

SUBJECT: Changing enforcement, hearing process for motor carrier permit violations

COMMITTEE: Transportation — committee substitute recommended

VOTE: 9 ayes — Krusee, Phillips, Harper-Brown, Deshotel, Haggerty, Harless, Hill, Macias, Murphy

0 nays

WITNESSES: For — (*Registered, but did not testify*: Les Findeisen, Texas Motor Transportation Association)

Against — None

On — Carol Davis, Texas Department of Transportation

BACKGROUND: Transportation Code, sec. 643.251 allows the Texas Department of Transportation (TxDOT) to impose an administrative penalty against a motor carrier that violates certain motor vehicle registration statutes under ch. 643. The standard penalty may not exceed \$5,000, but if it is determined the motor carrier knowingly committed the violation, the penalty may rise to \$15,000 for a single violation or \$30,000 total for multiple violations. Each day a violation occurs and continues is considered a separate violation. The penalty amount is based on:

- the seriousness of the violation, including its nature, circumstances, extent and gravity;
- the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- the economic harm to property or the environment caused by the violation;
- previous violations;
- the amount necessary to deter future violations; and
- efforts to correct the violation.

The section provides for notice of the carrier and a hearing process, conducted by an administrative law judge of the State Office of Administrative Hearings (SOAH). If the motor carrier does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the

director may refer the case to the attorney general, who may collect the penalty.

Transportation Code, sec. 643.252 allows TxDOT to suspend or revoke the registration of a motor carrier, or place a carrier with a suspended registration on probation. It provides for circumstances under which the agency can take such an action without a hearing, and that a motor carrier is subject to this punishment if it:

- fails to meet insurance or financial responsibility requirements under Transportation Code, sec. 643.101;
- fails to keep proof of insurance in the vehicle cab as required by Transportation Code, sec. 643.103;
- fails to register a vehicle as required;
- knowingly provides false information on any form filed with the agency;
- violates rules adopted under sections governing short-term lease or replacement vehicles (Transportation Code, sec. 643.063);
- has an unsatisfactory federal safety rating; or
- repeatedly violates commercial motor vehicle safety standards (Transportation Code, ch. 644) or traffic laws (Transportation Code, Subtitle C).

In 2005, the 78th Legislature approved HB 2971 by Harper-Brown, which renumbered Transportation Code, secs. 502.276 and 502.277.

Transportation Code, sec. 504.404, formerly sec. 502.276, allows an owner to obtain a specialty license plate for certain vehicles used to transport agricultural and construction products and does not require vehicle registration if the vehicle is used only temporarily on highways.

Transportation Code, sec. 504.505, formerly sec. 502.277, requires TxDOT to issue specially designed license plates for vehicles not more than 10 feet in width that transport chile peppers, cotton or associated equipment.

DIGEST:

CSHB 2903 would amend and repeal existing enforcement procedures for motor carriers that violate laws or rules governing overweight or oversize permits and registration and would establish new sanctions and hearing procedures for these offenses.

CSHB 2093 would repeal all of Transportation Code, sec. 643.251 except provisions providing for penalty calculations and standards. It would repeal the portions of sec. 643.252 providing circumstances under which the agency could suspend or revoke a motor carrier's registration or place a suspended carrier on probation without a hearing. It would amend both sections to expand the violations and resulting sanction options for motor carriers required to register a vehicle. TxDOT would be allowed to impose an administrative penalty and would be allowed to deny the registration of a motor carrier for any violation of motor vehicle registration procedures in statute, or a rule or order adopted under the statute (Transportation Code, ch. 623).

Shippers' provisions. TxDOT would prescribe a form to be used by shippers, specified as those who consign the movement of a shipment. The shipper would document the maximum weight of a transported shipment on the form, called the shipper's certificate of weight. The shipper would validate the certificate by:

- certifying the information on the form was accurate; and
- delivering the certificate to the shipment transporter before the transporter applied for an overweight permit.

