

BILL ANALYSIS

Senate Research Center

H.B. 3184
By: Hill (Barrientos)
Infrastructure Development and Security
5/14/2003
Engrossed

DIGEST AND PURPOSE

Senate Bill 342, 77th Texas Legislature, added Section 361.005 to the Transportation Code, to transfer the powers and duties of the former board of directors of the Texas Department of Transportation's (TxDOT) Texas Turnpike Authority Division to the Texas Transportation Commission (TTC), but not all necessary reference changes were made in existing law. Additionally, TxDOT's legal authority, with regard to turnpike projects, needs some clarification. Chapter 361 (Texas Turnpike Authority) contains obsolete references and provisions that duplicate other statutes applicable to TxDOT, which complicates the development of turnpike projects. H.B. 3184 clarifies TTC's power regarding financing, construction, improvement, maintenance, and operation of turnpike projects, and provides additional powers, including increased authority for TTC and TxDOT to enter into exclusive development agreements for the construction, improvement, maintenance, and operation of turnpike projects.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 61 (Section 361.3025, Transportation Code) and SECTION 65 (Section 361.306, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 201.112(a), Transportation Code, to make a conforming change by including Chapter 361 (State Highway Turnpike Projects). Makes nonsubstantive changes.

SECTION 2. Amends the heading to Chapter 361, Transportation Code, to read as follows:

Chapter 361. STATE HIGHWAY TURNPIKE PROJECTS

SECTION 3. Amends Sections 361.001(2), (3), (4), and (5), Transportation Code, to delete the definition of "board," redefine "turnpike project," and redesignate Subdivisions (3)-(5) as Subdivisions (2)-(4).

SECTION 4. Amends the heading to Subchapter B, Chapter 361, Transportation Code, to read as follows:

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

SECTION 5. Amends and reenacts Section 361.031, Transportation Code, as follows:

Sec. 361.031. TEXAS TURNPIKE AUTHORITY. (a) Provides that the Texas Turnpike Authority (authority) is responsible for promoting and coordinating the development of turnpike projects under this chapter. Requires the Texas Transportation Commission (TTC) and the executive director of the Texas Department of Transportation (director) to assign duties to the authority and other offices of the Texas Department of Transportation (TxDOT) as appropriate for the proper administration of this chapter and other law. Deletes text referring to powers under the chapter to study, design, construct, operate, expand, enlarge, or extend a turnpike project.

(b) Replaces the "authority" with "TxDOT" as the entity exercising powers conferred by this chapter in the construction, operation, and maintenance of a

turnpike project.

SECTION 6. Redesignates Section 361.042, Transportation Code, as Section 361.032, Transportation Code, and amends the section, as follows:

Sec. 361.032. GENERAL PROVISIONS AND DUTIES. (a) Requires TTC, rather than the board of the directors of the authority, to adopt rules for the implementation and administration of this chapter, rather than the regulation of its affairs and the conduct of its business and to undertake other duties delegated by TTC. Deletes text referring to considering, studying, planning, and developing turnpike projects. Makes nonsubstantive changes.

(b) Deletes text referring to employing attorneys, adopting and enforcing rules, and forming, developing, or utilizing a corporation. Redesignates Subdivisions (7), (9), and (11) as Subdivisions (6), (7), and (8). Makes conforming changes.

SECTION 7. Redesignates Section 361.054, Transportation Code, as Section 361.033, Transportation Code, and amends the section, as follows:

Sec. 361.033. AUDIT. Requires an audit of TxDOT's, rather than the authority's, books and accounts for activities under this chapter, at least annually. Requires the audit to be conducted in accordance with the requirements of any trust agreement securing bonds issued under this chapter that is in effect at the time of the audit. Makes conforming changes.

SECTION 8. Amends the heading to Subchapter C, Chapter 361, Transportation Code, to read as follows:

SUBCHAPTER C. DEVELOPMENT OF TURNPIKE PROJECTS

SECTION 9. Amends Section 361.101, Transportation Code, to require TTC to approve, by order, final designation, rather than the location of the project before final designation, and to make a conforming change.

SECTION 10. Amends Section 361.103, Transportation Code, as follows:

Sec. 361.103. New heading: APPLICATION OF OTHER LAW. Requires all other law applicable to TxDOT, TTC, or the state highway system to apply to the development, construction, maintenance, and operation of a turnpike project under this chapter, unless in conflict with a provision of this chapter. Deletes text referring to the provision of an environmental review.

