

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 Transportation Committee

BILL: SB 1912

INTRODUCER: Senator Evers

SUBJECT: Trucking

DATE: March 25, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Spalla	TR	Pre-meeting
2.			EP	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill, the “Small Trucker Relief Act” creates undesignated sections of statute to:

- define the term “small trucking firm” to mean a trucking firm that:
 - is family owned,
 - employs fewer than 30 persons, or
 - has fewer than 10 trucks in operation.

- direct county tax collector’s office to act as the agent for the Department of Highway Safety and Motor Vehicles (DHSMV) to issue and renew the registration license plates for trucks owned, and Commercial Driver’s Licenses (CDL) for employees of, small trucking firms.

- prohibit a penalty or fine from being assessed for idling if the truck is owned by a small trucking firm.

- direct the Department of Environmental Protection (DEP) to issue, upon application by a small trucking firm, a waiver exempting the firm from DEP restrictions on the washing of trucks.

- grant an annual credit against corporate income taxes imposed in ch. 220, F.S., to small trucking firms that make application for the credit. The credit is to be equal to the value of the time and amount of fuel consumed while idling.

- provide that any person who engages in theft of cargo or equipment from a small trucking firm commits a felony of the second degree. In addition to the punishments prescribed in ss. 775.082, 775.083, or 775.084, F.S., for each occurrence, a violator is to be sentenced to no less than five years in prison and fined \$100,000.
- creates the Trucking Regulation Workgroup to identify rules and regulations that can be removed without affecting public safety. The workgroup consists of the Secretary of the Florida Department of Transportation (FDOT), and an owner or employee of a small trucking firm, appointed by the Governor.
- authorize FDOT to inspect trucks randomly but may not use a “target list” when determining which trucks to inspect.

This bill creates several undesignated sections of the Florida Statutes.

II. Present Situation:

Commercial Vehicle Washing and Stormwater Discharge

Wastewater (including wash water) from any type of vehicle and equipment cleaning can contain significant amounts of substances such as oil and grease, petroleum products, suspended solids such as dirt and grit, heavy metals, detergents, and other pollutants. These contaminants may cause pollution of surface water or ground water and result in violations of water quality standards if the wastewater is not properly managed. Federal and state regulations exist to minimize the adverse effects of the discharge from wastewater from vehicle washing operations.

A stationary washing facility is a permanent fixed location where vehicles are driven for washing. Stationary facilities may include commercial car washes for passenger vehicles and commercial or industrial vehicle wash facilities for large trucks and heavy equipment. Alternatively, mobile vehicle and equipment washing involves washing at a location where vehicles are based (such as a trucking company, warehouse, bus station, vehicle dealership, fairgrounds, etc.) or at an intermediate location where the washing crew and vehicle owners meet solely for the purpose of washing vehicles (such as a business parking lot, gas station, etc.).

National Pollutant Discharge Elimination System

The U.S. Environmental Protection Agency (EPA) authorizes the Florida Department of Environmental Protection (DEP) to implement the National Pollutant Discharge Elimination System (NPDES) stormwater permitting program in the State of Florida. The program regulates point source discharges of stormwater runoff from certain industrial facilities, including certain vehicle washing operations. The operators of regulated industrial facilities must obtain an NPDES stormwater permit and implement appropriate pollution prevention techniques to reduce contamination of stormwater runoff.

As the NPDES stormwater permitting authority, DEP is responsible for promulgating rules and issuing permits, managing and reviewing permit applications, and performing compliance and enforcement activities. Accordingly, DEP has established a General Permit for Car Wash Systems by rule (ch. 62-660.803, F.A.C.) which provides for exemptions, requirements, and best management practices for vehicle washing operations.

Truck Idling

Due to federal and state hours-of-service (HOS) requirements, truck drivers often have long off-hour rest periods, which they often spend inside the cab of their trucks. Cab power is essential in order to control the temperature inside the cab and keep the drivers comfortable during the long rest periods.