Administrative sanctions. TxDOT would be allowed to investigate and impose an administrative penalty or revoke an oversize or overweight permit if the permit holder:

- provided false information on the permit application or another TxDOT form associated with the overweight or oversize permit;
- violated statutes, or rules or orders adopted under the statutes, governing vehicle size and weight and oversize or overweight vehicles (Transportation Code, chs. 621-623); or
- failed to obtain an oversize or overweight permit if one was required.

It would be an affirmative defense to enforcement if the permit holder relied on the shipper's certificate of weight. TxDOT would be allowed to investigate and impose an administrative penalty on a shipper who provided false information on a shipper's certificate of weight delivered to a shipment transporter.

Any administrative penalty would be calculated under the current provisions (Transportation Code, sec. 643.251). TxDOT could opt not to issue a permit to a person until that person had paid the administrative penalty.

TxDOT could request that the attorney general petition a Travis County district court for appropriate injunctive relief to prevent or abate a violation of this provision. The court would be required to grant appropriate relief without bond if it found a person was violating or had violated the chapter, or an associated rule or order. The attorney general and TxDOT would be allowed to recover reasonable expenses incurred in obtaining injunctive relief, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Administrative hearing process. If TxDOT determined a motor carrier had violated statute subject to enforcement under secs. 643.251 or 643.252, it would be required to send via first class mail a written notice to the motor carrier including:

- a brief summary of the alleged violation;
- a statement and effective date of each administrative sanction taken; and
- information alerting the carrier to its right to request a hearing, including the procedure and time frame for such a request.

If the carrier's written request for a hearing was received by TxDOT within 26 days of the date it sent the notice, the agency would be required to set a hearing date and notify the carrier. A SOAH administrative law judge would conduct the hearings. If a request was not received in this time frame, the agency decision would become final on the 26th day after it mailed the notice.

The judge would issue the TxDOT executive director a proposal for a decision, which would include penalties and costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state in bringing the proceeding. The executive director would be allowed to, by order, impose the sanctions or find that a violation did not occur, and send written notice of this decision to the motor carrier that would include a reminder of its right to seek judicial review of the order. The carrier would have 31 days after the director's order became final under Government Code, sec. 2001.144, to file a petition for judicial review contesting the

order. Such an action would stay the enforcement of the administrative action until the earlier of:

- the 550th day after the date the petition was filed; or
- the date the court rendered a final judgment.

If the motor carrier was required to pay costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state in bringing the proceeding, failure to pay these costs and the penalty before the 61st day after the decision becomes final would be a violation and could result in an additional penalty, including:

- revocation or suspension of a motor carrier registration; or
- denial of renewal of a motor carrier registration.

A motor carrier that failed to pay all fines and fees required under an administrative hearing or administrative penalty would be barred from reinstatement or renewal of a registration until all debts had been cleared.

If the suspension of a motor carrier's registration is probated, TxDOT could require it to report regularly to the agency on any matter on which the probation is based. Any violation of the probation could result in imposition of an administrative penalty or registration revocation.

All proceedings under this section would be governed by administrative procure statutes (Government Code, ch. 2001).

Federal guidelines. The bill would amend Transportation Code, ch. 643 to exempt from registration requirements any motor carrier operations exempt from registration under the federal Unified Carrier Registration Act of 2005 or a motor vehicle operating exclusively in interstate or international commerce and registered under the single state registration system established in federal law (49 U.S.C. Sec. 14504(c)).

TxDOT would be allowed, to the fullest extent possible, to participate in a federal motor carrier vehicle registration program, or any successor program. It would be required to adopt rules consistent with federal law providing for administrative penalties and sanctions for:

- failing to register as required by the unified carrier registration system or single state registration system; or

- violating statutes, or rules or orders adopted under the statutes, governing the single state registration system (Transportation Code, ch. 645).

Other provisions. The bill would amend several sections in Transportation Code, ch. 623 to conform to the renumbering of provisions governing vehicles transporting agricultural and construction products and equipment.

