

SUBJECT: Priority of local highway access policies over state rules

COMMITTEE: Transportation — favorable, with amendment

VOTE: 7 ayes — Krusee, Phillips, Hamric, Garza, Hill, Laney, Mercer

0 nays

2 absent — Edwards, Harper-Brown

SENATE VOTE: On final passage, March 25 — 30-0

WITNESSES: No public hearing

BACKGROUND: Transportation Code, sec. 203.031(a)(2) and (4) authorize the Texas Transportation Commission (TTC) to deny access between controlled-access highways and public and private real property and intersecting ways as well as designate the location, type, and extent of access to such highways. Sec. 203.032 gives precedence to TTC orders controlling access to highways on the state highway system over conflicting rules or ordinances of other state agencies or subdivisions, counties, and municipalities (including home-rule cities).

In October 1999, TTC approved an order limiting frontage roads along U.S. Interstate Highway 69. In June 2001, TTC approved orders limiting future frontage roads on new relief routes and giving the Texas Department of Transportation (TxDOT) direction on new highway access situations. In November 2001, TxDOT announced that TTC no longer would assume that frontage roads would be built along new freeways.

After a series of public hearings on proposed rules implementing the new frontage road policy, TxDOT rescinded the rules in favor of an access management policy including new criteria on median openings, driveways, and “curb cuts.” Before new rules were promulgated, however, TTC considered adopting a policy manual setting guidelines for implementing managed access. After another round of public hearings in 2002, the manual underwent revision. To date, TTC has not approved the draft manual or

adopted access management rules, although it is expected to consider doing so this summer.

DIGEST:

Under SB 361, as amended, municipal highway-access rules or ordinances, including those of home-rule municipalities, regulating driveways and other easements would take precedence over conflicting TTC access orders. The bill would give precedence to the rules or ordinances of the county commissioners courts of Harris, Liberty, Chambers, Galveston, Brazoria, Fort Bend, Waller, and Montgomery counties, as well as those of the municipalities within those counties, over all conflicting TTC access control orders, not just driveways and other easements.

TTC access orders would prevail, however, in the following cases:

- if the Federal Highway Administration notified TxDOT that enforcement of the municipal rules or ordinances would impair the state's or TxDOT's ability to receive federal highway construction or maintenance funds;
- if TxDOT specifically had acquired abutters' access rights from adjacent property owners through specific deed language; or
- if TxDOT owned the access rights when building limited-access toll roads and parkways without frontage roads that otherwise would allow access, unless preexisting abutters' access rights were impacted.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

For the past two years, TTC has been trying to reverse TxDOT's longstanding policy allowing a high degree of access to the state highway system within cities and other highly developed areas. The initial focus was on the state's widespread practice of building frontage roads along state highways. The ongoing revision of TxDOT's access management policy has conflicted with many cities' and some counties' managed access policies and raised concerns about future economic development along segments of the state highway system in and near metropolitan and suburban areas.

Although the frontage road controversy has dissipated, questions have persisted about the propriety of the proposed access management policy and the efficacy of the draft manual. In some cities, TxDOT district engineers have threatened to enforce more restrictive access rules before they have been adopted. Specifically, many city officials believe TxDOT's proposed limits on the number and spacing of median openings are impractical. Many view the required distances from access points (entrances, exits, driveways, "curb cuts," etc.) to intersections as excessive. Consequently, some businessmen think service stations and convenience stores no longer could locate on corner lots. Many term TxDOT's proposed process for approving new local access management plans as too stringent. Developers view this as an impediment, especially in fast-growing areas.

SB 361 would maintain local control over access management. It would prevent TxDOT from superseding city and, in some cases, county access policies — primarily on locating driveways and curb cuts — along state roadways within city limits and, in Harris and its surrounding counties, within cities' ETJs and unincorporated county areas. Decisions would be made by those in the best position to understand local traffic patterns and community needs and who stood to gain or lose the most from the impact of those decisions. TTC still would be able to fill vacuums where no policies existed and develop new policies on new highways under new alignments, such as those envisioned in Gov. Perry's Trans-Texas Corridor Plan. TxDOT's access policies still would prevail when it legitimately owned access rights.

Federal officials are much less concerned with frontage roads and driveways than with on-off ramps. TxDOT has indicated that it never has lost money, nor had funds delayed, due to noncompliance with federal access management standards. Nevertheless, the bill would ensure that adherence to local plans did not jeopardize the state's federal highway funding in this regard.

