed statements from witnesses, police officers, government
23 officials, or other relevant parties or photographs, diagrams, maps, or other relevant
24 documents submitted by the registered owner. Statements or materials sent to a
25 violation clerk for review shall have attached to them the name, address, and
26 electronic mail address of the registered owner as well as the number of the HOV
27 violation notice and the date of the HOV violation. All information submitted by the
28 registered owner becomes part of the violation record. The violation clerk shall,
29 within sixty days of receipt of such material, review the material and dismiss or

1 uphold the HOV violation and notify the registered owner of the disposition of the
2 HOV violation in writing by mail or electronic mail. If the appeal by request for
3 written disposition is denied, the violation clerk shall explain the reasons for the
4 determination. The violation clerk shall have the authority to waive the
5 administrative fee, in whole or in part, for good cause shown.

6 (6) A registered owner that is issued an HOV violation notice may make a
7 written statement for an appeal hearing before an agent designated by the
8 department. The violation clerk shall, within thirty days of receipt of a request for
9 an appeal, notify the registered owner in writing by first-class mail of the date, time,
10 and place of the hearing. The hearing shall be informal, the rules of evidence shall
11 not apply, the Administrative Procedure Act shall not apply, and the decision of the
12 agent shall be final, subject to judicial review. The parties to the appeal hearing shall
13 be notified in person or by regular mail or electronic mail of the decision following
14 the hearing. Each written appeal decision shall contain a statement of reasons for the
15 decision, including a determination of each issue of fact necessary to the decision.
16 Failure to appear at the date, time, and place specified on the hearing notice shall
17 automatically result in denial of the appeal.

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

22 I.(1) Failure to comply with the requirements of this Section shall result in
23 the following late charges or sanction, or both, against the registered owner:

24 (a) The department may assess the following penalties for late payment, for
25 failure to pay, or for otherwise failing to respond against the registered owner:

26 (i) A registered owner who fails to respond to an HOV violation notice as
27 provided by this Section within thirty calendar days after the date of the issuance of
28 the HOV violation notice may incur a late charge. A registered owner who fails to
29 respond to an HOV violation notice within sixty calendar days after the date of

1 issuance of the violation notice shall be prohibited from renewing his driver's license
2 or the registration of the vehicle until all matters regarding the alleged HOV
3 violation are disposed of in accordance with law. The violation clerk shall notify the
4 registered owner by the first-class mail of this delinquency and consequences of the
5 delinquency.

6 (ii) A registered owner who fails to respond to an HOV violation notice as
7 provided by this Section within sixty calendar days after the date of the issuance of
8 the violation notice shall be prohibited from renewing his driver's license. The
9 violation clerk shall notify the office of motor vehicles of this delinquency. Upon
10 notice from a violation clerk, the office of motor vehicles shall place the matter on
11 record and shall not renew the driver's license of the registered owner or the
12 registration of the vehicle until after notice from the violation clerk that the matters
13 have been disposed of in accordance with law.

14 (b) After notice to the office of motor vehicles provided in Item (a)(ii) of this
15 Paragraph, the department shall not be required to send notices of delinquency to
16 registered owners with ten or more HOV violations. However, the penalties and
17 administrative fees of such registered owner shall continue to accumulate.

18 (2) The department may pursue such civil action as it deems appropriate to
19 collect the penalties and the administrative fees assessed in the HOV violation notice
20 as well as such subsequent late charges assessed in accordance with this Section.

21 (J)(1) A video recording, photograph, or other electronic data produced by
22 an HOV monitoring system shall be admissible in a proceeding to collect a penalty,
23 administrative fee, or other charge of the department of an HOV violation.

24 (2) An original or facsimile of a certificate, sworn to or affirmed by an agent
25 of the department that states that an HOV violation has occurred and states that it is
26 based upon a personal inspection of a video recording, photograph, or other
27 electronic data produced by an HOV monitoring system, as defined in this Section,
28 is prima facie evidence of the facts contained in the certificate.

1 (3) Notwithstanding any other provision of law to the contrary, a video
2 recording, photograph, or other electronic data prepared for enforcement of HOV
3 lane requirements is for the exclusive use of the department in the discharge of its
4 duties under this Section.

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

15 L. The provisions of this Section are intended to supplement the laws
16 governing motor vehicles and traffic regulation appearing in Title 32 of the
17 Louisiana Revised Statutes of 1950, and nothing contained in this Section shall be
18 construed as precluding any police officer from enforcing these laws within a
19 designated HOV lane. If a police officer issues a citation to the operator of a motor
20 vehicle for a violation occurring within an HOV lane, the department shall not
21 implement any enforcement action pursuant to this Section.