Effective date. This bill would take effect September 1, 2007. Provisions governing administrative sanctions would apply to violations that occurred or information received by TxDOT on or after that date. Changes related to fee assessments for overweight or oversize vehicles would apply only for permit applications on or after the effective date. Provisions governing administrative hearings would apply to any violations on which an enforcement action was begun on or after the effective date, regardless of when the violation occurred. Any administrative penalties or license revocation processes begun prior to the effective date under existing procedures would be governed by current law.

**SUPPORTERS
SAY:**

TxDOT has had the ability to sanction motor carriers for registration and consumer protection violations but has had little ability to enforce those penalties or reach the source of certain overweight loads. CSHB 2093 would grant the agency the ability to revoke or deny a registration to violators and would enable TxDOT to pursue shippers for overloading vehicles or misreporting the weight of a trucker's shipment.

The state has created overweight permits to protect other drivers by ensuring a vehicle does not exceed its established safety guidelines and to finance road improvement projects necessitated by the impact these large loads have on the roads. TxDOT has not had a problem assessing carriers who repeatedly violate these regulations, but it has had difficulty collecting the fines because carriers realize the punishments have little teeth. In 87.5 percent of administrative cases, the motor carrier has not even shown up for its SOAH hearing. Between fiscal 2004 and fiscal 2006, the agency has assessed 133 penalties totaling almost \$800,000 in fines. Of those, the violators settled with the state in 61 cases but the amount of fines collected was less than \$100,000.

The trucking industry supports this bill because it not only would ensure that everyone was following the same standards and competing under the

same rules, but also because it would provide a way to penalize shipping companies that overload trucks. Truckers can assess a shipment's height, length, and width upon loading but most are not able to weigh the vehicles and have to take the shippers at their word. But truckers who are cited for going over the weight prescribed on their permits currently have no recourse to shift the burden to the true cause in the cases when a shipper does not provide accurate information. Trucking companies also want to ensure that competitors are not skirting the system, saving time and money by not registering or not accurately conveying the weight of their shipment with the knowledge that they will not be severely punished for their actions.

This bill would streamline the hearings process because there are currently several different procedures that govern this area. It would also fix inadvertent renumbering mistakes in the current statutes covering certain types of vehicles.

TxDOT believes it has the personnel needed for enforcement and to conduct investigations and would be able to reprioritize and increase efficiency in its investigative and complaint response methods. The agency also would have the ability to create rules to govern this section and could ensure through this process that no carrier would be punished twice for the same violation through enforcement efforts of the Department of Public Safety (DPS) and TxDOT.

**OPPONENTS
SAY:**

This bill should be amended to provide for potential enforcement conflicts with DPS and additional staffing needed to issue permits on the front end, which is a significant source of today's problems.

Truckers face a significant delay in obtaining an overweight permit once a shipper informs them of the load's weight. TxDOT has seen a 30 percent increase in demand in the last three years, yet its staffing levels have not shifted. SB 1373 by Corona, which contains much of the same language as CSHB 2093, would provide the agency with 25 full-time employees who would expedite the process. One of the reasons people run afoul of the law today is because of the high cost of waiting to move a shipment, and beefing up TxDOT's staffing in this area would lessen the incentive to disobey the law.

The Transportation Code has additional statutes governing overweight violations that DPS enforces on the roads. It can cite truckers for some of

the same offenses that TxDOT could under this bill. Although TxDOT's enforcement efforts are done administratively, it is conceivable that the agency could fine a carrier for the same violation for which the carrier was cited by a DPS officer. Also, it is uncertain whether TxDOT has the resources or personnel effectively to enforce these regulations.

NOTES:

A related bill, HB 3088 by Phillips, which would revise the fee schedule for overweight vehicles based on the number of counties through which they travel, passed the House by 140-0 on April 18 and has been referred to the Senate Transportation and Homeland Security Committee.

SB 1373 by Carona, which incorporates much of the same language that is in CSHB 2093 and HB 3088, was reported favorably, as substituted, by the Senate Transportation and Homeland Security Committee on April 25 and was scheduled for the May 3 Local and Uncontested Calendar.