

SUBJECT: Prohibiting exclusive city agreements for non-consent tows on freeways

COMMITTEE: Urban Affairs — favorable, without amendment

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

1 nay — A. Allen

WITNESSES: For — Suzanne Poole, Houston Professional Towing Association and Citizens Against Safe Clear; Patricia Gonzales, League of United Latin American Citizens Council #4807; Rodrigo Carreon; John Juanopulos; Gracie Yerena

Against — Joe L. Breshears, City of Houston; Lori Bender, Houston Police Department; Steve Smith, Greater Dallas Emergency Wrecker Association

On — Anne O'Ryan, AAA Texas

BACKGROUND: On January 1, 2005, Houston launched the Safe Clear program, which requires all vehicles abandoned or disabled on the city's freeways to be towed immediately by program-affiliated wrecker companies. The program grants exclusive towing authority to particular freeway zones to 11 companies, which collectively pay the city about \$900,000 a year for the contracts. Tow truck drivers who are not under contract can be fined \$750 if they tow a vehicle from one of these exclusive zones.

Towing companies in the program must respond to incidents within six minutes of receiving a call and are required to accept city-negotiated fees, which are set at \$124 for accident and arrest tows. All other tows are \$75 for the first five miles and \$1.50 per mile thereafter. Under recent changes, drivers who can move their vehicles onto the shoulder may receive free tows of up to one mile past the nearest exit, for which the towing company is credited \$50 by the city against its annual fees.

Transportation Code, sec. 643.206 requires that vehicles towed without the consent of the owner be taken to licensed vehicle storage facilities. Under Transportation Code, sec. 545.305, a peace officer may remove certain vehicles from a highway, including vehicles that are a hazard. Vehicles

removed under this section may be taken to the nearest garage or safe place, a garage designated or maintained by the agency that employs the officer, or a position off the main part of the highway. A 2004 attorney general's opinion (GA-0215) determined that while a peace officer may order a nonconsent tow under sec. 545.305, if the officer calls a towing company, that company may not impose a fee on the vehicle's owner unless the vehicle is taken to a licensed storage facility.

Transportation Code, secs. 311.001, 311.002, and 203.003, grant concurrent jurisdiction over state highways inside city limits to the city and the state. Sec. 311.001 grants home rule municipalities exclusive control over and under public highways. Under sec. 203.003, the Texas Department of Transportation may exercise authority granted to a municipality without the municipality's consent. It removes the exclusive jurisdiction of the municipality to the extent the exercise of power affects the public way and its use.

In 1995, the U.S. Congress enacted the Interstate Commerce Commission Termination Act, which deregulated the towing industry. Under 49 USC 14501, neither a state nor a political subdivision of a state can regulate the price, route, or service of motor carriers of property. The statute includes several exceptions, including one for public safety.

DIGEST:

HB 857 would prohibit cities from entering into exclusive agreements with towing companies to tow disabled vehicles from designated segments of a freeway without the consent of the owner or operator. The bill would not apply to vehicles:

- obstructing vehicular travel;
- left unattended for more than four hours; or
- that were unable to operate normally and whose owner or operator was not in the vicinity or is incapacitated.

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:**

HB 857 would prevent Houston and other like-minded cities from privatizing and leasing sections of state freeways to the detriment of small business owners and local residents.

The Safe Clear program disadvantages small towing companies, some of which have been put out of business by the program. Of the more than 200 companies previously certified to conduct police-authorized tows in Houston, only 11 of the largest companies received contracts. Some small businesses could not afford to pay for exclusive contracts under the program. Some also complain that they were not informed about the program and how to participate. These companies also have lost body shop business since program-affiliated wreckers are likely to direct motorists to their own body shops. These smaller companies have thus suffered great economic injury. All towing companies that meet certain minimum criteria on licensing, safety, and insurance should have the right to tow vehicles from the freeway.

The Safe Clear program also infringes on the rights of citizens to choose to which company they give their business and to do minor vehicle repairs on freeway shoulders. Under the Safe Clear program, drivers cannot use non-contract towing companies and services such as those of AAA. They also have no right to refuse the program-affiliated tow truck dispatched to them, even if they have concerns that the type of trucks being used could damage their vehicles. Motorists should have the right to decide which company best meets their needs. Drivers also should have a chance safely to repair vehicles on the shoulder if it does not interfere with traffic. The six-minute response time mandated by the program does not give drivers enough time to change a flat tire or get gas from a nearby filling station. .

The Safe Clear program 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. Motorists also may try quicker but less careful car repairs in order to beat the tow truck.

