

BILL ANALYSIS

Senate Research Center
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S.B. 882
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2007, the 80th Legislature passed S.B. 792, which designated local toll project entities (like the North Texas Tollway Authority (NTTA) and the Harris County Toll Road Authority) as the toll operators of all the toll projects within their service area. This authority and responsibility required the authorities to enter into agreements with private developers of the toll projects. As part of these agreements, the private sector has attempted to obtain expensive letters of credit from the local toll project entities. Requiring letters of credit may sometimes negatively impact the local toll project entity's financial condition.

Also, under current law, a regional tollway authority, as defined under Chapter 366 (Regional Tollway Authorities), Transportation Code, has the authority to file complaints with local county justices of the peace to hear cases related to toll enforcement violations. Allowing NTTA to appoint an administrative officer to hear such cases would alleviate the workload of the Justice of the Peace system, as well as save the person against whom the violation is being enforced additional fees and fines that are imposed when a case is handled in the county system.

As proposed, S.B. 882 requires that a county toll authority enter into a written agreement with a regional toll authority before advancing a toll project if the authorities serve the same geographic area. S.B. 882 expands a regional tollway authority's bonding authority under Chapter 366, Transportation Code, from exceeding 40 years in connection with financing toll projects. This legislation also clarifies the statute as it relates to determining stipends for unsuccessful projects. S.B. 882 additionally exempts the internal audit working paper of a regional tollway authority from disclosure under the Public Information Act if a determination or ruling of the authority has not yet been rendered in connection with an ongoing investigation. Finally, the bill conforms board of director conflict of interest provisions to current state law in the Local Government Code.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to a Regional Tollway Authority is modified in SECTION 3 (Section 366.185, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 366.038, Transportation Code, as follows:

Sec. 366.038. TOLL COLLECTION. (a) Creates this subsection from existing text.

(b) Prohibits a regional tollway authority (authority) from providing financial security for the performance of services it provides under Subsection (a) if the authority determines that providing security could restrict the amount, or increase the cost, of bonds or other debt obligations the authority is authorized to subsequently issue under this chapter or the authority is not reimbursed its cost of providing the security.

SECTION 2. Amends Section 366.178, Transportation Code, by adding Subsection (j), as follows:

(j) Provides that in addition to the other powers and duties provided by this chapter, an authority has the same powers and duties as the Texas Department of Transportation (TxDOT) under Chapter 228 (State Highway Toll Projects), a county under Chapter 284

(Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties), and a regional mobility authority under Chapter 370 (Regional Mobility Authorities), regarding the authority's toll collection and enforcement powers for the authority's turnpike projects; and other toll projects developed, financed, constructed, or operated under an agreement, including a comprehensive development agreement, with the authority.

SECTION 3. Amends Section 366.185, Transportation Code, by adding Subsection (d-2), as follows:

(d-2) Authorizes the rules adopted under Subsection (d), notwithstanding Subsection (d-1), if the contract amount exceeds \$50 million, to provide for a stipend to be offered to an unsuccessful design-build firm that submits a response to the authority's request for additional information, in an amount that is authorized to exceed \$250,000 and is reasonably necessary, as determined by the authority in its sole discretion, to compensate the unsuccessful firm for preliminary engineering costs associated with the development of the proposal by the firm and the value of the work product contained in the proposal, including the techniques, methods, processes, and information contained in the proposal.

SECTION 4. Amends Subchapter E, Chapter 366, Transportation Code, by adding Sections 366.186 and 366.187, as follows:

Sec. 366.186. ORDER PROHIBITING OPERATION OF MOTOR VEHICLE ON TURNPIKE PROJECT. (a) Authorizes an authority to prohibit by order of its executive director the operation of a motor vehicle on a turnpike project if an operator of the vehicle has failed to pay a toll, fine, or administrative fee imposed under Section 366.178 (Failure or Refusal to Pay Toll) and the authority provides notice to the registered owner of the vehicle of the unpaid toll, fine, or administrative fee.

(b) Requires that the notice required by Subsection (a)(2) be mailed to the registered owner of the vehicle at least 30 days before the date the prohibition takes effect.

(c) Authorizes the authority, if the registered owner of the vehicle fails to pay a toll, fine, or administrative fee before the 31st day after the notice under Subsection (b) is mailed, to impose a reasonable cost for expenses associated with collecting the unpaid toll, fine, and administrative fee.

Sec. 366.187. VIOLATION OF ORDER; OFFENSE. (a) Provides that a person commits an offense if the person operates a motor vehicle or causes or allows the operation of a motor vehicle on a turnpike project in violation of an order issued under Section 366.186.

