

SUBJECT: Remedies for nonpayment of tolls for the use of toll projects

COMMITTEE: Transportation — committee substitute recommended

VOTE: 10 ayes — Phillips, Martinez, Burkett, Fletcher, Guerra, Harper-Brown, Lavender, McClendon, Pickett, Riddle

0 nays

1 absent — Y. Davis

WITNESSES: For — John R. Ames, Dallas County Tax Office; Gerry Carrigan, North Texas Tollway Authority; C. Brian Cassidy, Alamo Regional Mobility Authority, Cameron County RMA, Camino Real RMA, Central Texas RMA, Grayson County RMA, and North East Texas RMA; Mike Heiligenstein, Central Texas RMA; Charles Reed, Dallas County; (*Registered, but did not testify*: Thomas Bamonte, North Texas Tollway Authority; David Garcia, Cameron County RMA; James Hernandez, Harris County and Harris County Toll Road Authority; Ed Martin, Lube Center Management doing business as Mobil 1 Lube Express; Mark Mendez, Tarrant County; Seth Mitchell, Bexar County; Michael Nowels, Texas State Inspection Association; Craig Pardue, Dallas County; Carrie Rogers, North Texas Tollway Authority; Rider Scott, Dallas Regional Mobility Coalition; Frank Stevenson; Vic Suhm, Tarrant Regional Transportation Coalition)

Against — Terri Hall, Texas TURF; (*Registered, but did not testify*: Teresa Beckmeyer; Don Dixon; Pat Dossey; Dennis Edwards, Texasconservatives.org; Jeff Judson, San Antonio Tea Party; Bill Molina; Robert Morrow; Melanie Oldham; Deborah Parrish)

On — Phil Wilson, Texas Department of Transportation; (*Registered, but did not testify*: James Bass, TxDOT; Randy Elliston, Texas Department of Motor Vehicles; Michael Morris, North Central Texas Council of Governments)

BACKGROUND: Transportation Code, sec. 228.054, establishes a misdemeanor punishable by a fine of \$250 or less for failing to pay a toll on a state highway toll project. Sec. 284.070 establishes a misdemeanor for failing to pay a toll on

certain county highway projects. Sec. 366.178 establishes a misdemeanor for failing to pay a toll on roads operated by a regional tollway authority.

Transportation Code, ch. 284 applies only to a county that:

- has a population of 50,000 or more and borders the Gulf of Mexico or a bay or inlet opening into the gulf;
- has a population of two million or more;
- is adjacent to a county that has a population of two million or more;
- or
- borders the United Mexican States.

DIGEST:

Under CSHB 3048, registered vehicle owners who were issued at least two written notices of nonpayment and warnings related to 100 or more events of nonpayment within one year would be considered habitual violators. The bill would not apply to the Harris County Toll Road Authority or other counties acting under chapter 284, Transportation Code.

Remedies for habitual failure to pay tolls and fees. CSHB 3048 would allow toll project entities to prohibit a habitual violator from using a toll project if the entity provided notice at least 10 days before the prohibition. Under the bill, operating a motor vehicle on a toll project in violation of the prohibition would be a class C misdemeanor (maximum fine of \$500) and a peace officer could impound the vehicle. After a final determination that a vehicle owner was a habitual violator, the toll project entity could cause the denial of vehicle registration through the county assessor-collector or the Texas Department of Motor Vehicles.

Notification of habitual violators. If a vehicle owner was a habitual violator, a toll project entity would have to:

- send written notice by first class mail to the vehicle owner;
- state in the notice the total number of events of nonpayment, the total amount due for tolls and fees, the date of the habitual violation determination, the person's right to request a hearing on the determination, and the procedure and time limit for requesting a hearing.

Hearings for a determination of habitual violation. Hearings would:

- be held by the justice of the peace;
- be conducted in a justice court in the county where 25 percent of the

- events of nonpayment occurred;
- have to prove whether the registered owner was issued the appropriate notices of nonpayment containing at least 100 events of nonpayment within a year, not including nonpayment related to the vehicle being stolen or leased; and
 - have to prove whether the total amount due for tolls and fees specified in the notices was not already paid in full.

If the justice of the peace found that the vehicle owner was a habitual violator, the determination would be final. It would be a defense to prosecution that a vehicle had been stolen at the time of the nonpayment.

If the justice of the peace did not find in the affirmative on each issue in the hearing, the toll project entity would rescind its determination that the registered owner was a habitual violator, but it still could collect the outstanding tolls and fees. A justice of the peace could use the administrative hearings process to expedite appeals. The vehicle owner would have 30 days to appeal the justice of the peace's decision for a trial *de novo*. A fee of up to \$100 could be collected as court costs for determining whether a person was a habitual violator.

Publication of vehicle owner information. A toll project entity could publish information about the registered owners or lessees of nonpaying vehicles who owed past due and unpaid tolls or administrative fees, including their names, the city and state of their residence, the total number of events of nonpayment, and the total amount due for the tolls and administrative fees. This provision would not affect rental car companies or car dealers.