The most common way drivers power their cabs is to idle, which means to continuously operate the vehicle's main drive engine while the vehicle is stopped. Idling functions to keep the fuel and engine warm; helps to keep the driver alert; mask out noises and smells; and provides safety. While idling helps keep the driver comfortable, it has a negative economic and environmental impact. Exhaust from diesel engines contains pollutants that negatively impact human health and the environment. Diesel engines emit large amounts of nitrogen oxides, particulate matter and air toxics, which contribute to serious public health problems. Idling also generates a great deal of noise.

Although several exemptions apply (*e.g.*, idling while sleeping or resting in a sleeper berth) owners or operators of heavy-duty diesel engine powered motor vehicles are prohibited by rule from idling for more than five consecutive minutes. (See FAC 62-285.420 for exemptions) First time offenders will be given a notice to comply without penalties. Complaint driven or repeat offenses may result in further enforcement action. Penalties will be assessed on a case by case basis.

Although an additional weight allowance is provided for auxiliary power units which obviate idling, the practice of idling is not currently prohibited by Florida Statute.

Safety Inspections

Safety inspections are conducted by the Florida Department of Transportation's (FDOT) Motor Carrier Compliance Office (MCCO) personnel and/or authorized agents at weigh stations and on the roadside. Officers follow a procedure established by the Commercial Vehicle Safety Alliance (CVSA) to inspect both the driver and/or vehicle(s). MCCO officers are authorized to inspect:

- Hazardous Materials Transportation
 - Placards, Markings, Labels, Spills, Leaks, Unsecured Cargo
- Brakes
 - Parking Brakes, Drums and Rotors, Hoses and Tubing, Low Air Warning Device, Tractor Protection Valve (All brakes must work and be properly adjusted. Brakes must be on all wheels if the truck or tractor was manufactured after July 25, 1980)
- Coupling Devices
 - Fifth Wheel, Pintle Hooks, Tow Bar, Safety Devices
- Fuel System
 - Leaks, Securely-Mounted Tanks, Filler Caps
- Rearview Mirrors
- Horn
- Lighting Devices
 - Stop Lights, Turn Signals, Headlights, Clearance Lights, Marker Lights

- Steering Mechanism
- Suspension
- Frame Members
- Body Components
- Tires and Wheels
- Windshield and Wipers
- Exhaust System
- Emergency Equipment
 - Reflectors, Fire Extinguisher
- Load Secured

When determining whether a vehicle is to be inspected and how thorough the inspection is, MCCO officers may consult the federally-maintained Comprehensive Safety Analysis database which is made available to insurers, shippers, law enforcement, and other parties interested in a carrier's safety record. The database ranks a given carrier's compliance and safety record as "good", "questionable", or "poor". The Federal Motor Carrier Safety Administration (FMCSA) recommends thorough inspection of vehicles maintained by carriers whose records are "poor".

III. Effect of Proposed Changes:

Section 1 of the bill allows for the act to be cited as the "Small Trucker Relief Act."

Section 2 of the bill defines the term "small trucking firm" in subsection (1) to mean a trucking firm that:

- is family owned,
- employs fewer than 30 persons, or
- has fewer than 10 trucks in operation.

Subsection (2) directs the applicable county tax collector's office to act as the agent for the DHSMV to issue and renew the registration license plates for trucks owned, and CDLs for employees of, small trucking firms.

Subsection (3) prohibits a penalty or fine from being assessed for idling if the truck is owned by a small trucking firm.

Subsection (4) directs DEP to issue, upon application by a small trucking firm, a waiver exempting the firm from DEP restrictions on the washing of trucks.

Subsection (5) grants an annual credit against corporate income taxes imposed in ch. 220, F.S., to small trucking firms that make application for the credit. The credit is to be equal to the value of the time and amount of fuel consumed while idling.