SECTION 11. Amends Subchapter C, Chapter 361, Transportation Code, by adding Section 361.104, as follows:

Sec. 361.104. ENTRANCES AND EXITS OF TURNPIKE PROJECT. Requires TxDOT to designate the location of and establish, limit, and control the entrances and exits of a turnpike project, as considered necessary or desirable, to ensure the proper operation and maintenance of the project, and to prohibit entrance to a project at any place not designated as an entrance.

SECTION 12. Amends Section 361.131, Transportation Code, as follows:

Sec. 361.131. New heading: POWERS AND PROCEDURES OF DEPARTMENT IN ACQUIRING PROPERTY. Provides that TxDOT has the same powers and is authorized to use the same procedures in acquiring property under this chapter as TTC or TxDOT in acquiring property under Subchapter D, Chapter 203 (Acquisition of Property) and in disposing of surplus property acquired under this chapter as TTC or TxDOT under Subchapter B, Chapter 202 (Sale, Exchange, or Return of Highway Property).

SECTION 13. Amends Section 361.132, Transportation Code, as follows:

Sec. 361.132. ACQUISITION OF PROPERTY. (a) - (c) Make conforming changes.

(d) Provides that property necessary or convenient for the construction or operation of a turnpike project under Subsection (a) includes an interest in real property, a property right, or materials that TxDOT determines are necessary or convenient to provide a location for an ancillary facility that generated revenue for use in the construction, maintenance, or operation of a turnpike project, including a gas station, garage, store, hotel, or restaurant, or to construct or operate a warehouse, toll house, toll plaza, service station, or other facility used in connection with the construction, maintenance, or operation of a turnpike project, among other areas or activities. Redesignates Subdivisions (6)-(9) as Subdivisions (7)-(10).

(e) and (f) Make conforming changes.

SECTION 14. Amends Sections 361.133(b) and (c), Transportation Code, to make conforming changes.

SECTION 15. Amends Section 361.134, Transportation Code, to make conforming changes.

SECTION 16. Amends Section 361.135, Transportation Code, as follows:

Sec. 361.135. CONDEMNATION OF REAL PROPERTY. (a) Authorizes TTC to approve the acquisition of, rather than the board with TTC's concurrence, to acquire, public or private real property in the name of the state by the exercise of the power of condemnation under the laws applicable to the exercise of that power on property for public use under certain circumstances. Makes a conforming change.

(b) Authorizes TTC, to approve the condemnation of, rather than the board with TTC's concurrence to condemn, real property that TTC determines is necessary or convenient for the construction or operation of a turnpike project, rather than appropriate to construct or efficiently operate, as described by Section 361.132(d), in addition to other necessities. Makes a nonsubstantive change.

(c) Deletes existing Subsection (c) referring to authorizing the authority to construct a supplemental facility, and redesignates Subsection (d) as Subsection (c). Replaces a reference to the authority's board of directors' failure to accept and pay for the real property with TxDOT's failure to accept and pay for the real property. Makes a conforming change.

(d) Redesignates this subsection from Subsection (e). Provides that an undertaking under Subsection (c)(2), rather than (d)(2), or an act or obligation of TxDOT, rather than the authority, or TTC rather than the board of directors of the authority, does not impose any liability on the state, TxDOT or TTC, except liability that may be paid from the money authorized by this chapter. Makes conforming changes.

SECTION 17. Amends Section 361.136, Transportation Code, to make conforming changes.

SECTION 18. Amends Sections 361.137(a), (b), (c), and (d), Transportation Code, to make conforming changes.

SECTION 19. Amends Sections 361.138(a) and (b), Transportation Code, to make conforming changes.

SECTION 20. Amends Section 361.141(a), Transportation Code, to make conforming changes.

SECTION 21. Amends Section 361.142, Transportation Code, to make conforming changes.

SECTION 22. Amends Sections 361.171(a), (b), (c), (d), and (e), Transportation Code, as follows:

(a) Authorizes TTC, rather than the authority, to provide for the issuance of turnpike revenue bonds, by order rather than resolution, to pay all or part of the cost of a turnpike project.

(b)-(e) Make conforming changes.

SECTION 23. Amends Section 361.172, Transportation Code, to make conforming changes.

SECTION 24. Amends Section 361.173, Transportation Code, as follows:

Sec. 361.173. PAYMENT OF BONDS; CREDIT OF STATE NOT PLEDGED. (a) Makes a conforming change.

(b) Provides that TTC and TxDOT, rather than the authority, are not obligated to pay the bond or the interest on the bond from a source other than the amount pledged to pay the bond and the interest on the bond.

(d) Makes a conforming change.

SECTION 25. Amends Section 361.174, Transportation Code, to delete a reference to money other than that derived from a different turnpike project, and to make conforming changes.

