

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

General Responsibilities of the MCCO

Pursuant to chapters 207 and 316, F.S., FDOT's Motor Carrier Compliance Office (MCCO) enforces state and federal laws and rules regulating the safety of commercial motor vehicles and their drivers, and the weight and size of commercial vehicles operating on the state's highways.

The MCCO officers patrolling Florida's highways perform vehicle safety inspections to determine whether commercial drivers are appropriately licensed, are not under the influence of drugs or alcohol, have maintained required logbooks of their hours of service, and are not operating their vehicles in an unsafe manner. In addition, the MCCO conducts compliance reviews at truck and bus terminals to examine company vehicles and records. In the course of performing these duties, MCCO officers also check to see that other commercial motor vehicle-related laws, such as registration and fuel taxes, are complied with. This program helps to ensure that trucks and buses operating in Florida are mechanically sound, are licensed, do not exceed size and weight limits, and that vehicle operators are properly qualified, licensed, and driving their vehicles in a safe manner.

Key MCCO tasks are enforcing truck weight and size limits. MCCO's non-sworn weight inspectors weigh trucks and check truck registrations at 21 fixed-scale stations located along Florida's major highways. MCCO sworn officers use portable scales to weigh trucks when the trucks do not pass fixed-scale stations or when drivers deliberately avoid weighing at the fixed-scale stations.

The MCCO has an FY 02-03 budget of \$26.5 million and 448 positions. The office is funded through the State Transportation Trust Fund, so the sources of money financing the office's law enforcement activities are a combination of transportation revenues, such as fuel taxes and motor vehicle registration fees. Motor carrier registration fees and compliance penalties are not specifically earmarked for the MCCO's operating budget. However, included in the office's budget is a \$3 million federal highway safety grant.

In FY 01-02, the MCCO collected \$8.4 million in overweight penalties, \$2.4 million penalties for safety violations, and about \$88,000 for fuel-tax permit violations, according to the department's budget office.

Out-of-Service Orders

Under s.316.3026, F.S., the MCCO can prohibit commercial motor vehicles from operating on the highways of Florida if they are found to be in violation of safety and other motor carrier laws. MCCO has estimated that about 20 percent of the vehicles stopped by its officers are placed "out-of-service" until the defects are repaired or the driver is able to continue driving without causing a safety hazard.

According to a Federal Highway Administration database on traffic accidents, from 1998-2001 Florida has ranked third in the nation -- behind Texas and California -- in the total number of fatal crashes involving commercial motor vehicles. Florida's total during the four-year span is 1,984 fatal crashes;

of those, 357 occurred in 2001. However, the state's "crash rate" (number of commercial motor vehicles involved in fatal crashes per 100 million vehicle miles traveled) has been declining over that four-year period. The crash rate for 2001 was 3.6.

In at least one such crash last summer, the commercial motor vehicle involved in the multi-fatality accident had numerous safety violations, and its owner and his company had been placed out-of-service in his home state of Georgia, according to a post-crash investigation.

If that truck had been stopped by the MCCO and inspected, it would have been put out of service in Florida because of its existing safety hazards. However, if the truck had been in good working order, MCCO would not have been able to put the vehicle out of service because it didn't have legal authority to reciprocate the Georgia order. Also, the information available on the computerized federal SAFER System was not readily available.

HB 1205 amends s. 316.3026, F.S., to allow the MCCO to issue out-of-service orders to motor carriers prohibited to operate in other states or by federal order. The motor carrier operating illegally will be assessed a \$10,000 civil penalty, in addition to any other applicable penalties. In addition, any person who knowingly drives, operates, or causes to be operated any commercial motor vehicle in violation of the MCCO's out-of-service order commits a third-degree felony, punishable by up to a five years in prison.

The bill also broadens the MCCO's powers to issue out-of-service orders to include carriers who fail to pay previously assessed fines, who refuse to submit to a compliance review, or who have motor-carrier or insurance violations.

Carriers are able to seek an administrative hearing pursuant to s. 120.569, F.S., to overturn an out-of-service order.

The bill also amends s. 316.545(10), F.S., allowing the MCCO's non-sworn weight-station personnel to detain a commercial motor vehicle with obvious safety defects critical to the continued safe operation of the vehicle, or which is operating in violation of an out-of-service order reported on the Safer System database, until an MCCO officer arrives. The weight inspectors can not detain vehicle drivers, and they must release a detained vehicle once repairs to the safety defects are made, even if an MCCO officer hasn't arrived.

