

By: Geren

H.B. No. 2334

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the powers and duties of a regional tollway authority,  
3 including the establishment of an administrative adjudication  
4 hearing procedure; creating an offense.

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

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

8 Sec. 366.038. TOLL COLLECTION. (a) An authority shall  
9 provide, for reasonable compensation, customer service and other  
10 toll collection and enforcement services for a toll project in the  
11 boundaries of the authority, regardless of whether the toll project  
12 is developed, financed, constructed, and operated under an  
13 agreement, including a comprehensive development agreement, with  
14 the authority or another entity.

15 (b) An authority may not provide financial security for the  
16 performance of services it provides under Subsection (a) if:

17 (1) the authority determines that providing security  
18 could restrict the amount, or increase the cost, of bonds or other  
19 debt obligations the authority may subsequently issue under this  
20 chapter; or

21 (2) the authority is not reimbursed its cost of  
22 providing the security.

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

1        (j) In addition to the other powers and duties provided by  
2 this chapter, an authority has the same powers and duties as the  
3 department under Chapter 228, a county under Chapter 284, and a  
4 regional mobility authority under Chapter 370, regarding the  
5 authority's toll collection and enforcement powers for:

6            (1) the authority's turnpike projects; and

7            (2) other toll projects developed, financed,  
8 constructed, or operated under an agreement, including a  
9 comprehensive development agreement, with the authority.

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

12        (d-2) Notwithstanding Subsection (d-1), if the contract  
13 amount exceeds \$50 million, the rules adopted under Subsection (d)  
14 may provide for a stipend to be offered to an unsuccessful  
15 design-build firm that submits a response to the authority's  
16 request for additional information, in an amount that:

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

18            (2) is reasonably necessary, as determined by the  
19 authority in its sole discretion, to compensate the unsuccessful  
20 firm for:

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

23            (B) the value of the work product contained in  
24 the proposal, including the techniques, methods, processes, and  
25 information contained in the proposal.

26        SECTION 4. Subchapter E, Chapter 366, Transportation Code,  
27 is amended by adding Sections 366.186 and 366.187 to read as

1 follows:

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

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

9 (2) the authority provides notice to the registered  
10 owner of the vehicle of the unpaid toll, fine, or administrative  
11 fee.

12 (b) The notice required by Subsection (a)(2) must be mailed  
13 to the registered owner of the vehicle at least 30 days before the  
14 date the prohibition takes effect.

15 (c) If the registered owner of the vehicle fails to pay a  
16 toll, fine, or administrative fee before the 31st day after the  
17 notice under Subsection (b) is mailed, the authority may impose a  
18 reasonable cost for expenses associated with collecting the unpaid  
19 toll, fine, and administrative fee.

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

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

25 SECTION 5. Section 366.260, Transportation Code, is amended  
26 to read as follows:

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

1 (a) A director, agent, or employee of an authority may not,  
2 outside the person's service to that authority, otherwise  
3 [~~(1)~~] contract with the authority~~;~~  
4 [~~(2)~~ be directly or indirectly interested in  
5 [~~(A)~~ a contract with the authority; or  
6 [~~(B)~~ the sale of property to the authority].

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

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

12 (d) The term of an agreement under Subsections (a) through  
13 (c) [~~this section~~] may not exceed 40 years.

14 (f) Except as provided by Subsection (g), a local  
15 governmental entity may not own, construct, maintain, or operate a  
16 turnpike project or other toll project, as that term is defined by  
17 Section 201.001, in a county that is part of an authority unless the  
18 local governmental entity and the authority enter into a written  
19 agreement specifying the terms and conditions under which the  
20 project will be undertaken.

21 (g) Subsection (f) does not apply to a turnpike project or  
22 toll project located in a county to which an authority has  
23 transferred under Section 366.036 or leased, sold, or conveyed  
24 under Section 366.172:

25 (1) all turnpike projects of the authority that are  
26 located in the county; and

27 (2) all work product developed by the authority in

1 determining the feasibility of the construction, improvement,  
2 extension, or expansion of a turnpike project to be located in the  
3 county.

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

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

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

20 SUBCHAPTER I. ADMINISTRATIVE ADJUDICATION HEARING PROCEDURE

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

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

27 (1) establish a period of not less than 30 days from

1 the date notice of the second violation is provided as described in  
2 Section 366.186 during which a person may:

3 (A) pay the toll, fine, or administrative fee; or

4 (B) request a hearing;

5 (2) provide for appointment by the authority of one or  
6 more hearing officers to conduct administrative adjudication  
7 hearings and authorize the officers to administer oaths and issue  
8 orders compelling the attendance of witnesses and the production of  
9 documents; and

10 (3) establish the amount and provide for the  
11 disposition of the toll, fine, and administrative fee.

12 (c) An order issued under Subsection (b)(2) may be enforced  
13 by a justice of the peace.

14 Sec. 366.452. NOTICE OF HEARING. (a) If a person requests a  
15 hearing under Section 366.451(b)(1)(B), the authority shall:

16 (1) inform the person of the time and place of the  
17 hearing; and

18 (2) notify the person that the person has the right to  
19 a hearing without delay.

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

23 Sec. 366.453. ADMINISTRATIVE HEARING: PRESUMPTION;  
24 EVIDENCE OF OWNERSHIP. (a) In an administrative adjudication  
25 hearing under Section 366.451, it is presumed that the registered  
26 owner of the motor vehicle that is the subject of the hearing is the  
27 person who operated or who caused or allowed the operation of the

1 motor vehicle in violation of the order.

