

By: Carona

S.B. No. 882

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of a regional tollway authority, including the establishment of an administrative adjudication hearing procedure; creating an offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 366.038, Transportation Code, is amended to read as follows:

Sec. 366.038. TOLLING SERVICES [~~TOLL COLLECTION~~]. (a) In this section, "tolling services" means the tolling services normally provided through an authority's customer service center, including customer service, customer account maintenance, transponder supply, and toll collection and enforcement.

(b) An authority shall provide, for reasonable compensation, tolling [~~customer service and other toll collection and enforcement~~] services for a toll project in the boundaries of the authority, regardless of whether the toll project is developed, financed, constructed, and operated under an agreement, including a comprehensive development agreement, with the authority or another entity. This section does not restrict an authority from agreeing to provide additional tolling services in an agreement described in Subsection (d). Additional tolling services provided under an agreement under that subsection are subject to the provisions that apply to tolling services under this section.

(c) An authority may not provide financial security,

1 including a cash collateral account, for the performance of tolling
2 services the authority provides under this section if:

3 (1) the authority determines that providing security
4 could restrict the amount, or increase the cost, of bonds or other
5 debt obligations the authority may subsequently issue under this
6 chapter; or

7 (2) the authority is not reimbursed its cost of
8 providing the security.

9 (d) Before providing tolling services for a toll project
10 under this section, an authority must enter into a written
11 agreement that sets out the terms and conditions for the tolling
12 services to be provided and the terms of compensation for those
13 services.

14 (e) Toll revenues are the property of the entity that is
15 entitled to the revenues under a tolling services agreement for the
16 toll project, regardless of who holds or collects the revenues.
17 Toll revenues that are held or collected by an authority under a
18 tolling services agreement and are not the property of the
19 authority are not subject to a claim adverse to the authority or a
20 lien on or encumbrance against property of the authority. Toll
21 revenues that are the property of the authority are not subject to a
22 claim adverse to any other entity or a lien on or encumbrance
23 against property of any other entity.

24 (f) An authority may agree in a tolling services agreement
25 that its right and obligation to provide tolling services for the
26 applicable toll project under this section are subject to
27 termination for default, and that after a termination for default

1 this section does not apply to that toll project.

2 (g) Any public or private entity, including an authority or
3 the department, may agree to fund a cash collateral account for the
4 purpose of providing money that may be withdrawn as provided in the
5 tolling services agreement because of an authority's failure to
6 make any payment as required by the tolling services agreement. An
7 authority's written commitment to fully or partially fund a cash
8 collateral account is conclusive evidence of the authority's
9 determination that the commitment does not violate Subsection (c).
10 The department may use money from any available source to fund a
11 cash collateral account under this subsection.

12 SECTION 2. Section 366.178, Transportation Code, is amended
13 by adding Subsection (j) to read as follows:

14 (j) In addition to the other powers and duties provided by
15 this chapter, an authority has the same powers and duties as the
16 department under Chapter 228, a county under Chapter 284, and a
17 regional mobility authority under Chapter 370, regarding the
18 authority's toll collection and enforcement powers for:

- 19 (1) the authority's turnpike projects; and
20 (2) other toll projects developed, financed,
21 constructed, or operated under an agreement, including a
22 comprehensive development agreement, with the authority.

23 SECTION 3. Section 366.185, Transportation Code, is amended
24 by adding Subsection (d-2) to read as follows:

25 (d-2) Notwithstanding Subsection (d-1), if the contract
26 amount exceeds \$50 million, the rules adopted under Subsection (d)
27 may provide for a stipend to be offered to an unsuccessful

1 design-build firm that submits a response to the authority's
2 request for additional information, in an amount that:

3 (1) may exceed \$250,000; and

4 (2) is reasonably necessary, as determined by the
5 authority in its sole discretion, to compensate an unsuccessful
6 firm for:

7 (A) preliminary engineering costs associated
8 with the development of the proposal by the firm; and

9 (B) the value of the work product contained in
10 the proposal, including the techniques, methods, processes, and
11 information contained in the proposal.

