

BILL: AB 344 (Melendez, R-Lake Elsinore)
Introduced February 7, 2017

SUBJECT: AB 344 would revise the toll evasion penalty process to allow a person contesting the violation to only pay a penalty after all challenges to the penalty have been exhausted

STATUS: Pending in the Senate
Passed the Assembly 80-0
Passed Assembly Transportation Committee 14-0

SUMMARY AS OF APRIL 5, 2017:

AB 344 would not require a person contesting a notice of toll evasion violation or notice of delinquent toll evasion to pay the toll evasion penalty until after any of the following occurs, whichever is later:

- After the processing or issuing agency, as a result of an investigation with its own records and staff, finds that the contestant committed the toll evasion violation.
- If the contester requests an administrative review after the processing or issuing agency finds that the contestant committed the toll evasion violation.
- After the superior court finds as a result of an additional hearing requested by the contestant, that the contestant did commit the toll evasion violation.

Existing law states that if the person contesting a notice of toll evasion violation or delinquent toll evasion violation is not satisfied with the results of the initial investigation, then that person, within 15 days of the mailing of the results of the investigation, must deposit the full amount of the toll evasion penalty and request an administrative review. However, AB 344, revises the payment process for contested toll violations, and allows the contestant to exhaust all challenge opportunities before they pay the toll penalty.

EFFECTS ON ORANGE COUNTY:

The Orange County Transportation Authority (OCTA) is the owner and operator of the 91 Express Lanes, a ten-mile toll road on State Route 91 beginning at State Route 55 and extending to the Orange/Riverside County line. Under existing practice, if a person contacts OCTA disputing a toll violation notice, OCTA investigates the toll violation to ensure that the correct vehicle was cited, the time/location was correct on the citation, that no payment was made and that the correct party was cited. If these factors are confirmed, then OCTA continues enforcement of the toll penalty. There is no payment required for this process. Overall, OCTA receives about 5500 challenges annually to toll violations.

After the investigative stage, the contestant can then appeal the results to an administrative hearing. When this occurs a person will be required to deposit the total amount of the toll violation plus penalties unless: a) the person is an account patron and the violation arose out of the same operative facts, then deposit is toll and penalties amount or \$250, whichever is less; or b) if person is a non-patron and toll violations all

arose out of same operative facts, then deposit shall be tolls plus either \$250 or \$250 plus 10 percent of penalties above \$1000, whichever is greater. OCTA will decrease or waive these deposits in cases where the person can prove economic hardship.

Currently, it is estimated that OCTA has about 17-18 cases each year that move forward with an administrative action. In 89 percent of these cases the toll violation is upheld. Each of these hearings is completed at an OCTA facility, where a hearing officer must be brought in for the case. On average, the cost for each administrative hearing is \$450.

Without requiring a person challenging a toll penalty to provide some form of payment prior to the hearing, more of an incentive is provided for a person to challenge the penalty until the final stage of the process in order to avoid paying the penalty. This could be especially problematic for repeat offenders who are looking to game the system. It also can lead to exponentially more people deciding to go to later stages of the appeal process since it does not impact their position in any way. This will increase associated costs for OCTA and impact OCTA's ability to enforce toll policies.

An oppose position is consistent with the OCTA 2017-18 State Legislative Platform's principles to "Support efforts to preserve local flexibility in the administration of toll lanes."

OCTA POSITION:

Staff recommends: OPPOSE

ASSEMBLY BILL

No. 344

Introduced by Assembly Member Melendez

February 7, 2017

An act to amend Section 40255 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 344, as introduced, Melendez. Toll evasion violations.

Existing law prohibits a person from evading or attempting to evade the payment of tolls or other charges on any vehicular crossing or toll highway, and makes a violation of these provisions subject to civil penalties, as specified. If a vehicle is found to have evaded tolls on any toll road or toll bridge, existing law requires an issuing agency or a processing agency, within 21 days of the violation, to forward to the registered owner a notice of toll evasion violation setting forth the violation, as specified.

Existing law authorizes, within 21 days from the issuance of the notice of a toll evasion violation, or within 15 days from the mailing of the notice of delinquent toll evasion, whichever occurs later, a person to contest a notice of toll evasion violation or a notice of delinquent toll evasion. Existing law requires the processing agency to either investigate with its own records and staff or request that the issuing agency to investigate the circumstances of the notice, and requires the processing agency to mail the results of the investigation to the person who contested the violation. If the person is not satisfied with the results of the investigation, existing law authorizes the person to deposit the amount of the toll evasion penalty and request an administrative review, as prescribed. Existing law requires the review to be conducted in

accordance with specified written procedure established by the processing agency and authorizes the agency's final decision to be delivered personally or by first-class mail. Within 20 days after mailing of the final decision, the contestant may seek review by filing an appeal to the superior court.

