

BILL ANALYSIS

C.S.H.B. 1892
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County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas Transportation Code currently authorizes certain counties, without state approval, supervision, or regulation, to operate toll roads in the county. Harris County has utilized the authority of this code to develop a very successful toll road system of almost 500 lane miles. However, recent state policies have created confusion about the relationships between local and regional toll road agencies and the Texas Department of Transportation (department).

C.S.H.B. 1892 is intended to clarify this relationship by requiring the department to assist a local or regional toll road authority by providing right-of-way and access to the state system and by allowing counties to exercise the powers of a regional mobility authority for turnpike projects. It also further defines the relationship between a county operating under Chapter 284 and the department.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1892 amends the Transportation Code so that any payments received by the Texas Department of Transportation (department) or the Texas Commission on Transportation (commission) under a comprehensive development agreement shall be used by the commission or department to finance the construction, maintenance, or operation of transportation or air quality projects in the same department district as the project or facilities to which the payments are attributable.

The commission or department may not revise the formula as provided in the department's unified transportation program, or its successor document, in a manner that results in a decrease of a department district's allocation because of payments received under a comprehensive development agreement. They also may not take any other action that would reduce funding allocated to a department district because of payments received under a comprehensive development agreement.

A county acting under Chapter 284 of the Transportation Code has the primary responsibility for the financing, construction, and operation of a toll project located in the county. Also, to the extent authorized or required by federal law or Title 6 of the Transportation Code, the department and commission shall assist the county in the financing, construction, and operation of a toll project in the county by allowing the county to use highway right-of-way owned by the department and to access the state highway system. In connection with the use of improved state highway right-of-way, the county must enter into an agreement with the commission or the department as provided by Section 284.004(b). These changes do not limit the authority of the commission or department to participate in the cost of acquiring, constructing, maintaining, or operating a turnpike project of the county under Chapter 284.

Before the commission or department may enter into a contract for the financing, construction, or operation of a proposed or existing toll project any of which is located in the county, the commission or department shall provide the county the first option to finance, construct, or operate, as applicable, the portion of the toll project located in the county. The terms must be agreeable to the county, without the requirement of any payment to the commission or the

department except as provided by Section 284.004(a) and in a manner determined by the county to be consistent with the practices and procedures by which the county finances, constructs, or operates a project.

An agreement between the county and the department or commission in connection with a project under Chapter 284 that is financed, constructed, or operated by the county and that is on or directly connected to the state highway system may not require the county to make any payments to the commission or the department, except as provided by Section 284.004(a). This agreement does not create a joint enterprise for liability purposes.

The bill amends the definition of a "project" in Chapter 284 to include a turnpike project or system as those terms are defined by Section 370.003, Transportation Code.

A county, acting through the commissioners court of the county, or a local government corporation, without state approval, supervision, or regulation, to, in connection with a project, on adoption of an order exercise the powers of a regional mobility authority operating under Chapter 370, Transportation Code. It also allows the commissioners court of a county or local government cooperation to enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a proposed or existing project in the county to the extent and in the manner applicable to the department under Chapter 223 or to a regional tollway authority under Chapter 366.

The county or local government corporation may exercise a power of a regional mobility authority operating under Chapter 370 only in a manner consistent with the other powers provided by Chapter 284 and states that if there is a conflict between Chapter 284 and Chapter 370, Chapter 284 prevails.

A project or any portion of a project that is owned by the county and licensed or leased to a private entity or operated by a private entity under Chapter 284 to provide transportation services to the general public is public property used for a public purpose and exempt from taxation by this state or a political subdivision of the state.

If the county constructs, acquires, improves, operates, maintains, or pools a project under Chapter 284, Transportation Code, before December 31 of each even-numbered year the county shall submit to the department a plan for the project that includes the time schedule for the project and describes the use of the project funds. The plan may provide for and permit the use of project funds and other money, including state or federal funds, available to the county for roads, streets, highways, and other related facilities in the county that are not part of a project under Chapter 284. A plan is not subject to approval, supervision, or regulation by the commission or the department.

Except as provided by federal law, an action of a county taken under Chapter 284 is not subject to approval, supervision, or regulation by a metropolitan planning organization. The county, however, may enter into a protocol or other agreement with the commission or the department to implement Section 284.003 through the cooperation of the parties to the agreement.

