

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 220

INTRODUCER: Governmental Oversight and Accountability Committee; Transportation Committee; and Senator Simpson

SUBJECT: Commercial Motor Vehicle Review Board

DATE: April 1, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Price</u>	<u>Eichin</u>	<u>TR</u>	<u>Fav/CS</u>
2. <u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3. <u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 220 addresses various issues relating to commercial motor vehicle laws and the Commercial Motor Vehicle Review Board (Review Board). The bill:

- Authorizes a driver of a commercial motor vehicle that receives an overweight citation for excess weight measured by portable scales to proceed to the next weigh station or public scales for verification of weight;
- Establishes a process for the revocation of a citation by the Review Board if the vehicle is found to be in compliance with weight requirements;
- Revises the membership and related provisions of the Review Board; and
- Requires the Department of Transportation (DOT) to provide video conference capability at each of its district offices to enable a person requesting a hearing before the Commercial Motor Vehicle Review Board to appear remotely.

The bill has an indeterminate fiscal impact (see Section V.).

II. Present Situation:

Weighing of Commercial Motor Vehicles and Loads

Under current law, any officer of the Florida Highway Patrol with reason to believe the weight of a commercial motor vehicle and its load is unlawful is authorized to require the driver to stop

and have the vehicle weighed by either a portable or fixed scales. The officer may require the vehicle to be driven to the nearest fixed scale at a weigh station or public scales if such a facility is located within five miles.¹

Review of Commercial Motor Vehicle Weight, Size, and Safety Penalties

Law enforcement officers of various agencies and DOT weight inspectors are authorized to enforce current laws and rules relating to commercial motor vehicle weight, size, and safety.² Various penalties are imposed for violations of statutory weight and load limitations and safety requirements. All penalties collected are deposited into the State Transportation Trust Fund and used to repair and maintain state roads and enforce statutory weight and load requirements.³

The Commercial Motor Vehicle Review Board is a statutorily created body established within the DOT.⁴ The Review Board is authorized to hear challenges to any penalty imposed upon any commercial motor vehicle or person “relating to weights imposed on the highways by the axles and wheels of motor vehicles, to special fuel and motor fuel tax compliance, or to violations of safety regulations.”⁵ Any person upon whom a civil penalty is imposed may apply to the Review Board for a hearing, and the Review Board is authorized to modify, cancel, revoke, or sustain such penalties.⁶

Review Board Membership

The Review Board has three permanent members: the Secretary of Transportation, the Executive Director of DHSMV, and the Commissioner of Agriculture (or their designees).⁷ The Secretary of Transportation is the chair and is responsible for administrative functions of the Review Board.⁸ Each permanent member may also designate one additional person to be a member.⁹ Responsibilities may be carried out by meeting as a single group or as subgroups that consist of one representative of each permanent member.¹⁰

Review Board Procedure

The Review Board is authorized to hold sessions and conduct proceedings at any place within the state.¹¹ The Review Board schedules meetings based on a sufficient number of requests for

¹ Section 316.545(1) and (9), F.S.

² See s. 316.640, F.S.

³ See ss. 316.3025(7)(b), 316.516(5), 316.545(6), and 316.550(11), F.S.

⁴ Section 316.545(7), F.S.

⁵ *Id.*

⁶ Section 316.545(8), F.S.

⁷ Section 316.545(7), F.S.

⁸ Section 316.545(7)(a) and (d), F.S.

⁹ Section 316.545(7)(b), F.S. DOT advises no such additional members have ever been appointed to the Review Board. Telephone conversation between Senate Transportation Committee and DOT Legislative Staff, March 9, 2015.

¹⁰ Section 316.545(7)(c), F.S.

¹¹ Section 316.545(7)(e), F.S.

review to justify the expense of holding a meeting, but no less than six meetings per year are scheduled at various locations throughout the state.¹²

Any person wishing to have a penalty considered by the Review Board must submit a written request for hearing no later than 60 days after the date on the Notice of Violation.¹³ The Review Board determines the location of each meeting.¹⁴ However, any person may request in writing at least 14 days before a scheduled meeting:¹⁵

- To have a review of his or her case be held at a specific city at which the Review Board regularly meets;
- To be heard at the next meeting held in the geographic area of the state in which his or her principal place of business is located; or
- To be heard at the next meeting of the Review Board, regardless of the geographic area.

The Review Board considers testimony or other evidence supporting the modification, cancellation, or revocation of a penalty.¹⁶ The Review Board generally considers only penalties that have been paid;¹⁷ however, the Review Board will consider unpaid penalties if review occurs at its next meeting, regardless of location.¹⁸

A person may appear before the Review Board in person, through an authorized representative, or through legal counsel.¹⁹ No appearance is required if the person submits evidence or arguments no less than 14 days prior to the scheduled hearing.²⁰ If a person does not appear and does not submit evidence or arguments, penalties are sustained.²¹ Continuances are granted upon a showing of good cause.²²

The Review Board is required to render its written, final decision and notify the person requesting the hearing within 30 days after the meeting.²³ A rehearing may be requested, within 14 days of the final decision of the Review Board, if additional evidence is presented.²⁴ If the Review Board decision results in any refund, a refund check is issued by the DHSMV “in a timely manner.”²⁵

¹² Rule 14A-1.004(1), F.A.C. Also, see the DOT website for the Review Board’s 2015 meeting schedule, indicating 12 meetings, one each month: four in Fort Lauderdale, two in Tampa, four in Tallahassee, and two in Orlando, *available at* http://www.dot.state.fl.us/trafficoperations/Traf_Incident/CMVRB/CMVRB.shtm (last visited March 29, 2015).

