

SUBJECT: Photo/video enforcement and penalties for toll-road payment violators

COMMITTEE: Transportation — favorable, without amendment

VOTE: 9 ayes — Alexander, Hawley, Y. Davis, Edwards, Hamric, Hill, Noriega, Pickett, Swinford  
0 nays

SENATE VOTE: On final passage, March 12 — voice vote

WITNESSES: (*On House companion bill, HB 1661:*)  
For — *Registered but did not testify*: James McCarley, Dallas Regional Mobility Coalition and Texas Credit Union Coalition  
  
Against — None  
  
On — Carol Rawson and Phillip Russell, Texas Department of Transportation

BACKGROUND: Current state law does not permit the use of video or photographic technology to monitor or enforce toll payments on toll roads, except those operated by regional tollway authorities (RTAs).

DIGEST: SB 454 would allow the Texas Department of Transportation (TxDOT) and the Texas Turnpike Authority (TTA) to implement photo and video technology exclusively for toll enforcement at facilities on the state highway system. Only images of license plates (front or rear) could be produced. The images could not be used in the prosecution of any other offense.  
  
Nonpayment of tolls due on vehicles driven or towed through collection facilities would be a misdemeanor punishable by a fine of up to \$250 per offense. An administrative fee of up to \$100 per offense also could be assessed. Failure to pay the proper toll and administrative fee after receiving a written notice from TxDOT within the time specified by the notice also would be an offense. Each failure to pay a toll and fee after receiving notice would be a separate offense punishable by a fine of up to \$250.

TxDOT would have 30 days to mail notices of nonpayment to vehicles' registered owners, who, in turn, would have 30 days from the mailing date to pay the toll and any fee. Vehicle lessors and former owners who provided documentation of a lease agreement or ownership transfer within 30 days of the notice mailing date would be excepted, and lessees and subsequent owners would be liable for tolls and fees.

Video recordings, photographs, electronic recordings, or other evidence obtained by automated enforcement technology would constitute proof that a vehicle had been driven or towed through a toll collection facility without payment. Nonpayment notices would be presumed to have been received on the fifth day after mailing. TxDOT computer records of vehicle ownership and lease contract documents also would be admissible as evidence in a prosecution under the statute.

The bill's provisions also would apply to turnpike projects and congestion mitigation projects on which tolls were charged.

The bill would take effect September 1, 2001. Its changes would apply only to the civil or criminal consequences of a nonpayment of a toll that occurred on or after that date.

**SUPPORTERS  
SAY:**

By reducing toll fraud, SB 454 would help with Texas' transportation crisis by providing much-needed funds that toll road users are obligated to pay.

Toll roads historically have been financed by bonds. Authorities owe investors and taxpayers every effort to collect tolls and to enforce payment to make toll roads economically viable. Toll roads are increasing in Texas, and the state must be prepared to use the most cost-effective toll collection and enforcement methods available.

Automated enforcement technology has been proven effective in Texas in the multisite highway/rail grade crossing demonstration project that the Legislature approved in 1995. The technology already is used by the North Texas Tollway Authority and is allowed in 12 other states, including California, New York, and Illinois, according to the Insurance Institute for Highway Safety, and in at least 12 other countries.

Without automation, toll payment enforcement must be left up to peace officers on site or in expensive enforcement zones. That would create unnecessary hazards and significant expenses at a time when resources are lacking. Arguably, “photo-ticketing” as proposed by SB 454 would be more reliable and ubiquitous than uniformed personnel or patrols, whose time would be better spent enforcing other laws and investigating more serious crimes.

Although automated enforcement devices may cost as much as \$60,000 each, they would pay for themselves through higher toll payment rates, reduced evasion of tolls, and lower enforcement costs. They also would improve traffic mobility and reduce congestion by allowing the removal of automatic gates, which can slow traffic flow on high-volume roads and can close on vehicles prematurely.

Being arrested or fined for an offense committed on a public street is not an invasion of privacy. The purpose of these cameras is to ensure public safety, not to intrude on people’s private lives or to raise additional funds for toll roads. Unlawfully using toll roads is a public act, not a private matter. People do not have a reasonable expectation of privacy when traveling in a vehicle on a public roadway in public view. Courts have upheld the use of this technology for traffic law enforcement as not being an invasion of privacy.

Nevertheless, all photos and videos generated by the devices would remain confidential under an exception in the Driver’s Privacy Protection Act. They would not be subject to disclosure under the Public Information Act.

OPPONENTS  
SAY:

Government should not be in the business of arbitrarily monitoring private lives. This kind of police action would discourage public trust in law enforcement. It also would be a gross invasion of privacy. If cameras were used today to catch people who do not pay road tolls, they could be used in the future to enforce laws against even the pettiest crimes. This conjures up images of “Big Brother” from the George Orwell novel *1984*.

Texas has relatively few toll roads compared to other states. The proponents have not demonstrated a problem with toll nonpayment large enough to warrant the expense of installing cameras at toll facilities.

Automated systems invariably malfunction, creating the possibility of false prosecutions based on inaccurate information — in this case, photos of vehicles whose drivers did pay tolls. While the bill's intent is to photograph or videotape license plates only, there are no guarantees that equipment would not produce images of drivers and passengers, either accidentally or, in a worst-case scenario, intentionally. Not until the admissibility of any such evidence were tested in court could motorists be assured that their constitutional and privacy rights would be protected.

Toll roads historically are underfunded and often not self-sustaining, so the temptation to generate revenue through automated enforcement would be great. Revenue would be limited to the number of violators, making cost recovery uncertain and perhaps lengthy.

OTHER  
OPPONENTS  
SAY:

SB 454 would make TxDOT, a road-building agency, responsible for enforcing laws on public roads. Such authority should be delegated to the Department of Public Safety, if not exclusively, then at least in conjunction with TxDOT and TTA.

This technology has been in use in the Dallas area only a short time. Texas should wait and see how well it works before authorizing its use statewide and incurring a large cost that might have a small benefit.

NOTES:

The companion bill, HB 1661 by Alexander, was reported favorably, without amendment, by the House Transportation Committee on March 6.

A similar bill in the 76th Legislature, SB 1487 by Armbrister, failed to withstand a point of order. In 1997, the 75th Legislature enacted SB 370 by Armbrister/Sibley, authorizing RTAs to use video surveillance to prosecute nonpayment of tolls. In 1995, the 74th Legislature enacted SB 1512 by Cain, authorizing an automated enforcement highway/rail grade crossing demonstration project. It also enacted SB 1360 by Cain, which was intended to give TTA video surveillance authority for toll collection and enforcement. A technical problem with the bill's language prevented TTA from obtaining video enforcement authority.