

OMNIBUS TRANSPORTATION LEGISLATION

79TH Texas Legislature

HB 2702 authored by Representative Mike Krusee (R-Taylor) and sponsored by Senator Todd Staples (R-Palestine) re-codifies turnpike law and integrates its provisions with traditional highway law. The legislation offers several enhancements to TxDOT's powers to improve mobility and addresses certain concerns expressed by property owners and the driving public. The provisions of this bill take effect immediately.

The following is a summary of the substantive provisions. Each paragraph of the summary includes a reference to the section of the bill that is being summarized.

RAIL

Amends the definition of "Rail Facility" to include "tri-track" facilities. (1.01)

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)

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)

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)

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)

HIGHWAYS

Comprehensive Development Agreements

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)

If the department enters into an agreement with a private entity that includes the collection of tolls by that entity, 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)

Construction and Operation

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)

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)

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)

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)

Finance

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)

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)

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

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)

Local Governments

Amends the Interlocal Cooperation Act to authorize a local government to agree to enter into and make payments under an agreement with another local government for the design, development, financing, construction, maintenance, and operation of a toll or nontoll facility on the state highway system. Local governments would be able to work together in developing projects. (2.89)

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)

Other Toll Authorities

Provides that Regional Tollway Authority (RTA) rules may govern agreements entered into between TxDOT and RTAs for the improvement by an RTA of portions of the state highway system. (2.03)

An agreement between the department and an RTA on the development of projects may be governed by the statutes and rules governing RTAs. (2.34)

Provides that certain county toll projects may not be added to the state highway system. Authorizes certain county toll projects to be conveyed to the department. (2.48 – 2.50, 2.55, 2.56, 2.79, and 2.80)

Re-codifies Harris County's "declaration of taking" authority and removes TxDOT's executive director from the process of approving the taking. (2.52 and 2.53)

If a county enters into an agreement with a private entity that includes the collection of tolls by that entity, requires the county 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 RTA transponder customer account information from the Public Information Act. (2.61)

If an RTA enters into an agreement with a private entity that includes the collection of tolls by that entity, requires the authority 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)

Project Development

Re-codifies and provides a comprehensive definition of “toll project” as follows:

One or more tolled lanes of a highway or an entire toll highway constructed, maintained, or operated as a part of the state highway system and any improvement, extension, or expansion to the highway, including:

- (1) a facility to relieve traffic congestion and promote safety;
- (2) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll booth, toll plaza, service road, ramp, or service center;
- (3) an administration, storage, or other building, operations center, maintenance or other facility, equipment, or system the department considers necessary to operate the project;
- (4) property rights, easements, and interests the department acquires to construct, maintain, or operate the project;
- (5) a parking area or structure, rest stop, park, and any other improvement or amenity the department considers necessary, useful, or beneficial for the operation and maintenance of the project; and
- (6) a nontolled facility that is appurtenant to and necessary for the efficient operation and maintenance of the project, including a connector, service road, access road, ramp, interchange, bridge, or tunnel. (2.01)

Requires the department to consider the aesthetic character and the input of affected communities when developing transportation projects. (2.05)

As part of the re-codification of the turnpike statutes and the consolidation of toll and nontolled highway law, revises the definition of “highway” to include tolled state highways and buildings. (2.15)

Regarding pass-through toll agreements, 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)

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)

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

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)

Re-codifies and makes more explicit that the commission by order may designate one or more lanes of a segment of the state highway system as a toll project or system. Explicitly authorizes TxDOT to contract for operation of a highway. (2.40)

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)

Real Property and the Environment

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)

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)

Re-codifies the commission’s authority to acquire an interest in real property to provide a location for toll booths, toll plazas, service stations, and ancillary facilities. (2.10)

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)

For a declaration of taking involving property containing a business, farm, or ranch, 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)

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)

Exempts leased TxDOT facilities from property taxes. (2.96 and 2.97)

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

Regional Mobility Authorities (RMAs)

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)

Revises statutory references in the RMA chapter to reflect re-codification. 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)

If an RMA enters into an agreement with a private entity that includes the collection of tolls by that entity, requires the authority 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)

Toll Conversion and Conveyance

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)

Trans-Texas Corridor

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)

If the department enters into an agreement with a private entity that includes the collection of tolls by that entity, 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, circuitry 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)

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)

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)

TxDOT OPERATIONS

Allows the department to enter into an agreement with a private entity that includes site development and the design and construction of a building and related facility that supports department operations on real property owned or leased by the department.

Provides that the Texas Public Finance Authority may issue and sell obligations to finance one or more projects described by the bill. Allows the legislature to appropriate money from any available source, including the state highway fund, to TxDOT, to make lease payments to the authority for space occupied by the department in a building constructed under this bill. (2.02, 2.15, 2.90, and 2.92)

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)

Makes non-substantive, technical corrections to existing law requiring the department to contract out 35% of engineering-related expenditures. (2.20)

Designates FM 68 in Fannin County as the Speaker Jimmy Turman Road. (2.23)

Provides that TxDOT and toll authorities are held to the same duty of care to motorists traveling on toll roads as the duty of care that applies to motorists on nontolled roads. (2.88)

Exempts TxDOT maintenance and aviation contracts from Texas Building and Procurement Commission contracting procedures. (2.93)

VEHICLES

Authorizes the department to outsource the production and distribution of vehicle registration renewal notices. Authorizes the inclusion of paid advertising in the renewal notice packet. (2.85)

Clarifies that pocket bikes are not "street legal." (2.86 and 2.87)

Authorizes the department to seek funding for hydrogen refueling stations and hydrogen technology fleet vehicles. Authorizes the department to purchase and maintain five hydrogen refueling stations and charge the public a reasonable fee if the department acquires funding. (3.02 and 3.03)

Creates the Study Commission on Availability of Pre-Owned Heavy Duty Commercial Motor Vehicles. (3.04)

Requires the department to conduct a study of systems for issuing motor vehicle temporary tags. (3.05)

Requires that all household goods movers must register with TxDOT, carry automobile liability insurance in an amount determined by rule, not to exceed federal law (currently \$300,000), and carry cargo insurance in an amount determined by rule (currently \$5,000 per vehicle for single shippers and \$10,000 per vehicle for multiple shippers), regardless of the size of the vehicle. Currently, household goods movers are classified as Type A (greater than 26,000 pounds gross vehicle weight) and Type B (less than 26,000 pounds gross vehicle weight). This bill would have the effect of doing away with this delineation and treating all household goods movers as Type A carriers for registration and insurance purposes. (6.01 – 6.06)

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

MEDICAL TRANSPORTATION

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)

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)

MISCELLANEOUS

Prohibits billboards on segments 1 through 4 of SH 130. (2.78)

Allows the board of a metropolitan rapid transit authority to prevent an annexation if it gives notice to a municipality that adding new territory to the authority by virtue of annexation would create certain financial hardships on the authority. (2.81)

Provides that a legislator who is a member of the policy board of a Metropolitan Planning Organization is not counted absent during a legislative session. (2.82)

Allows Capital Metro to hold a referendum on commuter rail expansion in May or August rather than in November of even-numbered years. (2.84)

Refines the exemption for holders of a commercial driver's license regarding deferred adjudication on violations other than a parking ticket. (3.01)

Establishes a Regional Transit System Committee to study the provision of regional transit in North Texas. (5.01)

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)

Repeals various statutes that were re-codified or made unnecessary. (2.101 and 2.102)