¹³ Rule 14A-1.004(3), F.A.C.

¹⁴ Rule 14A-1.004(1)(b), F.A.C.

¹⁵ *Id.*

¹⁶ Rule 14A-1.004(1)(a), F.A.C.

¹⁷ Rule 14A-1.004(1)(a), F.A.C.

¹⁸ Rule 14A-1.004(1)(c), F.A.C.

¹⁹ Rule 14A-1.004(4), F.A.C.

²⁰ Rule 14A-1.004(4)(a), F.A.C.

²¹ Rule 14A-1.004(4)(b), F.A.C.

²² Rule 14A-1.004(6), F.A.C.

²³ Rule 14A-1.004(7), F.A.C.

²⁴ *Id.* Also see DOT, Commercial Motor Vehicle Review Board, *available at* http://www.dot.state.fl.us/trafficoperations/Traf_Incident/CMVRB/CMVRB.shtm (last visited March 29, 2015).

²⁵ *Id.*

Recent Review Board Hearing and Refund Data

The DOT supplied the following data about the Review Board:

In FY 2013/2014, the [Review] Board heard 1172 cases that represented a total of \$1,363,088.45 in fines. Out of these 1172 cases, relief was granted on 454 of the cases, or 38.74%, for a total refunded amount of \$552,332.94, or 40.23%. The total amount of citations issued and fines collected for 2014 was 80,662 citations and \$9,284,465.20, which approximates to 1.4% of the citations issued and 14.79% of the dollars being reviewed by the Board.²⁶

III. Effect of Proposed Changes:

Section 1 amends s. 316.545(2)(a), F.S., to allow a driver issued a citation for exceeding weight limits as measured by portable scales to proceed to the nearest weigh station or public scales for verification of weight. The bill establishes a process for revocation of tickets if the vehicle is found in compliance with weight requirements. Specifically, the driver may submit by U.S. mail the portable scale citation and the certified scale ticket to the Review Board for revocation of the citation.

Section 2 amends s. 316.545(7), effective October 1, 2015, to revise the membership of the Review Board by adding four additional members. The Governor must appoint one member each from the road construction industry and the trucking industry, and one member with a general business or legal background. The Commissioner of Agriculture must appoint one member from the agriculture industry. All four members serve two-year terms, must be registered voters and citizens of Florida, and must possess business experience in the private sector. The Governor may remove any of these members for misconduct, malfeasance, misfeasance, or nonfeasance in office. Each member is required to take an oath to perform board duties honestly, faithfully, impartially, and without neglect.

Vacancies during the term of one of the new members may be filled only for the remainder of the unexpired term. A vacancy does not impair the right of a quorum to exercise the rights and duties of the Review Board. Four members constitute a quorum, and the vote of four members is necessary for any action taken.

Under the bill, the FDOT is required to provide space and video conferencing capability at each of the FDOT district offices to enable a person requesting a hearing before the Review Board to appear remotely, as an alternative to physical appearance or any other method of appearance authorized by rule.

Section 3 requires the appointment of the additional four members to be made by September 1, 2015, for terms beginning October 1, 2015.

Section 4 provides the bill takes effect July 1, 2015, except as otherwise provided.

²⁶ See the 2015 DOT Legislative Bill Analysis for SB 220 (on file in the Senate Transportation Committee).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The mandates restrictions do not apply because the bill does not require counties or municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

A positive but indeterminate fiscal impact may be realized by the private sector if the revised membership of the Review Board results in increased refunds of citations. Appointed board members may experience loss of income while performing services on the Review Board.

C. Government Sector Impact:

An indeterminate but negative fiscal impact may be realized by the state if the revised membership of the Review Board results in increased refunds of citations. In addition, more penalties may be revoked if the fixed scales indicate that the vehicle was in compliance with the weight requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.545 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Governmental Oversight and Accountability on March 23, 2015:

The CS/CS modifies the CS by authorizing a driver of a commercial motor vehicle that receives an overweight citation for excess weight measured by portable scales to proceed to the next weigh station or public scales for verification of weight. If the vehicle is found to be in compliance with the weight requirements at the fixed scale, the driver may submit by U.S. mail the portable scale citation and the certified scale ticket to the Review Board for revocation of the citation.

CS by Transportation on March 12, 2015:

The CS modifies the bill by:

- Authorizing a driver of a commercial motor vehicle that receives an overweight citation for excess weight measured by portable scales to request an escort to the nearest fixed scale for a re-weighing;
- Voiding the citation if the vehicle is found to be in compliance with applicable weight requirements at the fixed scale;
- Requiring DOT to provide video conference capability at each of its district offices to enable a person requesting a hearing before the Review Board to appear remotely;
and
- Making a technical cross-reference insertion.

- B. **Amendments:**

None.