2 (b) In an administrative adjudication hearing under Section  
3 366.451, a computer record of the authority or the department of the  
4 registered vehicle owner is prima facie evidence of its contents  
5 and that the person named in the record was the registered owner of  
6 the vehicle at the time the violation occurred.

7 (c) In an administrative adjudication hearing under Section  
8 366.451, proof of the violation of the order may be shown by  
9 testimony of a peace officer or authority employee, video recording  
10 or surveillance, photograph, electronic recording, or any other  
11 reasonable evidence, including evidence obtained by automated  
12 enforcement technology.

13 (d) In an administrative adjudication hearing under Section  
14 366.451, it is a defense that the motor vehicle in question was  
15 stolen before the failure to pay the proper toll occurred and was  
16 not recovered by the time of the failure to pay, but only if the  
17 theft was reported to the appropriate law enforcement authority  
18 before the earlier of:

- 19 (1) the occurrence of the failure to pay; or  
20 (2) eight hours after the discovery of the theft.

21 (e) In an administrative adjudication hearing under Section  
22 366.451, a registered owner who is the lessor of a vehicle for which  
23 a notice of nonpayment has been issued is not liable for a toll,  
24 fine, or administrative fee if, not later than the 30th day after  
25 the date the notice of nonpayment is mailed, the registered owner  
26 provides to the authority a copy of the lease agreement covering the  
27 vehicle on the date of the nonpayment. The name and address of the

1 lessee must be clearly legible. If the lessor timely provides the  
2 required information, the lessee of the vehicle on the date of the  
3 violation is considered to be the registered owner of the vehicle  
4 for purposes of an administrative adjudication hearing under  
5 Section 366.451. The lessee is subject to prosecution for failure  
6 to pay the proper toll if the authority sends a notice of nonpayment  
7 to the lessee by first-class mail not later than the 30th day after  
8 the date of the receipt of the information from the lessor.

9 Sec. 366.454. ATTENDANCE AT HEARING. (a) A witness of a  
10 violation of an order adopted under Section 366.186 is not required  
11 to attend the administrative adjudication hearing related to that  
12 violation.

13 (b) The failure of the person who requested the hearing to  
14 appear at an administrative adjudication hearing under Section  
15 366.451 is considered an admission of liability for the violation.

16 Sec. 366.455. DECISION OF HEARING OFFICER. (a) At the  
17 conclusion of a hearing under this subchapter, the hearing officer  
18 shall issue a decision stating:

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

21 (2) the amount of the toll, fine, and administrative  
22 fee to be assessed against the person.

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

25 (c) Each decision of a hearing officer filed under  
26 Subsection (b) must be kept in a separate index and file. The  
27 decision may be recorded using a computer printout, microfilm,



1 microfiche, or a similar data processing technique.

2 Sec. 366.456. ENFORCEMENT OF DECISION. (a) An authority may  
3 enforce a decision issued under Section 366.455 by any or all of the  
4 following:

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

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

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

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

15 Sec. 366.457. APPEAL OF HEARING OFFICER DECISION. (a)  
16 Except as provided by Subsection (b), a person determined by a  
17 hearing officer to be in violation of an order may appeal the  
18 decision to any justice court in the county in which the authority's  
19 main administrative office is located.

20 (b) If applicable law either prohibits an appeal from being  
21 filed in a justice court or instead requires the appeal to be filed  
22 in a county court-at-law, the person may appeal the determination  
23 to the county court-at-law in the county in which the authority's  
24 main administrative offices are located.

25 (c) To appeal, the person must file a petition with the  
26 court not later than the 30th day after the date the hearing  
27 officer's decision is filed with the secretary of the authority.

1 The petition must be accompanied by payment of the costs required by  
2 law for the court.

3 Sec. 366.458. HEARING ON APPEAL. The court in which a  
4 petition is filed shall:

5 (1) schedule a hearing;

6 (2) notify all parties of the date, time, and place of  
7 the hearing; and

8 (3) conduct a trial de novo.

9 Sec. 366.459. EFFECT OF APPEAL. Service of notice of appeal  
10 does not stay the enforcement and collection of the decision of the  
11 hearing officer unless the person who files the appeal posts a bond  
12 with an agency or entity designated by the authority to accept  
13 payment for a violation.

14 SECTION 9. Section 552.116(a), Government Code, is amended  
15 to read as follows:

16 (a) An audit working paper of an audit of the state auditor  
17 or the auditor of a state agency, an institution of higher education  
18 as defined by Section 61.003, Education Code, a county, a  
19 municipality, a school district, ~~or~~ a joint board operating  
20 under Section 22.074, Transportation Code, or a toll project  
21 entity as defined by Section 371.001, Transportation Code, as added  
22 by Chapter 103 (H.B. 570), Acts of the 80th Legislature, Regular  
23 Session, 2007, including any audit relating to the criminal history  
24 background check of a public school employee, is excepted from the  
25 requirements of Section 552.021. If information in an audit  
26 working paper is also maintained in another record, that other  
27 record is not excepted from the requirements of Section 552.021 by

1 this section.

2 SECTION 10. Section 552.116(b)(1), Government Code, is  
3 amended to read as follows:

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

13 SECTION 11. Sections 366.2521 and 366.2522, Transportation  
14 Code, are repealed.

15 SECTION 12. This Act takes effect immediately if it  
16 receives a vote of two-thirds of all the members elected to each  
17 house, as provided by Section 39, Article III, Texas Constitution.  
18 If this Act does not receive the vote necessary for immediate  
19 effect, this Act takes effect September 1, 2009.