

- SUBJECT:** Creating Texas Department of Motor Vehicles, auto parts recycling
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 10 ayes — Pickett, Phillips, Callegari, Davis, Dunnam, Guillen, Harper-Brown, McClendon, Merritt, W. Smith
- 0 nays
- 1 absent — T. Smith
- WITNESSES:** For — Betsy Price, Tax Assessor-Collectors Association; Ken Roche, Gulf States Toyota, Alliance of Automotive Manufacturers; Victor Vandergriff, Texas Automobile Dealers Association, VanTuyl Group, Vandergriff Auto Group (*Registered, but did not testify*: Jeff Martin, Texas Independent Auto Dealers Association; Richard Watson, Automobile Burglary Theft Prevention Authority)
- Against — (*Registered, but did not testify*: Kristen Ogden, AGC of Texas)
- On — John Esparza, Texas Motor Transportation Association; Clark McEwen, Texas Recreational Vehicle Association; David Orf, Texas Truck Dealers Coalition (*Registered, but did not testify*: Michael Lyons, Rush Enterprises, Inc.; Dean McWilliams, Texas Recreational Vehicle Association; Dean McWilliams, Texas Truck Dealers Coalition; Edward Serna, TxDOT)
- BACKGROUND:** The Texas Department of Transportation (TxDOT) is responsible for managing the state's transportation network and vehicles traveling on state roads. The agency's major duties include:
- planning, maintaining, and expanding the state's highways and bridges, including toll roads;
 - managing the state's transportation network, safety improvements on roads, and regulations of outdoor advertising;
 - overseeing business activities related to motor vehicles, including dealerships and vehicle salvage; and

- administering divisions responsible for registering vehicles, including motor carriers, and issuing titles and license plates, and oversize and overweight permits.

TxDOT administers functions related to vehicle titles, registration, and license plates in conjunction with county tax assessor-collectors' offices. Revenue from vehicle registrations is divided between the counties that collect the fees and Fund 6, where it is appropriated for various highway-related purposes.

The agency also houses the Automobile Burglary and Theft Prevention Authority (ABTPA), which was established to assess problems related to auto burglary and theft in the state and administers a grant program to local governments. The ABTPA has a seven-member board and has a budget of about \$30 million for fiscal 2008-09, the vast majority of which was granted to local entities. TxDOT also issues permits for vehicles that exceed statutory weight and size limits, which totaled about 554,000 permits in fiscal 2007.

DIGEST:

CSHB 3097 would transfer various functions related to the management of motor vehicles currently under TxDOT into a new Department of Motor Vehicles, move the Automobile Burglary and Theft Prevention Authority (ABTPA) from TxDOT to the Governor's Office, and establish a new regulatory framework for used automotive parts recyclers in the state.

Department Of Motor Vehicles. CSHB 3097 would create the Texas Department of Motor Vehicles (DMV) as a separate state agency. The bill would charge the department with administering and enforcing current laws governing:

- certificates of title and motor vehicle registration;
- motor carrier registration, including federal motor carrier registration;
- the sale and lease of motor vehicles;
- salvage vehicle dealers;
- markings on commercial motor vehicles;
- motor transportation brokers; and
- foreign commercial motor transportation.

The DMV would be organized into divisions to accomplish assigned functions and duties, including divisions for administration, motor carriers, motor vehicles, and vehicle titles and registration.

The bill would make conforming changes to statutes governing the Texas Department of Transportation (TxDOT) to reflect the transferred responsibilities and associated appropriations. Powers and duties consolidated in the DMV would be transferred to the agency on November 1, 2009. The bill would provide that no more than \$100 million per year could be appropriated from the State Highway Fund (Fund 6) to fund the operations of the DMV.

The DMV would be abolished on September 1, 2015, unless continued by the Legislature.

DMV board. The DMV would have an executive director appointed by a board that would meet quarterly and would consist of nine members serving staggered, six-year terms, appointed by the governor no later than October 1, 2009, with the advice and consent of the Senate. The governor would designate a presiding member of the board to preside over meetings, create subcommittees, and appoint a member to act in his or her absence. Appointments to the board would have to include:

- three members to represent motor vehicle dealers, one of whom would be a new vehicle dealer, one a used vehicle dealer, and one a heavy truck dealer;
- one member who would be a county tax assessor-collector;
- one member to represent the motor carrier industry;
- one member who would be a law enforcement officer, but not a state employee; and
- two members to represent the general public.

No public member of the board or his or her spouse could be registered, certified, or licensed by the DMV, could participate in or control a business entity regulated by or receiving fund from the DMV, or receive substantial goods, services or money from the DMV outside board-related expenses. Board members would only be entitled to receive reimbursement for expenses incurred as part of exercising official duties. A board member could be removed for not meeting conditions specified in statute or if he or she was absent for more than half of the regularly scheduled meetings. The DMV's executive director could notify relevant

parties of potential grounds for removal of a board member. Board members would have to receive training prior to beginning service.

