

## **BILL ANALYSIS**

Senate Research Center

S.B. 1929  
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Transportation & Homeland Security  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 3588, 78th Legislature, Regular Session, 2003, and H.B. 2702, 79th Legislature, Regular Session, 2005, enacted sweeping changes to the fundamental laws governing transportation financing and development. These bills created many new tools for the Texas Department of Transportation to use, including comprehensive development agreements and the ability to enter into public-private partnerships.

Many issues have created need to reform various transportation laws. Texans are concerned about the quantity of toll projects in this state as a whole, and more specifically, there is concern regarding the stipulations placed on toll project agreements with private companies, such as buyback provisions and non-compete clauses. There are also concerns regarding the Trans-Texas Corridor and the process the state has used in determining the path of that corridor.

As proposed, S.B. 1929 places restrictions on comprehensive development agreements, increases the state's transportation infrastructure financing tools by limiting diversion and increasing bonding capabilities, and addresses eminent domain provisions and planning for the Trans-Texas Corridor. This bill also expands the capabilities of local toll entities and addresses metropolitan planning organization and regional mobility authority governance.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 91.004(a), Transportation Code, as follows:

(a) Authorizes the Texas Department of Transportation (TxDOT) to reconstruct, relocate, and subject to Section 91.005 (Reliance on Public Entities), operate publicly or privately owned passenger or freight rail facilities, individually or as one or more systems. Makes nonsubstantive changes.

SECTION 2. Amends Section 201.204, Transportation Code, as follows:

Sec. 201.204. SUNSET PROVISION. Abolishes TxDOT on September 2, rather than 1, 2009, unless continued in existence as provided by Chapter 325, Government Code (Texas Sunset Act).

SECTION 3. Amends Subchapter H, Chapter 201, Transportation Code, by adding Section 201.619, as follows:

Sec. 201.619. COOPERATIVE PLANNING WITH COUNTIES. (a) Authorizes TxDOT and a county jointly to enter into an agreement that identifies future transportation corridors within the county in accordance with this subsection. Requires such a corridor to be derived from existing transportation plans adopted by TxDOT or the Texas Transportation Commission (commission), the county, or a metropolitan planning organization.

(b) Requires, notwithstanding any other law, the commissioners court of the county in which the land is located, if all or part of a subdivision for which a plat is required is located in any county within a future transportation corridor identified in an agreement under this section, to refuse to approve the plat for recordation unless the plat states that the subdivision is located within the future transportation corridor. Authorizes, notwithstanding any other law, the commissioners court of such a county to refuse to approve the plat for recordation if an environmental review of a transportation project in the future transportation corridor has begun.

SECTION 4, Amends Sections 203.092(a-1), (a-2), and (a-3), Transportation Code, as follows:

(a-1) Requires TxDOT and the utility, notwithstanding Subsection (a), to share equally the cost of the relocation of a utility facility that is made before September 1, 2013, rather than 2007, and required by improvement of a nontolled highway to add one or more tolled lanes. Provides that this subsection expires September 1, 2013, rather than 2007.

(a-2) Requires TxDOT and the utility, notwithstanding Subsection (a), to share equally the cost of the relocation of a utility facility that is made before September 1, 2013, rather than 2007, and required by, rather than for, the improvement of a nontolled highway that has been converted to a turnpike project or toll project. Provides that this subsection expires September 1, 2013, rather than 2007.

(a-3) Requires TxDOT and the utility, notwithstanding Subsection (a), to share equally the cost of the relocation of a utility facility that is made before September 1, 2013, rather than 2007, and required by, rather than for, the construction of a new location of a turnpike project or toll project or the expansion of such a turnpike project or toll project. Provides that this subsection expires September 1, 2013, rather than 2007.

