

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 Governmental Oversight and Accountability

BILL: CS/SB 220

INTRODUCER: Transportation Committee and Senator Simpson

SUBJECT: Commercial Motor Vehicle Review Board

DATE: March 20, 2015 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Price | Eichin | TR | Fav/CS |
| 2. | Peacock | McVaney | GO | Pre-meeting |
| 3. | | | FP | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 220 addresses various issues relating to enforcement of commercial motor vehicle laws. The bill:

- Authorizes 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;
- Voids the citation if the vehicle is found to be in compliance with weight requirements;
- Revises the membership, and related provisions, of the Commercial Motor Vehicle Review Board by adding four additional members with business experience in the private sector, three appointed by the Governor and one appointed by the Commissioner of Agriculture;
- 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; and
- Makes a technical correction by inserting a cross-reference.

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 stop and have the vehicle weighed by means of either portable or fixed scales. The officer or the driver 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

The Department of Highway Safety and Motor Vehicles (DHSMV) advises that its portable scales are tested annually. To meet certification requirements, each portable scale must meet maintenance tolerance specifications set by the manufacturer, which generally allow for a deviation of only 1.5 percent to 3 percent scale tolerance.² By statute, the weight limits established in s. 316.535, F.S., must include a 10 percent scale tolerance.³

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

Law enforcement officers of various agencies⁴ and DOT weight inspectors, are authorized to enforce current laws and rules relating to commercial motor vehicle weight, size, and safety. Various penalties are imposed for violations of statutory weight and size limitations and safety requirements. All collected penalties are ultimately deposited into the State Transportation Trust Fund and used to repair and maintain the state's roads and for enforcement of the limitations and requirements.⁵

The Commercial Motor Vehicle Review Board (Review Board) is a statutorily created body established within the DOT.⁶ 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, to violations of safety regulations, and to violations of width, height, and length.⁷ Any person upon whom a civil penalty is imposed may apply to the Review Board for a hearing, and the Review Board is broadly authorized to modify, cancel, revoke, or sustain such penalties.⁸

Review Board Membership

The Review Board has three permanent members, the Secretary of Transportation,⁹ the Executive Director of DHSMV,¹⁰ and the Commissioner of Agriculture¹¹ (or their designees).¹²

¹ Section 316.545(1), F.S.

² Telephone conversation with DHSMV staff, March 10, 2015.

³ Section 316.545(2)(a), F.S., provides that the term "scale tolerance" means the allowable deviation from legal weights established in s. 316.535."

⁴ See s. 316.640, F.S.

⁵ See ss. 316.3025(7)(b), 316.516(5), 316.545(6), and 316.550(11), F.S. Also, see Rule 14A-1.004, F.A.C.

⁶ Section 316.545(7), F.S.

⁷ *Id.*

⁸ Section 316.545(8), F.S.

⁹ Section 20.23(1)(a), F.S., provides that the "head of the Department of Transportation is the Secretary of Transportation. The secretary shall be appointed by the Governor from among three persons nominated by the Florida Transportation Commission and shall be subject to confirmation by the Senate. The secretary shall serve at the pleasure of the Governor."

¹⁰ Section 20.24(1), F.S., provides that the "head of the Department of Highway Safety and Motor Vehicles is the Governor and Cabinet."

¹¹ Section 20.14(1), F.S., provides that "head of the Department of Agriculture and Consumer Services is the Commissioner of Agriculture."

¹² Section 316.545(7), F.S. Also, the DOT website advises that "[w]hile the Board usually meets with all three members, a hearing with fewer members is legal and proper."

http://www.dot.state.fl.us/trafficoperations/Traf_Incident/CMVRB/CMVRB.shtm. Last visited March 10, 2015.

