

1-1 By: Watson S.B. No. 1792
 1-2 (In the Senate - Filed February 8, 2013; February 25, 2013,
 1-3 read first time and referred to Committee on Transportation;
 1-4 April 15, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 0, 1 present not
 1-6 voting; April 15, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12				X
1-13	X			
1-14			X	
1-15			X	
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1792 By: Watson

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to remedies for nonpayment of tolls for the use of toll
 1-22 projects; authorizing a fee; creating an offense.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Chapter 372, Transportation Code, is amended by
 1-25 adding Subchapter C to read as follows:

1-26 SUBCHAPTER C. NONPAYMENT OF TOLLS; REMEDIES

1-27 Sec. 372.101. APPLICABILITY. This subchapter does not
 1-28 apply to a county acting under Chapter 284.

1-29 Sec. 372.102. PUBLICATION OF NONPAYING VEHICLE
 1-30 INFORMATION. (a) Notwithstanding the confidentiality of
 1-31 electronic toll collection customer account information, including
 1-32 confidentiality under Sections 228.057(e), 366.179(d), and
 1-33 370.178(d), a toll project entity may publish a list of the names of
 1-34 the registered owners or lessees of nonpaying vehicles who at the
 1-35 time of publication are liable for the payment of past due and
 1-36 unpaid tolls or administrative fees. The list may include only the
 1-37 persons' names and, for each person listed:

- 1-38 (1) the city and state of the person's residence;
- 1-39 (2) the total number of events of nonpayment; and
- 1-40 (3) the total amount due for the tolls and
 1-41 administrative fees.

1-42 (b) A toll project entity may not include on a list
 1-43 published under Subsection (a) the name of a registered owner who
 1-44 remits a tax imposed under Section 152.026, Tax Code.

1-45 Sec. 372.103. TOLL VIOLATION PAYMENT PLAN. A toll project
 1-46 entity may enter into an agreement with the registered owner of a
 1-47 vehicle, for whom a single payment is not feasible, that allows the
 1-48 person to pay the total amount of outstanding tolls and
 1-49 administrative fees over a specified period. The agreement must be
 1-50 in writing and specify the amount due for tolls and administrative
 1-51 fees, the duration of the agreement, and the amount of each payment.

1-52 Sec. 372.104. DEFAULT; SUIT TO RECOVER OUTSTANDING BALANCE
 1-53 DUE. (a) If the registered owner of the vehicle fails to comply
 1-54 with the terms of an agreement described by Section 372.103, a toll
 1-55 project entity may send by first class mail to the person at the
 1-56 address shown on the agreement a written notice demanding payment
 1-57 of the outstanding balance due.

1-58 (b) If the registered owner fails to pay the outstanding
 1-59 balance due on or before the 30th day after the date on which the
 1-60 notice is mailed, the toll project entity may, in addition to other

2-1 remedies available to the entity, refer the matter to an attorney
2-2 authorized to represent the toll project entity for suit or
2-3 collection.

2-4 (c) The authorized attorney may file suit in a district
2-5 court in the county in which the toll project entity's
2-6 administrative offices are primarily located to recover the
2-7 outstanding balance due. The authorized attorney may recover
2-8 reasonable attorney's fees, investigative costs, and court costs
2-9 incurred on behalf of the toll project entity in the proceeding in
2-10 the same manner as provided by general law for a private litigant.

2-11 Sec. 372.105. NONPAYMENT BY VEHICLES NOT REGISTERED IN THIS
2-12 STATE. (a) A toll project entity may, in lieu of mailing a written
2-13 notice of nonpayment, serve with a written notice of nonpayment in
2-14 person an owner of a vehicle that is not registered in this state,
2-15 including the owner of a vehicle registered in another state of the
2-16 United States, the United Mexican States, a state of the United
2-17 Mexican States, or another country or territory. A notice of
2-18 nonpayment may also be served by an employee of a governmental
2-19 entity operating an international bridge at the time a vehicle with
2-20 a record of nonpayment seeks to enter or leave this state.

