

SUBJECT: Allowing traffic incident management programs to clear roadways

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 6 ayes — Talton, Wong, Bailey, Blake, Menendez, Rodriguez

0 nays

1 absent — A. Allen

WITNESSES: For — Larry Cernosek, Jeanette Rash, Texas Towing and Storage Association; Alan Miller, Texas Towing and Storage Association and Allan's Wrecker Service; Anne O'Ryan, AAA Texas; Steve Smith, Greater Dallas Emergency Wrecker Association

Against — None

BACKGROUND: Peace officers and the Texas Department of Transportation (TxDOT) license and weight inspectors may remove or require the removal of certain unlawfully stopped vehicles under sec. 545.305 of the Transportation Code. These vehicles may be taken to the nearest garage or other place of safety, a government maintained or designated garage, or a position off the paved or main traveled part of the road. The owner of a removed or stored vehicle is liable for all reasonable towing and storage fees. Under sec. 545.3051, certain transportation and transit authorities and law enforcement agencies may remove personal property if it blocks the road or endangers public safety. The owner of the vehicle must reimburse the authority or law enforcement agency for any reasonable cost of removal and disposition of the property.

Transportation Code, ch. 643 requires towing companies to register, maintain insurance or financial responsibility, and report the results of positive drug testing of employees. Companies that perform nonconsent tows are subject to additional provisions for registration, fees charged for nonconsent tows, and the storage of vehicles towed.

Transportation Code, sec. 221.002 permits TxDOT and a city's governing body to enter into agreements regarding the control and regulation of state highways in the city.

Under Occupations Code, ch. 2303, to receive a license to operate a vehicle storage facility, a person must not have been convicted of a felony or a class A or B misdemeanor in the past three years. The facility must meet certain standards established by Texas Transportation Commission rules.

Business and Commerce Code, ch. 15, also known as the Texas Free Enterprise and Antitrust Act of 1983, makes it unlawful for a person or entity to monopolize or attempt or conspire to monopolize any part of trade or commerce. The act allows any person to bring suit for injunctive relief or damages incurred due to violation of the Act.

DIGEST:

CSHB 2799 would permit a political subdivision to establish a traffic incident management program to remove personal property from a roadway or right-of-way in the political subdivision. Local authorities could not establish a transportation or mobility enhancement program on a state highway, including a farm-to-market or ranch-to-market road, unless permitted by an agreement between the local authority and the Texas Department of Transportation.

The local authority could not charge towing companies a fee that exceeded 2 percent of the annual gross receipts for the program's towing and would have to reinvest all revenue generated by these fees into the program. Any program would have to comply with chapter 15 of the Business and Commerce Code.

The bill would allow a political subdivision to pay a towing company for towing or storage related to the program. If the political subdivision did not pay the towing company, the owner of a towed or stored vehicle would be liable for all reasonable towing and storage fees. The political subdivision would have to comply with sec. 643.204 of the Transportation Code, which requires a political subdivision that regulates nonconsent tow fees to set those fees at an amount that represents the fair value of the services of a towing company and that are reasonably related to any financial or accounting information provided to the political subdivision.

Towing companies that provide traffic incident management towing would have to maintain insurance, comply with each fee provision in chapter 643 of the Transportation Code, and provide towing equipment for vehicles in accordance with the vehicles' manufacturers' towing guidelines. These companies could not use a driver who was not certified by the National

Drivers Certification Program of the Towing and Recovery Association of America or who had been convicted of a felony in the last seven years, and would be required to verify the criminal record of each driver. The companies also would provide annual driver training.

A vehicle towed under a traffic incident management program would have to be taken to a safe drop location, government designated or maintained garage, vehicle storage facility, or a position off the paved or main traveled part of the road. A "safe drop location" would be well lighted and have both public restrooms and telephones. The bill would amend section 545.305 of the Transportation Code to include the same language.

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, 2005.

**SUPPORTERS
SAY:**

Traffic incident management programs are a valuable tool to help certain cities relieve severe congestion and reduce the number of traffic accidents and fatalities. CSHB 2799, while creating minimum statewide guidelines, would ensure that these programs would be properly and safely implemented.

Quickly removing disabled vehicles from freeways is the key to good traffic management. According to the Texas Transportation Institute, for every minute that traffic is blocked, it takes three to five minutes for traffic to flow freely again, so that a vehicle that blocks traffic for 10 minutes could cause almost an hour of delay. Disabled vehicles distract drivers and lead to many secondary accidents and injuries. Traffic slowdowns occur even when the disabled vehicle is on the shoulder of the freeway and not blocking traffic. A motorist's right to repair a vehicle on the shoulder of the road is outweighed by the public safety threat. These programs reduce traffic congestion and secondary incidents, including those caused by tow trucks racing to the scene of an accident. They also reduce the smog caused by idling motors.