CSHB 3097 would permit the board to adopt any rules necessary to implement powers and duties assigned to it in law. The bill would implement standard recommendations generally contained in Sunset Commission reports on agencies, including requiring the board to:

- implement a policy on technological solutions to enhance functions;
- develop and encourage negotiated rulemaking and alternative dispute resolution procedures;
- establish separate advisory committees for the motor carrier, motor vehicles, and vehicle titles and registration divisions; and
- develop policies that provide the public with a reasonable opportunity to offer public comment.

Board members also would be prohibited from serving if they were subject to conflict of interest as defined in statute. The board and all employees would be subject to statewide standards of ethics, and registered lobbyists would not be able to assume certain leadership positions in the department. The DMV would maintain a system to act promptly on any complaints filed with the department and would keep parties informed of the status of their complaints.

The board would cooperate with the Texas Transportation Commission and TxDOT to establish procedures to ensure mutual access to certain data necessary for TxDOT operations. The board would also develop and implement policies to distinguish clearly the responsibilities of the board from those of the director and departmental staff.

Automobile Burglary And Theft Prevention Authority. The bill would revise statutes governing the Automobile Burglary and Theft Prevention Authority (ABTPA) to transfer its authority from TxDOT to the Office of the Governor. Conforming changes would be made to reflect the transfer.

The ABTPA could not make a grant of appropriated funds before receiving approval by the governor or a designee. As part of the appropriations process, the Legislature would specify the funding the ABTPA could use to make grants or provide other types of financial assistance for each applicable fiscal year.

Used Automotive Recyclers. CSHB 3097 would add Occupations Code, ch. 2309, the Texas Used Automotive Parts Recycling Act, governing the dismantling and reuse or resale of used automotive parts and the safe disposal or resale of salvaged or non-repairable motor vehicles. The bill would exclude from the definition of salvage yards a person dealing in used parts and would add “used parts dealers” and “used automotive parts recycler” to statutes governing salvage vehicle dealers.

The bill would not apply to metal recyclers or salvage vehicle dealers unless a recycler or dealer was involved in a transaction in which a motor vehicle was delivered or used as a source of used automotive parts.

Advisory board. The bill would establish an advisory board that would meet twice annually to provide advice and recommendations to the Texas Department on Licensing and Regulation (TDLR) on technical matters relating to licensing standards and other matters related to used automotive parts recyclers. The advisory board would consist of six members appointed for staggered, six-year terms by the Texas Commission on Licensing and Regulation to represent the used automotive parts industry. Board members would only be entitled to receive reimbursement for expenses incurred as part of exercising official duties.

Licensing and inspection. The Texas Commission on Licensing and Regulation would adopt rules for licensing used automotive parts recyclers and would take necessary enforcement action accordingly. The commission also would establish and collect reasonable fees necessary to cover administration costs.

The bill would require a person that owned or operated a used automotive parts recycling business to be licensed by TDLR. The bill would establish requirements for an application for a license and would require an applicant to establish proof of financial responsibility, ownership or lease of the subject property, and evidence of compliance with other applicable state laws. License holders would be subject to a continuing education program approved by TDLR that would be a requirement of the license renewal process.

TDLR could enter and inspect a business regulated by the bill and would conduct additional regular inspections based on criteria established by the bill. A peace officer could inspect any record that a recycler was required to maintain or the recycler’s premises at any reasonable time.

Requirements and procedures. A used automotive parts recycler who acquired a salvaged vehicle would have to obtain a properly assigned title from the previous owner and would have to maintain a record of each vehicle purchased. A dealer that acquired a vehicle for the purpose of dismantling or destroying the vehicle would have to submit a report to TxDOT stating this intent before the 61st day after acquiring the vehicle. The report would have to be submitted on a standard form and would have to include a properly signed certificate or title or comparable document. TxDOT would have to issue a receipt to the dealer upon receiving the certificate. Parts recyclers also would have to comply with existing statutes governing salvaged and non-repairable vehicles, including processes for titling such vehicles.

A used automotive parts recycler would have to remove any unexpired license plates from a purchased vehicle and place them in a secure place until destroyed. A recycler could not take delivery of a motor vehicle without first obtaining a certificate of authority to dispose of the vehicle, or similar document, or a certificate or title showing that all liens had been satisfied.

A used automotive parts recycler would have to keep an inventory of each major auto component acquired, such as an engine, transmission, fender, or frame. Each inventory record would have to include:

- the date of purchase or delivery;
- the driver's license number of the seller and a photocopy of the seller's driver's license;
- the license plate number of the motor vehicle in which the part was delivered;
- a complete description of the part and, if applicable, the make, model, color, and size of the part; and
- the vehicle identification number of the motor vehicle from which the part was removed.

A dealer could alternatively keep an inventory of the name of the person who participated in the sale, including the person's certificate or inventory number or federal taxpayer identification number. A dealer would not have to keep an inventory of interior components or special accessories from a vehicle older than 10 years or of a part delivered by a commercial freight line or other commercial carrier.

Inventories would have to include unique numbers for each vehicle or component obtained in a transaction, and a recycler would have to keep each component in its original condition for at least three calendar days after obtaining the part. The recycler would not have to assign a unique number to an inoperable engine, transmission, or rear axle from another recycler or automotive-related business.

