

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1373
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Transportation & Homeland Security
4/21/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, fees for overweight truck permits go to the counties and to the general revenue fund depending upon the permit. Counties that have overweight truck traffic are in need of increased revenue and the overweight permit fees have not been updated since 1991. There is also a need to address enforcement efforts against violators of the motor vehicle size and weight laws of this state.

Currently, three-fourths by value and two-thirds by tonnage of manufactured goods and raw materials are transported through this state by truck. The widespread use of overweight or oversize permits has created concern over the damage to the roadways caused by such vehicles and the ability of the state to properly maintain them without causing an increased tax burden. The demand for overweight and oversize permits issued by the motor carrier division of the Texas Department of Transportation (TxDOT) has long since surpassed TxDOT's capacity to handle. Changes in statute are needed to confront the issue of more trucks traveling without a permit.

C.S.S.B. 1373 increases certain fees for overweight truck permits with a portion of the increase to be used to address the timely issuance of permits and enforcement efforts against violators of the motor vehicle size and weight laws of this state. This bill also sends certain permit fee revenue to the state highway fund to be used for transportation-related issues. Certain county brackets for permit fees are broken up to more accurately distribute fees to counties getting overweight truck traffic. This bill provides administrative penalties against shippers and motor carriers, sets forth the administrative hearing process, and provides for injunctive relief. Furthermore, this bill requires a shipper to provide a shipper's certificate of weight to be turned in with the permit application by the motor carrier in order to remove the motor carrier's liability if a shipper falsifies the weight on a truck. Finally, this bill authorizes the Texas Department of Transportation to deny, suspend, or revoke a registration of a person who violates overweight truck statutes.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Department of Transportation is modified in SECTION 5 (Section 623.096, Transportation Code), SECTION 12 (Section 643.251, Transportation Code) and SECTION 19 (Section 645.003, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth legislative findings relating to the issuance and enforcement of motor carrier overweight or oversize vehicle permits and motor carrier registrations.

SECTION 2. Amends Section 623.0111(a), Transportation Code, to increase the amount of the annual fee a person is required to pay when a person applies for a permit under Section 623.011 (Permit for Excess Axle or Gross Weight) by certain amounts based upon the number of counties designated in the application for which the vehicle will be operated.

SECTION 3. Amends Section 623.076, Transportation Code, by amending Subsections (a) and (c) and adding Subsection (a-1), as follows:

- (a) Increases the amount of certain permit fees required to accompany an application for a permit under this subchapter (Heavy Equipment).

(a-1) Requires certain amounts of the fees collected under Subsection (a) to be deposited to the general revenue fund and the remainder to be deposited to the credit of the state highway fund (fund).

(c) Requires an application for a permit under Section 623.071(c)(3) or (d) (regarding permits to move certain heavy equipment) to be accompanied by the permit fee established by the Texas Transportation Commission for the permit, not to exceed \$7,000, rather than \$3,500.

SECTION 4. Amends Section 623.077(a), Transportation Code, to increase by certain amounts the maintenance fees that an applicant for a permit under this subchapter (Heavy Equipment), other than a permit under Section 623.071(c)(3), is required to pay based upon vehicle weight.

SECTION 5. Amends Sections 623.096(a) and (b), Transportation Code, as follows:

(a) Requires TxDOT to collect a fee of \$40, rather than \$20, for each permit issued under this subchapter (Manufactured and Industrialized Housing). Requires \$19.70, rather than 30 cents, of each fee to be deposited to the credit of the general revenue fund and the remainder to be deposited to the credit of the fund.

(b) Requires TxDOT to adopt rules concerning fees for each annual permit issued under Section 623.095(c) (regarding a permit for certain trips for the transportation of new manufactured homes) at a cost not to exceed \$3,000, rather than \$1,500. Deletes existing text requiring two percent of any fee adopted to be deposited to the credit of the fund.

