

BILL ANALYSIS

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C.S.S.B. 882
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2007, the 80th Legislature passed S.B. 792, which designated local toll project entities (like the North Texas Tollway Authority (NTTA) and the Harris County Toll Road Authority) as the toll operators of all the toll projects within their service area. This authority and responsibility required the authorities to enter into agreements with private developers of the toll projects. As part of these agreements, the private sector has attempted to obtain expensive letters of credit from the local toll project entities. Requiring letters of credit may sometimes negatively impact the local toll project entity's financial condition.

Also, under current law, a regional tollway authority, as defined under Chapter 366 (Regional Tollway Authorities), Transportation Code, has the authority to file complaints with local county justices of the peace to hear cases related to toll enforcement violations. Allowing NTTA to appoint an administrative officer to hear such cases would alleviate the workload of the Justice of the Peace system, as well as save the person against whom the violation is being enforced additional fees and fines that are imposed when a case is handled in the county system.

C.S.S.B. 882 amends Chapter 366 of the Transportation Code relating to certain powers and duties of a regional tollway authority.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to a Regional Tollway Authority is modified in SECTION 3 (Section 366.185, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 366.038, Transportation Code, as follows:

Sec. 366.038. New heading: TOLLING SERVICES. (a) Defines "tolling services."

(b) Requires a regional tollway authority (authority) to provide, for reasonable compensation, tolling services, rather than customer service and other toll collection and enforcement, for a certain toll project. Provides that this section does not restrict an authority from agreeing to provide additional tolling services in an agreement described in Subsection (d). Provides that additional tolling services provided under an agreement under that subsection are subject to the provisions that apply to tolling services under this section.

(c) Prohibits an authority from providing financial security, including a cash collateral account, for the performance of tolling services the authority provides under this section if the authority determines that providing security could restrict the amount, or increase the cost, of bonds or other debt obligations the authority is authorized to subsequently issue under this chapter or the authority is not reimbursed its cost of providing the security.

(d) Requires an authority, before providing tolling services for a toll project under this section, to enter into a written agreement that sets out the terms and conditions for the tolling services to be provided and the terms of compensation for those services.

(e) Provides that toll revenues are the property of the entity that is entitled to the revenues under a tolling services agreement for the toll project, regardless of who holds or collects the revenues. Provides that toll revenues that are held or collected by an authority under a tolling services agreement and are not the property of the authority are not subject to a claim adverse to the authority or a lien on or encumbrance against property of the authority. Provides that toll revenues that are the property of the authority are not subject to a claim adverse to any other entity or a lien on or encumbrance against property of any other entity.

(f) Authorizes an authority to agree in a tolling services agreement that its right and obligation to provide tolling services for the applicable toll project under this section are subject to termination for default, and that after a termination for default this section does not apply to that toll project.

(g) Authorizes any public or private entity, including an authority or the Texas Department of Transportation (TxDOT), to agree to fund a cash collateral account for the purpose of providing money that is authorized to be withdrawn as provided in the tolling services agreement because of an authority's failure to make any payment as required by the tolling services agreement. Provides that an authority's written commitment to fully or partially fund a cash collateral account is conclusive evidence of the authority's determination that the commitment does not violate Subsection (c). Authorizes TxDOT to use money from any available source to fund a cash collateral account under this subsection.

SECTION 2. Amends Section 366.178, Transportation Code, by adding Subsection (j), as follows:

(j) Provides that in addition to the other powers and duties provided by this chapter, an authority has the same powers and duties as TxDOT under Chapter 228 (State Highway Toll Projects), a county under Chapter 284 (Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties), and a regional mobility authority under Chapter 370 (Regional Mobility Authorities), regarding the authority's toll collection and enforcement powers for the authority's turnpike projects; and other toll projects developed, financed, constructed, or operated under an agreement, including a comprehensive development agreement, with the authority.

SECTION 3. Amends Section 366.185, Transportation Code, by adding Subsection (d-2), as follows:

(d-2) Authorizes the rules adopted under Subsection (d), notwithstanding Subsection (d-1), if the contract amount exceeds \$50 million, to provide for a stipend to be offered to an unsuccessful design-build firm that submits a response to the authority's request for additional information, in an amount that is authorized to exceed \$250,000 and is reasonably necessary, as determined by the authority in its sole discretion, to compensate the unsuccessful firm for preliminary engineering costs associated with the development of the proposal by the firm and the value of the work product contained in the proposal, including the techniques, methods, processes, and information contained in the proposal.

