

SUBJECT: Revising toll project operations, comprehensive development agreements

COMMITTEE: Transportation — committee substitute recommended

VOTE: 8 ayes — Canales, Bernal, Goldman, Krause, Leman, Raney, Thierry, E. Thompson

3 nays — Landgraf, Y. Davis, Hefner

2 absent — Martinez, Ortega

WITNESSES: For — James Hines, Texas Association of Business; (*Registered, but did not testify*: Michael Johnson, Pinnacle Landscaping, Shorebird Capital; David White, Texans for Traffic Relief; Fred Bosse, Webber, LLC)

Against — Crystal Main, NE Tarrant Tea Party; Arturo Ballesteros, North Texas Tollway Authority; Jack Finger, Texans Uniting for Reform and Freedom; Terri Hall, Texas TURF, Texans for Toll-free Highways; and six individuals; (*Registered, but did not testify*: Anne Oryan, AAA Texas; Steven Albright, AGC of Texas-Highway Heavy Branch; Gary Bushell, Alliance for I-69 Texas, I-14, Gulf Coast Strategic Highway Coalition; Peyton McKnight, American Council of Engineering Companies of Texas; Matthew Geske, Austin Chamber of Commerce; James Hernandez, Brazoria County Toll Road Authority, Harris County Toll Road Authority; C. Brian Cassidy, Central Texas Regional Mobility Authority, Alamo Regional Mobility Authority, North East Texas Regional Mobility Authority, Cameron County Regional Mobility Authority; Adam Haynes, Conference of Urban Counties; Priscilla Camacho, Dallas Regional Chamber; Brandi Bird and Drew Campbell, Dallas Regional Mobility Coalition; Casey Burack, Downtown Austin Alliance; Angela Smith, Fredericksburg Tea Party; Aimee Bertrand, Harris County Commissioners Court; Byron Campbell, North Texas Commission; Victor Boyer, San Antonio Mobility Coalition; Vic Suhm, Tarrant Regional Transportation Coalition; Michael Cargill, Texans For Accountable Government; Mackenna Wehmeyer, Transportation Advocacy Group Houston; Alexis Tatum, Travis County Commissioners Court; and seven individuals)

On — Lee Kleinman, City of Dallas; (*Registered, but did not testify:*  
James Bass, Texas Department of Transportation)

DIGEST:

CSHB 1951 would revise regulation of comprehensive development agreements (CDAs); repeal several provisions regarding state, county, and regional toll billing and enforcement; and replace those provisions with toll regulations applicable to more than one type of toll project.

**Comprehensive development agreements.** The bill would allow the Texas Department of Transportation (TxDOT) to enter into a CDA with a private entity for a toll project if:

- the estimated capital costs for construction exceeded \$1 billion;
- TxDOT demonstrated that state funding was not available without significant reprioritization of existing funds; and
- construction did not require the use of the State Highway Fund.

TxDOT could enter into no more than two CDAs in a fiscal year.

*Voter approval.* TxDOT or a private entity could not construct or operate a project subject to a CDA unless it was approved by a majority of voters:

- in all counties in which a portion of the project would be located;  
or
- in each county in which a portion of the project would be located, if at least one county had a population of 500,000 or more and another had a population of no more than 50,000.

On request of TxDOT, a county commissioners court would have to order an election, provided that an election could not be ordered until the scope of the project had been finalized, including the route, number of lanes, number of tolled lanes, and method of financing for the project.

An election would have to be held on the first November uniform election date that allowed sufficient time to comply with law and could not be held

within five years of a previous election to approve the same or a substantially similar project.

The ballot would have to state specific information about the toll project, including whether the toll charged would be at a variable or static rate. TxDOT would have to contract with each county for election services.

**Toll collection and enforcement.** The bill would specify that the operator of a vehicle that was driven or towed through a toll collection facility would pay the proper toll, unless the vehicle was an authorized emergency vehicle.

The exemption for emergency vehicles would apply regardless of whether the vehicle was responding to an emergency, displaying a flashing light, or marked as an emergency vehicle.

The bill would allow a toll project entity to waive the toll or authorize a reduced toll for any vehicle or class of vehicles.

