

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 6, 2011

TO: Honorable David Dewhurst, Lieutenant Governor, Senate

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: SB1420 by Hinojosa (Relating to the continuation and functions of the Texas Department of Transportation; providing penalties.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1420, As Passed 2nd House: an impact of \$0 through the biennium ending August 31, 2013.

The bill would re-appropriate in fiscal year 2012 any unobligated balance of any appropriations made to the Texas Department of Transportation for the 2010-11 biennium related to programs that would be transferred to the Department of Motor Vehicles.

The bill could result in a significant indeterminate cost to the State depending on the number and complexity of comprehensive development agreements submitted to the Comptroller and the Legislative Budget Board for financial viability review.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/ (Loss) from <i>Hwy Beautification Acct</i> 71	Probable Revenue Gain/ (Loss) from <i>State Highway Fund</i> 6	Probable Savings/(Cost) from <i>State Highway Fund</i> 6
2012	(\$619,000)	\$619,000	\$6,000,000
2013	(\$628,000)	\$628,000	\$6,000,000
2014	(\$637,000)	\$637,000	\$6,000,000
2015	(\$647,000)	\$647,000	\$6,000,000
2016	(\$657,000)	\$657,000	\$6,000,000

Fiscal Analysis

The bill would amend provisions in the Transportation Code regarding the continuation and functions of the Texas Department of Transportation (TxDOT). The bill would extend the sunset abolition date for TxDOT to September 1, 2015. The bill would require TxDOT to submit a financial audit prepared by an independent certified public accountant along with the required agency report to the Sunset Advisory Commission (SAC) prior to Sunset review.

The bill would require TxDOT to establish an office of Inspector General and require the Texas Transportation Commission (commission) to appoint an Inspector General. The bill would prescribe the duties and responsibilities of the Inspector General.

The bill would amend requirements regarding the Statewide Transportation Plan (plan) to specify that the plan would cover a period of 20 years, be updated every four years, and be developed using funding assumptions for long-range planning developed in coordination with metropolitan planning organizations.

The bill would require TxDOT to establish a project information reporting system that makes all of TxDOT's transportation plans accessible and searchable on the TxDOT website. The bill would require TxDOT to conduct an annual review of the benchmarks and timelines of each project included in transportation plans to determine the completion rates of these projects.

The bill would require TxDOT to create a transportation expenditure reporting system and a policy for public involvement and report on comments received regarding environmental impact statements through this process. The information from these systems and reports would be required to be made available on TxDOT's website. The bill would require TxDOT to report annually on the attainment status of state transportation goals and a list of projects designated as major transportation projects. The bill would require the commission to specify formulas for allocating funds by rule and update these formulas at least every four years.

Under the provisions of the bill, each department district would be required to develop a formatted work program that contains all projects proposed for implementation during a four-year period. The bill would require the work program to be published on the department's website and in appropriate media.

The bill would amend Section 202.021, Transportation Code, to authorize the commission to waive payment for highway right-of-way no longer needed for a state highway purpose that is transferred to a governmental entity if the governmental entity assumes or has assumed jurisdiction, control, and maintenance of the right-of-way for public road purposes. The bill would require a grant transferring the right-of-way to include a provision that would automatically revert the property to the state if the right-of-way ceases to be used for public road purposes.

The bill would amend requirements for TxDOT to publish notifications for bids on TxDOT contracts in newspapers to authorize the department to provide, at a minimum, the Internet website address where bid information can be located.

The bill would authorize TxDOT to enter into no more than three design-build contracts during a fiscal year and establish requirements for issuing requests for qualifications and proposals for these contracts. The bill would require TxDOT to pay an unsuccessful proposer a stipend for work completed that TxDOT can use in carrying out its functions.

The bill would require money received from Highway Beautification Fees to be deposited to State Highway Fund 6 (Fund 6) rather than the General Revenue-Dedicated Texas Highway Beautification Fund Account. The commission would be required to use this money to administer the regulation of outdoor advertising in addition to the Highway Beautification program.