This bill would not require a person contesting a notice of toll evasion violation or notice of delinquent toll evasion from being required to pay the toll evasion penalty until after the processing agency or issuing agency finds as a result of an investigation, or the processing agency finds as a result of an administrative review, or a court finds as a result of a hearing, that the contestant did commit a toll evasion violation, whichever occurs later.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 40255 of the Vehicle Code is amended to read:

40255. (a) (1) Within 21 days from the issuance of the notice of toll evasion violation, or within 15 days from the mailing of the notice of delinquent toll evasion, whichever occurs later, a person may contest a notice of toll evasion violation or a notice of delinquent toll evasion. ~~In that case, the processing agency shall do the following:~~

(1)

(2) The processing agency shall either investigate with its own records and staff or request that the issuing agency investigate the circumstances of the notice with respect to the contestant's written explanation of reasons for contesting the toll evasion violation. ~~If,~~ ~~based~~ Based upon the results of that investigation, ~~if~~ the processing agency is satisfied that the violation did not occur or that the registered owner was not responsible for the violation, the processing agency shall cancel the notice of toll evasion violation and make an adequate record of the reasons for canceling the notice. The processing agency shall mail the results of the investigation to the person who contested the notice of toll evasion violation or the notice of delinquent toll evasion violation.

(2)

1 (3) If the person contesting a notice of toll evasion violation or
2 notice of delinquent toll evasion violation is not satisfied with the
3 results of the investigation provided for in paragraph (1), ~~the person~~
4 ~~may~~, (2), *the person*, within 15 days of the mailing of the results
5 of the investigation, ~~deposit the amount of the toll evasion penalty~~
6 ~~and investigation, may~~ request an administrative review. ~~After~~
7 ~~January 1, 1996, an~~ An administrative hearing shall be held within
8 90 calendar days following the receipt of a request for an
9 administrative hearing, excluding any time tolled pursuant to this
10 article. The person requesting the hearing may request one
11 continuance, not to exceed 21 calendar days.

12 (b) The administrative review procedure shall consist of *all of*
13 the following:

14 (1) The person requesting an administrative review shall indicate
15 to the processing agency his or her election for a review by mail
16 or personal conference.

17 (2) If the person requesting an administrative review is a minor,
18 that person shall be permitted to appear at an administrative review
19 or admit responsibility for a toll evasion violation without the
20 necessity of the appointment of a guardian. The processing agency
21 may proceed against that person in the same manner as if ~~that~~ *the*
22 person were an adult.

23 (3) (A) The administrative review shall be conducted before a
24 reviewer designated to conduct the review by the issuing agency's
25 governing body or chief executive officer. In the case of violations
26 on facilities developed pursuant to Section 143 of the Streets and
27 Highways Code, the processing agency shall contract with a public
28 agency or a private entity that has no financial interest in the facility
29 for the provision of administrative review services pursuant to this
30 subdivision. The costs of those administrative review services shall
31 be included in the administrative fees authorized by this article.

32 (B) In addition to any other requirements of employment, a
33 reviewer shall demonstrate those qualifications, training, and
34 objectivity prescribed by the issuing agency's governing body or
35 chief executive as are necessary and ~~which~~ *that* are consistent with
36 the duties and responsibilities set forth in this article.

37 (C) The examiner's continued employment, performance
38 evaluation, compensation, and benefits shall not be directly or
39 indirectly linked to the amount of fines collected by the examiner.

(4) The officer or person authorized to issue a notice of toll evasion violation shall not be required to participate in an administrative review. The issuing agency shall not be required to produce any evidence other than the notice of toll evasion violation or copy thereof, information received from the department identifying the registered owner of the vehicle, and a statement under penalty of perjury from the person reporting the violation. The documentation in proper form shall be considered prima facie evidence of the violation.

(5) For a toll evasion violation that occurs on a vehicular crossing or toll highway where the issuing agency allows pay-by-plate toll payment, as defined in subdivision (e) of Section 23302, the officer or person authorized to issue a notice of toll evasion violation shall not be required to participate in an administrative review. The issuing agency shall not be required to produce any evidence other than the notice of toll evasion violation or copy thereof, information received from the department identifying the registered owner of the vehicle, and a statement from the officer or person authorized to issue a notice of toll evasion that the tolls or other charges and any applicable fee was not paid in accordance with the issuing agency's policies for pay-by-plate toll payment. Any officer or person who knowingly provides false information pursuant to this paragraph shall be subject to a civil penalty for each violation in the minimum amount of two hundred fifty dollars (\$250) up to a maximum amount of two thousand five hundred dollars (\$2,500). An action for a civil penalty may be brought by any public prosecutor in the name of the people of the State of California. The documentation in proper form shall be considered prima facie evidence of the violation.

(6) The review shall be conducted in accordance with the written procedure established by the processing~~-agency~~ agency, which shall ensure fair and impartial review of contested toll evasion violations. The agency's final decision may be delivered personally or by first-class mail.

(c) A person contesting a notice of toll evasion violation or a notice of delinquent toll evasion pursuant to this section is not required to pay the toll evasion penalty until after any of the following occurs, whichever is later:

(1) After the processing agency or issuing agency, as a result of the investigation conducted pursuant to paragraph (2) of

1 *subdivision (a), finds that the person committed the toll evasion*
2 *violation.*

3 *(2) If the person requests an administrative hearing pursuant*
4 *to paragraph (3) of subdivision (a), after the processing agency*
5 *finds that the person committed the toll evasion violation.*

6 *(3) If the person seeks further review pursuant to Section 40256,*
7 *after the court finds that the person committed the toll evasion*
8 *violation.*