In the absence of state guidelines on traffic incident management programs, several cities have begun implementing these programs in sometimes unsafe and inappropriate ways. In Houston, the city's SafeClear program allowed convicted felons to be drivers, granted monopolies to towing companies for particular sections of highways, and charged high fees to towing companies to participate. CSHB 2799 would

set specific requirements to ensure that programs in Houston and across the state would be safely and appropriately implemented.

The bill would cap fees and require any revenue they generated to be reinvested in the program, ensuring that political subdivisions did not use the programs to generate revenue. This provision, combined with the prohibition on monopolies, would ensure participation by more towing companies. The bill would protect consumers by requiring that fees for nonconsent tows represented the fair market value of the towing services, ensuring that companies maintained sufficient financial responsibility to cover potential vehicle damage, and requiring companies to use appropriate towing equipment according to the vehicle manufacturer's towing guidelines. The bill also would protect consumers' safety by setting criteria for safe drop locations, requiring drivers to be certified and to receive regular driver education, and prohibiting recently convicted felons from being tow truck drivers in the program.

By requiring all programs on state highways to be approved by TxDOT, the bill would give the department the flexibility to impose additional uniform program criteria. As the agency best informed about traffic procedures, regulation, and management, the department is the most appropriate agency to set these guidelines. Rather than imposing overly strict or inappropriate criteria on these programs, the Legislature should allow the agency time properly to research these programs and create guidelines, which could be codified in future sessions.

Traffic incident management programs would not harm small businesses. Prohibiting monopolies would ensure broader participation by more towing companies. Programs like that in Dallas, in which all of the towing companies authorized to perform police-mandated tows may choose to participate on a rotating basis, would be allowed. These programs are necessary only on freeways, where traffic volumes are extremely heavy. Because freeway tows represent only a small percentage of all tows, non-affiliated towing companies could continue to tow from other parts of the city. In fact, business off the freeway would be likely to increase as program-affiliated companies focused on freeway tows.

**OPPONENTS
SAY:**

Small towing companies could be harmed by lost business if cities were allowed to enter into exclusive towing agreements. The bill would not prohibit exclusive contracts because political subdivisions generally have been held to be immune from suit under chapter 15 of the Business and

Commerce Code. Moreover, HB 857 by Talton, which would prohibit exclusive contracts, has not yet cleared the Senate and would not apply to programs dealing with vehicles slowing traffic. Because some cities have argued that even vehicles on the shoulder slow traffic, almost any vehicle needing to be towed could be covered by exclusive agreements entered into under these two bills. The bill should be amended explicitly to prohibit exclusive contracts. However, simply prohibiting exclusive contracts would not be enough because a political subdivision still could choose to contract only with larger businesses. The bill should include provisions to ensure the participation of small businesses and prohibit towing companies involved in the program from soliciting related services. Otherwise, these smaller companies could face considerable economic injury.

CSHB 2799 does not contain adequate consumer protection safeguards. All traffic incident management programs should include a grievance procedure to ensure the fair resolution of problems, such as property damage, and conduct regular reviews of customer satisfaction. The bill should be amended to set specific guidelines in these areas.

Traffic incident management programs could also infringe on the right of citizens to conduct minor vehicle repairs on the roadway and to decide what kind of tow truck best meets their needs. In many cases, tows are unnecessary because vehicles need only minor repairs, such as a tire change or a gallon of gas, that quickly and safely could be accomplished on the road's shoulder. Without specific provisions permitting these repairs, vehicles may be towed that could have been repaired on the shoulder. Owners could then have to pay for tows that they did not want or need. The bill either should allow these minor repairs by owners or require towing companies to provide these services. The bill also would fail to give motorists the explicit right to refuse a program-affiliated tow truck dispatched to them if they had concerns that the trucks used could damage their vehicles.

The bill would limit the ability to charge adequate cost recovery fees from tow operators. Fees pay for the administration and enforcement of the program and also may be used by some political subdivisions to provide free short distance tows. By capping these fees without regard to the costs incurred by the political subdivision, the bill could impair the viability of these programs.

Traffic incident management programs also could decrease public safety if motorists felt obliged to undertake risky behaviors to avoid being towed. In January, an elderly man was killed as he attempted to cross the freeway and return to his car as a tow truck pulled up for a city-authorized non-consent tow. Motorists also may try quicker but less careful car repairs in order to beat the tow truck.

NOTES:

The committee substitute added provisions to prohibit a political subdivision from establishing a program on a state highway unless approved by the TxDOT and to require that programs comply with chapter 15 of the Business and Commerce Code. The substitute also removed language specifying that the limit on fees would not affect the authority of a political subdivision to impose a fee or charge related to the towing of a motor vehicle at the request of a peace officer or authorized employee, nor impair the payment provisions of an agreement relating to the towing of vehicles owned by the political subdivision.

HB 857 by Talton, which would prohibit cities from granting the exclusive right to one or more towing companies to remove a disabled vehicle without the consent of the owner or operator, with some exceptions, passed the House on April 28.