The bill would authorize the commission to impose an administrative penalty against a person who violates Transportation Code, Chapter 391 (Highway Beautification on Interstate and Primary Systems and Certain Roads) in lieu of a suit to collect a penalty. The bill sets forth certain requirements that must be met before an administrative penalty is imposed, restricts the amount of the administrative penalty that may be imposed, and directs revenue from these penalties to the credit of Fund 6.

The commission would be required to establish, by rule, procedures for accepting and resolving written complaints related to outdoor advertising and outdoor signs on rural roads. TxDOT would be required to keep an information file about complaints that the department has the authority to resolve.

The bill would add sections to the Transportation Code to require the commission to issue a license to certain persons to erect or maintain an off-premise sign on a rural road and to erect or maintain outdoor advertising under Texas Transportation Code, Chapter 391 (Highway Beautification on Interstate and Primary Systems and Certain Roads). The bill would authorize the commission to set the amount of a license fee based on the number of off-premise signs owned by a license applicant and would create a misdemeanor offense punishable by a fine within limits specified by the bill for erecting or maintaining an off-premise sign on a rural road without a license.

The bill would amend the Transportation Code to transfer the powers, duties, functions, programs, and activities of the TxDOT relating to oversize and overweight vehicles under Chapters 621, 622, and 623 to the Texas Department of Motor Vehicles (DMV) no later than January 1, 2012. The bill would also require the transfer to include all TxDOT funds, personnel, furniture, computers, and other property associated with the powers, duties, functions, programs, and activities relating to oversize and overweight. The bill would transfer and re-appropriate to DMV any unobligated and unexpended balance of any appropriations made to TxDOT for the state fiscal biennium ending August 31, 2011 (2010-11 biennium) for the transferred programs in fiscal year 2012. The bill would authorize DMV to enter into a memorandum of understanding (MOU) with a state agency, including TxDOT, if the board of the DMV determines the MOU is necessary or appropriate to implement the changes to the Transportation Code made by the bill. The MOU may provide for (1) the provision of office space, utilities, and other facility services, (2) the need for TxDOT full-time-equivalent positions to provide support services; and (3) the transfer of information technology to effectuate the transfer of functions from TxDOT to DMV.

The bill would require a memorandum of understanding (MOU) between TxDOT and certain state agencies to specify a time period not to exceed 45 days during which a state agency reviews and provides comments to TxDOT regarding the environmental, historical, or archeological effect of a highway project. The bill would require TxDOT, by rule, to establish procedures for coordinating with state agencies in carrying out the responsibilities under such MOUs. The bill would require the commission, by rule, to set standards for processing an environmental review document for a transportation project pursuant to certain guidelines established by the bill. The bill authorizes a local government sponsor to prepare an environmental review document for certain highway projects and sets forth instances in which TxDOT may charge a fee in an amount established by the commission and not to exceed the actual cost of reviewing the document. The bill would require TxDOT to determine whether environmental review documents submitted by the sponsor are administratively complete and ready for technical review and sets forth review deadlines, and requires certain procedures to be followed if TxDOT declines to confirm the completeness of an environmental review document. The bill would require TxDOT to submit reports to the commission and the Legislature identifying the status of each project being processed under the review process established by the bill and to publish and regularly update project status information on the TxDOT website. The bill authorizes TxDOT, a county, a regional tollway authority, or a regional mobility authority to enter into an agreement to provide funds to a state or federal agency to expedite the agency's performance of its duties related to the environmental review process. The bill would require TxDOT to establish, by rule, a process to certify district environmental specialists to work on all documents related to state and federal environmental review processes and to make the process available to TxDOT employees. The bill would require the certification process to require continuing education for recertification. The bill would amend the Parks and Wildlife Code to require the Texas Parks and Wildlife Department (TPWD) to provide recommendations and information in response to a TxDOT request for comments no later than 45 days after the request is received.