A recycler would have to surrender any documents it had to retain under law to TxDOT upon request and would receive a receipt for any surrendered certificate of title.

Additional provisions. The bill would provide administrative penalties for anyone who violated a provision it established or an associated rule. The director of TDLR could issue a cease-and-desist order as necessary to uphold applicable laws. A person that violated licensing requirements, dealt used parts without a license, or employed an unlicensed individual would be subject to a class C misdemeanor (maximum fine of \$500).

Regulations in the bill would supplement local ordinances or other regulations of used automotive parts dealers and would not restrict any similar municipal licensing or permit requirement. A recycler could sell salvaged vehicles only at the recycler's designated business location and would have to post notice on a vehicle for sale of the type of title held for the vehicle.

A used automotive parts recycler in a county with a population greater than 2.8 million (Harris) could not operate heavy machinery in a facility between the hours of 7 p.m. and 7 a.m. unless the conduct was necessary to a sale or purchase by the recycler.

Effective date. The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 3097 would consolidate key customer service functions currently housed in TxDOT into a new state agency, the Texas Department of Motor Vehicles. Moving functions carried out by the motor vehicle titles and registration division, the motor vehicle division, and the motor carrier division to the DMV would allow TxDOT to focus on expanding and managing the state's transportation system. TxDOT currently is saddled with too many exacting responsibilities related to the state's transportation network to devote adequate attention to managing the divisions serving Texas drivers. An agency of the size of TxDOT is prohibitively difficult to

restructure internally without causing disruptions to other divisions and activities. Separating the functions to an independent agency would provide the best opportunity for any further restructuring or other revisions that may be necessary in the long-term.

Creating a separate agency with an emphasis on customer service for Texas drivers would improve registration processing times and reduce administrative lags that inconvenience many citizens and businesses in the state. A stand-alone agency would also improve transparency and accountability by creating clear responsibility for overseeing the transferred functions and subjecting the agency to direct scrutiny from a number of sources, including the Legislature and the State Auditor's Office.

CSHB 3097 also would impose long-overdue regulations on used auto parts recyclers, which have to date been free of direct regulation in state statutes. Some used auto parts recyclers have engaged in criminal activities associated with stolen and damaged auto parts as well as other offenses. The bill would create a separate chapter for used auto parts recyclers and establish a regulatory framework that would provide licensing and oversight of the industry by the Texas Department of Licensing and Regulation (TDLR). TDLR, with abundant experience overseeing so many different professions, is well-equipped to extend its purview to include auto recyclers. Clear regulations would not impair an honest broker's ability to operate, but would empower the state to stop those engaged in criminal activity.

**OPPONENTS
SAY:**

CSHB 3097 would create a new agency to address problems that could be addressed through restructuring or by making other changes to the management of the divisions that would be moved out of TxDOT. The state did in fact have a separate department to administer motor vehicle registrations until the early 1990s, when it was merged to form TxDOT. Reversing that decision would not necessarily resolve problems with turnaround times and understaffing. Moving the functions to a new agency possibly could relocate the sources of current problems without addressing underlying issues, specifically concerning lack of resources.

The bill would constitute another example of diversions of State Highway Fund (Fund 6) revenue from TxDOT to a different agency. A new agency could create additional demands on resources over time and effectively

divert a larger portion of dedicated highway funds away from desperately needed highway projects.

CShB 3097 could have unintended consequences on used parts recyclers that operate in good faith in Texas. The bill would apply overbearing standards to all recyclers, requiring them to collect and record personal information from a person that delivered parts. This could place both the recycler and the seller in a difficult position, since the former may not want to record and store personal information and the latter may not want to surrender this information. Further, provisions requiring that a recycler retain a component part for three days after purchase would serve no clear purpose and would place a significant inconvenience on a recycler that received an order for the part. The requirement to hold a part for three days could be a decisive factor that could lose a particular sale.

OTHER
OPPONENTS
SAY:

The board of the DMV as designated in CShB 3097 would not have a representative from the manufacturing industry. Because manufacturers would be regulated by the DMV and play an important role in the industry, they should be given a voice on the board.

NOTES:

The companion bill, SB 626 by Carona, passed the Senate by 31-0 on May 1.

The author plans to propose a floor amendment to revise a provision in the bill transferring the Automobile Burglary and Theft Prevention Authority to the Governor's Office. The amendment would transfer the ABPTA to the DMV, as in the filed version of the bill. The author plans to propose another floor amendment to revise the composition of the board of the DMV to add one member of the public.

The Legislative Budget Board (LBB) estimates the bill would have no net impact on state general revenue through fiscal 2011. The LBB estimates that the bill could have a cost to Fund 6 of about \$1.2 million for fiscal 2010-11. The expenses would come from additional employees in executive management and support positions, as well as travel and support expenses for the DMV board. The LBB estimates that the TDLR would be able to recover additional expenses necessary for enforcement on used parts recyclers from licensing and other fees authorized in the bill.