SECTION 6. Amends Section 623.124, Transportation Code, as follows:

Sec. 623.124. FEE. (a) Creates this subsection from existing text. Requires an application for a permit to move a portable building unit to be accompanied by a fee of \$15, rather than \$7.50.

(b) Requires TxDOT to send each fee collected under this section to the comptroller of public accounts (comptroller). Requires the comptroller to deposit, of each fee received from TxDOT, \$7.50 to the credit of the general revenue fund and \$7.50 to the credit of the fund.

SECTION 7. Amends Section 623.182, Transportation Code, as follows:

Sec. 623.182. PERMIT FEE. (a) Creates this subsection from existing text. Provides that the fee for a permit under this subchapter (Unladen Lift Equipment Motor Vehicles; Annual Permit) is \$100, rather than \$50.

(b) Requires TxDOT to send each fee collected under this section to the comptroller. Requires the comptroller to deposit, of each fee received from TxDOT, \$50 to the credit of the general revenue fund and \$50 to the credit of the fund.

SECTION 8. Amends Section 623.001, Transportation Code, as follows:

Sec. 623.001. DEFINITIONS. Defines "shipper" and "shipper's certificate of weight." Makes nonsubstantive changes.

SECTION 9. Amends Chapter 623, Transportation Code, by adding Subchapter N, as follows:

SUBCHAPTER N. ADMINISTRATIVE SANCTIONS

Sec. 623.271. ADMINISTRATIVE ENFORCEMENT. (a) Authorizes TxDOT to investigate and, except as provided by Subsection (f), to impose an administrative penalty or revoke an oversize or overweight permit issued under this chapter (Permits for

Oversize or Overweight Vehicles) if the person or holder of the permit, as applicable, commits certain acts or violations.

(b) Provides that the notice and hearing requirements of Section 643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under this section as if the action were being taken under that section.

(c) Provides that the person or holder of a permit having relied on the shipper's certificate of weight is an affirmative defense to administrative enforcement under this section.

(d) Provides that the amount of an administrative penalty imposed under this section is calculated in the same manner as the amount of an administrative penalty imposed under Section 643.251 (Administrative Penalty).

(e) Prohibits a person who has been ordered to pay an administrative penalty under this section and the vehicle that is the subject of the enforcement order from being issued a permit under this chapter until the amount of the penalty has been paid to TxDOT.

(f) Provides that this subsection applies only to certain vehicles and combinations. Prohibits TxDOT, in connection with a violation of a vehicle or combination weight restriction or limitation in this chapter, Chapter 621 (General Provisions Relating to Vehicle Size and Weight), or Chapter 622 (Special Provisions and Exceptions For Oversize or Overweight Vehicles), from imposing an administrative penalty against a person or the holder of an overweight permit if the weight of the vehicle or combination involved in the violation did not exceed the allowable weight by more than three percent.

Sec. 623.272. ADMINISTRATIVE PENALTY FOR FALSE INFORMATION ON CERTIFICATE. (a) Authorizes TxDOT to investigate and impose an administrative penalty on a shipper who provides false information on a shipper's certificate of weight that the shipper delivers to a person transporting a shipment.

(b) Provides that the notice and hearing requirements of Section 643.2525 apply to the imposition of an administrative penalty under this section as if the action were being taken under that section.

(c) Provides that the amount of an administrative penalty imposed under this section is calculated in the same manner as the amount of an administrative penalty imposed under Section 643.251 (Administrative Penalty).

Sec. 623.273. INJUNCTIVE RELIEF. (a) Authorizes the attorney general, at the request of TxDOT, to petition a district court for appropriate injunctive relief to prevent or abate a violation of this chapter or a rule or order adopted under this chapter.

(b) Establishes that the venue in a suit for injunctive relief under this section is in Travis County.

(c) Requires the court to grant the appropriate relief without bond on application for injunctive relief and a finding that a person is violating or has violated this chapter.