SECTION 5. Amends Subchapter A, Transportation Code, by adding Section 222.0011, as follows:

Sec. 222.0011. RESTRICTIONS ON USE OF STATE HIGHWAY FUND. Prohibits money in the state highway fund, notwithstanding any other provision of law, to be transferred to or appropriated for use by the Department of Public Safety, the Health and Human Services Commission or any other health and human services agency or entity, or the Texas Workforce Commission.

SECTION 6. Amends Subchapter A, Chapter 222, Transportation Code, by adding Section 222.004, as follows:

Sec. 222.004. ISSUANCE OF GENERAL OBLIGATION BONDS FOR HIGHWAY IMPROVEMENT PROJECTS. (a) Authorizes the commission to issue general obligation bonds to fund state highway improvement projects.

(b) Prohibits the aggregate principal amount of the bonds that are issued from exceeding \$5 billion.

(c) Prohibits the proceeds of bonds issued under this section from being used for any purpose other than the payment of any costs related to the bonds and the purposes for which revenues are dedicated under Section 7-a (Revenues From Motor Vehicle Registration Fees and Taxes on Motor Fuels and Lubricants; Purposes for Which Used), Article VIII, Texas Constitution.

(d) Authorizes the commission to enter into credit agreements, as defined by Chapter 1371 (Obligations for Certain Public Improvements), Government Code, relating to the bonds authorized by this section. Authorizes the agreements to be secured by and payable from the same sources as the bonds.

(e) Provides that all laws affecting the issuance of bonds and other public securities, including Chapter 1201 (Public Security Procedures Act), Chapter

1202 (Examination and Registration of Public Securities), Chapter 1204 (Interest Rate), Chapter 1207 (Refunding Bonds), Chapter 1231 (Bond Review Board), and Chapter 1371, Government Code, apply to the issuing of bonds and the entering into of credit agreements under this section.

(f) Authorizes the proceeds of bonds issued under this section to be used to finance other funds relating to the bonds, including debt service reserve and contingency, and to pay the cost or expense of the issuance of the bonds.

(g) Authorizes bonds issued under this section to be sold in such manner and subject to such terms and provisions as set forth in the order authorizing their issuance, and requires such bonds to mature not later than 30 years after their dates of issuance, subject to any refundings or renewals.

(h) Requires the comptroller to pay the principal of the bonds as they mature and the interest as it becomes payable, and pay any cost related to the bonds that become due, including payments under credit agreements.

SECTION 7. Amends Section 223.201(f), Transportation Code, to provide that the authority to enter into comprehensive development agreements provided by this section (authority) expires on August 30, rather than 31, 2011.

SECTION 8. Amends Section 223.205(a), Transportation Code, to require TxDOT, notwithstanding Section 223.006 (Contractors Bond) and the requirements of Subchapter B (General Requirements; Liability), Chapter 2253, Government Code, to require a private entity entering into a comprehensive development agreement under this subchapter to provide a performance bond and a payment bond or alternative forms of security, or a combination of bonds and alternative forms of security, in an amount, as determined by TxDOT, that is sufficient for certain purposes.

SECTION 9. Amends Subchapter E, Chapter 223, Transportation Code, by adding Section 223.210, as follows:

Sec. 223.210. NOTIFICATION OF TERMINATION FOR CONVENIENCE. Requires TxDOT, if TxDOT decides to purchase an interest of a private participant in a comprehensive development agreement and related property before the termination date of the agreement, to notify the governor, lieutenant governor, and speaker of the house of representatives not later than the 120th day preceding the date of the proposed purchase.

SECTION 10. Amends Section 224.1541(b), Transportation Code, as follows:

(b) Authorizes the commission to designate a lane as an exclusive lane under Subsection (a) only if the commission determines that the use or operation of the exclusive lane is likely to enhance safety, mobility, or air quality and two or more lanes adjacent to the proposed exclusive lane are available for the use of vehicles other than vehicles for which the lane is restricted, a multilane facility adjacent to the proposed exclusive lane is available for the use of vehicles other than vehicles for which the lane is restricted, or the proposed exclusive lane is to be used only by commercial motor vehicles, as defined by commission order. Deletes existing text including the requirement that the use or operation of the exclusive lane is likely to enhance safety, mobility or air quality for the commission to be authorized to designate a lane as an exclusive lane under Subsection (a).

