

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 145 Commercial Motor Vehicle Review Board
SPONSOR(S): Highway & Waterway Safety Subcommittee and Beshears
TIED BILLS: **IDEN./SIM. BILLS:** SB 220

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee	10 Y, 1 N, As CS	Whittaker	Smith
2) Transportation & Economic Development Appropriations Subcommittee	13 Y, 0 N	Cobb	Davis
3) Economic Affairs Committee	16 Y, 0 N	Whittaker	Creamer

SUMMARY ANALYSIS

The Commercial Motor Vehicle Review Board (Board) is the state entity created in statute that functions to consider protested commercial vehicle citations. The Board may review, sustain, modify, cancel, or revoke any penalty imposed on any vehicle or person under the provisions of chapter 316, F.S., 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. Any person may, upon payment of his or her penalty, apply to the Board for a modification, cancellation, or revocation of a penalty for violations of certain commercial vehicle regulations. The Board is part of the Florida Department of Transportation (FDOT), and has three permanent members who are the Secretary of the Department of Transportation, the Executive Director of the Department of Highway Safety and Motor Vehicles (DHSMV), and the Commissioner of Agriculture, or their authorized representatives.

This bill revises the membership of the Board by adding four appointed members who have private sector experience in the state of Florida. The Governor will appoint three of the members from the private sector: one from the road construction industry, one from the trucking industry, and one with a general business or legal background. The Commissioner of Agriculture will appoint the final member of the Board from the agriculture industry. Appointments must be made by September 1, 2015, for terms beginning October 1, 2015.

The bill provides that the Governor may remove appointed members of the Board for misconduct, malfeasance, misfeasance, or nonfeasance in office. Each member must take an oath of office pledging to honestly, faithfully, and impartially perform his or her duties before beginning official action on the Board.

The bill provides that official action may be taken by a quorum of the Board. Four members will constitute a quorum.

This bill further provides that whenever a driver is issued a citation for exceeding weight limits established by s. 316.535, F.S., by means of a portable scale, the driver may proceed to the next weigh station or public scale for verification of weight. If the vehicle is found to be in compliance with the weight requirements of this chapter at the fixed scale, the driver may submit, by US mail, both the portable scale citation and certified scale ticket to the Commercial Motor Vehicle Review Board for revocation of the penalty.

It is unknown whether this bill will result in changes to the number of citations heard by the Board, or the total amount of refunds granted. Changes to the total amount of funds received from commercial motor vehicle compliance penalties would impact the State Transportation Trust Fund. The fiscal impact of this bill is indeterminate. See Fiscal Comments.

The effective date of the bill is July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

Section 316.545, F.S., provides that whenever an officer of the Florida Highway Patrol or weight inspector of the Department of Transportation, upon weighing a vehicle or combination of vehicles with load, determines that the axle weight or gross weight is unlawful, the officer may require the driver to stop the vehicle in a suitable place, and remain standing until a determination can be made as to the amount of weight thereon, and, if overloaded, determine the amount of the penalty to be assessed.

Currently, enforcement of commercial motor vehicle compliance is carried out by the DHSMV¹, and motor vehicle weight inspections are carried out by the FDOT.² Any individual who receives a penalty under the provisions of Ch. 316 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 may, upon payment of his or her penalty³, apply to the Board to have the penalty reconsidered. The Board is then authorized to modify, cancel, revoke, or sustain each penalty.⁴

Upon receipt of payment, the Board reviews testimony or other evidence supporting the modification, cancellation, or revocation of penalties imposed pursuant to sections:

- 316.516, F.S., regarding size restrictions of width, height, or length;
- 316.545, F.S., regarding weight and load violations and special fuel and motor fuel tax violations;
- 316.550, F.S., regarding operating an oversize or overweight vehicle without a special permit; and
- 316.3025, F.S., regarding operating an unsafe and out of service vehicle, texting while driving a commercial vehicle, or unsafe handling of hazardous cargo.

The Commercial Motor Vehicle Review Board currently resides within the FDOT. The Board consists of three permanent members who are the Secretary of the FDOT, the Executive Director of the DHSMV and the Commissioner of Agriculture, or their authorized representatives. Each permanent member of the Board may designate one additional person to be a member of the Board.

The Board may hold sessions and conduct proceedings at any place within the state. The Board is scheduled to meet monthly in 2015, and the locations will rotate from Ft. Lauderdale, Tallahassee, Orlando, and Tampa.⁵

Pursuant to s. 112.061, F.S., as state officers and employees, each member receives reimbursement for travel expenses and per diem relating to their service on the Board.⁶

Case Volume and Outcomes Fiscal Year 2013/2014

In Fiscal Year 2013/2014, the Board heard 1,172 cases that represented a total of \$1,373,088.45 in fines. Out of these 1,172 cases, relief was granted on 454 of the cases, or 38.74%, for a total refunded amount of \$552,332.94, or 40.23%.

Decisions

¹ S. 20.24, F.S.

² S. 20.23, F.S.

³ Florida Administrative Code 14A-1.004

⁴ S. 316.545 (8), F.S.