The bill would amend Chapter 456 of the Transportation Code to specify that an urban transit district, which may otherwise become ineligible to receive certain state public transportation funds as a result of the 2010 federal decennial census, may continue to receive an amount of state funding not to exceed the amount of funds allocated to the district during the 2010-11 state fiscal biennium.

The bill would authorize the issuance of and/or use of proceeds from Texas Mobility Fund obligations, State Highway Fund Revenue Bonds (Proposition 14 Bonds), and general obligation bonds for highway improvements (Proposition 12 GO Bonds) for the purpose of making loans to public entities for transportation projects subject to the statutory provisions of each applicable bond program. The bill would require the commission to determine the terms and conditions, including the interest rate to be

charged, for repayment of such loans. The bill would authorize certain public entities (including units of local government) to pledge revenue from any available source (including the pledge, levy, and collection of any taxes, subject to any constitutional limitation) to provide for the repayment of a loan from money authorized by the bill. Under the provisions of the bill, loan repayments would be deposited to the credit of Fund 365 for loans made from Texas Mobility Fund Bond proceeds; to either Fund 6 or the State Infrastructure Bank (SIB) for loans made from Proposition 14 Bond proceeds; and to the SIB for loans made from Proposition 12 GO Bond proceeds.

The bill would amend Section 222.103, Transportation Code, to have the commission require (rather than authorize) the repayment of any money spent by TxDOT for participation in the cost of toll facility of a public entity or require the public entity to agree to share project revenue with TxDOT on terms and conditions approved by the commission. The bill would require payments received under the agreement to be deposited to the credit of the fund from which TxDOT's expenditure for cost participation was made.

The bill would amend various provisions of Subchapter D, Chapter 222, of the Transportation Code relating to the SIB. The bill would establish the SIB as an account held in the Texas Treasury Safekeeping Trust Company and specify sources of funds that the commission may deposit to the fund, including certain bond proceeds and proceeds from the sale of loans made from money in the SIB. The bill would require the commission to file a biennial report to certain state elected officials and the Legislative Budget Board providing information regarding the operation of the SIB. The bill would authorize the use of money in the SIB to provide financial assistance to TxDOT; provide liquidity enhancement through an agreement to purchase bonds, notes, or other obligations from a public entity; and for certain other purposes specified in the bill. The bill would authorize the commission to require a public entity to pay an application fee and other reasonable amounts for a request for financial assistance provided from the SIB and would require this revenue to be deposited to Fund 6. The bill would require TxDOT to monitor the use of financial assistance provided to a public entity to ensure it is used for purposes authorized by law. The bill would require the Office of the Attorney General (OAG) to review and approve the commission's records authorizing the issuance, execution, and delivery of SIB revenue bonds, credit agreements, and any related contracts authorized under Section 222.075, Transportation Code. The bill would authorize the commission to sell any loans made from money in the SIB and require the proceeds of the sale to be deposited into the SIB. The bill would authorize the commission to submit to OAG any financial assistance agreement related to any loans to be sold under the provisions of the bill.

The bill would amend Section 201.706 of the Transportation Code to increase from \$6 million to \$12 million the minimum annual value of materials TxDOT is required to provide to counties to assist in the repair and maintenance of county roads.

The bill would amend Chapter 222 of the Transportation Code regarding the creation of municipal and county transportation reinvestment zones (TRZ) for any type of transportation project and the pledge and use of taxes collected on property in a TRZ.

The bill would require the Comptroller and the Legislative Budget Board to review for financial viability a comprehensive development agreement (CDA) entered into by TxDOT or another governmental entity under which a private entity operates a toll project or is entitled to receive revenue from the project.

The bill would authorize TxDOT and/or certain regional mobility authorities to enter into CDAs for various highway improvement projects specified by the bill. The authority to enter into a CDA for certain projects authorized by the bill would expire on August 31, 2015.