12 SECTION 4. Subchapter E, Chapter 366, Transportation Code,
13 is amended by adding Sections 366.186 and 366.187 to read as
14 follows:

15 Sec. 366.186. ORDER PROHIBITING OPERATION OF MOTOR VEHICLE
16 ON TURNPIKE PROJECT. (a) An authority by order of its executive
17 director may prohibit the operation of a motor vehicle on a turnpike
18 project if:

19 (1) an operator of the vehicle has failed to pay a
20 toll, fine, or administrative fee imposed under Section 366.178;
21 and

22 (2) the authority provides notice to the registered
23 owner of the vehicle of the unpaid toll, fine, or administrative
24 fee.

25 (b) The notice required by Subsection (a)(2) must be mailed
26 to the registered owner of the vehicle at least 10 days before the
27 date the prohibition takes effect.

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

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

10 (b) An offense under this section is a Class C misdemeanor.

11 SECTION 5. Section 366.260, Transportation Code, is amended
12 to read as follows:

13 Sec. 366.260. CERTAIN CONTRACTS [~~AND SALES~~] PROHIBITED.

14 (a) A director, agent, or employee of an authority may not,
15 outside the person's service to that authority, otherwise [+

16 [~~(1)~~] contract with the authority[, ~~or~~

17 [~~(2)~~ ~~be directly or indirectly interested in:~~

18 [~~(A)~~ ~~a contract with the authority, or~~

19 [~~(B)~~ ~~the sale of property to the authority~~].

20 (b) A person who violates Subsection (a) is liable for a
21 civil penalty to the authority not to exceed \$1,000.

22 SECTION 6. Section 366.303, Transportation Code, is amended
23 by amending Subsection (d) and adding Subsections (f) and (g) to
24 read as follows:

25 (d) The term of an agreement under Subsections (a)-(c) [~~this~~
26 ~~section~~] may not exceed 40 years.

27 (f) To accelerate a toll project's design, financing,

1 construction, and operation by the entity ultimately responsible
2 for the toll project's design, financing, construction, and
3 operation, a county that is part of an authority, including a county
4 acting under Chapter 284, may acquire right-of-way necessary to
5 locate and preserve the proposed alignment for a potential toll
6 project, and may obtain the environmental approvals, any necessary
7 traffic and revenue studies, and any engineering data necessary to
8 advance the feasibility of a potential toll project. For purposes
9 of this subsection and Subsection (g), "toll project" includes:

10 (1) a project, as defined by Section 284.001;

11 (2) a turnpike project, as defined for this chapter;

12 or

13 (3) any similar project consisting of one or more
14 tolled lanes of a bridge, tunnel, or highway or an entire toll
15 bridge, tunnel, or highway, and any improvement, extension, or
16 expansion to the bridge, tunnel, or highway.

17 (g) A county that acquires right-of-way or obtains
18 approvals, studies, or data under Subsection (f) may petition the
19 applicable authority to negotiate a written agreement by which the
20 county's and the authority's activities can be better coordinated
21 and more efficiently accomplished. The agreement may include
22 provisions by which the authority may agree to later reimburse the
23 county for certain costs the county incurs for right-of-way and
24 other deliverables transferred to and used by the authority if the
25 authority ultimately develops the toll project. The department or
26 the applicable metropolitan planning organization, or both, may be
27 a party or parties to an agreement under this subsection if the

1 county and the authority determine that the inclusion of one or both
2 of those entities furthers the objectives of this subsection.

3 SECTION 7. Subsection (g), Section 366.407, Transportation
4 Code, is amended to read as follows:

5 (g) Except as provided by this subsection, a comprehensive
6 development agreement with a private participant that includes the
7 collection by the private participant of tolls for the use of a toll
8 project may be for a term not longer than 50 years from the later of
9 the date of final acceptance of the project or the start of revenue
10 operations by the private participant, not to exceed a total term of
11 52 years. The contract must contain an explicit mechanism for
12 setting the price for the purchase by the authority [~~department~~]
13 the interest of the private participant in the contract and related
14 property, including any interest in a highway or other facility
15 designed, developed, financed, constructed, operated, or
16 maintained under the contract.