SECTION 4. Amends Subchapter E, Chapter 366, Transportation Code, by adding Sections 366.186 and 366.187, as follows:

Sec. 366.186. ORDER PROHIBITING OPERATION OF MOTOR VEHICLE ON TURNPIKE PROJECT. (a) Authorizes an authority to prohibit by order of its executive director the operation of a motor vehicle on a turnpike project if an operator of the vehicle has failed to pay a toll, fine, or administrative fee imposed under Section 366.178 (Failure or Refusal to Pay Toll) and the authority provides notice to the registered owner of the vehicle of the unpaid toll, fine, or administrative fee.

(b) Requires that the notice required by Subsection (a)(2) be mailed to the registered owner of the vehicle at least 10 days before the date the prohibition takes effect.

(c) Authorizes the authority, if the registered owner of the vehicle fails to pay a toll, fine, or administrative fee before the 11th day after the notice under Subsection (b) is mailed, to impose a reasonable cost for expenses associated with collecting the unpaid toll, fine, and administrative fee.

Sec. 366.187. VIOLATION OF ORDER; OFFENSE. (a) Provides that a person commits an offense if the person operates a motor vehicle or causes or allows the operation of a motor vehicle on a turnpike project in violation of an order issued under Section 366.186.

(b) Provides that an offense under this section is a Class C misdemeanor.

SECTION 5. Amends Section 366.260, Transportation Code, as follows:

Sec. 366.260. New heading: CERTAIN CONTRACTS PROHIBITED. (a) Prohibits a director, agent, or employee of an authority from, outside the person's service to that authority, otherwise from contracting with the authority. Deletes existing text prohibiting a director, agent, or employee of an authority from being directly or indirectly interested in a contract with the authority or the sale of property to the authority.

(b) Makes no changes to this subsection.

SECTION 6. Amends Section 366.303, Transportation Code, by amending Subsection (d) and adding Subsections (f) and (g), as follows:

(d) Provides that the term of an agreement under Subsections (a) (relating to the authorization of a local governmental entity other than a nonprofit corporation to issue bonds or enter into an agreement with an authority regarding a turnpike project, and to levy taxes to pay interest on the bonds and provide a sinking fund for the bonds), (b) (relating to the authorization of a local governmental entity to agree with an authority to issue bonds or enter into and make payments under an agreement regarding a turnpike project of that authority), and (c) (relating to the authorization of a local governmental entity to make payments related to Subsection (b) from certain sources), rather than this section, may not exceed 40 years.

(f) Authorizes a county that is part of an authority, including a county acting under Chapter 284, to accelerate a toll project's design, financing, construction, and operation by the entity ultimately responsible for the toll project's design, financing, construction, and operation, to acquire right-of-way necessary to locate and preserve the proposed alignment for a potential toll project, and to obtain the environmental approvals, any necessary traffic and revenue studies, and any engineering data necessary to advance the feasibility of a potential toll project. Defines "toll project."

(g) Authorizes a county that acquires right-of-way or obtains approvals, studies, or data under Subsection (f) to petition the applicable authority to negotiate a written agreement by which the county's and the authority's activities can be better coordinated and more efficiently accomplished. Authorizes the agreement to include provisions by which the authority is authorized to agree to later reimburse the county for certain costs the county incurs for right-of-way and other deliverables transferred to and used by the authority if the authority ultimately develops the toll project. Authorizes TxDOT or the applicable metropolitan planning organization, or both, to be a party or parties to an agreement under this subsection if the county and the authority determine that the inclusion of one or both of those entities furthers the objectives of this subsection.

SECTION 7. Amends Section 366.407(g), Transportation Code, to require that the contract contain an explicit mechanism for setting the price for the purchase by the authority, rather than TxDOT, of the interest of the private participant in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the contract.

SECTION 8. Amends Chapter 366, Transportation Code, by adding Subchapter I, as follows:

SUBCHAPTER I. ADMINISTRATIVE ADJUDICATION HEARING PROCEDURE

Sec. 366.451. **ADOPTION OF ADMINISTRATIVE ADJUDICATION HEARING PROCEDURE.** (a) Authorizes the board of an authority to adopt an administrative adjudication hearing procedure for a person who is suspected of having violated an order issued under Section 366.186 on at least two separate occasions within a 12-month period.