The Secretary of Transportation is the chair and is responsible for administrative functions of the Review Board.¹³ Each permanent member may also designate one additional person to be a member.¹⁴ Responsibilities may be carried out by meeting as a single group or as subgroups that consist of one representative of each permanent member.¹⁵

Review Board Procedure

The Review Board is authorized to hold sessions and conduct proceedings at any place within the state.¹⁶ By rule, the Review Board schedules meetings based on a sufficient number of requests for 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.¹⁷

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.¹⁸ The Review Board determines the location of each meeting.¹⁹ However, any person may request in writing no less than 14 days prior to a scheduled meeting:²⁰

- 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 generally considers only penalties that have been paid.²¹ However, the Review Board will consider unpaid penalties if review occurs at its next meeting, regardless of location.²² Testimony or other evidence supporting the modification, cancellation, or revocation of a penalty will be considered.²³

A person may appear before the Review Board in person, through an authorized representative, or through legal counsel.²⁴ Additionally, no appearance is required at all if the person submits evidence or arguments no less than 14 days prior to the scheduled hearing.²⁵ If a person does not

¹³ Section 316.545(7)(a), F.S.

¹⁴ Section 316.545(7)(b), F.S. DOT advises no such additional members have ever been appointed to the Review Board. Telephone conversation with DOT Legislative Staff, March 9, 2015.

¹⁵ Section 316.545(7)(c), F.S.

¹⁶ Section 316.545(7)(e), F.S.

¹⁷ Rule 14A-1.004(1), F.A.C. Also, see 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:
http://www.dot.state.fl.us/trafficoperations/Traf_Incident/CMVRB/CMVRB.shtm.

¹⁸ Rule 14A-1.004(3), F.A.C.

¹⁹ Rule 14A-1.004(1)(b), F.A.C.

²⁰ *Id.*

²¹ Rule 14A-1.004(1)(a), F.A.C.

²² Rule 14A-1.004(1)(c), F.A.C.

²³ Rule 14A-1.004(1)(a), F.A.C.

²⁴ Rule 14A-1.004(4), F.A.C.

²⁵ Rule 14A-1.004(4)(a), F.A.C.

appear and does not submit evidence or arguments, the penalty will be sustained.²⁶ Continuances may be granted upon a showing of good cause.²⁷

The Review Board is required to render its written, final decision and notify the person requesting the hearing within 30 days after the meeting.²⁸ A rehearing may be requested within 14 days only if additional evidence is presented.²⁹ If the Review Board decision results in any refund, a refund check is issued by the DHSMV “in a timely manner.”³⁰

Recent Review Board Hearing and Refund Data

DOT advises:

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 percent, for a total refunded amount of \$552,332.94, or 40.23 percent. 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 percent of the citations issued and 14.79 percent of the dollars being reviewed by the Board.³¹

III. Effect of Proposed Changes:

Section 1 amends s. 316.545(1) and (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 fixed scale at an official weigh station or at a certified public scale for verification of the weight of the vehicle and load. The officer must escort the driver at all times and attend the re-weighing. The citation is void if the vehicle is found to be in compliance with applicable weight requirements at the fixed scale. This provision has no stated distance, as is present in current law, limiting re-weighing to situations in which a weigh station or public scale is located within five miles. Authorization of an officer to weigh a vehicle and load by either fixed or portable scales remains in place.

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 appoints 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 appoints 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. Four members constitute a quorum, and the vote of four members is necessary for any action taken.

²⁶ Rule 14A-1.004(4)(b), F.A.C.

²⁷ Rule 14A-1.004(6), F.A.C.

²⁸ Rule 14A-1.004(7), F.A.C.

²⁹ *Id.*

³⁰ See the DOT website: http://www.dot.state.fl.us/trafficoperations/Traf_Incident/CMVRB/CMVRB.shtm. Last visited March 10, 2015.

³¹ See the 2015 DOT Legislative Bill Analysis for SB 220. On file in the Senate Transportation Committee and Senate Governmental Oversight and Accountability Committee.

Vacancies during the term of one of these members is 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. 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.

In addition, 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.

This section also makes a technical correction by inserting a cross-reference.

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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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. Appointed board members may experience loss of income while performing services on the Review Board.

C. Government Sector Impact:

A negative but indeterminate fiscal impact may result to the State Transportation Trust Fund if the revised membership of the Review Board results in increased refunds.

VI. Technical Deficiencies:

As drafted, the title of the bill may be deficient. The bill is “An act relating to the Commercial Motor Review Board.” Section 1 of the bill does not relate to the Board.

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 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.