SECTION 26. Amends Section 361.175, Transportation Code, to make conforming changes.

SECTION 27. Amends Sections 361.176(a) and (e), Transportation Code, to make conforming changes.

SECTION 28. Amends Section 361.177, Transportation Code, to make conforming changes.

SECTION 29. Amends Section 361.178, Transportation Code, to make conforming changes.

SECTION 30. Amends Sections 361.179(a), (b), (d), (e), and (g), Transportation Code, as follows:

(a) Makes a conforming change.

(b) Includes contributions with other revenue used to pay certain costs.

(d)-(e) and (g) Make conforming changes.

SECTION 31. Amends Sections 361.181(a) and (b), Transportation Code, as follows:

(a) Deletes text referring to using money received from TxDOT for feasibility studies, undertaken at TTC's request. Makes conforming and nonsubstantive changes.

(b) Makes a conforming change.

SECTION 32. Amends Sections 361.182 (a), (b), (d), (f), (h), and (i), Transportation Code, as follows:

(a) and (b) Make conforming changes.

(d) Authorizes TTC to delegate the authority to authorize a feasibility study to the director. Makes a conforming change.

(f) Makes a conforming change.

(h) Redesignates this subsection from Subsection (i). Deletes text referring to money transferred to TxDOT for the benefit of the authority. Authorizes TTC to authorize, rather than request the authority to conduct, a feasibility study to be funded in accordance with Subchapter E, Chapter 222 (Toll Facilities). Deletes text referring to the expense of the study.

SECTION 33. Amends Section 361.183(b), Transportation Code, to make a conforming change.

SECTION 34. Amends Sections 361.184(a), (b), and (c), Transportation Code, to make conforming changes.

SECTION 35. Amends Section 361.185, Transportation Code, to make conforming changes.

SECTION 36. Amends Section 361.186, Transportation Code, as follows:

Sec. 361.186. REMEDIES. Deletes text referring to a coupon incident to a bond and makes conforming changes.

SECTION 37. Amends Section 361.187(a), Transportation Code, to make conforming changes.

SECTION 38. Amends Section 361.188, Transportation Code, to make a conforming change.

SECTION 39. Amends Section 361.189, Transportation Code, to make conforming changes.

SECTION 40. Amends Section 361.191, Transportation Code, as follows:

Sec. 361.191. New heading: EXPENDITURE OF MONEY AUTHORIZED BY COMMISSION. (a) Authorizes TTC, rather than TxDOT, to provide for the expenditure of money for the cost of the acquisition, construction, maintenance, or operation of a turnpike project. Authorizes TTC, rather than TxDOT, to require the repayment of, rather than the authority to repay, money provided under this section from toll revenue or other sources on terms established by TTC.

(b) Makes a conforming change.

SECTION 41. Amends Section 361.231(a), Transportation Code, to delete the specification to the extent applicable, in reference to awarding a TxDOT contract for the construction, improvement, repair, or maintenance of a turnpike. Includes a reference to Section 223.011 (Partial Payment Exception: Maintenance and Preconstruction Contracts). Makes conforming and nonsubstantive changes.

SECTION 42. Amends Sections 361.232(b), (c), and (d), Transportation Code, to make conforming and nonsubstantive changes.

SECTION 43. Amends Sections 361.233(a) and (c), Transportation Code, to make conforming changes.

SECTION 44. Amends Sections 361.234(a), (b), (d), (e), (f), and (g), Transportation Code, as follows:

(a), (b), and (d) Make conforming changes.

(e) Deletes text referring to the authority's powers and duties. Makes conforming and nonsubstantive changes.

(f) and (g) Make conforming changes.

SECTION 45. Amends Section 361.235(a), Transportation Code, to make conforming changes.

SECTION 46. Amends Section 361.236, Transportation Code, to make a conforming change.

SECTION 47. Amends Section 361.238(c), Transportation Code, to make a conforming change.

SECTION 48. Amends Section 361.251, Transportation Code, as follows:

Sec. 361.251. New heading: **TURNPIKE PROJECT A STATE HIGHWAY**. Provides that a turnpike project is a state highway subject to all laws applicable to the regulation and control of traffic on a state highway, rather than a public highway.

SECTION 49. Amends Section 361.253, Transportation Code, by amending Subsections (b), (d), (e), and (g), and adding Subsection (i), as follows:

(b), (d), and (e) Make conforming changes.

(g) Requires the court in which a person is convicted of an offense under this section to collect the proper toll and administrative fee and forward them to TxDOT for deposit in the depository bank used for that purpose. Makes a conforming change.