The bill would require the North Texas Tollway Authority (NTTA) to undergo review under Chapter 325, Government Code (Texas Sunset Act), or undergo an audit by the State Auditor. The bill would require NTTA to pay the costs incurred by SAC in performing a review under the Texas Sunset Act.

Except as otherwise provided by the bill, the bill would take effect on September 1, 2011.

Methodology

The provisions of the bill would require fees currently deposited to the General Revenue-Dedicated Highway Beautification Account No. 71 to be deposited to State Highway Fund 6 (Fund 6). Based on the analysis of the Comptroller's office, it is assumed the provisions of the bill would result in a revenue loss of \$619,000 to the Account No. 71 and an equal revenue gain to Fund 6; and similar revenue losses to Account No. 71 and gains and gains to Fund 6 would continue each year thereafter as indicated in the tables above.

Based on the information provided by TxDOT and Sunset Advisory Commission Staff, it is assumed the changes to the requirements for the publishing of TxDOT contract bid announcements in local newspapers would result in savings from Fund 6. For the purposes of this analysis, it is assumed any savings realized from this provision of the bill would be reallocated by TxDOT for other transportation planning purposes and to implement the provisions of the bill; and, therefore, any potential costs savings are not reflected in the tables above.

Based on the analysis of TxDOT and the General Land Office, it is assumed provisions of the bill relating to the authority of the commission to waive payment for the transfer of right-of-way to a governmental entity for public road purposes would not result in a significant fiscal impact to the State.

Based on information provided by TxDOT, it is assumed that 116 FTEs and approximately \$8 million in funding each year related to TxDOT's oversize/overweight vehicle programs would be transferred to DMV. It is assumed any unobligated and unexpended TxDOT appropriations from the 2010-11 state fiscal biennium relating to the transferred programs would be re-appropriated to DMV and would be used to cover any additional transition costs. Based on the analysis of TxDOT and DMV, it is assumed any costs associated with the transfer could be absorbed within existing resources.

Based on the analysis of TxDOT, TPWD, the Historical Commission, and the Texas Commission on Environmental Quality, it is assumed any costs or duties associated with implementing the provisions of the bill relating to environmental reviews of TxDOT could be absorbed within the agencies' existing resources. Based on the information provided by TxDOT, it is assumed the agency would use existing highway planning and construction appropriations to provide funding to other state and federal agencies under agreements for expedited environmental reviews of TxDOT transportation projects.

TxDOT indicates that the agency currently reviews projects submitted by local sponsors but does not conduct reviews of document submissions for administrative completeness prior to performing technical reviews. TxDOT assumes that consultants would be hired to perform the administrative reviews at a cost of \$70 per hour. The total costs of review would depend on the number of projects submitted for review, the initial level of completeness of the original documents submitted for review, and the number of projects that may be resubmitted for subsequent review. It is assumed TxDOT's costs for the administrative reviews required by the bill would be accommodated through the reallocation of the agency's existing transportation planning and construction funds.

Because the amounts of any loans extended to public entities and the terms of any repayments or revenue sharing agreements that may be set by the commission under the provisions of the bill is unknown, the fiscal implications to state cannot be determined at this time. Based on the analysis of the Comptroller's office and TxDOT, it is assumed the provisions of the bill could result in an indeterminate positive impact to Fund 6, Fund 365, and the State Infrastructure Bank (SIB), depending on the nature and terms of any loan repayments and/or revenue sharing agreements approved by the commission and the timing of receipts by TxDOT under such agreements.

The Comptroller's office reports that the fiscal implications of moving the SIB out of Fund 6 and into the Texas Treasury Safekeeping Trust Company cannot be determined at this time. The Comptroller's office reports that the fiscal impact on the Fund 6 from authorizing TxDOT to collect an application fee from any entity requesting financial assistance from the bank cannot be determined because the amount of any fee or number of entities that would pay it is unknown. Based on the analysis of OAG

and TxDOT it is assumed any costs resulting from implementation of the bill could be absorbed within existing resources.