17 SECTION 8. Chapter 366, Transportation Code, is amended by
18 adding Subchapter I to read as follows:

19 SUBCHAPTER I. ADMINISTRATIVE ADJUDICATION HEARING PROCEDURE

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

25 (b) A hearing procedure adopted under Subsection (a) must:

26 (1) determine liability for:

27 (A) nonpayment of a toll under Section 366.178;

1 (B) violations under Section 366.187 of an order
2 issued under Section 366.186; and

3 (C) fines and administrative fees associated
4 with nonpayments and violations;

5 (2) establish a period of not less than 10 days from
6 the date notice of the second violation of the order under Section
7 366.186 is provided to the registered owner of the vehicle, during
8 which a person may:

9 (A) pay all tolls, fines, and administrative fees
10 imposed under Sections 366.178 and 366.187; or

11 (B) request a hearing; and

12 (3) provide for appointment by the authority of one or
13 more hearing officers to conduct administrative adjudication
14 hearings and authorize the officers to administer oaths and issue
15 orders compelling the attendance of witnesses and the production of
16 documents.

17 (c) An order issued under Subsection (b)(3) may be enforced
18 by a justice of the peace.

19 Sec. 366.452. NOTICE OF HEARING. (a) If a person requests
20 a hearing under Section 366.451(b)(2)(B), the authority shall:

21 (1) inform the person of the time and place of the
22 hearing; and

23 (2) notify the person that the person has the right to
24 a hearing without delay.

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

1 Sec. 366.453. ADMINISTRATIVE HEARING: PRESUMPTION AND
2 EVIDENCE OF OWNERSHIP. (a) In an administrative adjudication
3 hearing, it is presumed that the registered owner of the motor
4 vehicle that is the subject of the hearing is the person who
5 operated or who caused or allowed the operation of the motor vehicle
6 when a nonpayment or violation occurred.

7 (b) In an administrative adjudication hearing, a computer
8 record of the authority or the department of the registered vehicle
9 owner is prima facie evidence of its contents and that the person
10 named in the record was the registered owner of the vehicle at the
11 time a nonpayment or a violation occurred.

12 Sec. 366.454. PROOF OF NONPAYMENT AND VIOLATION. In an
13 administrative adjudication hearing, proof of a nonpayment or
14 violation may be shown by testimony of a peace officer or authority
15 employee, video recording or surveillance, photograph, electronic
16 recording, or any other reasonable evidence, including evidence
17 obtained by automated enforcement technology.

18 Sec. 366.455. DEFENSES; LIABILITY OF VEHICLE LESSEE.
19 (a) In an administrative adjudication hearing, it is a defense to
20 a violation that the motor vehicle in question was stolen before the
21 violation occurred and was not recovered by the time of the
22 violation, but only if the theft was reported to the appropriate law
23 enforcement authority before the earlier of:

- 24 (1) the occurrence of the violation; or
25 (2) eight hours after the discovery of the theft.

26 (b) In an administrative adjudication hearing, the defense
27 under Section 366.178(h) is available as a defense to nonpayment

1 under Section 366.178.

2 (c) In an administrative adjudication hearing, a registered
3 owner who is the lessor of a vehicle for which a notice has been
4 issued under Section 366.451(b)(2) is not liable for a violation
5 if:

6 (1) before the 11th day after the date the notice is
7 mailed the registered owner provides to the authority a copy of the
8 lease agreement or agreements covering the vehicle when the
9 violation occurred;

10 (2) not more than one violation occurred when the
11 vehicle was not covered by a lease agreement; and

12 (3) the name and address of the lessee are clearly
13 legible.

14 (d) If the lessor timely provides the information required
15 under Subsection (c), the lessee of the vehicle on the dates of two
16 or more violations is considered to be the registered owner of the
17 vehicle for purposes of an administrative adjudication hearing.
18 The lessee is subject to prosecution for:

19 (1) failure to pay the proper toll, in the same manner
20 as a registered owner under Section 366.178; and

21 (2) violation of an order issued under Section
22 366.186, in the same manner as a registered owner under Sections
23 366.186 and 366.187.

24 (e) In an administrative adjudication hearing, the lessor
25 of a vehicle for which a notice of nonpayment under Section 366.178
26 has been issued may raise Section 366.178(i) as a defense to
27 liability for the nonpayment.

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

5 (b) The failure of the person who requested the hearing to
6 appear at an administrative adjudication hearing is considered an
7 admission of liability for the violation.

8 Sec. 366.457. DECISION OF HEARING OFFICER. (a) At the
9 conclusion of an administrative adjudication hearing, the hearing
10 officer shall issue a decision stating:

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

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

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

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

24 (b) The hearing officer shall file the decision with the
25 secretary of the authority.