(b) Requires that a hearing procedure adopted under Subsection (a) determine liability for nonpayment of a toll under Section 366.178, violations under Section 366.187 of an order issued under Section 366.186, and fines and administrative fees associated with nonpayments and violations; establish a period of not less than 10 days from the date notice of the second violation of the order under Section 366.186 is provided to the registered owner of the vehicle, during which a person is authorized to pay all tolls, fines, and administrative fees imposed under Sections 366.178 and 366.187, or request a hearing; and provide for appointment by the authority of one or more hearing officers to conduct administrative adjudication hearings and authorize the officers to administer oaths and issue orders compelling the attendance of witnesses and the production of documents.

(c) Authorizes an order issued under Subsection (b)(3) (relating to the appointment by the authority of one or more hearing officers to conduct certain functions) to be enforced by a justice of the peace.

Sec. 366.452. **NOTICE OF HEARING.** (a) Requires the authority, if a person requests a hearing under Section 366.451(b)(2)(B) (relating to requesting a hearing), to inform the person of the time and place of the hearing and notify the person that the person has the right to a hearing without delay.

(b) Provides that the original or any copy of the summons or citation is a record kept in the ordinary course of business of the authority and is rebuttable proof of the facts it contains.

Sec. 366.453. **ADMINISTRATIVE HEARING: PRESUMPTION AND EVIDENCE OF OWNERSHIP.** (a) Provides that in an administrative adjudication hearing it is presumed that the registered owner of the motor vehicle that is the subject of the hearing is the person who operated or who caused or allowed the operation of the motor vehicle when a nonpayment or violation occurred.

(b) Provides that in an administrative adjudication hearing a computer record of the authority or TxDOT of the registered vehicle owner is prima facie evidence of its contents and that the person named in the record was the registered owner of the vehicle at the time a nonpayment or a violation occurred.

Sec. 366.454. **PROOF OF NONPAYMENT AND VIOLATION.** Authorizes proof of a nonpayment or violation to be shown by testimony of a peace officer or authority employee, video recording or surveillance, photograph, electronic recording, or any other reasonable evidence, including evidence obtained by automated enforcement technology in an administrative adjudication hearing.

Sec. 366.455. **DEFENSES; LIABILITY OF VEHICLE LESSEE.** (a) Provides that in an administrative adjudication hearing it is a defense to a violation that the motor vehicle in question was stolen before the violation occurred and was not recovered by the time of the violation, but only if the theft was reported to the appropriate law enforcement authority before the earlier of the occurrence of the violation or eight hours after the discovery of the theft.

(b) Provides that in an administrative adjudication hearing the defense under Section 366.178(h) (relating to providing a defense to nonpayment where the

motor vehicle in question was stolen before the failure to pay the proper toll occurred) is available as a defense to nonpayment under Section 366.178.

(c) Provides that in an administrative adjudication hearing a registered owner who is the lessor of a vehicle for which a notice has been issued under Section 366.451(b)(2) (relating to establishing a certain period from the date of notice of the second violation to take certain administrative actions) is not liable for a violation if before the 11th day after the date the notice is mailed the registered owner provides to the authority a copy of the lease agreement or agreements covering the vehicle when the violation occurred, not more than one violation occurred when the vehicle was not covered by a lease agreement, and the name and address of the lessee are clearly legible.

(d) Provides that if the lessor timely provides the information required under Subsection (c), the lessee of the vehicle on the dates of two or more violations is considered to be the registered owner of the vehicle for purposes of an administrative adjudication hearing. Provides that the lessee is subject to prosecution for failure to pay the proper toll, in the same manner as a registered owner under Section 366.178; and violation of an order issued under Section 366.186, in the same manner as a registered owner under Sections 366.186 and 366.187.

(e) Authorizes the lessor of a vehicle for which a notice of nonpayment under Section 366.178 has been issued, in an administrative adjudication hearing, to raise Section 366.178(i) (relating to the registered owner who is the lessor of a vehicle for which a notice of nonpayment has been issued not being liable) as a defense to liability for the nonpayment.