(i) Authorizes TxDOT to contract, in accordance with Section 2107.003 (Collection by Attorney General or Outside Agent), Government Code, with a person to collect the unpaid toll and administrative fee before referring the matter to a court with jurisdiction over the offense.

SECTION 50. Amends Section 361.255(b), Transportation Code, to make conforming changes.

SECTION 51. Amends Sections 361.256 (a), (b), and (d), Transportation Code, to make conforming changes.

SECTION 52. Amends the heading to Subchapter H, Chapter 361, Transportation Code, to read as follows:

New heading: **SUBCHAPTER H. TRANSFER OF TURNPIKE PROJECT**

SECTION 53. Amends Section 361.281, Transportation Code, to include a regional mobility authority created under Section 361.003 (Regional Mobility Authority) in the list of entities to which this subchapter applies.

SECTION 54. Amends Section 361.282, Transportation Code, as follows:

Sec. 361.282. **LEASE, SALE, OR CONVEYANCE OF TURNPIKE PROJECT**. (a) Includes a regional mobility authority in the list of entities to which TxDOT is authorized to lease, sell, or convey in another manner a turnpike project.

(b) Makes conforming and nonsubstantive changes.

SECTION 55. Amends Section 361.283, Transportation Code, as follows:

Sec. 361.283. New heading: **DISCHARGE OF OUTSTANDING BONDED INDEBTEDNESS**. Makes a conforming change.

SECTION 56. Amends Subchapter H, Chapter 361, Transportation Code, by adding Section 361.284, as follows:

Sec. 361.284. **REPAYMENT OF DEPARTMENT'S EXPENDITURES**. (a) Requires an agreement to lease, sell, or convey a turnpike project under Section 361.282, to provide for the repayment of any expenditures of the department for the design, construction,

operation, and maintenance of the project, that have not been reimbursed with the proceeds of bonds issued for the project, except as provided by Subsection (b).

(b) Authorizes TTC to waive repayment of all or a portion of the expenditures if it finds that the transfer will result in substantial net benefits to the state, TxDOT, and the public that equal or exceed the amount of repayment waived.

SECTION 57. Amends Section 361.285(a), Transportation Code, to make a conforming change.

SECTION 58. Amends Section 361.301, Transportation Code, as follows:

Sec. 361.301. AGREEMENTS WITH PUBLIC OR PRIVATE ENTITIES TO CONSTRUCT, MAINTAIN, REPAIR, AND OPERATE TURNPIKE PROJECTS. Provides that, notwithstanding Section 361.231, Transportation Code, and Subchapter A, Chapter 2254 (Professional Services), Government Code, TxDOT may enter into certain agreements. Makes a conforming change.

(b) Makes a conforming change.

SECTION 59. Amends Section 361.302, Transportation Code, as follows:

Sec. 361.302. New heading: EXCLUSIVE DEVELOPMENT AGREEMENTS WITH PRIVATE ENTITIES. Authorizes an exclusive development agreement to include the functions of design, construction, and operation in any combination, and to use any constitutionally permissible source of funds without restriction on the number of exclusive development agreements that TxDOT may enter, notwithstanding Subchapter A, Chapter 254, Government Code. Makes a conforming change.

(b) Authorizes the project to be financed in whole or in part by invested private funding.

(c) Creates this subsection from existing text. Makes a conforming change.

(d) Provides that, until a final contract is executed relating to a proposed project, certain information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552 (Public Information), and is not subject to any means of legal compulsion for its release.

(e) Provides that an agreement under this section is not subject to the requirements of Section 361.231 (Awarding of Contracts) except that the process by which a private entity is chosen by TxDOT to enter an agreement under this section is subject to the extent possible to Section 361.050 (Disadvantaged Business).

SECTION 60. Amends Subchapter I, Chapter 361, Transportation Code, by adding Section 361.3021, as follows:

Sec. 361.3021. ADVERTISING. Requires TxDOT to publish notice in the Texas Register requesting competitive proposals for an agreement, before entering into an agreement under Section 361.302.

SECTION 61. Amends Subchapter I, Chapter 361, Transportation Code, by adding Section 361.3025, as follows:

Sec. 361.3025. PERFORMANCE AND PAYMENT SECURITY. (a) Requires TxDOT, notwithstanding Section 223.006 (Contractor's Bond), Transportation Code, and the requirements of Subchapter B, Chapter 2253 (General Requirements; Liability), Government Code, to require a private entity entering into an exclusive development agreement under Section 361.302 to provide performance and payment bonds or alternative forms of security in an amount sufficient to protect TxDOT and ensure proper

performance of the agreement, and payment bond beneficiaries who have a contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

(b) Requires the performance and payment bonds or alternative forms of security to be in an amount equal to the cost of constructing the project.