The Safe Clear program was not well planned and implemented. Although the city conducted a pilot program, no evaluation of the program was undertaken to determine whether it was successful before implementing the full program. The city had no regulations in place to ensure that persons convicted of serious crimes were not certified as Safe Clear drivers. Most seriously, many in the industry say that they were not informed about the program nor given an opportunity to provide input in its design. Problems such as these demonstrate that the city rushed into the program without a proper and thoughtful analysis.

Cities should not be able to lease sections of state freeways. These freeways, which were built with state and federal dollars and are maintained with state money, belong to the state. The city does not own these freeways and should not be able to rent them out for economic gain.

The Safe Clear program also appears to violate both state and federal law. Contrary to the requirements of Transportation Code, sec. 643.206, clarified by an attorney general's opinion, the Safe Clear program does not tow vehicles to a licensed vehicle storage facility. The program also may violate the 1995 federal act deregulating the towing industry, which prohibited states and cities from imposing additional regulations on towing companies.

OPPONENTS
SAY:

HB 857 would restrict the ability of cities to address safety on state highways. Programs like Safe Clear are necessary in some cities to relieve severe congestion and reduce the number of traffic accidents and fatalities. The state should not remove this important safety tool.

Safe Clear is an appropriate public safety program designed to meet Houston's specific traffic challenges. Houston has long had some of the worst traffic and traffic-related problems in the nation, including severe congestion, high numbers of accident injuries and fatalities, high EMS and police costs, high insurance rates, and high levels of air pollution. Rapid population growth practically ensures that, even with new road construction, congestion and traffic incidents will continue to worsen.

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. The resulting traffic slowdowns occur even when the initial 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. The Safe Clear program reduces the number of secondary incidents and traffic congestion, including those caused by tow trucks racing to the scene of an accident. The number of accidents in January and February on freeways covered by the program decreased by 12.2 percent from the previous two years, according to the city of Houston. The program also reduces the smog caused by idling motors, improves travel times, and

increases accountability by making a single company responsible for a particular freeway segment.

The Safe Clear consideration process was open and fair, and an effort was made to include small businesses. Small companies were eligible for special assistance to form limited liability corporations and compete in the bid process. The program does not harm small businesses. Freeway tows represent only a small percentage of all tows, and non-affiliated towing companies can continue to tow from other parts of the city. Business off the freeway is likely to increase as program-affiliated companies focus on freeway tows. Program-affiliated companies are not allowed to solicit vehicle owners for further services, such as car repairs, so the program does not affect this secondary business.

The Safe Clear program has been responsive to residents' concerns. In February, the city council responded to concerns about the effect the nonconsent tows might have on the poor by authorizing free, short tows for certain vehicles. The fees negotiated under the program also are much less than those previously charged by wreckers for the same tows. The city also authorized the revocation of towing licenses for drivers with certain criminal convictions after concerns were expressed about safety. Three bills filed by Sen. Whitmire, SB 1060, SB 1061, and SB 1062, which have passed the Senate, would make further changes in the program by requiring any program revenues to be deposited in the state highway fund, requiring the city to gain the consent of the Department of Transportation, and authorizing the city to impose licensing requirements. The Safe Clear program should be given an opportunity to improve itself and demonstrate its value.

The Safe Clear program does not violate state or federal law. The attorney general's opinion determined that a peace officer may order a vehicle removed under sec. 545.305 of the Transportation Code. The opinion did not consider whether the owner is liable for towing and storage fees. Under sec. 311.001, home rule municipalities have exclusive control over and under public highways, and the Safe Clear program is a reasonable implementation of that authority. The program does not violate federal law since the law provides an exception for regulations implemented to foster public safety.

OTHER
OPPONENTS
SAY:

HB 857 could unintentionally affect towing agreements in other cities. Many cities have exclusive contracts with a single towing company to remove vehicles upon the request of a peace officer. Since these agreements can cover all parts of a city, including freeways, HB 857 could affect the legality of these contracts. Other cities are also considering incident management programs to remove disabled vehicles from freeways that address many of the concerns of the Safe Clear program. For example, in Dallas, the city is planning to launch a program to remove vehicles from freeways in which all of the towing companies authorized to perform police-mandated tows could choose to participate on a rotating basis. If the Legislature is concerned about the Safe Clear program, it should bracket the bill to Houston.

NOTES:

The companion bill, SB 340 by Whitmire, was reported favorably, without amendment, by the Senate Intergovernmental Relations Committee on February 14. It was placed on the Senate Intent Calendar for February 16, but was not taken up for debate.

Three other bills filed by Sen. Whitmire, SB 1060, SB 1061, and SB 1062, which passed the Senate on the Local and Uncontested Calendar on April 14 and have been referred to the House Urban Affairs Committee, would make further changes to the Safe Clear program by requiring any program revenues to be deposited in the state highway fund, by requiring the city to gain the consent of the Department of Transportation, and by authorizing the city to impose licensing requirements.