Sec. 366.456. ATTENDANCE AT HEARING. (a) Provides that a witness of a violation of an order adopted under Section 366.186 is not required to attend the administrative adjudication hearing related to that violation.

(b) Provides that the failure of the person who requested the hearing to appear at an administrative adjudication hearing is considered an admission of liability for the violation.

Sec. 366.457. DECISION OF HEARING OFFICER. (a) Requires the hearing officer, at the conclusion of an administrative adjudication hearing, to issue a decision stating:

(1) whether the person is liable for a violation of the order;

(2) the amount of the tolls, fines, and administrative fees to be assessed against the person;

(3) if the decision addresses more than one violation of an order or nonpayment of a toll, fine, or administrative fee, whether the violations or nonpayments constitute repeated violations or nonpayments; and

(4) in the hearing officer's discretion, the justice court to which the person is authorized to appeal the hearing officer's decision under Section 366.459, provided that the court is in a justice precinct in which the hearing officer determines any violation of an order or nonpayment occurred.

(b) Requires the hearing officer to file the decision with the secretary of the authority.

(c) Requires that each decision of a hearing officer filed under Subsection (b) be kept in a separate index and file. Authorizes the decision to be recorded using a computer printout, microfilm, microfiche, or similar data processing technique.

Sec. 366.458. ENFORCEMENT OF DECISION. (a) Authorizes an authority to enforce a decision issued under Section 366.457 by any or all of the following: requesting any peace officer or other public servant authorized to do so to place a device that prohibits movement of a motor vehicle on the vehicle that is the subject of the decision; imposing an additional fee if the amount specified in the decision is not paid within a specified time; and requesting TxDOT to refuse to allow the registration of the vehicle that is the subject of the decision.

(b) Authorizes TxDOT to refuse to register a vehicle as requested by an authority under Subsection (a)(3).

Sec. 366.459. APPEAL OF HEARING OFFICER DECISION. (a) Authorizes a person determined by a hearing officer to owe a toll, fine, or administrative fee or to be in violation of an order, except as provided by Subsection (b), to appeal the decision to the justice court named in the hearing officer's decision, and that court has jurisdiction over the appeal.

(b) Authorizes a person, if applicable law either prohibits an appeal from being filed in a justice court or instead requires the appeal to be filed in a county court-at-law, to appeal the determination to the county court-at-law in the county in which the hearing officer determines a violation of an order or a nonpayment occurred.

(c) Requires a person, to appeal, to file a petition with the court not later than the 30th day after the date the hearing officer's decision is filed with the secretary of the authority. Requires that the petition be accompanied by payment of the costs required by law for the court.

Sec. 366.460. HEARING ON APPEAL. Requires the court in which a petition is filed to schedule a hearing; notify all parties of the date, time, and place of the hearing; and conduct a trial de novo.

Sec. 366.461. EFFECT OF APPEAL. Provides that service of notice of appeal does not stay the enforcement and collection of the decision of the hearing officer unless the person who files the appeal posts a bond with an agency or entity designated by the authority to accept payment for a violation.

SECTION 9. Amends Section 552.116(a), Government Code, as follows:

(a) Provides that an audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003 (Definitions), Education Code, a county, a municipality, a school district, a joint board operating under Section 22.074 (Joint Board), Transportation Code, or a toll project entity as defined by Section 371.001 (Vehicles Used by Nonprofit Disaster Relief Organizations), Transportation Code, as added by Chapter 103 (H.B. 570), Acts of the 80th Legislature, Regular Session, 2007, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021 (Availability of Public Information).

SECTION 10. Amends Section 552.116(b)(1), Government Code, to redefine "audit."

SECTION 11. Repealer: Section 366.2521 (Gifts and Contributions; Offense), Transportation Code.

Repealer: Section 366.2522 (Offering Gift to a Director; Offense), Transportation Code.

SECTION 12. Provides that Section 366.038(c), Transportation Code, as added by this Act, does not apply to any project, or portion of any project, subject to the tolling services agreement between the North Texas Tollway Authority and TxDOT or a private participant in a comprehensive development agreement for the North Tarrant Express project in Tarrant County

or the tolling services agreement for the IH-635 managed lanes project in Dallas County if the agreement is entered into before September 1, 2009.

SECTION 13. Effective date: upon passage or September 1, 2009.