26 (c) Each decision of a hearing officer filed under
27 Subsection (b) must be kept in a separate index and file. The

1 decision may be recorded using a computer printout, microfilm,
2 microfiche, or a similar data processing technique.

3 Sec. 366.458. ENFORCEMENT OF DECISION. (a) An authority
4 may enforce a decision issued under Section 366.457 by any or all of
5 the following:

6 (1) requesting any peace officer or other public
7 servant authorized to do so to place a device that prohibits
8 movement of a motor vehicle on the vehicle that is the subject of
9 the decision;

10 (2) imposing an additional fee if the amount specified
11 in the decision is not paid within a specified time; and

12 (3) requesting the department to refuse to allow the
13 registration of the vehicle that is the subject of the decision.

14 (b) The department may refuse to register a vehicle as
15 requested by an authority under Subsection (a)(3).

16 Sec. 366.459. APPEAL OF HEARING OFFICER DECISION.

17 (a) Except as provided by Subsection (b), a person determined by a
18 hearing officer to owe a toll, fine, or administrative fee or to be
19 in violation of an order may appeal the decision to the justice
20 court named in the hearing officer's decision, and that court has
21 jurisdiction over the appeal.

22 (b) If applicable law either prohibits an appeal from being
23 filed in a justice court or requires the appeal to be filed in a
24 county court-at-law, the person may appeal the determination to the
25 county court-at-law in the county in which the hearing officer
26 determines a violation of an order or a nonpayment occurred.

27 (c) To appeal, the person must file a petition with the

1 court not later than the 30th day after the date the hearing
2 officer's decision is filed with the secretary of the authority.
3 The petition must be accompanied by payment of the costs required by
4 law for the court.

5 Sec. 366.460. HEARING ON APPEAL. The court in which a
6 petition is filed shall:

7 (1) schedule a hearing;

8 (2) notify all parties of the date, time, and place of
9 the hearing; and

10 (3) conduct a trial de novo.

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

16 SECTION 9. Subsection (a), Section 552.116, Government
17 Code, is amended to read as follows:

18 (a) An audit working paper of an audit of the state auditor
19 or the auditor of a state agency, an institution of higher education
20 as defined by Section 61.003, Education Code, a county, a
21 municipality, a school district, ~~or~~ a joint board operating
22 under Section 22.074, Transportation Code, or a toll project
23 entity as defined by Section 371.001, Transportation Code, as added
24 by Chapter 103 (H.B. 570), Acts of the 80th Legislature, Regular
25 Session, 2007, including any audit relating to the criminal history
26 background check of a public school employee, is excepted from the
27 requirements of Section 552.021. If information in an audit

1 working paper is also maintained in another record, that other
2 record is not excepted from the requirements of Section 552.021 by
3 this section.

4 SECTION 10. Subdivision (1), Subsection (b), Section
5 552.116, Government Code, is amended to read as follows:

6 (1) "Audit" means an audit authorized or required by a
7 statute of this state or the United States, the charter or an
8 ordinance of a municipality, an order of the commissioners court of
9 a county, a resolution or other action of a board of trustees of a
10 school district, including an audit by the district relating to the
11 criminal history background check of a public school employee, or a
12 resolution or other action of a joint board or the governing board
13 of a toll project entity described by Subsection (a) and includes an
14 investigation.

15 SECTION 11. Sections 366.2521 and 366.2522, Transportation
16 Code, are repealed.

17 SECTION 12. Subsection (c), Section 366.038,
18 Transportation Code, as added by this Act, does not apply to any
19 project, or portion of any project, subject to the tolling services
20 agreement between the North Texas Tollway Authority and the Texas
21 Department of Transportation or a private participant in a
22 comprehensive development agreement for the North Tarrant Express
23 project in Tarrant County or the tolling services agreement for the
24 IH-635 managed lanes project in Dallas County if the agreement is
25 entered into before September 1, 2009.

26 SECTION 13. This Act takes effect immediately if it
27 receives a vote of two-thirds of all the members elected to each

S.B. No. 882

1 house, as provided by Section 39, Article III, Texas Constitution.
2 If this Act does not receive the vote necessary for immediate
3 effect, this Act takes effect September 1, 2009.