⁵ www.dot.state.fl.us/trafficoperations/Traf_Incident/CMVRB/CMVRB.shtm (last viewed 1/8/15)

⁶ www.dot.state.fl.us/trafficoperations/Traf_Incident/CMVRB/CMVRB.shtm (last viewed 1/8/15)

The Board renders its decision within 30 days of the protest hearing, and notifies the person of its decision in writing via a disposition letter. Once the disposition letter is delivered by U.S. Mail, pursuant to Rule 14A-1.004(7), Florida Administrative Code, the Board's decision is final.

Rehearing

A rehearing may be requested only if additional evidence is presented. Individuals may request a rehearing by filing such a request within fifteen (15) days of the date of the disposition letter.⁷

Refunds

If the Board votes to give a partial or full refund of a citation fine, a refund will be issued by check in a timely manner. Checks are issued by the Florida Department of Highway Safety and Motor Vehicles (DHSMV).⁸

Proposed Changes:

This bill amends s. 316.545, F.S., providing that whenever a driver is issued a citation for exceeding weight limits established by s. 316.535, F.S., by means of portable scale, the driver may proceed to the next weigh station or public scale for verification of weight. If the vehicle is found to be in compliance with the weight requirements of this chapter at the fixed scale, the driver may submit, by US mail, both the portable scale citation and certified scale ticket to the Commercial Motor Vehicle Review Board for revocation of the penalty.

It is unknown whether this bill will result in changes to the number of citations heard by the Board, or the total amount of refunds granted. Changes to the total amount of funds received from commercial motor vehicle compliance penalties would impact the State Transportation Trust Fund.⁹

This bill revises the membership of the Board by providing four additional members. The Governor will appoint three members from the private sector: one from the road construction industry, one from the trucking industry, and one with a general business or legal background. The Commissioner of Agriculture will appoint the final member of the Board from the agriculture industry. The appointed members must be registered voters and citizens of the state of Florida, and possess private sector business experience. Additionally, the three permanent members of the Board will no longer have the power to appoint an additional member.

Each appointed member will serve a two-year term on the Board. The appointments to the Board must be made no later than September 1, 2015, for terms beginning October 1, 2015. A vacancy on the Board occurring during a term of an appointed member will only be filled for the balance of the unexpired term. The Governor may remove members from the Board for misconduct, malfeasance, misfeasance, or nonfeasance in office. Each member is required to take and subscribe to an oath before an official authorized by law to administer oaths prior to entering upon his or her official duties. The oath declares that he or she that he or she will honestly, faithfully, and impartially perform the duties devolving upon him or her in office as a member of the Board, and that he or she will not neglect any duties imposed upon him or her by ss. 316.3025, 316.550, or 316.545, Florida Statutes.

Four members of the Board will constitute a quorum, and the vote of four members shall be necessary for any action taken by the Board. A vacancy on the Board shall not impair the right of a quorum of the Board to exercise all of the rights, and perform all of the duties of the Board.

The bill removes the ability of the Board to execute its responsibilities by meeting as subgroups.

⁷ www.dot.state.fl.us/trafficoperations/Traf_Incident/CMVRB/CMVRB.shtm (last viewed 1/8/15)

⁸ www.dot.state.fl.us/trafficoperations/Traf_Incident/CMVRB/CMVRB.shtm (last viewed 1/8/15)

⁹ S. 316.545 (6), F.S.

B. SECTION DIRECTORY:

- Section 1 Amends s. 316.545, F.S., creating a weight appeal process to the Commercial Motor Vehicle Review Board; revises the membership of the Board, requires additional appointments of Board members by the Governor and the Commissioner of Agriculture, provide qualifications and terms for the appointees, and specifies Board quorum requirements; provides for removal of appointed members by the Governor; removes the ability of each permanent member to designate an additional member; removes the ability of the board to meet as subgroups.
- Section 2 Provides for appointments to be made by September 1, 2015, for terms to begin on October 1, 2015.
- Section 3 Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
Indeterminate. See Fiscal Comment.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is a potential positive impact on the private sector as there may be an increase in the number of revocations and subsequent refunds for citations for excess vehicle load weight whenever the initial weight is recorded on a portable scale. The total positive impact to the private sector is indeterminate.

D. FISCAL COMMENTS:

There is an indeterminate, negative impact to the State Transportation Trust Fund. This bill may result in changes to the number of citation revocations issued by the Board for excess vehicle load weight initially recorded at a portable scale, and the total amount of refunds granted.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2015, The Highway & Waterway Safety Subcommittee adopted one amendment to HB 145 and reported the bill favorably as a committee substitute. The amendment provided:

- When a driver is issued a citation for exceeding weight limits established by s. 316.535 by means of portable scales the driver may proceed to the next weigh station or public scales for verification of weight. In the event the vehicle is found to be in compliance with the weight requirements of this chapter at the fixed scale the driver may submit, by US mail, both the portable scale citation and certified scale ticket to the or revocation of the penalty.

This analysis is drafted to the committee substitute as reported by the Highway & Waterway Safety Subcommittee.