(d) Authorizes the attorney general and TxDOT to recover reasonable expenses incurred in obtaining injunctive relief under this section, including certain expenses.

Sec. 623.274. SHIPPER'S CERTIFICATE OF WEIGHT. (a) Requires TxDOT to prescribe a form to be used for a shipper's certificate of weight. Requires the form to provide space for the maximum weight of the shipment being transported.

(b) Sets forth certain requirements that must be met for a shipper's certificate of weight to be valid.

SECTION 10. Amends Section 643.001, Transportation Code, by adding Subdivision (7-a), to define "unified carrier registration system."

SECTION 11. Amends Section 643.002, Transportation Code, as follows:

Sec. 643.002. EXEMPTIONS. Provides that this chapter (Motor Carrier Registration) does not apply to motor carrier operations exempt from registration by the Unified Carrier Registration Act of 2005 (49 U.S.C. Sections 14504a and 14506) or a motor vehicle registered as a cotton vehicle under Section 504.505 (Cotton Vehicles), rather than Section 502.277.

SECTION 12. Amends Section 643.251(a), Transportation Code, as follows:

(a) Authorizes TxDOT to impose an administrative penalty against a motor carrier required to register under Subchapter B (Registration) that violates this chapter, rather than certain other sections, or a rule or order adopted under this chapter, rather than certain provisions or Section 643.003. Deletes existing text requiring TxDOT to designate one or more employees to investigate violations and administer penalties under this section.

SECTION 13. Amends the heading to Section 643.252, Transportation Code, to read as follows:

Sec. 643.252. ADMINISTRATIVE SANCTIONS.

SECTION 14. Amends Section 643.252(a), Transportation Code, as follows:

(a) Authorizes TxDOT to deny a registration issued under this chapter or place on probation a motor carrier whose registration is suspended if a motor carrier commits certain actions or violations. Authorizes TxDOT to suspend, revoke, or deny a registration issued under this chapter or place on probation a motor carrier whose registration is suspended if a motor carrier violates any provision of this chapter or violates a rule or order adopted under this chapter. Makes nonsubstantive changes.

SECTION 15. Amends Subchapter F, Chapter 643, Transportation Code, by adding Section 643.2525, as follows:

Sec. 643.2525. ADMINISTRATIVE HEARING PROCESS. (a) Requires TxDOT, if TxDOT determines that a violation has occurred for which an enforcement action is being taken under Section 643.251 or 643.252 (Suspension and Revocation of License), to give written notice to the motor carrier by certified mail to the carrier's address as shown in the records of TxDOT.

(b) Requires a notice required by Subsection (a) to include certain information.

(c) Requires TxDOT, if not later than the 26th day after the date the notice is mailed TxDOT receives a written request for a hearing, to set a hearing and give notice of the hearing to the carrier. Requires the hearing to be conducted by an administrative law judge of the State Office of Administrative Hearings.

(d) Provides that TxDOT's decision becomes final on the expiration of the period described by Subsection (c) if the motor carrier does not timely request a hearing under Subsection (c).

(e) Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the director of TxDOT (director) a proposal for a decision as to the occurrence of the violation and the administrative penalties or sanctions.

(f) Requires the administrative law judge, in addition to a penalty or sanction proposed under Subsection (e), to include in the proposal for a decision a finding setting out costs, fees, expenses, and reasonable attorney's fees incurred by the state in bringing the proceeding. Authorizes the director to adopt the finding and make it a part of a final order entered in the proceeding.

(g) Authorizes the director by order, based on the findings of fact, conclusions of law, and proposal for a decision, to find that a violation has occurred and impose the sanctions or find that a violation has not occurred.

(h) Requires the director to provide written notice to the motor carrier of a finding made under Subsection (g) and include in the notice a statement of the right of the carrier to judicial review of the order.

(i) Authorizes the motor carrier, before the 31st day after the date the director's order under Subsection (g) becomes final as provided by Section 2001.144 (Decisions; When Final), Government Code, to appeal the order by filing a petition for judicial review contesting the order. Provides that judicial review is under the substantial evidence rule.