*Toll invoice.* The bill would require a toll project entity to use video billing or other tolling methods as an alternative to requiring payment at the time a vehicle was driven through a collection facility. A toll project entity could use automated enforcement technology, including video recordings, photography, electronic data, or other methods to identify the registered owner of the vehicle for billing, collection, and enforcement.

A toll project entity would have to mail to the registered owner of a vehicle a written invoice containing a toll assessment. The invoice would be sent to the owner's address shown in the records of the Texas Department of Motor Vehicle or another government agency or an alternate address provided by the owner.

If the owner agreed to the terms, a toll project entity could provide the invoice as an electronic record instead of by mail.

*Collection.* A toll invoice would have to require payment within 30 days

of being mailed and conspicuously state the amount due, the due date, and that failure to pay would result in an administrative fee.

A person who received an invoice would have to pay the amount owed or send a written request to the toll project entity for a review of the toll assessment. A toll project entity could add an administrative fee of up to \$6 for failure to comply.

An administrative fee would have to be set by rule in an amount that did not exceed the cost of collecting the toll and no more than \$48 in a year.

A toll project entity other than certain counties could contract with a person to collect the unpaid toll and any administrative fees before referring the matter to a court.

*Enforcement.* A person who received two or more invoices for unpaid tolls without paying would be subject to a civil penalty of \$25. Only one civil penalty could be assessed in a six-month period. An appropriate district or county attorney could sue to collect the penalty, toll, and administrative fees.

In determining liability for a civil penalty, it would be presumed that the unpaid invoices were received five days after being mailed. It would be a defense to liability that the person was not liable for payment of each toll assessed or paid the amount owed.

Proof that a vehicle passed through a toll collection facility without payment, together with proof that the invoice recipient was the registered owner or the driver, would create a presumption that the recipient was liable for the toll. The proof could be by a written statement of a peace officer or toll project entity employee, video surveillance, or other reasonable evidence specified in the bill.

The court in which a person was found liable for a civil penalty would have to collect the penalty, tolls, administrative fees, and court costs and forward the amounts to the toll project entity.

*Exception to liability.* The bill would make it an exception to liability of the vehicle's registered owner for a toll incurred by the vehicle if:

- the owner was a lessor of the vehicle;
- ownership of the vehicle was transferred before the toll was incurred; or
- the vehicle was stolen before the toll was incurred.

The owner or former owner would have to provide certain information to the toll project entity no later than 30 days after the invoice was mailed to show that the vehicle was leased, transferred, or stolen.

Upon receiving information that the vehicle was leased or ownership was transferred, the toll project entity could send the invoice to the lessee or person to whom ownership was transferred.

*Confidentiality.* The bill would make information used for toll collection and enforcement confidential and not subject to public disclosure laws.

*Regional authorities.* The bill would specify that regional tollway authorities and regional mobility authorities had the same powers and duties as TxDOT and certain counties regarding toll collection and enforcement for the authorities' turnpike projects and other toll projects.

**Repealed provisions.** The bill would repeal several provisions from Transportation Code regarding CDAs, toll projects contracting with TxDOT or certain counties, regional authorities, and habitual toll violators.

*Comprehensive development agreements.* The bill would repeal certain provisions regarding CDAs, including the expiration date on the authority to enter into a CDA and environmental clearance requirements.

*State, county, and regional tolls.* The bill would repeal provisions regarding toll projects under the authority of TxDOT, particular counties,

regional tollway authorities, or regional mobility authorities, including requirements for toll collection and enforcement and a provision making nonpayment of tolls within a certain time frame a misdemeanor punishable by a fine of up to \$250.

The bill also would repeal a provision making the operation of a vehicle on a county project having failed to pay tolls within a certain timeframe a class C misdemeanor (maximum fine of \$500).

*Habitual violators.* The bill would repeal provisions of law relating to habitual toll violators who had aggregated 100 or more events of nonpayment in a year, including the authorization of a county assessor-collector to refuse to register the vehicle of a habitual violator.

The bill would take effect September 1, 2019, and apply only to a toll incurred on or after that date.