(c) Requires TxDOT, if it determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), to set the amount of the bonds or the alternative forms of security.

(d) Provides that a performance and payment bonds or alternative form of security is not required for the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(e) Requires the amount of the payment to be not less than the amount of the performance security.

(f) Authorizes TxDOT, in addition to performance and payment bonds, to require certain alternate forms of security.

(g) Requires TTC to prescribe requirements, by rule, for alternate forms of security provided under this section.

SECTION 62. Amends Section 361.303, Transportation Code, to make conforming changes.

SECTION 63. Amends Section 361.304, Transportation Code, to make conforming changes.

SECTION 64. Amends Section 361.305, Transportation Code, to make conforming changes.

SECTION 65. Amends Section 361.306, Transportation Code, as follows:

Sec. 361.306. New heading: RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATING PROCESS. (a) Requires TTC to adopt rules, procedures, and guidelines, governing selection, in addition to negotiations. Makes conforming changes.

(b) Authorizes TxDOT to pay a private entity that submits an unsuccessful response to a request for proposals (RFP), a stipulated amount of the final contract price for any costs incurred in preparing the proposal. Requires the stipulated amount to be stated in the RFP and prohibits the amount from exceeding the value of any work product contained in the proposal that can, as determined by TxDOT, be used by TxDOT in the performance of its functions. Authorizes TxDOT to make use of any work product contained in the proposal, including the technologies, techniques, methods, processes, and information contained in the project design, after payment of the stipulated amount.

(c), (d), and (e) Redesignated from Subsections (b), (c), and (d). Makes conforming changes.

SECTION 66. Amends Section 361.307, Transportation Code, to make conforming changes.

SECTION 67. Amends Section 361.331(a), Transportation Code, to delete text referring to TTC's approval and to make conforming changes.

SECTION 68. Amends Section 361.333, Transportation Code, to make conforming changes.

SECTION 69. Amends Sections 361.334(a) and (e), Transportation Code, to make conforming

changes.

SECTION 70. Amends Section 361.335, Transportation Code, to make conforming changes.

SECTION 71. Amends Sections 362.003(b) and (c), Transportation Code, as follows:

(b) Provides that Chapters 1201 (Public Security Procedures Act) and 1371 (Obligations for Certain Public Improvements), Government Code, and Subchapters A (General Provisions), B (Advance Refunding Procedures), and C (Direct Deposit With Paying Agent), Chapter 1207 (Refunding Bonds), Government Code, apply to bonds issued by TTC under this chapter.

(c) Authorizes TxDOT to enter into all agreements necessary or convenient to effectuate the purposes of this chapter. Deletes text referring to the chapter being cumulative of laws affecting the authority and chapters referenced regarding applicability to bonds.

SECTION 72. Amends Sections 362.007(a) and (b), Transportation Code, to make conforming changes.

SECTION 73. Amends Section 362.008, Transportation Code, as follows:

Sec. 362.008. New heading: ADDITIONAL AGREEMENTS OF DEPARTMENT.
Makes a conforming change.

SECTION 74. Amends the heading to Section 545.354, Transportation Code, to read as follows:

Sec. 545.354. AUTHORITY OF REGIONAL TOLLWAY AUTHORITIES TO ALTER SPEED LIMITS ON TURNPIKE PROJECTS.

SECTION 75. Amends Section 545.354(a)(1), Transportation Code, to redefine "authority."

SECTION 76. Amends Section 621.102(a), Transportation Code, to delete an exception provided by Subsection (h).

SECTION 77. Repealer: Sections 222.103(i) and (j) (Cost Participation), 361.005 (Transfer of Board's Powers and Duties), 361.043 (Entrances and Exits of Turnpike Project), 361.046 (Compensation of Employees), 361.0485 (Board Meeting by Telephone Conference Call), 361.049 (Consultants), 361.050 (Disadvantaged Business), 361.051 (Public Access), 361.052 (Public Complaints), 361.053 (Evidence of Action by Authority), 361.055 (Successor Agency to Authority), 361.102 (Public Hearings), 361.184(f) (Texas Turnpike Authority Revolving Fund), 361.231(b) (Awarding of Contracts), 361.237 (Operation of Turnpike Project), 361.308 (Participation on Certain Other Boards, Commissions, or Public Bodies), 362.001(1) (Definitions), 362.052 (Commission Review of Bonds), 362.053 (Contracts Between Commission and Texas Turnpike), and 621.102(h) (Commission's Authority to Set Maximum Weights).

SECTION 78. Effective date: upon passage or September 1, 2003.