Harris County and its surrounding counties and municipalities need to be exempted specifically from TTC's access control authority because they constitute a unique urban region, much of which is in the city of Houston's extraterritorial jurisdiction (ETJ) or unincorporated county areas. Unlike other parts of the state, Harris and its adjacent counties typically make most transportation policy decisions affecting Houston's and other area cities' ETJs. Most of the Dallas-Fort Worth metroplex, by contrast, is under one city

or another's direct jurisdiction and so would not have to adhere to TxDOT's access policy.

In some cases, particularly in Houston, TxDOT has used its claims of access rights to leverage exorbitant payments from property owners, both when building new roadways and expanding existing ones. In effect, TxDOT has resold virtually essential access for curb cuts and other easements to property owners from whom it previously had acquired rights-of-way through condemnation or other means. Typically, TxDOT obtains two property appraisals, one with access (always a higher value) and one without, and charges property owners seeking access rights the difference. TxDOT should have to obtain access rights contractually, or by virtue of building limited-access toll roads, before asserting such rights to the detriment of landowners providing property for the state highway system. The goal is not to circumvent existing law but to protect individual property rights by clarifying how TxDOT acquires access rights they later sell.

**OPPONENTS
SAY:**

For generations, Texas has not managed access to its state roadways effectively. This piecemeal approach has produced a regulatory patchwork leading to over-development in many urban areas and accelerating roadway deterioration. Many local access decisions are driven by public fiscal priorities or private profit margins, instead of sound traffic engineering principles that ensure safety and mobility.

For example, Texas highways have far too many frontage roads within cities that too easily are accessible. Texas is the only state that has them to such an extent. Other states have used less costly means of providing access without suffering economically. Nevertheless, TTC never advocated an outright frontage road ban but only a more reasoned approach requiring justification for any new frontage roads. Too many points of access impair mobility and exacerbate congestion, defeating the primary purpose of freeways and highways. They are meant to move large amounts of traffic quickly across considerable distances, not allow commuters and shoppers to get on and off at will.

TxDOT's access management plan will not affect every city adversely. In fact, some cities' access management policies are more stringent than what TxDOT is proposing. The policy manual still is a draft, and the proposed rules

have not yet been finalized. TxDOT has been receptive to public input as evidenced by its willingness to revise its proposed policies more than once. Enacting this preemptive legislation is unnecessary because TTC fully intends to continue cooperating with cities and not supersede local access policies.

OTHER
OPPONENTS
SAY:

The Houston area/Harris County portion of the committee amendment is overly broad and would go beyond the intent and scope of the original bill. It is not necessary to specify municipalities in the Harris County area. The bill already would cover all cities having access ordinances in decisions involving driveways and curb cuts. Moreover, the amendment would give the access policies of cities and counties in the Houston area precedence over all TTC access decisions, not just driveways and curb cuts. Not only would this usurp TTC's authority to control access to state highways, but it would grant one set of local governments more legal authority than other local governments.

The access rights portion of the amendment could create a property right that does not exist in state law (abutters' rights of access) and would complicate TxDOT contracting. Sec. 203.034 makes it clear that owners of property adjacent to new (previously non-existent) highway locations are not entitled to access rights. Hence, deed contracts with developers and other landowners are silent on this point because no one can acquire or sell rights that do not exist. Regarding property adjacent to existing roadways, TxDOT either grants access, purchases the rights from owners, or undertakes condemnation. If TxDOT does sell access rights to property owners, it is because the property owners never owned them to begin with. TxDOT's dual appraisal policy reflects the best interests of the state. In determining fair market value of access rights, TxDOT must take into consideration the higher value associated with access. Otherwise, charging less than the difference in value between accessible and inaccessible property would not be a good deal for taxpayers.

NOTES:

The committee amendment would specify two instances in which TxDOT access rules would take precedence over local regulations: express contractual acquisition of abutters' access rights or construction of limited-access toll facilities without frontage roads. The amendment also would extend precedence of municipal access policy to Harris County, its seven adjacent counties, and the municipalities within those counties for all TTC access control decisions, not just permitting and denying access to state highways.

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A similar bill, SB 1782 by Lindsay, passed the Senate by 31-0 on May 6 on the Local and Uncontested Calendar and is pending in the House Transportation Committee.