

## HB 3588 and HB 2702 Comparison

*This analysis is based on the summary of HB 3588. Measures from HB 2702 that amend provisions in HB 3588 are noted in italics. The numbers in parentheses are the bill sections in HB 2702.*

### ARTICLE 1: Trans-Texas Corridor

This article provides for the establishment, designation, construction, and operation of a system of multimodal facilities including toll roads, rail facilities, and utilities to be known as the Trans-Texas Corridor. The legislation amends the Transportation Code by adding a new chapter that provides the commission and the Texas Department of Transportation (TxDOT) with certain powers necessary to construct and operate the Trans Texas Corridor.

The legislation broadens the authority of the department and the commission with respect to financing the corridor. The department shall encourage the participation of private entities in the planning, design, construction, and operation of corridor facilities. The department may use contributions from governmental entities, as well as loans, grants, and reimbursements from the federal government. The commission may issue bonds for the construction of the corridor. And it may transfer funds from the State Infrastructure Bank.

The department may enter into comprehensive development agreements with regard to turnpikes (see Article 15 for further information on comprehensive development agreements).

The commission may establish, assess, and collect tolls and fees for use of corridor facilities. It may grant franchise rights and exclusive and non-exclusive access licenses. The commission can enter into agreements with a rail operator, public utility, private utility, communications system, common carrier, transportation system, or other entity for the common use of any facility.

The commission is authorized to purchase options to acquire real property in advance of the final determination of the corridor route (*this was revised in HB 2702; see Article 3*). The department is granted a right of entry and “early possession” authority for the corridor as it is currently authorized to do so for turnpikes (*this was revised in HB 2702; see Article 15*).

The law specifies restrictions and requirements for the commission and TxDOT regarding public meetings and hearings and conducting, or approving, all required environmental evaluations or studies. The bill would allow the commission to establish speed limits and vehicle weight limits for the corridor within certain specifications.

There are limitations on the department’s financial participation in activities associated with the corridor. The department may not annually expend out of the state highway

fund more than an amount equivalent to 20 percent of the obligation authority under the federal-aid highway program distributed to Texas in that year for the purposes of acquiring rights of way, initial construction of the corridor, and grading and bed preparation for non-highway components of the corridor. This limitation does not apply to money spent for preliminary engineering, studies, operation, and maintenance or to expenditures of bond proceeds and revenue collected from the corridor.

In addition, each fiscal year the department may expend not more than \$25 million for the construction or purchase of non-highway facilities on the corridor. This limitation as well does not apply to money spent for preliminary engineering, studies, operation, and maintenance or to expenditures of bond proceeds and revenue collected from the corridor. This limitation also does not apply to certain federal funds received by the department.

*HB 2702 also adds the following provisions with respect to development of the Trans-Texas Corridor:*

*Repeals the expenditure cap on non-highway facilities on the Corridor and provides that the department may not spend money from the general revenue fund for such facilities except pursuant to a line-item appropriation. (2.33)*

*Requires periodic reports on the reasons and needs for each mode of transportation in the Trans-Texas Corridor and links the timing of the report to release of the environmental impact statements. (2.25)*

*Prohibits the department from limiting access to the Corridor with the intent to benefit the economic viability of an ancillary facility. (2.26)*

*Ensures that commercial ancillary facilities are not exempt from ad valorem taxation and are subject to local zoning regulations and building standards. (2.27)*

*Requires the department to approve a methodology for the setting of tolls, increases to tolls, plans to collect tolls including penalties, and any change to the approved methodology. (2.27)*

*Requires the department to restore the utility of a facility that it alters in order to accommodate construction of the Trans-Texas Corridor. (2.29)*

*Requires the department to provide direct connections to and from the Trans-Texas Corridor and interstate, United States, and state highways. Requires the department to consider similar connections to farm-to-market and ranch-to-market roads, and major county and city arterials, taking into consideration feasibility, local input, traffic volume, circuity of travel for landowners and emergency vehicles. (2.30)*

