

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. 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. The secretary of the Department of Transportation and Development, or
10 his designee, is authorized to exercise so much of the police powers of the state as
11 shall be necessary to maintain the peace and accomplish the orderly handling of the
12 establishment of high-occupancy vehicle (HOV) lanes, subject to the provisions of
13 this Section.

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

18 (1) "Department" means the Department of Transportation and
19 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) "HOV violation" means use of an HOV lane in a manner not authorized
11 by this Section or any regulation promulgated pursuant to this Section.

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

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

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. A motor vehicle that has not fulfilled
22 applicable permitting requirements established by the department shall not be
23 considered a qualified HOV.

24 E. Where a record generated by an HOV monitoring system shows an HOV
25 violation by a motor vehicle, the vehicle's registered owner shall be liable to make
26 payment to the department of the applicable penalty and administrative fee to
27 recover the cost of collecting the penalty.

28 F. The penalty for an HOV violation shall be a fine of not more than one
29 hundred dollars. The department may establish increasing penalties for multiple

1 HOV violations, but in no instance shall any penalty for a single HOV violation
2 imposed pursuant to this Section exceed one hundred dollars.

3 G. It is not a defense to liability under this Section that a registered owner
4 was not operating the motor vehicle at the time of the HOV violation. However, if
5 a report that the motor vehicle was stolen is given to a law enforcement officer or
6 agency before the HOV violation occurs or within forty-eight hours after the
7 registered owner becomes aware of the theft, the registered owner shall not be liable
8 under this Section.

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

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

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

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

1 appeal may be sent, and any other information as the department may deem
2 appropriate.

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

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

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

22 (a) This appeal shall contain a signed statement from the registered owner
23 explaining the basis for the appeal. The signed statement shall be accompanied by
24 signed statements from witnesses, police officers, government officials, or other
25 relevant parties or photographs, diagrams, maps, or other relevant documents
26 submitted by the registered owner.

27 (b) Statements or materials sent to a violation clerk for review shall have
28 attached to them the name, address, and electronic mail address of the registered
29 owner as well as the number of the HOV violation notice and the date of the HOV

1 violation. All information submitted by the registered owner shall become part of
2 the violation record.

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

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

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

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

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

24 (7) Electronic mail sent by the registered owner to the address provided in
25 the HOV violation notice shall be presumptive evidence of receipt by the
26 department. Electronic mail sent by the department to the address provided by the
27 registered owner shall be presumptive evidence of receipt by the registered owner.

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

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

8 (b) If the registered owner fails to submit payment or otherwise respond to
9 an HOV violation notice as provided by this Section within sixty calendar days after
10 the date of issuance of the violation notice, the department may pursue civil action
11 against the registered owner as it deems appropriate to collect the penalties and
12 administrative fees assessed in the HOV violation notice. The violation clerk shall
13 notify the registered owner by first-class mail of this delinquency and consequences
14 of the delinquency.

15 (2)(a) In addition to the procedures described above, the department shall
16 promulgate rules and regulations for the identification of motor vehicles that
17 frequently engage in HOV violations and for providing notice to registered owners
18 of motor vehicles meeting such criteria as established by the department. Any
19 registered owner of a motor vehicle classified by the department as a frequent
20 violator who fails to submit payment or otherwise respond to an HOV violation
21 notice as provided by this Section, within sixty calendar days after the date of
22 issuance of the notice of classification as a frequent violator is issued, shall be
23 prohibited from renewing his driver's license and the vehicle's registration until after
24 all matters regarding HOV violations have been disposed of in accordance with law.

25 (b) The violation clerk shall notify the office of motor vehicles of the
26 registered owner's delinquency and status as a frequent violator. Upon notice from
27 a violation clerk, the office of motor vehicles shall place the matter on record and
28 shall not renew the driver's license of the registered owner or the registration of the

1 vehicle until after notice from the violation clerk that the matters have been disposed
2 of in accordance with law.

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

6 (4) An original or facsimile of a certificate, sworn to or affirmed by an agent
7 of the department that specifies that an HOV violation has occurred and is based
8 upon a personal inspection of a video recording, photograph, or other electronic data
9 produced by an HOV monitoring system, as defined in this Section, is prima facie
10 evidence of the facts contained in the certificate.

11 (5) Notwithstanding any other provision of law to the contrary, a video
12 recording, photograph, or other electronic data prepared for enforcement of HOV
13 lane requirements shall be exclusively for the use of the department in the discharge
14 of its duties under this Section.

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

24 L. The provisions of this Section are intended to supplement the laws
25 governing motor vehicles and traffic regulation appearing in Title 32 of the
26 Louisiana Revised Statutes of 1950, and nothing contained in this Section shall be
27 construed as precluding any police officer from enforcing these laws within a
28 designated HOV lane. It shall be a defense to enforcement by the department
29 pursuant to this Section that the registered owner of the motor vehicle received a

1 citation from a law enforcement officer for the same conduct that resulted in an HOV
2 violation.

3 Section 2. This Act shall become effective upon signature by the governor
4 or, if not signed by the governor, upon expiration of the time for bills to become law
5 without signature by the governor, as provided in Article III, Section 18 of the
6 Constitution of Louisiana. If vetoed by the governor and subsequently approved by
7 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 701 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, 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 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, an administrative fee to recover the cost of collecting the penalty 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 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 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 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 renewing their driver's license and vehicle registration until all HOV violations are disposed of pursuant to proposed law.

Proposed law requires the violation clerk notify the OMV of the violation record, place the matter on record, and not renew the violator's driver's license or vehicle registration until after notice from the violation clerk that the matters have been disposed of in accordance with proposed law. 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.

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 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 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)