

SUBJECT: Prohibit extended parking or erecting structures on highway right-of-way

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Phillips, Darby, Fletcher, Lavender, McClendon, Pickett

2 nays — Y. Davis, Martinez

3 absent — Bonnen, Harper-Brown, Rodriguez

WITNESSES: *(On committee substitute:)*

For — *(Registered, but did not testify:* Les Findeisen, Texas Motor Transportation Association; Deborah Ingersoll, Texas State Troopers Association; Chris Miller, The Association of Electric Companies of Texas (AECT); Damon Withrow, Xcel Energy)

Against — Terri Hall, Texas TURF, TAG; Celeste Morris; Robert Morrow; Beverly Nuckols; Randall Peterson; Craig Young; *(Registered, but did not testify:* Mary Anderson, Texans Against Tolls; Thomas Davis; Pamela Dickinson; Russell Doyle; Heather Fazio, Libertarian Party of Texas; Hector Medina; Travis Snively)

On — John Barton, Texas Department of Transportation; Pat Dossey

BACKGROUND: Transportation Code, sec. 545.411 prohibits a person from staying at a rest area for longer than 24 hours or erecting a tent, shelter, booth, or structure at the rest area. It is considered an offense if the person has received notice that the activity is prohibited and does not leave or remove the structure within eight hours.

The restriction does not apply to a structure erected by a nonprofit organization to provide food or beverages at a temporary rest stop for the traveling public as long as the group receives a permit from the Texas Department of Transportation (TxDOT).

DIGEST: CSHB 2443 would prohibit staying at, erecting a structure within, or parking a vehicle on a state highway right-of-way, as well as in rest areas.

The bill would provide an exemption for anyone remaining or parking a vehicle on a state highway right-of-way if:

- the vehicle was parked because of an emergency or to conduct highway construction or maintenance;
- the highway was within the city limits;
- the vehicle was for operations of an electric or gas utility or for surface coal mining and reclamation projects; or
- parking was allowed along the highway by other state or local laws.

The bill would take effect on September 1, 2011, and apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 2443 would provide law enforcement agencies an effective tool to remedy the public safety hazards and nuisances caused by vagrants parking vehicles and trailers under highway bridges and on state highway rights-of-way. These “camps” increase the possibility of traffic accidents involving pedestrians. The accumulation of refuse poses public health risks and requires taxpayer-funded cleanup of the litter. Also, errant sparks from camp cooking fires can ignite wildfires, in urban as well as rural areas.

CSHB 2443 would be a logical extension of the current restrictions on camping or building structures in rest areas. The highway right-of-way is as much of the public domain as are the rest areas, and law enforcement agencies already have experience in enforcing the rest area camping statute.

CSHB 2443 would not impose any restrictions on freedom of speech or the ability to protest or to advocate along highway rights-of-way. There are procedures for asking for permits for large marches, and TxDOT officials typically have more pressing duties than monitoring people congregating along highways. However, First Amendment rights are not absolute, and there remains a need to balance them against public safety concerns.

The bill would not expand existing rights-of-way and would provide reasonable exceptions for emergency stops by motorists and commercial activities along the side of the roadway. It also would exclude areas within the city limits and operations of electric and gas utilities and coal mining companies.

The substitute properly would exclude the enhancement of criminal penalties that could impose additional cost to the state and local governments to prosecute these offenses. There should be a limit to efforts to criminalize homelessness.

OPPONENTS
SAY:

CSHB 2443 is unnecessary. There are sufficient state and local laws to promote traffic safety and to prevent littering. Additional law and county measures regulate commercial activities along roads in unincorporated areas. Adding new sanctions might not help remedy the problem if current laws are not being enforced.

CSHB 2443 would infringe on the constitutional protection of freedom of speech. Roadways have been a traditional forum to express one's opinions to the public. Measures such as CSHB 2443 could potentially be used to outlaw any activities along public rights-of-way, such demonstrations or sit-ins.

OTHER
OPPONENTS
SAY:

CSHB 2443 should have retained the criminal penalties included in the original bill. The proposed sanctions would not be sufficient to address the problems with homeless camps under bridges and along highway right-of-way.

NOTES:

On April 14, the House passed, 141-1, on the Local and Uncontested Calendar HB 1768 by Muñoz, et. al, that would allow county commissioners courts in counties with populations of 450,000, rather than 1.3 million, to pass ordinances to regulate sale of food and merchandise along roadways in unincorporated areas of the county. The bill would prohibit county commissioners from restricting the sale of livestock along these roads. The bill was referred to the Senate Intergovernmental Relations Committee.