SUPPORTERS  
SAY:

CSHB 1951 would bring necessary reform to toll roads by revising toll regulations, allowing the Texas Department of Transportation (TxDOT) to partner with private entities, and requiring voter approval of comprehensive development agreements (CDAs). Regulation of toll projects currently is split under separate provisions of Transportation Code based on whether the toll was operated by TxDOT, a regional authority, or certain counties. The bill would provide more certainty for toll users by consolidating regulations on toll collection and enforcement.

**Late fee cap.** While some may be concerned that the bill would cause regional toll authorities to lose money, the bill would not prevent those authorities from collecting tolls. If a toll entity predicted that they would lose money from this bill, it means that the entity expects to receive revenues from assessing administrative late fees, rather than just through toll collections. Authorities should not receive the majority of their funds through late fees or penalties, and should be able to pay for debt and maintenance and operations costs through normal toll revenues.

**Toll enforcement.** The bill would remove toll enforcement practices that

can trap individuals in debt by piling administrative fees on low-income Texans who cannot afford the tolls but must access toll roads for work. The bill would allow for a civil penalty on nonpayment of tolls, which is more appropriate than a criminal penalty. People should not be criminalized or prevented from using their vehicles just for the inability to pay a toll.

**Toll billing.** While the bill may change the billing practices of certain regional authorities, it would provide uniform billing regulations to fix the current patchwork of different regional toll road billing procedures. Toll users have reported receiving a bill for one toll but paying that money to a different tolling authority, proving that the current billing system is not working. CSHB 1951 would streamline the process, providing greater clarity and transparency and ensuring that users were not confused about how and to whom toll bills should be paid.

**Comprehensive development agreements.** The bill would bring back the ability of private entities to enter into a CDA with TxDOT in a specific and limited manner. CDAs provide necessary financing for transportation projects, which cumulatively require many billions of dollars to construct. In addition, projects that go through the traditional process can take years to even begin construction, leading to long delays in improvements for vital infrastructure. Public-private partnerships under a CDA can provide an alternative method of financing for these projects, and the bill would ensure that TxDOT could only enter into two each year and only for projects that the department could not otherwise fund.

OPPONENTS  
SAY:

CSHB 1951 would restrict the ability of tolling authorities to use billing and enforcement practices that have been developed over years of operations and have proven to be efficient at collecting tolls, flexible for irregular toll violators, and responsive to local communities.

**Late fee cap.** By capping the administrative late fee on all toll authorities, the bill would cause regional authorities to lose money, perhaps millions of dollars. Several toll authorities are supported through local property taxes to ensure that debt service or maintenance and operations were paid

for in the case that toll revenues did not cover that cost. If authorities cannot fully collect all revenues, they may have to assess property taxes to make up for that money. This loss of revenue also is problematic for county or regional authorities that are not backed by the full faith and credit of the state and could have their bond ratings lowered.

**Toll enforcement.** Under the bill, the problem with the late fee cap would be compounded because CSHB 1951 also would remove certain toll collection enforcement measures. Current law ensures that people who take advantage of a toll project and never intend to pay are labeled as habitual violators and have their vehicle registration blocked until payment is made. Habitual violators also may receive a criminal penalty. The bill would remove all of these measures, leaving toll enforcement practices toothless and preventing toll authorities from collecting toll payments.

**Toll billing.** The bill also would remove local flexibility in billing by requiring regional authorities to use pay-by-mail as an alternative means of revenue collection. Pay-by-mail is not as efficient as collecting tolls at the time of transaction. While pay-by-mail may be more convenient to consumers, camera technology can make mistakes capturing license plate numbers and the collection of toll revenue is cumbersome and costly for authorities, leading to a lower percentage of collection.

OTHER  
OPPONENTS  
SAY:

Rather than expanding the number of CDAs in the state, CSHB 1951 should remove private toll roads. Private toll projects tax citizens for the use of public roads, unfairly burdening motorists who already pay for the roads through other taxes and fees, including the gas tax. CDAs are public-private partnerships that privatize the benefits and socialize the risks of transportation projects. Allowing for more CDAs also would be unnecessary, since TxDOT already has the ability, scope, and funding to deliver large projects through traditional procurement methods.