*Requires the department to provide notice to local authorities when a proposal is made to transport groundwater out of a county. Prohibits the department from extracting*

*groundwater from the right of way unless necessary for construction, operation, or maintenance of a facility other than a public utility. Requires the department to comply with rules of water districts. (2.30)*

*Prevents the department from agreeing to a non-compete clause in a CDA unless exceptions are made for projects: on the UTP, of local governments, and that are for the safety of pedestrian and vehicular traffic. (2.30)*

*Revises current law by allowing the department to acquire property to provide a location for a gas station, convenience store, or similar facility. Hotels and restaurants are no longer in this portion of the statute. (2.31)*

*Limits ancillary facilities to a location between the main lanes of a highway or between a highway and a department rail facility. These facilities are limited to a gas station, convenience store, or similar facility. These facilities may not be located within ten miles of an intersection with an interstate. (2.31)*

*When acquiring property, encourages the department to purchase options and offer leasebacks to allow property owners to occupy land not immediately necessary for department purposes. (2.31)*

*Prohibits the department from condemning property contiguous to an existing or planned segment of the Corridor for an ancillary facility. (2.31)*

*Authorizes property owners to build alternative access between tracts of property severed by the Trans-Texas Corridor. The department must approve the project. (2.32)*

*Allows property owners to retain development rights when their property is to be used for an ancillary facility. (2.32A)*

*Authorizes the department to lease or grant a franchise, or license for operation of an ancillary facility to provide a location for a gas station, convenience store, or similar facility between the main lanes of a highway or between a highway and a department rail facility. These facilities may not be located within ten miles of an intersection with an interstate. The commissioners court of the county in which the facility is located must approve the lease, franchise, or license. (2.33A)*

## ARTICLE 2: Regional Mobility Authorities

The law provides to a Regional Mobility Authority the power of eminent domain and the power to issue revenue bonds. It allows the Transportation Commission to authorize the creation of an RMA for the purposes of constructing, maintaining, and operating transportation projects in a region of the state.

An RMA can establish tolls and may lease part of a transportation facility for hotels, gas stations, stores, garages, railroad tracks, or restaurants.

*HB 2702 imposes a two-year moratorium on the construction and operation of commercial ancillary facilities not associated with the Trans-Texas Corridor by TxDOT and RMAs. Makes exceptions for projects for which an RMA has awarded a contract before September 1, 2005 (183-A) and to segments of SH 130 in Travis or Williamson counties. (2.100)*

It allows the commission to convert a segment of the non-tolled state highway system to a turnpike project and transfer that segment to an authority. It requires the authority to reimburse the commission for the cost of a transferred highway unless the commission determines that the transfer will result in substantial net benefits to the state, the department and the traveling public. *(See HB 2702 changes in Article 15)*

The legislation allows an authority to acquire, construct, operate, maintain, expand or extend a transportation project in a county that is not part of the authority if the transportation project in the affected county is a continuation of the authority's transportation project extending from an adjacent county.

It allows an authority to lease, sell, or convey a transportation project to a governmental entity with the approval of the governing body of the governmental entity to which the project is transferred. It establishes an offense for an operator of a vehicle who fails to pay the proper toll. It allows an authority to designate a turnpike project or a portion of a project as a controlled-access toll road. It allows an authority to promote the use of a transportation project through advertising or marketing. It requires RMAs to establish and meet goals for participation by disadvantaged businesses. It allows TxDOT to help pay for certain costs of an RMA project.

It allows an authority to enter into agreements with a public or private entity, a toll road corporation, the U.S., a state of the U.S., the United Mexican States, a state of the United Mexican States, another governmental entity, or a political subdivision, in order to study the feasibility of a transportation project or to acquire, design, finance, construct, maintain, repair, operate, extend or expand a transportation project. It allows an authority to enter into comprehensive development agreements. In the event that an authority is requested by the commission to participate in the Trans Texas Corridor, the authority shall have all powers of the department related to the development of Trans-Texas Corridor projects.