22 Section 2. This Act shall become effective upon signature by the governor
23 or, if not signed by the governor, upon expiration of the time for bills to become law
24 without signature by the governor, as provided in Article III, Section 18 of the
25 Constitution of Louisiana. If vetoed by the governor and subsequently approved by
26 the legislature, this Act shall become 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 636 Original

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, in the exercise of his authority, to designate high-occupancy vehicle (HOV) lanes on any highway in the state highway system to exercise so police powers of the state as necessary to maintain the peace and accomplish the orderly handling of this authority, subject to the provisions of proposed law.

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 specifies that use of an HOV lane by a motor vehicle that has not fulfilled permitting requirements established by the department constitutes an HOV violation.

Proposed law requires the vehicle's registered owner be liable to make prompt payment to the department of the proper penalty and, except as provided in proposed law, an administrative fee to recover the cost of collecting the penalty where a record generated by an HOV monitoring system shows an HOV violation by a motor vehicle. Prohibits administrative fees from being assessed against the registered owner of a motor vehicle that has fulfilled permitting requirements established by the department for use of the HOV lane. Establishes a HOV violation fine of not more than \$100.

Proposed law provides the registered owner is responsible for payment of penalties, administrative fees, and late charges assessed in accordance proposed law, and 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. Prohibits the 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.

Proposed law requires 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, 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 as a registered owner for the HOV violation, the amount of the penalty 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 such 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 stated 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. 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) Within 30 calendar days after the date of the issuance of the HOV violation notice, the registered owner to whom the HOV violation notice is issued must either pay the penalties and administrative fees or appeal the HOV violation as provided by proposed law.
- (5) The registered owner may, without waiving judicial review, appeal an HOV violation by notifying the department in writing, by either mail or electronic mail, that the right to a hearing is being waived 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. 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 of the HOV violation in writing by 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. The violation clerk will have the authority to waive the administrative fee, in whole or in part, for good cause shown.
- (6) 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, 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 shall automatically result in denial of the appeal.
- (7) The electronic mail sent by the registered owner to the address provided in 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 specifies that failure to comply with the requirements of proposed law will result in late charges or sanction, or both, against the registered owner. Authorizes the Department to assess the following penalties for late payment, for failure to pay, or for otherwise failing to respond against the registered owner:

- (1) A registered owner who fails to 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 late charge. Specifies that a registered owner who fails to respond to an HOV violation notice within 60 calendar days after the date of issuance of the violation notice will not be able to renew his driver's license of the registration of the vehicle until all matters regarding the alleged HOV violation are disposed of in accordance with law. Requires the violation clerk notify the registered owner by the first-class mail of this delinquency and consequences thereof.
- (2) A registered owner who fails to respond to an HOV violation notice as provided in proposed law within 60 calendar days after the date of the issuance of the violation notice will be prohibited from renewing his driver's license. Requires the violation clerk notify the office of motor vehicles of this delinquency. Upon notice from a violation clerk, requires the office of motor vehicles to place the matter on record and not renew the driver's license of the registered owner or the registration of the vehicle until after notice from the violation clerk that the matters have been disposed of in accordance with proposed law.
- (3) After notice to the office of motor vehicles or a 30 day or 60 day violation, the department will not be required to send notices of delinquency to registered owners with 10 or more violations, but penalties and administrative fees will continue to accumulate.

Proposed law authorizes the department to pursue civil action as it deems appropriate to collect the penalties and the administrative fees assessed in the HOV violation notice as well as subsequent late charges assessed in accordance with this Section.

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 of an HOV violation.

Proposed law provides an original or facsimile of a certificate, sworn to or affirmed by an agent of the department that states that an HOV violation has occurred and states that it 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 in the discharge of its duties under proposed law.

Proposed law requires the department from time to time designate one or more violation clerks and agents to perform the functions specified in proposed law at the discretion of the department and for an time period as the department deems necessary. Requires the department supervise and coordinate the processing of a HOV violation notices in accordance with proposed law. Authorizes the department to hire or designate such personnel and organize such sections as the department deems necessary, or contract for such services, in order to carry out the provisions in proposed law. Requires hearing agents and violation clerks have the authority to waive penalties, administrative fees, and late fees, in whole or in part, in accordance with standards established by the department.

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 enforcing these laws within a designated HOV lane. Prohibits the department from implementing any enforcement action pursuant to proposed law if a police officer issues a citation to the operator of a motor vehicle for a violation occurring within a HOV lane.

Effective upon signature of the governor.

(Adds R.S. 47:820.5.9)