

SUBJECT: Allowing certain peace officers to remove personal property from roadways

COMMITTEE: Law Enforcement — favorable, without amendment

VOTE: 7 ayes — Driver, Garza, Hupp, Burnam, Y. Davis, Hegar, Keel
0 nays

SENATE VOTE: On final passage, March 5 — 28-2 (Harris, Whitmire)

WITNESSES: For — Gary Lindsey, Dallas County Sheriff's Office; Robert Pope, Dallas Area Rapid Transit
Against — None

BACKGROUND: Transportation Code, ch. 472 authorizes the Texas Department of Transportation (TxDOT) to order the removal of damaged or disabled vehicles, spilled cargo, or hazardous materials from the roadway or right-of-way of the state highway system if that vehicle or spill blocks the highway or endangers public safety. TxDOT officials may remove the vehicle or spill without the owner's or carrier's consent, and the owner or carrier must pay the costs of removal and disposition. Sec. 472.014 relieves TxDOT and its officers or employees of liability for any damage to the vehicle or spilled cargo, unless that removal or disposal is carried out recklessly or in a grossly negligent manner, or for any damage resulting from the failure to exercise authority granted under this statute.

Transportation Code, sec. 545.305 authorizes a peace officer or a TxDOT license and weight inspector to remove or require a person in charge of a vehicle to remove a vehicle that is blocking a roadway or that otherwise poses a threat to public safety.

DIGEST: SB 165 would authorize the Department of Public Safety, a municipal police department, or a sheriff's or a constable's office to remove personal property, including a vehicle, spilled cargo, or hazardous materials or substances, from a roadway or right-of-way if the agency determined that the property was blocking the roadway or posed a danger to public safety.

The property could be removed without the owner's or carrier's consent, and the owner or carrier would have to reimburse the law enforcement agency for removing and disposing of the property.

A law enforcement agency would not be liable for any damage to the property unless the removal were done recklessly or with gross negligence. Nor would an agency be liable for any damage that resulted from a failure to remove the property.

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, 2003.

**SUPPORTERS
SAY:**

SB 165 would remove the uncertainty about a local law enforcement agency's liability in deciding to remove a wrecked vehicle or cargo spill. It would give these agencies the same authority and protection from liability in removing vehicles or cargo spills that state law already grants TxDOT. Police, sheriffs, and constables also should be immune from liability for damage to vehicles or cargo, unless the removal is done recklessly or with gross negligence.

Local law enforcement officers sometimes delay ordering a vehicle to be towed until a TxDOT representative is available. This delay can create additional dangers for officers and others on the scene if TxDOT officials cannot respond in a timely manner. Wrecks on congested state highways in major cities can back up traffic for miles, waste money, cause stress, and contribute to air pollution. Cargo spills can involve anything from computers to cattle, as well as hazardous materials. The bill would encourage quick decision-making in these situations and would require that all applicable state laws on handling hazardous materials and substances be followed.

SB 165 would apply only to cases when a law enforcement officer determined that a vehicle or spill was blocking the roadway or endangering public safety. Cities and counties already have established procedures to contact privately owned wreckers, either through a rotation system or an exclusive towing contract. Non-consent towing, as compared to removing vehicles from the private parking lot of an apartment complex or a shopping center, already is subject to stringent state and local laws. Wreckers would respond only if asked by local law enforcement or TxDOT officials.

**OPPONENTS
SAY:**

SB 165 could encourage wreckers to troll for disabled vehicles on public roadways and could lead to an unregulated “open season” for towing companies seeking additional revenue. Municipalities also would reap a windfall in administrative fees and other charges for towing vehicles.

The protection from liability when ordering the towing of disabled vehicles or spilled cargo should not be extended to constable’s offices, nor should it be limited to larger counties. Constable deputies, particularly in rural counties, should not be involved in removing wrecked vehicles or spilled cargo. Those departments are not trained or equipped adequately to handle such situations.

**OTHER
OPPONENTS
SAY:**

SB 165 should extend the same kind of liability protection provided to TxDOT or local law enforcement officers to privately owned wrecker services and their employees when they respond to emergencies. Removing a disabled vehicle or cargo spill is hazardous, and wreckers that answer these calls assume these risks at the request of law enforcement officers. Currently, a Houston wrecker service is being sued for actions it took at the direction of a law enforcement agency. Wrecker services seek protection only when they respond to law enforcement calls, not from damages caused when they respond to discretionary and less dangerous requests for towing.

NOTES:

A similar bill, HB 647 by E. Jones, passed the House on April 1 and has been referred to the Senate Infrastructure Development and Security Committee. HB 647 would authorize a “law enforcement agency” to remove personal property from a roadway without liability at the owner’s or carrier’s expense.

During the 77th Legislature, the Senate passed SB 1020 by Nelson, identical to the filed version of SB 165, on the Local and Uncontested Calendar. SB 1020 was placed on the House General State Calendar on May 22, 2001, but did not come up for a vote.