Penalties

Spread through chapter 316, F.S., are the various penalties MCCO can assess for a variety of motor carrier violations. For example, s. 316.3025, F.S., includes a number of different penalties, ranging from operating a commercial motor that is cited for being out of compliance, to violations discovered during law enforcement audits at commercial terminals, to failing to have the proper cargo shipping documents. Penalties range between \$50 and \$5,000, depending on the violation.

Over the years, as federal regulations have changed and chapter 316, F.S., has been amended, s. 316.3025, F.S., has become very confusing, and the potential exists for MCCO to be legally challenged on some of the penalties it assesses because of this lack of clarity in statute. In addition, the federal government could withhold highway-safety grants received by the MCCO if the penalties are not assessed.

One of the key provisions in HB 1205 amends s. 316.3025, F.S., to clearly list all of the federal violations that are subject to the stated penalties. Among these are new federal regulations relating to hazardous materials out-of-service violations and vehicle operating authority.

The amended section also includes two expanded violations:

- First, each vehicle placed out-of-service shall be subject to a \$100 civil penalty, as drivers are now. MCCO expects this to encourage motor carrier owners to keep their vehicles in better working condition.

- Second, s.316.3025(3)(e), F.S., creates a maximum penalty of \$25,000 in the aggregate for commercial carriers found to be in violation of motor carrier laws during a follow-up compliance review conducted within 24 months of the original inspection. MCCO staff said they selected the \$25,000 figure because that was the average of penalties assessed in the past against carriers where subsequent inspections showed continued violations. The first-time penalty remains at \$5,000.

In addition, changes to s. 316.3025(6), F.S., and s. 316.545(5) and (6), F.S., delete requirements for MCCO officers to give receipts to drivers or owners of commercial motor vehicles cited for penalties. This change will promote MCCO's new policy of detaining commercial motor vehicle violators for shorter periods of time, allowing them to continue to their destination without excessive delay, and allowing MCCO officers to return to patrol. This policy does not apply to vehicles with serious mechanical defects or to impaired drivers.

Keeping pace with changes in federal law

Every year, FDOT (and other state agencies) learn that passage of federal legislation or regulations leaves its laws out of compliance, and ask the Florida Legislature to make substantive or technical changes.

HB 1205 accomplishes a substantive change by repealing s. 316.3027, F.S., which specifies now-obsolete vehicle identification requirements superseded by new federal regulations in chapter 49 C.F.R. However, it retains and clarifies the exemption for vehicles engaged in hauling forestry, agricultural, or horticultural products, in s. 316.302(2)(e), F.S.

Among the technical changes are replacing the phrase "terminal audits" with "compliance reviews;" changing the date reference to federal law from 2001 to 2002; and adopting the federal length standards for semitrailers specialized for use in hauling vehicles to motorsports events.

Other issues

HB 1205 with CS deletes s. 316.610(3), F.S., which authorized the MCCO to inspect, upon request of the owner, commercial motor vehicles, for a fee of \$25. The provision was rarely used, so the MCCO requested that it be deleted.

The bill also recognizes that many common fluids and tools of business trades are defined by the federal government as "hazardous materials," and that commercial motor vehicles carrying large amounts must have clearly visible "HazMat" placards. It makes clear that commercial motor vehicles operating strictly in intra-state commerce can transport hazardous materials in amounts too small, under federal regulations, to require placarding.

Finally, the bill corrects a glitch created by 2002 legislation allowing the Florida Highway Patrol (FHP) to employ traffic accident investigator, with a required level of training. These investigators are not allowed to carry weapons or to make arrests. The provision was erroneously placed in the wrong paragraph of s. 316.640(1), F.S., and was being interpreted by some attorneys as preventing the FHP, the MCCO, and all other state law enforcement officers from carrying firearms and arresting suspects. The provision creating traffic accident investigators is moved to a more appropriate location in s. 316.640, F.S.

C. SECTION DIRECTORY:

Section 1: Amends s. 316.302, F.S., to correct obsolete references to updated federal regulations. Clarifies certain motor carrier's exemption from having HazMat placarding based on less-than threshold amounts of hazardous materials.

