

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1371 Cargo chassis

SPONSOR(S): Bucher

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Systems (SUB)</u>	_____	<u>PUGH</u>	<u>MILLER</u>
2) <u>Transportation</u>	_____	_____	_____
3) <u>Commerce</u>	_____	_____	_____
4) <u>Appropriations</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Florida has 14 public ports, owned by local-government port authorities, and an estimated 102 special-generator, privately owned ports. The maritime activities of seaports are regulated by the federal government, not the state.

Pursuant to chapters 207 and 316, F.S., the Florida Department of Transportation'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. Most of Florida's motor carrier statutes are based on those of Chapter 49, U.S. Code.

Pursuant to federal law, motor carriers are responsible for the inspection, repair and maintenance of motor vehicles under their use or control. In recent years, commercial drivers and motor carriers have raised concerns about the legal responsibility for unsafe intermodal chassis which they don't own, but which are loaded onto their vehicles at seaports. The trucking industry has claimed it is unfairly being cited and fined by law enforcement officers because of these unsafe chassis. Seaport terminal operators or shipping companies typically own these intermodal chassis or trailers, but since they don't meet the federal definition of "motor carrier" they claim they aren't legally subject to the motor carrier laws.

The Federal Highway Administration is developing a rule to address these concerns.

HB 1371 seeks to shift more responsibility for inspecting and repairing unsafe intermodal chassis, and ensuring they aren't used on Florida highways, to the seaport terminal operators. The bill creates a number of requirements for terminal operators, and directs the Florida Department of Transportation (FDOT) and the Florida Highway Patrol to conduct inspections of intermodal chassis at seaports, as well as inspect the terminals' records to determine their compliance with this act's requirements. The bill creates penalties for terminal operators who fail to comply with the provisions of this act. It also specifies that commercial drivers and motor carriers still must comply with all current state and federal trucking regulations.

HB 1371 has an indeterminate fiscal impact. It raises no apparent constitutional issues, but does raise several bill-drafting concerns. The bill takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1371.tr.doc

DATE: April 3, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

HB 1371 does not reduce government because it gives additional responsibilities to FDOT and the Florida Highway Patrol – to enforce proposed intermodal chassis inspection requirements – that are intended, in part, to improve highway safety.

B. EFFECT OF PROPOSED CHANGES:

Background

Pursuant to chapters 207 and 316, F.S., FDOT's Motor Carrier Compliance Office 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 Florida Highway Patrol, which is a unit of the Florida Department of Highway Safety and Motor Vehicles, has a primary purpose of enforcing highway safety and traffic laws in chapter 316, F.S.

Commercial motor carriers and commercial drivers are responsible, under chapter 49, U.S. Code, for the safe operation, inspection, repair, and maintenance of the vehicles under their control or use. Drivers or motor carriers, based on the circumstances, are cited by FDOT's motor carrier officers for violations of these regulations, even if they do not own the vehicles or related equipment found to be not in compliance.

At least as far back as 1997, the American Trucking Association, the Teamsters Union, and other trucking-related entities that haul freight offloaded from ships have expressed concerns about what they consider to be an unfair loophole in chapter 49, U.S. Code. At seaports throughout the country, truckers wait to pick up their freight on intermodal chassis carrying the cargo container or load. The American Trucking Association estimates there are at least 750,000 intermodal chassis in use on U.S. highways. An "intermodal chassis" is a framelike, commercial trailer upon which a container is temporarily fastened for transportation on roadways. These chassis typically are owned either by the shipping companies, the seaport terminal operators (which may be representatives of shipping companies), or the railroad companies.

While shipping companies and railroad companies own or lease the intermodal chassis and schedule its usage, they do not fit the federal definition for motor carrier, and so are not technically responsible for the condition of their equipment under federal safety regulations. Depending on the entity, the owners affix the annual inspection sticker on the chassis equipment, which constitutes an act of certification that the equipment was inspected in detail at least once a year. Periodic maintenance is done by contractual arrangement, typically by the terminal operators, in the case of seaports.