SECTION 11. Amends Subchapter A, Chapter 228, Transportation Code, by adding Sections 228.0091, 228.011, 228.012, and 228.013, as follows:

Sec. 228.0091. AUDIT BY STATE AUDITOR. Requires the state auditor to perform an audit of each annual financial statement for a toll road segment or combination of segments.

Sec. 228.011. REVIEW AND APPROVAL BY ATTORNEY GENERAL OF CERTAIN AGREEMENTS. Prohibits TxDOT from entering into a comprehensive development agreement until the agreement is reviewed for legal sufficiency by the attorney general.

Sec. 228.012. TOLL REVENUE PROJECTIONS. Prohibits TxDOT from entering into an agreement with a developer to operate, lease, or finance a segment of a toll road until the comptroller has projected the toll revenue for each geographic region of the toll road segment.

Sec. 228.013. ACQUISITION OF TOLL PROJECTS. (a) Authorizes the commission to authorize TxDOT to enter into an agreement with a governmental entity to acquire a toll project or system from that entity if the governing body of the entity approves the acquisition, and to issue bonds to acquire such toll project or system as provided in Subsection (b), assume any debts, obligations, and liabilities of the entity relating to the toll project or system transferred to TxDOT, or carry out any combination of the issuance of bonds or assumption of debts, obligations, and liabilities. Authorizes such agreements to include any terms TxDOT determines to be in the best interest of the state.

(b) Authorizes the commission to issue toll revenue bonds under Subchapter C (Diesel Fuel Tax) or use any other legally available funds for the purpose of acquiring a toll project or system.

SECTION 12. Amends Subchapter A, Chapter 284, Transportation Code, by adding Section 284.0021, as follows:

Sec. 284.0021. JOINT USE OF POWERS. Authorizes two or more counties jointly to exercise the powers granted under this chapter (Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties).

SECTION 13. Amends Subchapter A, Chapter 284, Transportation Code, by adding Section 284.0031, as follows:

Sec. 284.0031. ADDITIONAL POWERS. Authorizes a county, acting through the commissioners court of the county, or a local government corporation, to exercise any power granted to a regional mobility authority under Chapter 370 (Regional Mobility Authorities) to the extent that such a power does not conflict with the powers or duties provided under this chapter. Provides that, in the exercise of a power granted under Chapter 370, a county is subject to regulation by the commission as if it were a regional mobility authority. Provides that the exercise of a power under Chapter 370 does not subject a county to involuntary dissolution under Section 370.332 (Involuntary Dissolution).

SECTION 14. Amends Section 284.011(a), Transportation Code, as added by Chapter 281, Acts of the 79th Legislature, Regular Session, 2005, as follows:

(a) Authorizes a county to transfer to TxDOT a project under this chapter if the commission agrees to the transfer and agrees to any, rather than the, outstanding bonded indebtedness. Deletes existing text including the requirement that the project have outstanding bond indebtedness for this provision to apply.

SECTION 15. Amends Subchapter C, Chapter 284, Transportation Code, by adding Section 284.075, as follows:

Sec. 284.075. TRANSACTION PROCESSING. Authorizes a county to enter into an agreement with a bank or other financial institution, as defined by Section 31.002 (Definitions), Finance Code, or a clearinghouse providing services to a bank or other financial institution, to provide, on terms and conditions approved by the county, toll transaction processing and other related services.

SECTION 16. Amends Subchapter B, Chapter 366, Transportation Code, by adding Section 366.037, as follows:

Sec. 366.037. **ADDITIONAL POWERS.** Authorizes a regional tollway authority to exercise any power granted to a regional mobility authority under Chapter 370 to the extent that such a power does not conflict with the powers or duties of a regional tollway authority provided under this chapter. Provides that, in the exercise of a power granted under Chapter 370, a regional tollway authority is subject to regulation by the commission as if it were a regional mobility authority. Provides that the exercise of a power under Chapter 370 does not subject a regional tollway authority to involuntary dissolution under Section 370.332.