*HB 2702 adds the following provisions to the RMA statute:*

*Authorizes RMAs to offer transit services. Authorizes Regional Tollway Authorities and County Toll Authorities to convert and transfer assets to an RMA. Authorizes RMAs to transfer assets to RTAs and counties. (2.51, 2.57 – 2.59, 2.62 – 2.66, 2.72, and 2.76)*

*Allows automated enforcement technology to enforce tolls. Exempts RMA transponder customer account information from the Public Information Act. (2.68 – 2.71)*

*Provides that RMA directors serve staggered six-year terms if permitted under the constitution. (2.73)*

*Provides that RMA directors are subject to state ethics laws. (2.74)*

*Authorizes RMA board meetings to be conducted via teleconference call. (2.75)*

*Requires RMAs to approve a methodology for the setting of tolls, increases to tolls, plans to collect tolls including penalties, and any change to the approved methodology.*

*Provides that the length of a concession term may not be longer than 50 years. (2.77)*

### ARTICLE 3: Advanced Acquisition

The commission may purchase an option to acquire real property for possible use in a transportation facility, before a final alignment has been determined. The commission may not make an advance acquisition by condemnation. At the request of TxDOT, the General Land Office may manage the property.

*HB 2702 specifies that the department may not purchase an option to acquire real property in increments longer than five years and may not renew for periods longer than five years. (2.06)*

### ARTICLE 4: Rail

The legislation authorizes the department to plan, construct, maintain and operate rail facilities or systems, including the acquisition and development of existing facilities. Permissible sources of revenue are: appropriations from the state highway fund that are not otherwise dedicated (i.e. vehicle registration fees and taxes on motor fuels), bonds secured by the Texas Mobility Fund, donations, and the proceeds of revenue bonds. Utilities enjoy the same right to occupy rail right of way as they currently do with respect to highway right of way.

Total funds disbursed cannot exceed \$12.5 million unless they are for rail on the Trans Texas Corridor, acquisition of abandoned rail facilities, grading and rail bed preparation or funds derived from bonds, gifts, private donations, or certain Federal funds.

*HB 2702 repeals the cap on rail expenditures and provides that the department may not spend money from the general revenue fund for such projects except pursuant to a line-item appropriation. (1.05)*

*Additionally, HB 2702 also adds the following features to the department's rail authority:*

*Requires that most federal money for maintenance and construction of rail facilities to be administered by the Texas Transportation Commission (commission) and be spent under the oversight of the Texas Department of Transportation (TxDOT). Exempt from this provision are Metropolitan Rapid Transit Authorities (Ch 451), Regional Transportation*

*Authorities (Ch 452), Municipal Transit Departments (Ch 453), Coordinated County Transportation Authorities (Ch 460), certain port authorities and navigation districts, and Rural Rail Transportation Districts. (1.02)*

*Authorizes comprehensive development agreements (CDAs) to design, construct, finance, acquire, maintain, or operate a rail facility. Allows the department to establish rules for entering into a CDA and allows the department to select the proposal offering the best value. Allows the department to combine a joint rail and turnpike project into one CDA. (1.03 and 1.04)*

*Provides that any portion of a rail facility or system that is used or leased for a commercial purpose is not exempt from ad valorem taxation and is subject to local zoning regulations and building standards. (1.06)*

*Authorizes pass-through fares, similar to pass-through tolls for highways. The department may enter into an agreement with a local entity in which that entity would develop a rail project and be reimbursed by the department over time, based on the level of usage of the facility. The commission may adopt rules. (1.07)*

#### ARTICLE 5: Bonds

The bill authorizes the Texas Transportation Commission to issue bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the State Highway Fund. The aggregate principal amount of the bonds and other public securities issued may not exceed \$3 billion (and may not exceed \$1 billion per year). Revenues must be used to fund highway improvement projects, with at least \$600 million of the proceeds being used to fund highway safety improvement projects that correct or improve hazardous locations on the state highway system. The commission shall adopt rules prescribing criteria for the safety-related projects. Bond proceeds may not be used for projects on the Trans Texas Corridor. The bill provides that bonds and other public securities must mature not later than 20 years after their dates of issuance, subject to any refunds or renewals. And annual expenditures may not exceed 10% of the amount deposited to the credit of the State Highway Fund in the immediately preceding year.