The commissioners court of a county or a local government corporation, without state approval, supervision, or regulation may authorize the use of surplus revenue of a project for the study, design, construction, maintenance, repair, or operation of roads, streets, highways, or other related facilities that are not part of a project under Chapter 284 and also prescribe terms for the use of the surplus revenue, including the manner in which the roads, streets, highways, or other related facilities are to be studied, designed, constructed, maintained, repaired, or operated.

In order to implement Section 284.0031, Transportation Code, a county may enter into an agreement with the commission, the department, a local governmental entity, or another political subdivision of this state. A county may not take an action under Section 284.0031 that violates or impairs a bond resolution, trust agreement, or indenture that governs the use of the revenue of a project. Except as otherwise provided by Section 284.0031, a county has the same powers and may use the same procedures with respect to the study, financing, design, construction, maintenance, repair, or operation of a road, street, highway, or other related facility under

Section 284.0031 as are available to the county with respect to a project under Chapter 284, Transportation Code.

If a county requests or is requested by the commission to participate in the development of a project under Chapter 284 that has been designated as part of the Trans-Texas Corridor, in connection with the project and in addition to the other powers granted by Chapter 284, the county has all the powers of the department related to the development of a project that has been designated as part of the Trans-Texas Corridor.

Notwithstanding any other law, under Chapter 284, Transportation Code a county may use any county property, state highway right-of-way, or access to the state highway system regardless of when or how the property, right-of-way, or access is acquired. However, the department or the commission may require the county to comply with any covenant, condition, restriction, or limitation that affects state highway right-of-way, but may not adopt rules or establish policies that have the effect of denying the county the use of the right-of-way or access that the county has determined to be necessary or convenient for the construction, acquisition, improvement, operation, maintenance, or pooling of a project under Chapter 284 or the implementation of a plan under Section 284.003(d); or require the county to pay for the use of the right-of-way or access, except to reimburse the commission or department for actual costs incurred or to be incurred by a third party, including the federal government, as a result of that use by the county.

If a project of the county under Chapter 284, Transportation Code includes the proposed use of improved state highway right-of-way, the county and the commission or the department must enter into an agreement that includes reasonable terms to accommodate that use of the right-of-way by the county and to protect the interests of the commission and the department in the use of the right-of-way for operations of the department. Notwithstanding any other law, the commission and the department are not liable for any damages that result from a county's use of state highway right-of-way or access to the state highway system under Chapter 284.

Except as provided by Section 284.008 (d), a project becomes a part of the state highway system and the commission shall maintain the project without tolls when all of the bonds and interest on the bonds that are payable from or secured by revenues of the project have been paid by the issuer of the bonds or another person with the consent or approval of the issuer or when a sufficient amount for the payment of all bonds and the interest on the bonds to maturity has been set aside by the issuer of the bonds or another person with the consent or approval of the issuer in a trust fund held for the benefit of the bondholders. A county may request that the commission adopt an order stating that a project will not become part of the state highway system under Section 284.008 (c) and removes the condition that the request be before construction on a project under Chapter 284 begins.

Section 284.065 states that an existing project may be pooled in whole or part with a new project or another existing project more than once.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from the original by requiring that the Texas Department of Transportation (department) or the Texas Commission on Transportation (commission) must spend payments received from a comprehensive development agreement in the same department district where the funds originated. The substitute also specifies that a county under Chapter 284, Transportation Code has the right of first refusal for all toll projects in the county, under certain conditions. The substitute differs in stating that a county must enter into an agreement with the commission or department in order to use state highway right-of-way and specifies the conditions under which an agreement may exist. The substitute states the agreement does not create a joint enterprise for liability purposes. It also specifies that the language does not limit the commission or department from participating in the cost of a project under Chapter 284, Transportation Code.

The substitute differs from the original in that it allows a county to enter into a comprehensive development agreement with a private entity for projects in the county. It also specifies that in the case of a conflict, Chapter 284, Transportation Code prevails over Chapter 370. The substitute indicates that projects described under Chapter 284 are state tax exempt. It also requires counties with projects under Chapter 284 to submit a bi-annual plan to the department that is not subject to the approval of the commission or department.

The substitute differs from the original in that it allows counties with surplus revenue from projects under Chapter 284, Transportation Code to spend it on other transportation projects in the county, with some restrictions, without the approval of the commission or department. The substitute specifies that if a county is requested by the commission or requests to participate in a project designated as part of the Trans-Texas Corridor, the county has the powers of the department for the project's development.

The substitute differs from the original in that it states the department of commission may require the county to comply with restrictions that affect state highway right-of-way. It also specifies that not regarding other law, the commission or department is not liable for any damages that result from a county's use of state right-of-way.