

SUBJECT: Administrative penalties for violations of the Vehicle Storage Facility Act

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Alexander, Siebert, Finnell, Hartnett, Hawley, Uher
0 nays
3 absent — Edwards, Hill, Pickett

WITNESSES: For — Jeanette Rash, Zone One Auto Storage
Against — None

BACKGROUND : Under the Vehicle Storage Facility Act, facilities that store towed vehicles must be licensed and comply with regulations for imposing fees and notifying owners about their vehicles and storage fees due. Owners and operators of storage facilities that fail to comply with licensing requirements commit an offense and may be assessed a penalty ranging from \$200 to \$500.

In 1995, responsibility for enforcing the act was transferred from the Texas Railroad Commission to the Texas Department of Transportation (TxDOT).

DIGEST: CSHB 2202 would make technical changes to the Vehicle Storage Facility Act to reflect the transfer of responsibility to TxDOT. It also would impose administrative penalties upon unlicensed vehicle storage facilities, allowing TxDOT to assess an administrative penalty of up to \$10,000 for each day that a violation occurred or continued.

TxDOT would consider several factors in determining the penalty amount, including the seriousness of the violation; any economic harm to property or to the environment; any history of previous violations; the amount necessary to deter future violations; the person's efforts to correct the violation; and any other relevant matters.

Penalties could be assessed only after the alleged violator had an opportunity to offer a defense at an administrative hearing.

Administrative hearings would be conducted by the State Office of Administrative Hearings, with proceedings held before an administrative law judge (ALJ) authorized to make findings of fact, conclusions of law, and proposals for decision involving potential violations. Upon receipt of the ALJ's proposals, the executive director of TxDOT could review all findings and make an independent judgment concerning the existence and proof of violations, and ultimately impose, increase, or decrease a penalty, if appropriate. The director would have full discretion concerning any recommendation by the ALJ.

Within 30 days after the decision became final, the person would have to pay the penalty or seek a stay of enforcement. CSHB 2202 would provide for standard procedures for staying enforcement. If a court finally determined that no violation had occurred, that the penalty was undeserved, or that the penalty amount was excessive, TxDOT could remit an appropriate amount to a person with interest or execute release of any surety bond that had been pledged. The attorney general could bring a civil action to recover any penalty a court found to be appropriate.

CSHB 2202 would also amend another provision of the Vehicle Storage Facility Act to restrict the period for which fees could be assessed against the owner of a vehicle towed to a facility. A fee could not be assessed for more than five days prior to the date when the operator mailed notice of the vehicle's whereabouts to the owner.

CSHB 2202 would take immediate effect if finally approved by a two-thirds record vote of the membership of each house.

**SUPPORTERS
SAY:**

CSHB 2202 would give the Texas Department of Transportation the enforcement tools necessary to fully implement and enforce the provisions of the Vehicle Storage Act. The vehicle storage industry has grown along with the state, especially in urban and suburban areas, but the growth has been accompanied by growing pains. Owners retrieving their autos from such storage operations often find their vehicles have suffered damage. Private passenger cars and trucks stored in these facilities are especially susceptible to exterior finish or simple body damages, due to the often unprotected storage conditions and the repeated movement of cars and trucks into, out of, and within the storage unit. In addition, the level of

security at many storage facilities is often weak, and a number of autos and trucks in the major metropolitan areas of Texas have been vandalized or stripped of parts while under the custody of storage facilities.

The legitimate storage facilities want tough penalties against the bad actors, and CSHB 2202 would give TxDOT the flexibility to impose penalties appropriate to the violations. Previous standards of care imposed upon these facilities by law have not brought about great improvement, in large part because the fines are negligible. The hefty administrative penalties provided by CSHB 2202 would be an appropriate reaction to the continued failure of certain storage facilities to correct problems in complying with the act.

The bill would guard against misapplication of TxDOT authority by specifically listing factors the agency would have to consider in determining the appropriate penalty for violations. CSHB 2202 also would establish standard procedures that facilities accused of licensing violations could use to defend themselves, including an appeals process that conforms to Texas administrative procedures.

OPPONENTS
SAY:

CSHB 2202 would give TxDOT extraordinary powers to punish storage facilities that the agency considered to be operated in a substandard manner. Currently facilities that violate vehicle storage licensing requirements may be assessed penalties ranging from \$200 to \$500. Increasing the possible penalty to \$10,000 per day would be unduly harsh and punitive. A single penalty could bankrupt most storage facilities.

The bill would also unfairly penalize facility operators who appealed the imposition of a TxDOT penalty, since it would still require the accused party to pay the full penalty or secure an equivalent bond even while the actual appeal process continued. Although the appellant could file an affidavit of financial inability to pay or post bond, TxDOT could still contest that affidavit.

NOTES:

The committee substitute delineated the procedures that a storage facility would have to follow to stay an enforcement order.

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House Research Organization
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