*Authorizes the department to double its level of short-term borrowing in order to manage its fiscal resources more efficiently, given the state's expanding transportation program. (2.04)*

#### ARTICLE 6: Pass-Through Tolls

A "pass-through toll" is defined as a per vehicle fee or per vehicle mile fee that is measured by the number of vehicles using a highway. The toll revenue may be used to finance the construction, maintenance, and operation of a tolled or non-tolled state highway or another toll facility. The legislation allows the department to enter into an agreement with a public or private entity to provide pass-through tolls to be paid to a public or private entity as reimbursement for the construction, maintenance or operation

of a toll or non-toll facility on the state highway system by the public or private entity. It also allows the department to enter into an agreement with a regional mobility authority, a regional tollway authority, or a county regarding the payment of pass-through tolls as compensation for the payment of all or a portion of the costs of maintaining a state highway or a portion of a state highway converted to a toll facility of the authority or county that the department estimates it would have incurred had the highway not been converted.

*HB 2702 authorizes private entities to reimburse the department for development and construction of a highway project on a per-vehicle or vehicle-mile basis. (2.18)*

*Authorizes the department to delegate oversight and development of pass-through toll projects to a municipality, county, Regional Mobility Authority, or RTA. (2.34)*

*Authorizes a local entity to contract with a private entity to act as an agent in the construction and maintenance of a pass-through toll project. The pass through tolls may be assigned to the private entity. (2.41)*

*Authorizes counties to issue bonds to fund the costs of state highways within the county and extensions into adjacent counties, and to pledge for the payment of the bonds 1) revenues from any source, 2) taxes [subject to any applicable constitutional limitation], or 3) a combination of revenue and taxes. The revenue to be pledged expressly includes payments under a pass-through toll agreement with TxDOT. The bill fixes an issue that has arisen with respect to ongoing pass-through toll projects, i.e., the authority for a county to issue revenue bonds. The bill would facilitate the development of state highways, particularly those developed by a county under a pass-through toll agreement. (2.91)*

#### ARTICLE 7: Toll Conversion

This article allows the commission to transfer segments of the non-tolled state highway system to a county toll road authority for its operation and maintenance under certain circumstances. The segment could then be tolled under their jurisdiction. At the time of conveyance, the highway would be removed from the state highway system wherein the department would have no liability, responsibility, or duty for the maintenance or operation of the highway. It allows the commission to waive all or a portion of money due if it finds that the conveyance will result in substantial net benefits to the state. Counties must use toll revenue to fund the expansion, extension, operation, and maintenance of the highway.

TxDOT is authorized to convert a segment of a free roadway on the state system to a toll facility with the approval of the county commissioner's courts in each county within which the highway segment is located.

*HB 2702 authorizes the department to transfer a toll project to any governmental entity that has the authority to operate a toll road. (2.44)*

*Prohibits the department from converting a nontolled highway to a tolled highway unless: the project was designated a toll project before the contract to construct was awarded; the highway was open to traffic as a turnpike project before September 1, 2005; the project was designated a toll project in a Metropolitan Planning Organization plan prior to September 1, 2005; the project expands capacity without eliminating existing nontolled lanes; the highway was open to traffic as a high-occupancy vehicle lane by May 1, 2005; or the department conducts a public hearing and obtains county and voter approval of the conversion. (2.45)*

*Authorizes the department to operate a nontolled highway as a toll project if, before September 1, 2006: a construction contract was awarded before September 1, 2005; the highway had not been open to traffic before September 1, 2005; and the commission designated the highway as a toll project either before the highway is opened to traffic or before September 1, 2005. (2.45)*