Section 2: Amends s. 316.3025, F.S. Reorganizes the penalties section to clarify which commercial vehicle violations are subject to certain fines.. Deletes requirement that law enforcement officers collecting penalties from a motor carrier owner or operator provide a receipt.

Section 3: Amends s. 316.3026, F.S., throughout. Specifies that the MCCO may issue out-of-service orders to motor carriers that, after proper notice, have failed to pay penalties of fine assessed by the MCCO or its agent; refused to submit to a compliance review and provide safety records; or for being in violation of safety or insurance requirements. Specifies that pursuant to such out-of-service orders, carriers can not operate in Florida until they have complied. Specifies that only the MCCO director or designee may issue an out of service order under these provisions. Provides for a s. 120.569, F.S., administrative hearing. Also, specifies that a motor carrier enjoined or prohibited from operating in Florida, another state, or by the federal government, shall not operate in Florida until it has been authorized to resume its operations by the entity originally putting the carrier out-of-service. Provides that such violators are subject to a \$10,000 civil penalty, in addition to any other penalties that may be assessed. Provides that if any person who knowingly drives, operates, or causes to be operated in Florida an out-of-service vehicle commits a third-degree felony. Allows FDOT to petition the circuit courts to enjoin a motor carrier that fails to comply with out-of-service orders.

Section 4: Amends s. 316.515, F.S., to exempt from maximum length regulations semitrailers used exclusively or primarily to transport vehicles in connection with motorsport competitions, as long as the length does not exceed 46 feet from the kingpin to the center of the rear axles.

Section 5: Amends s. 316.545, F.S., to add cross-reference to out-of-service provisions and to delete the receipt requirement for penalties paid to an officer. Allows an FDOT weight inspector to detain a commercial motor vehicle that has obvious safety defects, or which is operating in violation of an out-of-service order, until a law enforcement officer can arrive at the weigh station. Specifies that a detained motor vehicle can leave if the defect is repaired before an officer arrives.

Section 6: Amends s. 316.640, F.S., to correct a technical glitch.

Section 7: Repeals s. 316.3027, F.S., and s. 316.610(3), F.S., relating to obsolete vehicle identification requirements and FDOT inspections.

Section 8: Amends s. 316.1937(5), F.S., to correct a cross-reference.

Section 9: Provides this act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. The MCCO likely will collect more penalty revenue once the provisions of HB 1205 with CS are implemented, but it is difficult to determine how much, since that depends on the number of violators caught. Changes to the out-of-service regulations are being requested to improve safety, not to raise revenues for the MCCO.

2. Expenditures:

Indeterminate, but likely minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HB 1205 with CS will result in greater penalties for commercial motor vehicle carriers who operate out-of-service or refuse to participate in compliance reviews. These carriers also will have a loss of revenues from their vehicles being parked rather than hauling their cargoes to their destinations. These fiscal impacts are indeterminate, and depend on whether the penalties deter motor carriers from operating illegally.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable, because HB 1205 with CS does not impact local governments.

2. Other:

HB 1205 with CS does not appear to raise any constitutional or legal questions.

B. RULE-MAKING AUTHORITY:

FDOT has sufficient existing rule-making authority to implement the provisions of HB 1205.

C. DRAFTING ISSUES OR OTHER COMMENTS:

FDOT and the Florida Trucking Association has said it supports HB 1205 with CS.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Transportation Systems Subcommittee

On March 18, 2003, the Transportation Systems Subcommittee adopted without objection three amendments offered by the bill sponsor. Briefly:

-- Amendment #1 clarifies in state law an existing federal exemption from hazardous-materials placarding. The amendment recognizes that many common fluids and tools of business trades are defined by the federal government as "hazardous materials," and that commercial motor vehicles carrying large amounts must have clearly visible "HazMat" placards. It makes clear that commercial motor vehicles operating strictly in intrastate commerce can transport hazardous materials in amounts too small, under federal regulations, to require placarding.

-- Amendment #2 includes a technical name change and clarifies that the \$100 penalty for out-of-service vehicles applies if the vehicle has been involved in a crash.

-- Amendment #3 specifies that the FDOT Secretary/designee, rather than the MCCO executive director/designee, shall decide whether to issue out-of-service orders on certain violators.

The subcommittee then voted 9-0 in favor of the bill as amended.

Transportation Committee

At its March 26, 2003, meeting, the committee adopted the three amendments previously adopted in subcommittee, then passed the bill as amended by a vote of 19-0.