2-21 (b) Each written notice of nonpayment issued under
2-22 Subsection (a) shall include a warning that the failure to pay the
2-23 amounts in the notice may result in the toll project entity's
2-24 exercise of the habitual violator remedies under this subchapter.

2-25 (c) An owner who is served a written notice of nonpayment
2-26 under Subsection (a) and fails to pay the proper toll and
2-27 administrative fee within the time specified in the notice commits
2-28 an offense. Each failure to pay a toll or administrative fee under
2-29 this subsection is a separate offense.

2-30 (d) An offense under Subsection (c) is a misdemeanor
2-31 punishable by a fine not to exceed \$250. The court in which an owner
2-32 is convicted of an offense under this section shall also collect the
2-33 proper toll and administrative fee and forward the toll and fee to
2-34 the toll project entity.

2-35 (e) It is a defense to prosecution under Subsection (c) that
2-36 the owner of the vehicle is a lessor of the vehicle and not later
2-37 than the 30th day after the date the notice of nonpayment is served
2-38 under Subsection (a) provides to the toll project entity proof that
2-39 meets applicable toll project entity law establishing that the
2-40 vehicle was leased to another person at the time of the nonpayment.

2-41 (f) It is a defense to prosecution under Subsection (c) that
2-42 the vehicle in question was stolen before the failure to pay the
2-43 proper toll occurred and was not recovered by the time of the
2-44 failure to pay, but only if the theft was reported to the
2-45 appropriate law enforcement authority before the earlier of:

- 2-46 (1) the occurrence of the failure to pay; or
- 2-47 (2) eight hours after the discovery of the theft.

2-48 Sec. 372.106. HABITUAL VIOLATOR. (a) For purposes of this
2-49 subchapter, a habitual violator is a registered owner of a vehicle
2-50 who a toll project entity determines:

2-51 (1) was issued at least two written notices of
2-52 nonpayment that contained:

2-53 (A) in the aggregate, 100 or more events of
2-54 nonpayment within a period of one year, not including events of
2-55 nonpayment for which:

2-56 (i) the registered owner has provided to
2-57 the toll project entity information establishing that the vehicle
2-58 was subject to a lease at the time of the nonpayment, as provided by
2-59 applicable toll project entity law; or

2-60 (ii) a defense of theft at the time of the
2-61 nonpayment has been established as provided by applicable toll
2-62 project entity law; and

2-63 (B) a warning that the failure to pay the amounts
2-64 specified in the notices may result in the toll project entity's
2-65 exercise of habitual violator remedies; and

2-66 (2) has not paid in full the total amount due for tolls
2-67 and administrative fees under those notices.

2-68 (b) If the toll project entity makes a determination under
2-69 Subsection (a), the toll project entity shall give written notice

3-1 to the person at:
3-2 (1) the person's address as shown in the vehicle
3-3 registration records of the Texas Department of Motor Vehicles or
3-4 the analogous agency of another state or country; or
3-5 (2) an alternate address provided by the person or
3-6 derived through other reliable means.
3-7 (c) The notice must:
3-8 (1) be sent by first class mail and is presumed
3-9 received on the fifth day after the date the notice is mailed; and
3-10 (2) state:
3-11 (A) the total number of events of nonpayment and
3-12 the total amount due for tolls and administrative fees;
3-13 (B) the date of the determination under
3-14 Subsection (a);
3-15 (C) the right of the person to request a hearing
3-16 on the determination; and
3-17 (D) the procedure for requesting a hearing,
3-18 including the period during which the request must be made.
3-19 (d) If not later than the 30th day after the date on which
3-20 the person is presumed to have received the notice the toll project
3-21 entity receives a written request for a hearing, a hearing shall be
3-22 held as provided by Section 372.107.
3-23 (e) If the person does not request a hearing within the
3-24 period provided by Subsection (d), the toll project entity's
3-25 determination becomes final and not subject to appeal on the
3-26 expiration of that period.
3-27 Sec. 372.107. HEARING. (a) A justice court has
3-28 jurisdiction to conduct a hearing in accordance with this section.
3-29 (b) A hearing requested under Section 372.106 shall be
3-30 conducted in a justice court in a county in which the toll
3-31 collection facilities where at least 25 percent of the events of
3-32 nonpayment occurred are located.
3-33 (c) The justice of the peace is entitled to receive a fee not
3-34 to exceed \$100 for conducting the hearing. The party that does not
3-35 prevail under the justice's finding under Subsection (f) is liable
3-36 for payment of the fee.
3-37 (d) The issues that must be proven at the hearing by a
3-38 preponderance of the evidence are:
3-39 (1) whether the registered owner was issued at least
3-40 two written notices of nonpayment for an aggregate of 100 or more
3-41 events of nonpayment within a period of one year, not including
3-42 events of nonpayment for which:
3-43 (A) the registered owner has provided to the toll
3-44 project entity information establishing that the vehicle was
3-45 subject to a lease at the time of the nonpayment, as provided by
3-46 applicable toll project entity law; or
3-47 (B) a defense of theft at the time of the
3-48 nonpayment has been established as provided by applicable toll
3-49 project entity law; and
3-50 (2) whether the total amount due for tolls and
3-51 administrative fees specified in those notices was not paid in full
3-52 by the dates specified in the notices and remains not fully paid.
3-53 (e) Proof under Subsection (d) may be by oral testimony,
3-54 documentary evidence, video surveillance, or any other reasonable
3-55 evidence.
3-56 (f) If the justice of the peace finds in the affirmative on
3-57 each issue in Subsection (d), the toll project entity's
3-58 determination that the registered owner is a habitual violator is
3-59 sustained and becomes final. If the justice does not find in the
3-60 affirmative on each issue in Subsection (d), the toll project
3-61 entity shall rescind its determination that the registered owner is
3-62 a habitual violator. Rescission of the determination does not
3-63 limit the toll project entity's authority to pursue collection of
3-64 the outstanding tolls and administrative fees.
3-65 (g) A registered owner who requests a hearing and fails to
3-66 appear without just cause waives the right to a hearing, and the
3-67 toll project entity's determination is final and not subject to
3-68 appeal.
3-69 (h) A justice of the peace court may adopt administrative

4-1 hearings processes to expedite hearings conducted under this
4-2 section.

4-3 Sec. 372.108. APPEAL. (a) A registered owner may appeal
4-4 the justice of the peace's decision by filing a petition not later
4-5 than the 30th day after the date on which the decision is rendered:

4-6 (1) in the county court at law of the county in which
4-7 the justice of the peace precinct is located; or

4-8 (2) if there is no county court at law in that county,
4-9 in the county court.

4-10 (b) The registered owner must send a file-stamped copy of
4-11 the petition, certified by the clerk of the court, to the toll
4-12 project entity by certified mail not later than the 30th day after
4-13 the date the appeal petition is filed.

4-14 (c) The court shall notify the toll project entity of the
4-15 hearing not later than the 31st day before the date the court sets
4-16 for the hearing.

4-17 (d) A trial on appeal is a trial de novo on the issues under
4-18 Section 372.107(d).

4-19 (e) Neither the filing of the appeal petition nor service of
4-20 notice of the appeal stays the toll project entity's exercise of the
4-21 habitual violator remedies unless the person who files the appeal
4-22 posts a bond with the toll project entity issued by a sufficient
4-23 surety in the total amount of unpaid tolls and fees owed by the
4-24 registered owner to the toll project entity.

4-25 Sec. 372.109. PERIOD DETERMINATION IS EFFECTIVE. (a) A
4-26 final determination that a person is a habitual violator remains in
4-27 effect until:

4-28 (1) the total amount due for the person's tolls and
4-29 administrative fees is paid; or

4-30 (2) the toll project entity, in its sole discretion,
4-31 determines that the amount has been otherwise addressed.

4-32 (b) When a determination terminates, the toll project
4-33 entity shall, not later than the seventh day after the date of the
4-34 termination, send notice of the termination:

4-35 (1) to the person who is the subject of the
4-36 determination at an address under Section 372.106(b); and

4-37 (2) if the toll project entity provided notice to a
4-38 county assessor-collector or the Texas Department of Motor Vehicles
4-39 under Section 502.011, to that county assessor-collector or that
4-40 department, as appropriate.

4-41 Sec. 372.110. ORDER PROHIBITING OPERATION OF MOTOR VEHICLE
4-42 ON TOLL PROJECT; OFFENSE. (a) A toll project entity, by order of
4-43 its governing body, may prohibit the operation of a motor vehicle on
4-44 a toll project of the toll project entity if:

4-45 (1) the registered owner of the vehicle has been
4-46 finally determined to be a habitual violator; and

4-47 (2) the toll project entity has provided notice of the
4-48 prohibition order to the registered owner.

4-49 (b) The notice required by Subsection (a)(2) must be sent by
4-50 first class mail to the registered owner at an address under Section
4-51 372.106(b) at least 10 days before the date the prohibition order
4-52 takes effect and is presumed received on the fifth day after the
4-53 date the notice is mailed.

4-54 (c) Notwithstanding any provisions of law governing the
4-55 confidentiality of electronic toll collection customer account
4-56 information, the order described in Subsection (a) may include the
4-57 registered owner's name, the city and state of residence, and the
4-58 license plate number of the nonpaying vehicle.

4-59 (d) A person commits an offense if the person operates a
4-60 motor vehicle on a toll project in violation of an order issued
4-61 under Subsection (a). An offense under this subsection is a Class C
4-62 misdemeanor.

4-63 Sec. 372.111. DENIAL OF MOTOR VEHICLE REGISTRATION. After
4-64 a final determination that the registered owner of a motor vehicle
4-65 is a habitual violator, the toll project entity may report the
4-66 determination to a county assessor-collector or the Texas
4-67 Department of Motor Vehicles in order to cause the denial of vehicle
4-68 registration as provided by Section 502.011.

4-69 Sec. 372.112. IMPOUNDMENT OF MOTOR VEHICLE. (a) A peace

5-1 officer may detain a motor vehicle observed by the officer to be
 5-2 operated in violation of an order under Section 372.110(a) and may
 5-3 direct the impoundment of the vehicle if:

5-4 (1) the vehicle was previously operated on a toll
 5-5 project in violation of an order issued under Section 372.110(a);
 5-6 and

5-7 (2) personal notice to the registered owner of the
 5-8 vehicle of the toll project entity's intent to have the vehicle
 5-9 impounded on a second or subsequent violation of Section 372.110(a)
 5-10 was provided:

5-11 (A) at the time of the hearing under Section
 5-12 372.107;

5-13 (B) at the time of the previous traffic stop
 5-14 involving a violation of Section 372.110(a); or

5-15 (C) by personal service.

5-16 (b) A vehicle impounded under this section may be released
 5-17 after:

5-18 (1) payment by or on behalf of the registered owner of
 5-19 all towing, storage, and impoundment charges; and

5-20 (2) a determination by the toll project entity that
 5-21 all unpaid tolls and fees owed to the entity by the registered owner
 5-22 are paid or are otherwise addressed to the satisfaction of the toll
 5-23 project entity in the toll project entity's sole discretion.

5-24 Sec. 372.113. HABITUAL VIOLATOR REMEDIES AGAINST LESSEE OF
 5-25 VEHICLE. (a) A toll project entity may seek habitual violator
 5-26 remedies against a lessee of a vehicle and not the registered owner
 5-27 if the toll project entity sends to the lessee, in accordance with
 5-28 applicable toll project entity law, at least two notices of
 5-29 nonpayment containing:

5-30 (1) the warning under Section 372.106(a)(1)(B); and

5-31 (2) in the aggregate, 100 or more events of nonpayment
 5-32 in the period of one year, not including events of nonpayment for
 5-33 which a defense of theft at the time of the nonpayment has been
 5-34 established as provided by applicable toll project entity law,
 5-35 that:

5-36 (A) were not paid in full by the dates specified
 5-37 in the notices and that remain not fully paid; and

5-38 (B) were incurred during the period of the lease
 5-39 as shown in a lease contract document provided by the registered
 5-40 owner to the toll project entity as provided by applicable toll
 5-41 project entity law.

5-42 (b) A toll project entity seeking habitual violator
 5-43 remedies against a lessee under Subsection (a) shall use the
 5-44 procedures of this subchapter as if the lessee were the registered
 5-45 owner.

5-46 Sec. 372.114. HABITUAL VIOLATOR REMEDIES AGAINST OWNERS OF
 5-47 VEHICLES NOT REGISTERED IN THIS STATE. (a) A toll project entity
 5-48 may seek habitual violator remedies against a person described by
 5-49 Section 372.105(a) if:

5-50 (1) the person is served with five or more written
 5-51 notices of nonpayment under Section 372.105(a) and the amount owing
 5-52 under the notices was not paid in full by the dates specified in the
 5-53 notices and remains not fully paid; and

5-54 (2) notice of the toll project entity's intent to seek
 5-55 habitual violator remedies was served on the person in the manner
 5-56 described by Section 372.105(a) for a notice of nonpayment.

5-57 (b) A person described by Section 372.105(a) may request a
 5-58 hearing under Section 372.107 not later than the 30th day after the
 5-59 date of the notice under Subsection (a)(2).

5-60 (c) In making a finding under Section 372.107 against a
 5-61 person described by Section 372.105(a), a justice of the peace must
 5-62 find that the requirements of Subsection (a) have been met in lieu
 5-63 of the findings otherwise required under Section 372.107(d).

5-64 Sec. 372.115. USE OF REMEDIES OPTIONAL. A toll project
 5-65 entity's use of remedies under this subchapter is cumulative of
 5-66 other remedies and is optional, and nothing in this subchapter
 5-67 prohibits a toll project entity from exercising any other
 5-68 enforcement remedies available under this chapter or other law.

5-69 SECTION 2. Subchapter A, Chapter 502, Transportation Code,

6-1 is amended by adding Section 502.011 to read as follows:
6-2 Sec. 502.011. REFUSAL TO REGISTER VEHICLE FOR NONPAYMENT OF
6-3 TOLL OR ADMINISTRATIVE FEE. (a) A county assessor-collector or
6-4 the department may refuse to register or renew the registration of a
6-5 motor vehicle if it has received written notice from a toll project
6-6 entity that the owner of the vehicle has been finally determined to
6-7 be a habitual violator under Subchapter C, Chapter 372.

6-8 (b) A toll project entity shall notify a county
6-9 assessor-collector or the department, as applicable, that:

6-10 (1) a person for whom the assessor-collector or the
6-11 department has refused to register a vehicle is no longer
6-12 determined to be a habitual violator; or

6-13 (2) an appeal has been perfected and the appellant has
6-14 posted any bond required to stay the toll project entity's exercise
6-15 of habitual violator remedies pending the appeal.

6-16 (c) This section does not apply to the registration of a
6-17 motor vehicle under Section 501.0234.

6-18 SECTION 3. Subchapter B, Chapter 103, Government Code, is
6-19 amended by adding Section 103.0321 to read as follows:

6-20 Sec. 103.0321. MISCELLANEOUS FEES AND COSTS:
6-21 TRANSPORTATION CODE. A reasonable fee not to exceed \$100 may be
6-22 collected under Section 372.107(c), Transportation Code, as court
6-23 costs for determining whether a person is a habitual violator for
6-24 purposes of Subchapter C, Chapter 372, Transportation Code.

6-25 SECTION 4. This Act takes effect January 1, 2014.

6-26 * * * * *