*If notified by the department of the proposed conversion of a highway, and after approval of the conversion by the appropriate commissioners courts, the commissioners court of each county or the governing body of a municipality, as applicable, shall call an election for the approval or disapproval of the conversion. A proposed conversion is approved if it is approved by a majority of the votes cast. (2.46)*

#### ARTICLE 9: County Fee Switch

This article addresses the switch between motor vehicle registration fees and motor vehicle sales tax collections on the part of counties. Beginning in 2006, the amount that counties retain from motor vehicle registration fees based on motor vehicle sales taxes will be moved, at a rate of 10% per year, from motor vehicle registration fees and Fund 0006 to motor vehicle sales tax revenues and General Revenue. After ten years, all county revenue based on motor vehicle sales taxes will be deducted from General Revenue.

#### ARTICLE 10: Driver Responsibility Act

This article creates a system of points and surcharges applied to the drivers license of individuals convicted of certain moving violations. The program will be implemented by the Department of Public Safety. The bill creates and credits half the revenue collected to the trauma facility and emergency medical services account. The other half is deposited in the General Revenue Fund. This measure is effective September 1, 2003 and expires September 1, 2007.

#### ARTICLE 11: DPS Fees to Mobility Fund

This article moves existing revenue (motor vehicle inspection fees, driver's license fees, and driver's license information fees) from the General Revenue Fund to the Texas

Mobility Fund. These funds may be used to secure bonds issued to fund transportation projects, generating about \$3 billion in available funds for completion of critical transportation projects. This article will have the effect of capitalizing the Texas Mobility Fund.

*HB 2702 provides that Texas Mobility Fund bond obligations may not be issued if the department requires that toll roads be included in regional mobility plans. (2.08)*

#### ARTICLE 12: \$30 Additional Court Fee

The bill imposes a new \$30 court fee on traffic violations, excluding parking tickets. Two thirds of the revenue is deposited in the General Revenue Fund, and one third is credited to the designated trauma facility and emergency medical services account.

#### ARTICLE 13: Public Transportation

The legislation provides for the coordination by TxDOT of the provision of public transportation throughout the state. It authorizes the Transportation Commission to adopt rules requiring state agencies that provide public transportation services to contract with TxDOT for the department to assume responsibilities of that agency relating to public transportation services. It also authorizes the commission to require public transportation providers to provide detailed information on its public transportation services including revenue, routes and number of passengers.

It requires various health and human services agencies to contract with the department for the provision of public transportation services.

The department shall identify gaps and overlaps in services. It may contract with any public or private transportation provider to arrange for services. The commission may increase or reduce funding to a public transportation provider based on whether the provider is complying fully with this chapter. It gives the department new powers to require reports from public transportation providers.

The legislation authorizes the commission to appoint the membership of the Public Transportation Advisory Committee—rather than the governor, lieutenant governor and speaker. The committee will continue to be comprised of nine members representing transportation providers, transportation users, and the general public and will advise the commission on the implementation of this new responsibility.

*HB 2702 clarifies that TxDOT is responsible for the delivery of transportation services for health and human services program recipients, but that TxDOT has no responsibility for client case review, case management, coordination or authorization of any social service for any health and human services program recipient. (4.02 – 4.10)*

*Adds two more members to the commission's Public Transportation Advisory Committee. One would have experience in the administration of health and human services programs. One would represent the general public. (4.01)*

ARTICLE 15: Turnpikes  
(Effective June 22, 2003)

To further reflect the abolishment of the Texas Turnpike Authority Board as passed during the 2001 legislative session, the bill cleans up the turnpike chapter of the Transportation Code by substituting "department" or "commission" where "authority" or "board" previously existed.

The law allows the department to lease property for ancillary activities such as hotels, stores, restaurants, and gas stations.