SECTION 17. Amends Section 366.172, Transportation Code, as follows:

(a) Authorizes a regional tollway authority to lease, sell, or convey in another manner a turnpike system to TxDOT, a county, or a local government corporation created under Chapter 431 (Texas Transportation Corporation Act) only with the approval of the governing body of the entity to which the project is transferred.

(b) Makes a conforming change.

SECTION 18. Amends Subchapter E, Chapter 366, Transportation Code, by adding Section 366.186, as follows:

Sec. 366.186. **TRANSACTION PROCESSING.** Authorizes a regional tollway authority to enter into an agreement with a bank or other financial institution, as defined by Section 31.002, Finance Code, or a clearinghouse providing services to a bank or other financial institution, to provide, on terms and conditions approved by the regional tollway authority, toll transaction processing and other related services.

SECTION 19. Amends Sections 366.251(b)-(e), Transportation Code, as follows:

(b) Requires the commissioners court of each county of the regional tollway authority to appoint to the board of directors of the regional tollway authority (board) a number of directors determined by the ratio of the population of the county to the total population of the area covered by the regional tollway authority, rather than only one director to serve on the board. Requires the governor to appoint an additional director to the one director the governor is required to appoint to serve on the board if necessary to maintain an odd number of directors on the board, but authorizes no more than two appointees of the governor to serve at any time.

(c) Redesignated from existing Subsection (d). Deletes existing text requiring the commissioners courts of those counties of the regional tollway authority in which all or part of a turnpike project is located and open for use by the traveling public, in addition to directors appointed by a commissioners court under Subsection (b), to appoint two additional directors in a certain manner.

(d) Redesignated from existing Subsection (e). Makes conforming and nonsubstantive changes.

SECTION 20. Amends Subchapter E, Chapter 370, Transportation Code, by adding Section 370.194, as follows:

Sec. 370.194. **TRANSACTION PROCESSING.** Authorizes a regional mobility authority to enter into an agreement with a bank or other financial institution, as defined by Section 31.002, Finance Code, or a clearinghouse providing services to a bank or other financial institution, to provide, on terms and conditions approved by the regional mobility authority, toll transaction processing and other related services.

SECTION 21. Amends Section 370.251(c), Transportation Code, as follows:

(c) Provides that directors of the board of directors of a regional mobility authority (directors) serve two-year terms, with as near as possible to one-half of the directors' terms expiring on February 1st of each year. Deletes existing text providing that, if permitted under the constitution of this state, directors serve staggered six-year terms, with the terms of no more than one-third of the directors expiring on February 1st of each odd-numbered year. Deletes existing text providing that, if six-year terms are not permitted under the constitution, directors serve two-year terms, the terms of not more than one-half of the directors expiring on February 1st of each year.

SECTION 22. Amends Title 6, Subtitle I, Transportation Code, by adding Chapter 432, as follows:

CHAPTER 432. TEXAS TRANSPORTATION COMPANY ACT

Sec. 432.001. ORGANIZATION OF THE TEXAS TRANSPORTATION COMPANY. Authorizes the commission to form the Texas Transportation Company (company) as a for profit corporation, a limited liability company, or a limited partnership.

Sec. 432.002. PURPOSE OF THE COMPANY. Provide that the purpose of the company is for the acquisition, development, and operation of existing and new toll projects and the conduct of all activities ancillary thereto. Authorizes the company to conduct any lawful activity that is consistent with its purpose and not prohibited by the Business Organizations Code or this chapter.

Sec. 432.003. GENERAL POWERS. (a) Requires the company to have all of the powers and privileges accorded to it under the law governing its formation.