(j) Provides that a petition filed under Subsection (i) stays the enforcement of the administrative action until the earlier of the 550th day after the date the petition was filed or the date a final judgment is rendered by the court.

(k) Provides that if the motor carrier is required to pay a penalty or cost, failure to pay the penalty or cost before the 61st day after the date the requirement becomes final is a violation of this chapter and authorizes such to result in an additional penalty, revocation or suspension of a motor carrier registration, or denial of renewal of a motor carrier registration.

(l) Provides that a motor carrier that is required to pay a penalty, cost, fee, or expense under this section or Section 643.251 is not eligible for a reinstatement or a renewal of registration under this chapter until all required amounts have been paid to TxDOT.

(m) Authorizes TxDOT, if the suspension of a motor carrier's registration is probated, to require the carrier to report regularly to TxDOT on any matter that is the basis of the probation. Authorizes any violation of the probation to result in the imposition of an administrative penalty or the revocation of the registration.

(n) Provides that all proceedings under this section are subject to Chapter 2001 (Administrative Procedure), Government Code.

SECTION 16. Amends Section 643.254(a), Transportation Code, to authorize, to investigate an alleged violation of this chapter or a rule or order adopted under this chapter, an officer or employee of TxDOT who has been certified for the purpose by the director to enter a motor carrier's premises to inspect, copy, or verify the correctness of a document, including an operation log or insurance certificate.

SECTION 17. Amends Subchapter F, Chapter 643, Transportation Code, by adding Section 643.255, as follows:

Sec. 643.255. INJUNCTIVE RELIEF. (a) Authorizes the attorney general, at the request of TxDOT, to petition a district court for appropriate injunctive relief to prevent or abate a violation of this chapter or a rule or order adopted under this chapter.

(b) Establishes that venue in a suit for injunctive relief under this section is in Travis County.

(c) Requires the court to grant the appropriate relief without bond on application for injunctive relief and a finding that a person is violating or has violated this chapter or a rule or order adopted under this chapter.

(d) Authorizes the attorney general and TxDOT to recover reasonable expenses incurred in obtaining injunctive relief under this section, including certain expenses.

SECTION 18. Amends Section 645.001, Transportation Code, as follows:

Sec. 645.001. New heading: FEDERAL MOTOR CARRIER REGISTRATION. Authorizes TxDOT to participate in a federal motor carrier registration program under the unified carrier registration system as defined by Section 643.001 or the single state registration system established under 49 U.S.C. Section 14504, rather than requiring TxDOT to participate in the single state registration system established under 49 U.S.C. Section 14504.

SECTION 19. Amends Section 645.003, Transportation Code, as follows:

Sec. 645.003. ENFORCEMENT RULES. Requires TxDOT to adopt rules that are consistent with federal law providing for administrative penalties and sanctions for a failure to register as required by the unified carrier registration system or single state registration system or for a violation of this chapter or a rule adopted under this chapter in the same manner as Subchapter F (Enforcement), Chapter 643. Deletes existing text requiring TxDOT to adopt rules that are consistent with federal law providing for suspension and revocation of registration in the same manner as Section 643.252.

SECTION 20. Provides that the following laws are repealed:

- (1) Sections 643.251(d)-(r) (regarding administrative penalty), Transportation Code; and
- (2) Sections 643.252(c)-(e) (regarding suspension and revocation of license), Transportation Code.

SECTION 21. (a) Makes application of Subchapter N, Chapter 623, Transportation Code, as added by this Act, prospective.

(b) Makes application of Section 643.2525, Transportation Code, as added by this Act, prospective.

(c) Makes application of the changes in law made by this Act relating to the amount or disposition of a fee collected by TxDOT in connection with a permit for an overweight or oversize vehicle prospective.

SECTION 22. Effective date: September 1, 2007.