*HB 2702 imposes a two-year moratorium on the construction and operation of commercial ancillary facilities not associated with the Trans-Texas Corridor by TxDOT and RMAs. Makes exceptions for projects for which an RMA has awarded a contract before September 1, 2005 (183-A) and to segments of SH 130 in Travis or Williamson counties. (2.100)*

The department may offer the owner of the property a percentage of the revenue associated with a particular segment of a turnpike, rather than a single fixed payment for the property. Or it may offer the property owner an exclusive or nonexclusive right to use or operate a particular segment.

Tolls can still be imposed after the bonds are paid off, to fund the construction and maintenance of other turnpike projects in the region. Turnpikes are on the state highway system and are subject to the same regulation and traffic control.

*HB 2702 authorizes the department or a public or private entity that is contracted to operate a toll project to contract with state or local governmental entities to provide toll enforcement and to regulate vehicular traffic on toll roads. (2.09)*

The law allows for Comprehensive Development Agreements (CDA). A CDA is an agreement with a private entity that, at a minimum, provides for the design and construction of a turnpike project and may also provide for the financing, acquisition, maintenance, or operation of a turnpike project.

The department cannot disburse money during a federal fiscal year from the mobility fund or the state highway fund under a CDA in an amount greater than 40% of the obligation authority under the federal aid highway program that is distributed to this state for the fiscal year. The law requires a private entity entering into a CDA under this bill to provide performance and payment bonds or alternative forms of security in an amount sufficient to protect the department and the payment bond beneficiaries. TxDOT can only enter into a CDA with a private equity investor if the project is identified in the Unified Transportation Program or is located on a transportation corridor identified in the

statewide transportation plan. TxDOT shall pay a stipulated amount to unsuccessful proposers as compensation for proposal costs in an amount not to exceed the value of the work product contained in the proposal that can be used by TxDOT in the performance of its functions.

*HB 2702 authorizes CDAs for projects that include both tolled and nontolled elements, projects in which the private entity has an interest in the project, and projects that are financed wholly or partly with private activity bonds. Allows negotiations with the private entity whose proposal offers the apparent best value [previous law allowed limited discussions]. Authorizes a one-step process for entering into design-build contracts. (2.21)*

*Provides a limited waiver of sovereign immunity to provide greater financial protection to developers under a CDA. Certain obligations of the commission or the department may be enforced by mandamus. This allows the state to obtain more favorable terms for concession fees and revenue sharing. (2.21)*

*Requires the department to approve a methodology for the setting of tolls, increases to tolls, plans to collect tolls including penalties, and any change to the approved methodology. Provides that the length of a concession term may not be longer than 50 years. (2.21)*

*For TxDOT CDAs, if the agreement includes an explicit mechanism for setting the price for the purchase by the department of the private entity's interest in the facility, the concession term may be extended up to 70 years for projects not on the Trans-Texas Corridor. (2.21)*

The law provides that the department may not enter into an agreement with the United Mexican States or a state of the United Mexican States without the approval of the governor.

TxDOT cannot file a declaration of taking before the completion of all environmental documentation, including a final environmental impact or a record of decision, and all public hearings in connection with the environmental process are held.

*For a declaration of taking involving property containing a business, farm, or ranch, HB 2702 requires the department to provide written notification that the property owner does not have to move before 90 days, and provide a 30-day notice when the property must be vacated. (2.13)*

*Requires the department and utilities to share the costs of relocations to accommodate toll projects until September 1, 2007. After that date, utilities will pay the costs unless they own a compensable property interest. (2.14)*

*Allows TxDOT to contract for the distribution of transponders. Provides explicit authority to charge an administrative fee to recover the costs of administering these*

*accounts. Exempts customer information from the Public Information Act. Allows evidence of nonpayment of a toll to be used in prosecution of a capital offense. (2.41)*

## ARTICLE 19: Miscellaneous Provisions

### Section 19.02: Toll Equity

Previously, monies granted by the department each federal fiscal year for toll equity could not exceed 30% of the obligation authority under the federal highway-aid program distributed to Texas during that fiscal year. HB 3588 eliminates the 30% cap on the use of monies in the State Highway Fund for toll equity and changes it to a hard limit of \$800 million, excluding money required to be repaid.

