

SUBJECT: Allowing funding agreements for environmental review for transportation

COMMITTEE: Transportation — favorable, without amendment

VOTE: 8 ayes — Phillips, Darby, Bonnen, Fletcher, Harper-Brown, Lavender, McClendon, Pickett

0 nays

3 absent — Y. Davis, Martinez, Rodriguez

WITNESSES: For — Brian Cassidy, Alamo Regional Mobility Authority (RMA), Camino Real RMA, Cameron County RMA, Central Texas RMA, North East Texas RMA, Grayson County RMA; Valerie Covey, Williamson County; Michael Vasquez, Texas Conference of Urban Counties

Against — None

On — Amadeo Saenz, Texas Department of Transportation

BACKGROUND: Before final construction, transportation projects that receive federal or state funding must go through what is generally called an environmental review process. This process involves multiple federal and state agencies, each of which must approve various aspects of the transportation project before it is built.

Transportation Code, Sec. 201.607 requires TxDOT to adopt a memorandum of understanding (MOU) for a review on the potential impacts of a highway project with each state agency responsible for protecting the natural environment or historical or archaeological resources. The section sets forth general requirements for the MOU and requires each agency to adopt all revisions to the MOU by rule.

Transportation Code, ch. 366 establishes regional tollway authorities and assigns them powers related to the acquisition, design, financing, construction, operation, and maintenance of regional toll road projects. Transportation Code, ch. 370 establishes regional mobility authorities and assigns them powers related to constructing, maintaining, and operating regional transportation projects.

DIGEST:

HB 630 would allow 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 an environmental review for a transportation project. The agreement would have to require the recipient of the funds to complete the review in less time than normal. Eligible projects would include those a metropolitan planning organization designated in its long-range transportation plan.

An agreement to expedite an environmental review could specify which transportation projects to prioritize. An agreement reached under the bill would have to be available on the website of the entity entering into the agreement. It could not diminish the public's right to review and comment on the project. TxDOT could enter into a separate agreement that it determined had regional importance.

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, 2011.

SUPPORTERS
SAY:

HB 630 would implement a simple but important recommendation from the Senate Transportation and Homeland Security Committee to expedite the environmental review process that precedes transportation projects that receive federal or state funds. The recommendation embodied in the bill, one of several on the subject in the Senate report, urged that the Legislature expressly authorize TxDOT to enter into a funding agreement with state or federal agencies to expedite an environmental review. HB 630 would authorize this and would include other entities that develop major transportation projects in the state.

The environmental review process, which originally stemmed from the National Environmental Policy Act, has grown into a massive undertaking involving multiple federal and state agencies, such as the Federal Highway Administration, Environmental Protection Agency, Texas Commission on Environmental Quality, and Texas Historical Commission. The review process governs public involvement and affects a project's design and location.

The current environmental review process often is the source of extensive delays in the development of transportation projects in the state. It can extend by years the time it takes to bring a project to its construction

stages. One review for a State Highway 183 project in Williamson County took three years to complete when the county had estimated it would take between six months and a year. During this time, the cost of acquiring the right-of-way for the project increased \$27 million, a direct cost to taxpayers.

While some delay is unavoidable, much is caused by inadequate resources for reviewing documents and completing other necessary administrative tasks at participating agencies. For instance, the U.S. Fish and Wildlife Service, which has a role in the review, has one employee who dedicates a small portion of time to reviewing transportation projects in Texas. TxDOT would like to hire an employee to do reviews at the department full time, for which it believes express permission is necessary.

The lack of resources for environmental review on a federal level has prompted 20 states to allow funding arrangements to expedite the process. HB 630 would allow Texas to join these other states in taking a simple, proactive measure to expedite the review process without compromising any of the functions it serves. The bill would not weaken the integrity of a review, as payment would not depend on the outcome of the review, only on the time dedicated to processing it. Further, the expedited review could save public entities considerable money in the long run by saving on the rising costs of right-of-way acquisition that often attends a delay.

OPPONENTS
SAY:

HB 630 could weaken oversight of the environmental review process by allowing the entities under review to pay the entities subjecting them to review. Allowing an agency to pay for a review from a “resource” agency could create a desire to please the entity paying the bills. This payment, in effect, could make the entity receiving the payment beholden to the entity making the payment, which could affect the resource agency’s ability to objectively evaluate a proposal.

In addition, the bill would authorize public entities to pay for a service that already should be provided with existing tax dollars from other sources. In particular, federal agencies that are required to conduct a review by federal law should dedicate resources to those reviews from federal tax dollars. Authorizing the state to make up for a lack of federal resources would not be the best use of scarce revenue.

NOTES:

SB 548 by Nichols includes a provision similar to HB 630, authorizing funding agreements for expediting environmental review. SB 548 would also make other changes to the environmental review process. The bill passed the Senate by 31-0 on March 31 and has been received by the House.