California passed legislation in 2002 that created new and stringent inspection and record-keeping requirements on seaport terminal operators, regarding intermodal chassis. That state's California Highway Patrol is drafting rules for the implementation. The rules must be in place by July 1. South Carolina, Louisiana and Illinois have similar laws, and Washington and Oregon are among the states considering legislation identical to California's in 2003.

Meanwhile, the Federal Highway Administration is continuing work on a proposed federal rule on "chassis roadability." Rulemaking began in 1998, and the comment period has been extended at least twice. The rule has drawn support from trucking interests, and opposition from seaport and railroad associations.

According to written comments filed to the federal rule docket, supporters of the chassis roadability legislation focus on the highway safety benefits of the proposal. They say a chassis with brake or other safety defects can hinder a commercial driver's ability to quickly brake and maneuver in unexpected traffic situations. They also say that port terminal operators penalize truckers who refuse to drive with an unsafe chassis, and make them wait for hours for a replacement chassis, which costs them time and money.

Based on written comments filed to the docket, opponents say that such legislation places too stringent of a regulatory burden on ports and railroads, reducing the legal responsibility of truckers and motor carriers for safe operation. They also say individual state laws on chassis roadability may cause unreasonable burdens on interstate commerce.

Effect of HB 1371

Based on the successful California legislation, HB 1371 creates regulations regarding intermodal chassis safety inspections, required to be performed by "ocean marine terminal operators." These chassis must meet all safety requirements imposed by chapter 49, C.F.R., and inspections must be performed by certified inspectors on a routine basis. Chassis must be given a green tag if they pass the inspection and a red tag if they fail. Terminal operators may not intimidate or harass inspectors who fail to pass as "safe" a chassis, or drivers who refuse to accept a chassis for safety reasons or who contacts a law enforcement officer for an inspection.

The terminal operator must maintain records of each inspection for 90 days at the terminal, while repair records must be maintained for two years. These records must be made available to FDOT or the Florida Highway Patrol, upon request. In addition, FDOT is directed to conduct random, but at least biannual, inspections of the terminals to determine compliance with HB 1371. The Florida Highway Patrol or other law enforcement officers may enter port property and conduct inspections of chassis.

HB 1371 creates several penalties for terminal operators who fail to comply with the bill's provisions:

- \$500 per occurrence for each chassis that is green-tagged, but which law enforcement officers upon inspection determine has safety defects.
- \$100 a day that the terminal fails to comply with this act. After 10 days, FDOT will immediately pursue administrative or other action against the terminal operator's property permit and forward a recommendation to the Federal Motor Carrier Safety Administration for administrative action.
- \$100 an hour to be paid to any truck driver who has to wait at least an hour for a replacement chassis.
- Other penalties as provided by law.

It also specifies commercial drivers and motor carriers still must comply with all current state and federal trucking regulations.

The bill takes effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1: Creates definitions for "ocean marine terminal" and "intermodal chassis" or "chassis," as used in this act.

Section 2: Requires all ocean marine terminals that receive and dispatch intermodal chassis to implement a "chassis" roadability inspection program, in lieu of any inspections required by law for motor carriers or motor vehicles. Specifies no ocean marine terminal operator shall provide to a commercial motor carrier an intermodal chassis that does not comply with federal motor carrier regulations. Specifies that nothing in this act shall supersede those requirements.