*HB 2702 repeals the \$800 million cap on toll equity and replaces it with a five-year, average, annual expenditure limit of \$2 billion. (2.17)*

## ARTICLE 20: General Provisions

This article switches among different accounts revenue derived under the Driver Responsibility Act (Article 10), DPS fees to the Mobility Fund (Article 11), and the \$30 court cost (Article 12) for fiscal year 2004. According to the LBB, the \$60 million that would have gone to GR in 2004 under the Driver Responsibility Act will instead be credited to a Texas Mobility Fund debt service account. Similarly, in 2004, \$79 million that would have gone to GR under the new \$30 court fee provision will be credited to the Texas Mobility Fund debt service account. In exchange, the \$218 million that was slated for the Texas Mobility Fund under Article 11 will go to GR in 2004.

It is widely accepted that the revenue estimates generated by the DPS fees are more accurate because this revenue stream has existed for some time. Therefore, in order to ensure that the state budget may be certified, the legislature switched revenue among these accounts for 2004.

*HB 2, 78<sup>th</sup> Legislature, 3<sup>rd</sup> Called Session* HB 3588 created the Driver Responsibility Act and imposed a \$30 surcharge on traffic tickets. The revenue under these programs was supposed to go to the General Revenue Fund to fill in the hole created when certain DPS fees were used to capitalize the Texas Mobility Fund. HB 3588 reversed these streams for 2005. Article 3 of HB 2 maintains the reversal in 2004, and continues it in 2005.

*The effect is that the Mobility Fund will be capitalized by revenue in 2004 and 2005 from the Driver Responsibility Act and the \$30 state traffic fines. Beginning in 2006, the DPS fees and fine revenue will be dedicated to the Mobility Fund.*

*Article 3 also eliminates the Texas Mobility Fund Debt Service account, into which the Driver Responsibility Act and statewide traffic fine revenue were to be deposited. That revenue will now go to the Texas Mobility Fund proper in 2004 and 2005.*

*SB 1863, 79<sup>th</sup> Legislature allows some of the DPS fees to be deposited to the Mobility Fund in 2006, approximately \$83 million. Other DPS fees are deposited to the Mobility Fund in 2007, totaling approximately \$145 million. And the rest of the fees are deposited to the Mobility Fund in 2008.*

### ***HB 2702 Miscellaneous Financial Provisions***

*Authorizes the use of private activity bonds for highway and surface freight facilities if such a program is enacted by the federal government. (2.16)*

*Ensures toll revenue and concession fees are deposited to the state highway fund. Authorizes CDA payments to be used for transportation projects and air quality projects in the region. (2.35)*

*Revises current law by requiring that toll revenue be spent on transportation or air quality projects, including nontolled projects, within the TxDOT districts in which the toll project is located. Previous law allowed surplus revenue to be spent on other toll roads in an undefined region. Prohibits the department from revising funding formulas in a manner that results in a decrease of a TxDOT district's funding allocation because toll revenue is generated. (2.36)*

*As with previous law, allows the establishment of "toll systems" which is the joint operation of two or more toll projects in a region as one operational and financial enterprise. (2.39)*

*Re-codifies several sections regarding toll revenue bonds and refines the language to ensure "toll systems" are included in the provisions. Provides that debt service on bonds are payable from surplus revenue of another project, pass-through toll revenue, funds received through agreements with local entities, and funds received through a comprehensive development agreement. (2.42)*

*Provides a limited waiver of sovereign immunity to enforce the rights of bondholders on a breach of a duty of the commission. (2.42)*

*Prohibits the department from revising funding formulas in a manner that results in a decrease of a district's funding allocation because revenue bonds are issued for a project in that district. (2.43)*