(b) Provides that an offense under this section is a Class C misdemeanor.

SECTION 5. Amends Section 366.260, Transportation Code, as follows:

Sec. 366.260. New heading: CERTAIN CONTRACTS PROHIBITED. (a) Prohibits a director, agent, or employee of an authority from, outside the person's service to that authority, otherwise from contracting with the authority. Deletes existing text prohibiting a director, agent, or employee of an authority from being directly or indirectly interested in a contract with the authority or the sale of property to the authority.

(b) Makes no changes to this subsection.

SECTION 6. Amends Section 366.303, Transportation Code, by amending Subsection (d) and adding Subsections (f) and (g), as follows:

(d) Prohibits the term of an agreement under Subsections (a) (relating to the authorization of a local governmental entity other than a nonprofit corporation to issue bonds or enter into an agreement with an authority regarding a turnpike project, and to

levy taxes to pay interest on the bonds and provide a sinking fund for the bonds), (b) (relating to the authorization of a local governmental entity to agree with an authority to issue bonds or enter into and make payments under an agreement regarding a turnpike project of that authority), and (c) (relating to the authorization of a local governmental entity to make payments related to Subsection (b) from certain sources), rather than this section, from exceeding 40 years.

(f) Prohibits a local governmental entity, except as provided by Subsection (g), from owning, constructing, maintaining, or operating a turnpike project or other toll project, as that term is defined by Section 201.001 (Definitions), in a county that is part of an authority unless the local governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the project will be undertaken.

(g) Provides that Subsection (f) does not apply to a turnpike project or toll project located in a county to which an authority has transferred under Section 366.036 (Transfer of Turnpike Project or System) or leased, sold, or conveyed under Section 366.172 (Lease, Sale, or Conveyance of Turnpike Project) all turnpike projects of the authority that are located in the county and all work product developed by the authority in determining the feasibility of the construction, improvement, extension, or expansion of a turnpike project to be located in the county.

SECTION 7. Amends Section 366.407(g), Transportation Code, to require that the contract contain an explicit mechanism for setting the price for the purchase by the authority, rather than TxDOT, of the interest of the private participant in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the contract.

SECTION 8. Amends Chapter 366, Transportation Code, by adding Subchapter I, as follows:

SUBCHAPTER I. ADMINISTRATIVE ADJUDICATION HEARING PROCEDURE

Sec. 366.451. **ADOPTION OF ADMINISTRATIVE ADJUDICATION HEARING PROCEDURE.** (a) Authorizes the board of an authority to adopt an administrative adjudication hearing procedure for a person who is suspected of having violated an order issued under Section 366.186 on at least two separate occasions within a twelve-month period.

(b) Requires that a hearing procedure adopted under Subsection (a) establish a period of not less than 30 days from the date notice of the second violation is provided as described in Section 366.186 during which a person is authorized to pay the toll, fine, or administrative fee, or request a hearing; provide for appointment by the authority of one or more hearing officers to conduct administrative adjudication hearings and authorize the officers to administer oaths and issue orders compelling the attendance of witnesses and the production of documents; and establish the amount and provide for the disposition of the toll, fine, and administrative fee.

(c) Authorizes an order issued under Subsection (b)(2) to be enforced by a justice of the peace.

Sec. 366.452. **NOTICE OF HEARING.** (a) Requires the authority, if a person requests a hearing under Section 366.451(b)(1)(b), to inform the person of the time and place of the hearing and notify the person that the person has the right to a hearing without delay.

(b) Provides that the original or any copy of the summons or citation is a record kept in the ordinary course of business of the authority and is rebuttable proof of the facts it contains.

Sec. 366.453. **ADMINISTRATIVE HEARING: PRESUMPTION; EVIDENCE OF OWNERSHIP.** Provides that in an administrative adjudication hearing under Section

366.451, it is presumed that the registered owner of the motor vehicle that is the subject of the hearing is the person who operated or who caused or allowed the operation of the motor vehicle in violation of the order.

(b) Provides that in an administrative adjudication hearing under Section 366.451, a computer record of the authority or TxDOT of the registered vehicle owner is prima facie evidence of its contents and that the person named in the record was the registered owner of the vehicle at the time the violation occurred.

(c) Authorizes proof of the violation of the order to be shown by testimony of a peace officer or authority employee, video recording or surveillance, photograph, electronic recording, or any other reasonable evidence, including evidence obtained by automated enforcement technology in an administrative adjudication hearing under Section 366.451.