Subsection (6) provides that any person who engages in theft of cargo or equipment from a small trucking firm commits a felony of the second degree. In addition to the punishments prescribed

in ss. 775.082, 775.083, or 775.084, F.S., for each occurrence, a violator is to be sentenced to no less than five years in prison and fined \$100,000.

Section 3 creates the Trucking Regulation Workgroup consisting of two members:

- The Secretary of FDOT, or the Secretary's representative; and
- An owner or employee of a small trucking firm, appointed by the Governor.

The workgroup is charged with identifying rules and regulations that can be removed without affecting public safety. The workgroup is to provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than October 1, 2011.

Section 4 authorizes FDOT to inspect trucks randomly but may not use a "targeted list" when determining which trucks to inspect.

Section 5 establishes an effective date of July 1, 2011.

Other Potential Implications:

The definition of "small trucking firm" could be interpreted to include relative large trucking firms by its use of the disjunctive word "or," *i.e.*, of the following, only one need be satisfied to be considered a small trucking firm.

- is family owned,
- employs fewer than 30 persons, *or*
- has fewer than 10 trucks in operation.

Family-owned trucking firms can be quite large.

Under current law (s. 812.014(2)(a)1., F.S.) a person who engages in the theft of cargo or equipment with a value of more than \$100,000 commits a first degree felony. This bill would reduce that act to a second degree felony if the cargo or equipment were the property of or under the control of a small trucking firm.

According to DEP, the agency cannot provide an exemption for the discharge of pollutants from wash waters directly to surface waters since federal regulations (*i.e.*, the NPDES regulations) do not allow such exemptions. However, DEP has developed a best management practice (BMP) document for vehicle washing. Practices defined in the BMP when implemented, provide that wash waters either be percolated into the ground or collected and managed off-site and no pollutants would be discharged directly to surface waters. Operations implementing the BMP provisions are generally not required to obtain NPDES or other state wastewater permits. The BMPs were developed for mobile vehicle washing operations, but would have applicability to truck washing at small truck firms that would either contract for washing (*e.g.* mobile truck washing), or conduct vehicle washing on their own.

The Department of Revenue (DOR) notes that no authority is provided to adopt rules. However, rules would likely be needed to administer the tax credit authorized in Section 2 of the bill.

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:**

The bill does not address how the corporate income tax credit is to be documented. According to DOR:

The cost value of the time and amount of fuel consumed during idling needs to be calculated and documented. The trucking firm would be required to document the amount of time a truck spends idling and the cost of the fuel used by a truck idling.

Other observations made by DOR include:

- The bill does not address when the applicant is to apply for the credit, or if the applicant must apply each tax year to claim the credit.
- The bill does not address what happens if the credit exceeds the amount owed on a tax return.
- The bill does not place the provisions addressing the corporate income tax credit in ch. 220, F.S., where all other such credits are located.
- The bill does not state in what order the credit is to be claimed relative to other tax credits an applicant may be eligible to claim.
- Although the bill's effective date is July 1, 2011, the bill does not address how the tax credit is to be applied (*i.e.*, is it applicable to the 2010/2011 tax year, or to subsequent years only.)

B. Private Sector Impact:

Owners of small trucking firms will experience indeterminate but positive fiscal impacts from the corporate income tax credit provided by the bill.

C. Government Sector Impact:

It is not clear how many taxpayers would qualify for the corporate income tax credit provided by the bill. According to DOR,

(T)here are a limited number of small trucking firms that pay corporate income tax, so it is anticipated that the statement of estimated regulatory costs should not exceed \$1 million in the aggregate within five years of implementation.

According to DHSMV:

This bill gives legislative authority to tax collectors to issue license plates and registration renewals for trucks owned by small trucking firms, as well as issuing commercial driver licenses to the employees of those firms; however, tax collectors currently have the authority to act as DHSMV's agent for these processes.

Therefore, the bill will have no impact on local government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.