(b) Authorizes the company to enter into any contract, expend any funds, incur any indebtedness, and procure goods and services necessary or convenient to develop any toll project on such terms as the governing body deems appropriate.

(c) Requires the company to, subject to the approval of the commission, have any other powers that are reasonably necessary to develop a toll project.

Sec. 432.004. ISSUANCE OF SECURITIES. (a) Authorizes the company to issue securities and encumber its assets to the same extent and in the same manner as any similar business entity organized under the Business Organizations Code would be empowered to do.

(b) Requires securities of the company offered to investors, to the maximum extent permitted by applicable law and to the extent consistent with conventional industry practices regarding the distribution of securities, to be offered in a manner that optimizes valuation and securities liquidity while giving a preference to pension, retirement, and investment funds and other investors headquartered in this state.

Sec. 432.005. LIABILITIES OF THE STATE. Requires neither the state nor a toll authority to be liable for the debts, breaches of duty, or other liabilities or obligations of the company.

Sec. 432.006. PRIVATE ENTITY. Provides that the company is a private, non-governmental entity.

SECTION 23. Amends Section 501.138(c), Transportation Code, to require TxDOT to deposit \$5 in the Texas mobility fund, rather than the general revenue fund, of the amount received under Subsection (b)(2) (regarding certain amounts of the fee assessed for a certificate of title).

SECTION 24. Amends Section 504.101(e), Transportation Code, to require the remainder, after \$1.25 of each fee collected by TxDOT under this section (Personalized License Plates) is used to defray the cost of administering this section, to be deposited to the credit of the Texas mobility fund, rather than the general revenue fund.

SECTION 25. Amends Section 542.402, Transportation Code, by adding Subsection (f), to require the comptroller to deposit money received under Subsection (b) (regarding fines under this title (Vehicles and Traffic)) to the credit of the Texas mobility fund.

SECTION 26. Amends Section 162.102, Tax Code, to make a conforming change.

SECTION 27. Amends Subchapter B, Chapter 162, Tax Code, by adding Section 162.1025, as follows:

Sec. 162.1025. ANNUAL RATE CHANGE ACCORDING TO CONSUMER PRICE INDEX. Provides that on October 1st of each year the rate of the gasoline tax imposed under this subchapter (Gasoline Tax) is increased or decreased by a percentage that is equal to the consumer price index percentage change for the preceding fiscal year.

SECTION 28. Amends Section 162.202, Tax Code, to make a conforming change.

SECTION 29. Amends Subchapter C, Chapter 162, Tax Code, by adding Section 162.2025, as follows:

Sec. 162.2025. ANNUAL RATE CHANGE ACCORDING TO CONSUMER PRICE INDEX. Provides that on October 1 of each year the rate of the diesel fuel tax imposed under this subchapter is increased or decreased by a percentage that is equal to the consumer price index percentage change for the preceding fiscal year.

SECTION 30. Amends Subtitle C, Title 3, Tax Code, by adding Chapter 329, as follows:

#### CHAPTER 329. SALES AND USE TAXES BY CERTAIN MUNICIPALITIES

Sec. 329.001. DEFINITION. Defines "transit sales and use tax."

Sec. 329.002. TRANSIT SALES AND USE TAX NOT COUNTED IN COMBINED LOCAL TAX RATE. Prohibits the rate of a transit sales and use tax imposed within the territory of a municipality, notwithstanding any other law, from being considered in determining the combined or overlapping rate of local sales and use taxes in the municipality.

SECTION 31. Repealer: Section 223.203(m) (regarding process for entering into comprehensive development agreements), Transportation Code.

SECTION 32. (a) Effective date: September 1, 2007, except as provided by Subsection (b).

(b) Provides that Section 222.004, Transportation Code, takes effect on the date on which the constitutional amendment proposed by \_\_J.R. No.\_\_, 80th Legislature, Regular Session, 2007, becomes law. Provides that if that amendment does not become law, this section does not take effect.