(d) Provides that in an administrative adjudication hearing under Section 366.451, it is a defense that the motor vehicle in question was stolen before the failure to pay the proper toll occurred and was not recovered by the time of the failure to pay, but only if the theft was reported to the appropriate law enforcement authority before the earlier of the occurrence of the failure to pay or eight hours after the discovery of the theft.

(e) Provides that in an administrative adjudication hearing under Section 366.451, a registered owner who is the lessor of a vehicle for which a notice of nonpayment has been issued is not liable for a toll, fine, or administrative fee if, not later than the 30th day after the date the notice of nonpayment is mailed, the registered owner provides to the authority a copy of the lease agreement covering the vehicle on the date of the nonpayment. Requires that the name and address of the lessee be clearly legible. Provides that if the lessor timely provides the required information, the lessee of the vehicle on the date of the violation is considered to be the registered owner of the vehicle for purposes of an administrative adjudication hearing under Section 366.451. Provides that the lessee is subject to prosecution for failure to pay the proper toll if the authority sends a notice of nonpayment to the lessee by first-class mail not later than the 30th day after the date of the receipt of the information from the lessor.

Sec. 366.454. ATTENDANCE AT HEARING. (a) Provides that a witness of a violation of an order adopted under Section 366.186 is not required to attend the administrative adjudication hearing related to that violation.

(b) Provides that the failure of the person who requested the hearing to appear at an administrative adjudication hearing under Section 366.451 is considered an admission of liability for the violation.

Sec. 366.455. DECISION OF HEARING OFFICER. (a) Requires the hearing officer, at the conclusion of a hearing under this subchapter, to issue a decision stating whether the person is liable for a violation of the order and the amount of the toll, fine, and administrative fee to be assessed against the person.

(b) Requires the hearing officer to file the decision with the secretary of the authority.

(c) Requires that each decision of a hearing officer filed under Subsection (b) be kept in a separate index and file. Authorizes the decision to be recorded using a computer printout, microfilm, microfiche, or similar data processing technique.

Sec. 366.456. ENFORCEMENT OF DECISION. (a) Authorizes an authority to enforce a decision issued under Section 366.455 by any or all of the following: requesting any peace officer or other public servant authorized to do so to place a device that prohibits movement of a motor vehicle on the vehicle that is the subject of the decision; imposing an additional fee if the amount specified in the decision is not paid within a

specified time; and requesting TxDOT to refuse to allow the registration of the vehicle that is the subject of the decision.

(b) Authorizes TxDOT to refuse to register a vehicle as requested by an authority under Subsection (a).

Sec. 366.457. APPEAL OF HEARING OFFICER DECISION. (a) Authorizes a person determined by a hearing officer to be in violation of an order, except as provided by Subsection (b), to appeal the decision to any justice court in the county in which the authority's main administrative office is located.

(b) Authorizes a person, if applicable law either prohibits an appeal from being filed in a justice court or instead requires the appeal to be filed in a county court-at-law, to appeal the determination to the county court-at-law in the county in which the authority's main administrative offices are located.

(c) Requires a person, to appeal, to file a petition with the court not later than the 30th day after the date the hearing officer's decision is filed with the secretary of the authority. Requires that the petition be accompanied by payment of the costs required by law for the court.

Sec. 366.458. HEARING ON APPEAL. Requires the court in which a petition is filed to schedule a hearing; notify all parties of the date, time, and place of the hearing; and conduct a trial de novo.

Sec. 366.459. EFFECT OF APPEAL. Provides that service of notice of appeal does not stay the enforcement and collection of the decision of the hearing officer unless the person who files the appeal posts a bond with an agency or entity designated by the authority to accept payment for a violation.

SECTION 9. Amends Section 552.116(a), Government Code, as follows:

(a) Provides that an audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003 (Definitions), Education Code, a county, a municipality, a school district, a joint board operating under Section 22.074 (Joint Board), Transportation Code, or a toll project entity as defined by Section 371.001 (Vehicles Used by Nonprofit Disaster Relief Organizations), Transportation Code, as added by Chapter 103 (H.B. 570), Acts of the 80th Legislature, Regular Session, 2007, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021 (Availability of Public Information).

SECTION 10. Amends Section 552.116(b)(1), Government Code, to redefine "audit."

SECTION 11. Repealer: Section 366.2521 (Gifts and Contributions; Offense), Transportation Code.

Repealer: Section 366.2522 (Offering Gift to a Director; Offense), Transportation Code.

SECTION 12. Effective date: upon passage or September 1, 2009.