

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 28, 2011

TO: Honorable David Dewhurst, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

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.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1420, Conference Committee Report: 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.

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
2012	(\$619,000)	\$619,000
2013	(\$628,000)	\$628,000
2014	(\$637,000)	\$637,000
2015	(\$647,000)	\$647,000
2016	(\$657,000)	\$657,000

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 amend requirements regarding the Statewide Transportation Plan (plan) to specify that the plan would cover a period of 24 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 specify certain information to be included in the reporting system. TxDOT would be required 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 Texas Transportation Commission (commission) to specify formulas for allocating funds by rule and update these formulas at least every four years. TxDOT would be required to allocate funds to department districts based on these formulas and would be prohibited from exceeding the cash flow forecast when distributing these funds.

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

The bill would remove the requirement for TxDOT to publish notifications for bids on TxDOT contracts in newspapers, and authorizes the agency to determine an effective method for providing notification of bids.

The bill would authorize TxDOT to enter into a design-build contract for a nontolled highway project. The bill would specify the method for entering into such contracts and would limit the use of design-build contracts to projects with a construction cost of \$50 or more to TxDOT. The bill would authorize TxDOT to enter into no more than three design-build contracts in each fiscal year until the end of fiscal year 2015. The bill would also establish the scope of and limitations under which a regional mobility authority (RMA) may enter into design-build contracts for transportation projects.

The bill would require money received from Highway Beautification Fees to State Highway Fund 0006 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 the State Highway Fund No. 0006.

The bill would require the commission to establish a compliance program that includes a compliance office to oversee the program to prevent and detect serious breaches of departmental policy, fraud, waste, and abuse of office, including any acts of criminal conduct within the department; and to coordinate and oversee investigations as specified by the bill.

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 authorizes the commission to set the amount of a license fee based on the number of off-premise signs owned by a license applicant and creates 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 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 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 RMA 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 authorize TxDOT and/or certain RMAs 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 amend Chapter 222 of the Transportation Code regarding the creation of municipal and county transportation reinvestment zones (TRZ) for transportation projects and the pledge and use of taxes collected on property in a TRZ.

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

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. This analysis does not estimate the amount of revenue that may be received with an application from a local sponsor that opts to prepare documents for a project that is not included in the financially-constrained portion of the STIP or UTP. Based on the analysis of TxDOT, it is assumed any additional staffing requirements related to implementing the environmental document review and project status tracking provisions of the bill would be accommodated through the reallocation of vacant positions and associated resources to the agency's Environmental Affairs Division from elsewhere within the agency.

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.

Based on the analysis of TxDOT, it is assumed any other costs or duties associated with implementing the provisions of the bill could be absorbed within the agency's existing resources.

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.

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.

It is assumed a regional mobility authority would opt to enter into a CDA for a project authorized by the bill or a design build contract for a transportation project 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, 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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