The bill would increase the minimum annual value of road materials TxDOT would be required to provide to the counties by \$6 million in each fiscal year. TxDOT states that surplus materials and reclaimed asphaltic pavement (RAP) have been provided to counties to fulfill the current requirements. Due to limited maintenance funding in recent years, the agency has also incorporated RAP in state construction and maintenance projects to achieve cost savings, which has resulted in a reduction in the amount of available surplus materials that would otherwise be available to provide the required assistance to the counties. Based on the information provided by TxDOT, it is assumed the agency would incur up to \$6 million in additional costs each year beginning in fiscal year 2012 in order to maintain the agency's current level of maintenance and repairs to the state highway system and provide the increased amount of assistance to the counties required by the bill. These estimated costs are reflected in the tables above. It is assumed costs could be lower depending on the volume of surplus TxDOT materials that may be available to fulfill the county assistance requirements during a fiscal year.

The Comptroller's office indicates that contract consultants would be needed to perform reviews of CDAs submitted by TxDOT or a local toll project entity to the Comptroller and the Legislative Budget Board for financial viability review, which could result in significant costs. Based on the analysis of the Comptroller's office, it is assumed this provision of the bill would result in an indeterminate cost to the State depending on the number and complexity of applicable CDAs submitted by TxDOT or other governmental entities for review.

Based on the information and analysis provided by TxDOT, it is assumed that any costs or duties associated implementing the CDAs for projects authorized by the bill would be accommodated within existing resources and through the allocation of the agency's existing highway planning and construction appropriations.

Sunset Advisory Commission staff estimates costs for performing a review of the North Texas Tollway Authority (NTTA) would be approximately \$280,000. Under the provisions of the bill, NTTA would be required to pay for the costs incurred in the Sunset review; and, therefore, a Sunset review of NTTA would not result in a significant fiscal impact to the State. The State Auditor's Office (SAO) estimates costs for conducting an audit of NTTA would be \$398,391 if the audit were to be performed by SAO or \$526,500 if the audit were to be outsourced. The actual cost to the state would depend on whether the NTTA undergoes review by SAC or an audit by SAO.

Note: This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Legislative policy, implemented as Government Code 403.094, consolidated special funds (except those affected by constitutional, federal, or other restrictions) into the General Revenue Fund as of August 31, 1993 and eliminated all applicable statutory revenue dedications as of August 31, 1995. Each subsequent Legislature has reviewed bills that affect funds consolidation. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Local Government Impact

It is assumed that a local government would only opt to participate as a sponsor and prepare environmental documents for a highway project if sufficient funds were available.

Based on the information provided by TxDOT, it is assumed the proposed amendments to Chapter 456, Transportation Code, relating to eligibility for state public transportation formula funding would authorize the continued allocation of state funding to transit systems and providers in six municipalities that may have otherwise lost their "small urban" status as a result of the 2010 federal decennial census. While the bill would not impact the total amount of available public transportation funding, it is assumed the amount of funding that would have otherwise been available to other eligible transit providers would be reduced.

Fiscal impact to a local government for entering into an agreement to receive financial assistance from or to share local project revenue with TxDOT would vary depending on the amount of financial assistance, if any, received from TxDOT under the provisions of the bill, and the terms and conditions of the agreement.

It is assumed a county or municipality would opt implement a transportation reinvestment zone for a transportation project and assume responsibility for a project only if sufficient resources were available or if the net fiscal impact would be positive.

The bill would prohibit TxDOT from approving the installation of a photographic traffic signal enforcement system on a state highway intersection in a municipality with a population under 40,000. This analysis assumes the bill would not prohibit the maintenance and operation of systems installed prior to the effective date of the bill.

It is assumed a regional mobility authority would opt to enter into a CDA for a project authorized by the bill if sufficient resources were available.

Source Agencies: 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 308 State Auditor's Office, 582 Commission on Environmental Quality, 601 Department of Transportation, 608 Department of Motor Vehicles, 802 Parks and Wildlife Department, 808 Historical Commission

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