Payment plan. A toll project entity could agree on a repayment plan with the vehicle owner for the amount of outstanding tolls and fees. If the vehicle owner did not pay the outstanding balance due according to the plan within 30 days after receiving a written notice of failure to pay, the toll entity could file suit in district court to recover the outstanding balance as well as associated litigation expenses. The toll entity would file suit in the county in which its administrative offices were primarily located.

Vehicles registered outside the state. Owners of vehicles registered outside the state could be served either with a mailed notice or with a written notice of nonpayment in person, which would serve as a warning for further remedies. Government employees could serve this written

notice at international bridge crossings. For nonresidents, each failure to pay would be a separate, misdemeanor offense, punishable by a fine up to \$250 in addition to the outstanding balance of tolls and fees owed.

For vehicles registered outside the state, it would be a defense to prosecution that:

- the owner of the vehicle had provided the toll project entity proof within 30 days of the notice of repayment that the person had leased the vehicle to another person at the time of nonpayment;
- the owner had reported the vehicle as stolen either before the nonpayment occurred or eight hours after the discovery of the theft.

Termination of determination of habitual violation. A determination that a vehicle owner was a habitual violator would end when the owner paid the total amount of tolls and fees due or the toll project entity determined that the amount had been otherwise addressed. The toll project entity would have to send notification of the change of determination to the vehicle owner, the county assessor-collector, and the Texas Department of Motor Vehicles, as appropriate, within seven days of the change.

The bill would take effect January 1, 2014.

**SUPPORTERS
SAY:**

CSHB 3048 would hold drivers accountable for habitually failing to pay tolls by denying vehicle registration and prohibiting a violator's use of toll roads. Habitual violators are a detriment to the entire toll road system, potentially raising costs for other users by not paying their fair share. Thousands of drivers may rack up \$10,000 each in unpaid tolls and administrative fees on Texas toll roads each year, with little accountability.

CSHB 3048 would give toll project entities the authority they otherwise would not have to keep habitual violators off the road by denying their vehicle registration or impounding their cars.

The bill would give violators ample notice to cure their violations and the opportunity to appeal the determination of a violation in front of an elected justice of the peace. An associated \$100 fee would help cover court costs associated with the hearings, or a justice of the peace could choose to use the administrative hearings process to expedite appeals. While the courts may experience an initial increase in workload, the workload would level

out quickly.

By defining habitual violation as 100 events of nonpayment per year, the bill would target only those drivers who most egregiously failed to pay their tolls and would exclude any drivers who had received only a few erroneous bills. Publishing violators' names and addresses would make it easier for violators to find out if they were subject to a violation. The bill also would provide protections for vehicle owners, such as rental car companies, car dealerships, or owners whose cars had been stolen who were not driving the vehicle when an offense occurred. The bill would not affect the Harris County Toll Road Authority, which has its own effective system for settling toll violations.

By allowing toll project entities to set up payment plans, CSHB 3048 would give low-income drivers a way to pay off their accumulated unpaid tolls and fees through manageable payments.

OPPONENTS
SAY:

CSHB 3048 would overload justice of the peace courts with hearings for nonpayment of tolls and fees. The \$100 court cost fee would not be sufficient to help the courts handle the increase in workload and could make drivers wait up to a year before they could appeal their case in court.

CSHB 3048 would also unfairly penalize drivers who had received multiple erroneous bills resulting from an electronic error by making them go through the appeals process and would humiliate people by publishing their names and addresses.

OTHER
OPPONENTS
SAY:

The number of instances of unpaid tolls defining habitual violation should be set lower. CSHB 3048 would unfairly penalize low-income drivers by allowing people to amass thousands of dollars in unpaid tolls and fees before severe penalties would apply. Many people can't afford to pay off that much debt in a short period of time, even with a payment plan.

NOTES:

A similar bill, SB 1792 by Watson, was reported favorably by the House Transportation Committee on April 25.

The committee substitute differs from the bill as filed by

- making it the responsibility of the toll project entity, rather than the responsibility of the Texas Department of Transportation, to determine habitual violation, administer a payment plan, and notify

violators;

- bases habitual violation on the number of events of nonpayment rather than the number of days;
- adds defenses to prosecution for vehicles that were stolen or leased to another driver;
- adds a provision restricting a toll project entity from publishing information related to cars owned by a car rental company or car dealer;
- exempts counties acting under Chapter 284 of Transportation Code and
- adds remedies for nonpayment of tolls and fees by vehicle owners registered out of state;
- specifies that a hearing on the determination of habitual violation would be held in the county in which the toll collection facilities where at least 25 percent of the nonpayment events were located, not where a majority of the events of nonpayment were located’
- adds a 30-day deadline for the registered vehicle owner to petition the court for an appeal and a seven-day deadline for a toll project entity to notify a habitual violator of the termination of the determination;
- requires the authorized attorney in the county in which the toll project entity’s administrative offices are primarily located to file suit to recover the outstanding balance of tolls and fees owed to the toll project entity, instead of the attorney general filing suit in Travis County;
- removes a provision in the original allowing peace officers to issue a criminal trespass ticket when an administrative decision authorizing the exercise of habitual violator remedies is in effect.