

By: Carona

S.B. No. 882

A BILL TO BE ENTITLED

AN ACT

1
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~~] of
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.