

SUBJECT: Providing proceeds from the auction of certain vehicles for certain victims

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 7 ayes — Merritt, Frost, Burnam, Driver, P. King, Mallory Caraway, Vo

0 nays

2 absent — Lewis, Rodriguez

WITNESSES: For — Carlos Carrizales Jr., Bee County; David Jalufka, Karnes County; Bruce Thomas, McMullen County Sheriff's Office (*Registered, but did not testify*); Norman Garza, Texas Farm Bureau; Jason Skaggs, Texas and Southwestern Cattle Raisers Association)

Against — None

On — Jim Allison, County Judges and Commissioners Association of Texas; Donald Lee, Texas Conference of Urban Counties

BACKGROUND: Transportation Code, sec. 683.015 allows a law enforcement agency to be reimbursed from the proceeds of a sale of an abandoned motor vehicle, watercraft, or outboard motor for the cost of the auction, notice, and towing and other fees incurred from possessing the vehicle. After these expenses are deducted, an owner or lien holder has 90 days to collect the proceeds of the auction. After this time has elapsed, proceeds are deposited into an account and may be used to pay fees incurred for taking and auctioning other vehicles. Municipalities and counties may transfer funds in excess of \$1,000 from the account for use by their law enforcement agency.

An abandoned motor vehicle is defined as a vehicle that:

- is inoperable, is more than five years old, and has been left unattended on public property for more than 48 hours;
- has remained illegally on public property for more than 48 hours;
- has remained on private property without the consent of the owner or person in charge of the property for more than 48 hours;

- has been left unattended on the right-of-way of a designated county, state, or federal highway for more than 48 hours;
- has been left unattended for more than 24 hours on the right-of-way of a turnpike project built and maintained by the Texas Turnpike Authority division of the Texas Department of Transportation or a controlled access highway; or
- is a commercial vehicle with certain outstanding penalties left at a vehicle storage facility longer than 10 days.

DIGEST:

CSHB 453 would allow a law enforcement agency to use proceeds from the sale of a motor vehicle abandoned as a result of a pursuit by the agency to compensate property owners who experienced property damage as a result of the pursuit. The agency could use the funds to compensate owners regardless of the agency's legal liability under state tort laws. A payment for compensation for an affected property owner could be no greater than:

- the net proceeds received from the sale of the abandoned vehicle;
- \$1,000 per property owner, in the event that multiple property owners experienced damage; or
- the amount of the property owner's insurance deductible.

Before compensating a property owner, the county sheriff or constable would have to submit the proposed payment for consideration at the next scheduled commissioners' court meeting.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

SUPPORTERS
SAY:

CSHB 453 would allow law enforcement agencies to help defray costs incurred by victims of police pursuits of fleeing suspects. Sometimes drivers of vehicles fleeing an officer lose control and cause damage to private property, such as fences, homes, landscaping, and other property. Property owners that suffer damage to their property as a result of a pursuit may not have insurance to cover the damages or may not have policies that cover damage from fleeing vehicles. Even if covered, a property owner may have to pay a deductible on damage incurred.

CSHB 453 would allow law enforcement agencies to establish programs to help owners in this unfortunate situation to pay for damages to property.

The bill would be permissive in allowing, but not requiring, law enforcement agencies to establish such programs. This would not have an impact on the agency's revenue because compensation would be taken from auction proceeds. Further, CSHB 453 would establish a number of caps on the compensation that could be provided to property owners. Review by a commissioners' court would provide an important layer of review to ensure that any payments granted to property owners were fair and warranted.

CSHB 453 would not be problematic with respect to the Texas Constitution's prohibition against public grants to private individuals because the bill contains a broadly written public purpose not associated with any particular individual or group of individuals. Further, law enforcement agencies could make payments as a means of forestalling lawsuits that otherwise could emerge over the property damages. In this respect, such payments would be effectively no different than if the private party received an award as part of a court case to be settled with public funds.

**OPPONENTS
SAY:**

CSHB 453 could run afoul of state constitutional provisions restricting public entities' ability to grant public money to private parties. Texas Constitution, Art. 3, sec. 52 prohibits the Legislature from authorizing any county, city, town or other political subdivision to lend its credit or grant public money or a thing of value to aid any individual, association, or corporation. With certain exceptions, the provision has been interpreted broadly to put strict limits on the state's ability to divert public funds to individuals. There are several interpretations of the provision restricting private benefits, and the scope of the prohibition is not always clear. Certain provisions in CSHB 453 could fall within a constitutional grey area and be subject to challenge.

A transfer of funds to an individual with no formal legal inducement provided by a court or as part of court proceedings could be construed as a violation of the constitutional prohibition. Because the bill would not require that a law enforcement agency provide compensation in response to a matter of legal liability, it could be interpreted as authorizing a political subdivision to make a grant of public funds to a private individual.