*Provides a comprehensive definition of "transportation project" to include tolled or nontolled highways, rail facilities, ferries, aviation facilities, passenger rail of another governmental entity, and certain public transportation projects. The definition is applied to the use of toll revenue. (2.19)*

*Defines "region" as a metropolitan statistical area (MSA) and any county contiguous to that MSA, or two adjacent TxDOT districts. This definition is used with respect to "toll systems" and the use of concession fees. (2.34)*

*Defines “air quality project” as a project or program of the department or of another governmental entity that the commission determines will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads. This definition is used in reference to the types of projects to which concession fees and surplus toll revenue may be applied. (2.34)*

### ***Real Property and the Environment***

*When acquiring real property to mitigate an adverse environmental impact caused by a project, the department must first offer to purchase conservation easements rather than acquiring property by purchase or condemnation. (2.06)*

*Combines separate environmental statutes into one and authorizes the department to mitigate adverse environmental impacts by 1) paying a fee to an appropriate public agency or private entity in lieu of acquiring or agreeing to manage property [previous law]; 2) with federal authorization, transferring real property to an appropriate entity with or without monetary consideration [new law]; or 3) contracting with any public or private entity for the management of property used for mitigation purposes [previous law]. (2.07)*

*Authorizes the department to negotiate for and purchase severed real property. Requires the department to offer to purchase a remainder if the tract has little or no value to the owner [unless there is the presence of hazardous materials]. (2.11)*

*If the department severs property, requires the department to pay damages to the remainder including damages caused by the inaccessibility to one tract from the other. (2.11)*

*Requires the special commissioners in a condemnation hearing to consider damages for the loss of reasonable access to or from severed properties if the property was appraised for ad valorem tax purposes under a farm, ranch, or wildlife management exemption. Such tracts must be outside the limits and ETJ of a municipality with a population of 25,000 or more. (2.11)*

*Allows political subdivisions greater flexibility in determining how their property may be used for highway purposes. They may consent to the use; convey title; convey rights or easements; and lease, lend, or grant the property to the department. (2.12)*

*Provides that the special commissioners in a condemnation hearing shall consider additional damages for the loss of reasonable access to or from remaining properties if the property was appraised for ad valorem tax purposes under a farm, ranch, or wildlife management exemption. Such tracts must be outside the limits and ETJ of a municipality with a population of 5,000 or more. (2.94)*

*Clarifies that a private entity leasing a transportation facility of the department does not pay property taxes on that property unless it is for a commercial purpose, in which case it is not exempt from taxation. (2.95)*

*Requires TxDOT to conduct a study to determine how to maximize the use of highway rights of way by public utilities. (2.98)*

### **Other Toll Authorities**

*Requires counties to approve a methodology for the setting of tolls, increases to tolls, plans to collect tolls including penalties, and any change to the approved methodology. The length of a concession term may not be longer than 50 years. (2.54)*

*Exempts Regional Transportation Authority (RTA) transponder customer account information from the Public Information Act. (2.61)*

*Requires RTAs to approve a methodology for the setting of tolls, increases to tolls, plans to collect tolls including penalties, and any change to the approved methodology. Provides that the length of a concession term may not be longer than 50 years. (2.67)*

### **TxDOT Organization**

*Abolishes the Motor Vehicle Board and transfers rulemaking duties to the commission. (7.01 – 7.06)*

*Abolishes the State Aircraft Pooling Board and transfers all powers, duties, obligations, and property to TxDOT. Employees are made permanent TxDOT employees. The memorandum of understanding between TxDOT and the pooling board expires on the effective date of the Act. Requires a person who wishes to be authorized to use state-operated aircraft to sign an affidavit stating that the use of the aircraft is for official state business. (8.02)*

*Transfers all powers and duties of the Railroad Commission that relate to railroads and the regulation of railroads to the department. All personnel, property, assets, and obligations, and rules of the Railroad Commission that relate to railroads and the regulation of railroads would also be transferred to the department. (1.08 to 1.10)*