Section 3: Creates the intermodal chassis roadability inspection program. Requires all ocean marine terminal operators to inspect all chassis before a container is placed on the chassis and before the chassis is released for operation. Specifies minimal certification requirements for inspectors. Specifies each inspection shall be recorded on a daily report that includes certain information. Prohibits ocean terminal operators from threatening, coercing, or otherwise retaliating against inspectors who refuse to pass a chassis that is out of compliance. Specifies tagging process. Specifies that no chassis shall be released to a motor carrier to be operated on the highways of this state unless it has passed an inspection and is properly tagged. Allows drivers who suspect a chassis is unsafe to request an inspection, or to contact a law enforcement agency. Specifies if the driver has to wait for at least one hour for a chassis, then the ocean marine terminal operator shall compensate the driver \$100 an hour. Prohibits ocean terminal operators from threatening, coercing, or otherwise retaliating against drivers for requesting a chassis inspection or contacting a law enforcement officer. Provides penalties.

Section 4: Provides for maintenance and inspection of chassis-inspection records.

Section 5: Directs FDOT to conduct random, but at least biannual, onsite reviews of ocean marine terminals to determine whether such terminals are complying with this act. Specifies penalties. Allows Florida Highway Patrol officers, or other law enforcement officers, to enter ports and perform chassis inspections.

Section 6: Specifies that any contract between an owner or lessee of an intermodal chassis and a driver that contains a hold-harmless or indemnity clause concerning defects in the intermodal chassis is declared null and void as against public policy. Clarifies that this provision does not apply in cases of neglect or willful failure of the motor carrier or its driver to operate the commercial vehicle in a safe manner.

Section 7: Gives FDOT the authority to adopt rules to implement this act.

Section 8: Specifies that nothing in this act shall relieve a commercial driver or commercial motor carrier from state and federal regulations regarding safe operation of vehicles.

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. HB 1371 includes a \$100-a-day fine for ocean marine terminal operators who fail to comply with the provisions of the bill, and a \$500-per-occurrence fine for each intermodal chassis tagged as safe but which actually is not in compliance. It is impossible to determine how much revenue would be generated by these fines.

In addition, the bill does not specify which agency is to receive the revenues from these fines and how such revenues may be used.

2. Expenditures:

Indeterminate. HB 1371 gives new or expanded responsibilities to FDOT and the Florida Highway Patrol, so it is likely some manpower costs would be incurred.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. HB 1371 does not address what liability or costs the local governments that own Florida's 14 deep-water public ports might incur if a terminal operator violates the bill's provisions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Terminal operators of Florida's public and private ports may incur some costs because of the increased safety and weight inspection requirements of HB 1371, as well as from the new penalties for non-compliance or making commercial drivers wait at least an hour for certified-safe intermodal chassis.

Commercial drivers and motor carriers may benefit from the provisions of HB 1371 that defray their costs of waiting for certified-safe intermodal chassis.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 7 of HB 1371 gives FDOT specific authority to adopt rules to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Lines 56-60 of HB 1371 specify that the "intermodal chassis roadability inspection program" described in the bill is "in lieu of any inspection required by law for motor carriers or motor vehicles" could be considered too broad of a statement, in that it may be interpreted to mean FDOT's motor carrier officers couldn't weigh and otherwise inspect commercial intermodal chassis on the highways. If the sponsor's intent is to replace the current federal requirements for periodic chassis inspection by terminal operators, then perhaps the sentence should be redrafted to reflect that proposed change.

Lines 171 and 216 give the Florida Highway Patrol specific authority to review chassis inspection records on file at the port and to enter port property to conduct chassis inspections – tasks which

Florida troopers currently are not required to do, nor have the training to perform. These provisions likely are a carryover from the legislation that passed last year in California, where the California Highway Patrol is the agency responsible for motor carrier compliance.

On page 206, a reference is made to terminal operator's "property permit." It is unclear what this term means.

Finally, HB 1371 does not identify the trust fund where the fines and other penalties assessed the port terminal operators for non-compliance would be deposited, which agency or agencies might share the revenues resulting from the fines, nor how the revenues can be spent.

Other comments

The Florida Trucking Association supports HB 1371. FDOT motor carrier compliance staff and a representative of the Florida Ports Council have expressed some concerns or raised questions about the bill's provisions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES