

BILL ANALYSIS

C.S.S.B. 2722
By: Bettencourt
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that, under current policies, excess revenue from the Harris County Toll Road Authority is distributed equally among Harris County commissioners, irrespective of the amount of county road lane miles in each commissioner's precinct. Additionally, the bill sponsor has informed the committee that a portion of this excess revenue has been found to have been put towards projects for non-drivers including sidewalks, bike lanes, bike paths, and intersections and that this system of revenue distribution has prompted significant concern among constituents regarding whether surplus toll funds are being used for actual transportation needs. C.S.S.B. 2722 aims to address these issues by providing for a restriction on the use of revenue from tolls and other charges whereby \$25 million must be distributed to the municipality that contains more than 40 percent of the number of lane miles of the project to be used by the municipality only for the costs of providing law enforcement, fire protection, and emergency medical services during accidents or disasters affecting an applicable toll project of the county and the amount remaining after the distribution, if any, must be retained by the county and used only to pay costs related to a county road owned and maintained by the county.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 2722 amends the Transportation Code to restrict the use of revenues collected from tolls or charges authorized under applicable statute by a county with a population of four million or more to the following:

- pay the costs of operating, expanding, maintaining, or administering an applicable project;
- retire debt related to a project; or
- use or pledge revenues to pay or finance the costs of a project, including the costs to study, design, construct, maintain, operate, and pool a turnpike project or system, and to pay bonds or other obligations related to a project.

The restriction applies to any fees received by a county for operating a project of another entity but does not apply to any other revenue of a project that is collected by the county on behalf of another entity under an agreement with the entity.

C.S.S.B. 2722 provides for the following distributions of the revenues collected from tolls and charges that remain after paying such costs, including costs to establish reserves required by a bond instrument and to maintain ratings on bonds or other obligations related to a project, except as otherwise provided by the bill:

- \$25 million must be distributed to the municipality that contains more than 40 percent of the number of lane miles of the project to be used by the municipality only for the costs of providing law enforcement, fire protection, and emergency medical services during accidents or disasters affecting an applicable toll project of the county; and
- the amount remaining after the distribution, if any, must be retained by the county and used only to pay costs related to a county road owned and maintained by the county.

The bill requires an independent auditor hired by a municipality that receives such a \$25 million distribution to annually review the municipality's annual financial report to determine whether the municipality is in compliance with the usage requirements of the municipality under the bill's provisions and to certify the amount of the municipality's expenditures that were used for authorized purposes. The bill requires the independent auditor to provide a copy of the audit and report any violation of the usage requirements to the following entities:

- the commissioners court of the county;
- the attorney general;
- the governor;
- the lieutenant governor;
- the speaker of the house of representatives;
- the chair of each standing committee of the legislature with primary jurisdiction over transportation; and
- the chair of the Texas Transportation Commission.

The bill requires the county, if the independent auditor certifies that the municipality's expenditures were less than the amount transferred to the municipality for the applicable period, to deduct that difference from the amount to be transferred to the municipality as the next municipal disbursement. The bill establishes that the bill's provisions relating to the distribution of remaining revenues collected from tolls and charges do not apply if a county has entered into a contractual arrangement with a municipality regarding the use of revenues collected from tolls or charges as otherwise authorized to pay the municipality's costs of providing law enforcement, fire protection, and emergency medical services during accidents or disasters affecting an applicable toll project of the county. The bill establishes that these bill provisions relating to the distribution of remaining revenues expire September 1, 2030.

C.S.S.B. 2722 requires the county, beginning September 1, 2030, to retain the amount that remains from the revenues collected from tolls and charges after paying the previously described costs, including costs to establish reserves required by a bond instrument and to maintain ratings on bonds or other obligations related to a project and authorizes the county to use the amount retained only to pay costs related to a county road owned and maintained by the county.

C.S.S.B. 2722 requires at least 95 percent of the amount retained by a county to be allocated among all commissioners precincts as follows:

- one-third of the amount allocated based on the historical surplus funds transferred for the county's fiscal years 2005 through 2025 by precinct;
- one-third of the amount allocated based on the number of county lane miles in each precinct, excluding freeways, defined by reference as a divided, controlled-access highway for through traffic, and any road facilities for which a user must pay a toll, fee, or fare, according to the county's road log or maintenance schedule on September 1 of the fiscal year preceding the allocation; and
- one-third of the amount allocated based on the road and pavement condition of county roads in each precinct, excluding freeways and any road facilities for which a user must pay a toll, fee, or fare, according to the county engineer's annual report on September 1 of the fiscal year preceding the allocation.

The bill authorizes a county to allocate up to five percent of the amount retained to a county department or project with countywide impact, as determined by the county, for a state, county, or municipal facility relating to a road, street, highway, or related facility. The bill prohibits an amount allocated from retained revenue from being used on a hike, bike, or trail facility unless the expenditure is necessary to comply with a state or federal guideline.

C.S.S.B. 2722 requires an independent auditor hired by a county to audit the county's annual financial report made to the commissioners court and to the district judges of the county under the applicable Local Government Code provisions to annually review the county's annual financial report to determine whether the county is in compliance with the bill's allocation requirements and to certify the amount of the county's expenditures that were used for authorized purposes. The bill requires the independent auditor to provide a copy of the audit and report any violation of the usage requirements to the following:

- the commissioners court of the county;
- the attorney general;
- the governor;
- the lieutenant governor;
- the speaker of the house of representatives;
- the chair of each standing committee of the legislature with primary jurisdiction over transportation; and
- the chair of the Texas Transportation Commission.

C.S.S.B. 2722 makes a county that violates the bill's provisions subject to a civil penalty and requires the attorney general to promptly investigate a report received by a county's independent auditor to determine if the county committed a violation. On determining that a violation occurred, the bill authorizes the attorney general to file suit to collect a civil penalty as follows:

- if the violation is a first violation of the bill's provisions, in an amount equal to 100 percent of the amount of revenues used by the county in violation of the bill's provisions; or
- if the violation is a second or subsequent violation of the bill's provisions, in an amount equal to 110 percent of the amount of revenues used by the county in violation of the bill's provisions.

The bill requires a collected civil penalty to be deposited in the state treasury to the credit of the state highway fund and authorizes such a penalty to only be appropriated for transportation purposes. The bill requires a county for which a civil penalty is imposed to pay the penalty out of the general fund of the county and prohibits a county for which a civil penalty is imposed for a second or subsequent violation from adopting a tax rate for the tax year following the tax year in which the penalty was imposed that exceeds the lesser of the county's no-new-revenue tax rate or voter-approval tax rate, as determined under applicable Tax Code provisions, for that tax year.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 2722 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

With respect to the bill's distribution of revenue collected from tolls and charges that remain after use of revenues for certain projects, as restricted by the bill, to the municipality that contains more than 40 percent of the number of lane miles of the project, the substitute changes the distribution that was in the engrossed from the lesser of 30 percent of the amount remaining or \$80 million to \$25 million, except as otherwise provided by the substitute.

Both the engrossed and substitute authorize the municipality to use the distribution only for the costs of providing law enforcement and other emergency services in certain circumstances. However, they differ as follows:

- whereas the engrossed made the provision applicable during both accidents and disasters affecting a project of the county, the substitute makes the provisions applicable during accidents or disasters affecting a toll project of the county under applicable statutory provisions; and
- the substitute includes the costs of fire protection as an authorized use and specifies that the applicable emergency services are emergency medical services, whereas the engrossed did not include such costs or make that specification as to the type of emergency services.

The substitute omits a provision of the engrossed that established that a contractual arrangement entered into between a county and a municipality regarding the reimbursement of emergency services provided on a project by the municipality supersedes the distribution of those revenues as provided by the bill.

With respect to the audit performed by an independent auditor hired by a municipality that receives such a distribution, the substitute requires the audit to be performed annually, whereas the engrossed did not.

Whereas both the engrossed and the substitute require the independent auditor to report any violation of the usage requirements to the commissioners court of the county, they differ as follows:

- the engrossed required the independent auditor to report any violation of the usage requirement to the state auditor's office, whereas the substitute does not; and
- the substitute includes a provision absent from the engrossed that, as follows:
 - requires the independent auditor to report any violations of the bill's usage requirements to the attorney general, the governor, the lieutenant governor, the speaker of the house of representatives, the chair of each standing committee of the legislature with primary jurisdiction over transportation, and the chair of the Texas Transportation Commission; and
 - requires the auditor to provide the applicable entities with a copy of the audit.

The substitute includes a provision, which expires September 1, 2030, and which is absent from the engrossed, that establishes that the bill's provisions relating to the distribution of remaining revenues collected from tolls and charges do not apply if a county has entered into a contractual arrangement with a municipality regarding the use of revenues collected from tolls or charges as otherwise authorized to pay the municipality's costs of providing law enforcement, fire protection, and emergency medical services during accidents or disasters affecting an applicable toll project of the county.

Both the engrossed and the substitute require an independent auditor hired by a county to audit the county's annual financial report made to the commissioners court and to the district judges of the county under applicable Local Government Code provisions and to report any violation of the bill's usage requirements, but they differ as follows:

- the substitute includes a requirement absent from the engrossed that the independent auditor also do the following:
 - review the county's annual financial report to determine whether the county is in compliance with the usage requirements;
 - certify the amount of the county's expenditures that were used for the described purposes; and
 - provide a copy of the audit to the commissioners court of the county, the attorney general, the governor, the lieutenant governor, the speaker of the house of representatives, the chair of each standing committee of the legislature with

primary jurisdiction over transportation, and the chair of the Texas Transportation Commission; and

- the engrossed required the violation to be reported only to the state auditor's office, whereas the substitute omits that requirement and instead requires the violation to be reported to the commissioners court of the county, the attorney general, the governor, the lieutenant governor, the speaker of the house of representatives, the chair of each standing committee of the legislature with primary jurisdiction over transportation, and the chair of the Texas Transportation Commission.

The substitute requires the attorney general to promptly investigate a report to determine a violation and authorizes the attorney general, on determining that a violation occurred, to file suit to collect a civil penalty, whereas the engrossed required the state auditor's office to promptly investigate a report to determine a violation and required the attorney general to file suit to collect a civil penalty at the request of the state auditor's office.