

**SUBJECT:** Continuing the Texas Department of Transportation

**COMMITTEE:** Transportation — committee substitute recommended

**VOTE:** 9 ayes — Alexander, Siebert, Edwards, Finnell, Hartnett, Hawley, Hill, Pickett, Uher

0 nays

**SENATE VOTE:** On final passage, April 21 — voice vote

**WITNESSES:** (*On House companion, HB 2870*)  
For — David Laney, Anne Wynne and David Bernsen, Texas Transportation Commission; John Fainter, Vincent Matrone and Jere Thompson, Texas Turnpike Authority; Randy DeLay, South Texas Border Partnership for I-69; Cathy Golden, Greater Dallas Chamber; Ron Harris, Collin County; Fred Heldenfels, Greater Corpus Christi Business Alliance; Shanna Igo, Texas Municipal League; Lee Jackson and James McCarley, Greater Dallas Mobility Coalition; Tim Keleher, Fort Worth Chamber of Commerce; Jack Miller, City of Denton; Lawrence Olson, Texas Good Roads Association; Dan Petty and Vic Suhm, North Texas Commission; Michael Plaster, Texas Transit Association; Jeff Moseley; Don Anderson; Charlie Culpepper; Glenn Gadbois

Against — None

On — Bill Burnett, Texas Department of Transportation; James Griffin, Texas Turnpike Authority; J.R. Jones, Consulting Engineers Council of Texas; Cynthia Thomas, Texas Public Policy Foundation; Joe Walraven, Jay Schmidt and Larry Graham, Sunset Advisory Commission

**BACKGROUND** : The Texas Department of Transportation (TxDOT) was created in 1991 by the consolidation of the State Department of Highways and Public Transportation, the Texas Department of Aviation, and the Texas Motor Vehicle Commission. At that time, the Legislature also declared its intention to merge the Texas Turnpike Authority (TTA) with TxDOT in 1997, subject to the approval of a constitutional amendment allowing TxDOT to loan money to TTA for toll roads and bridges. The constitutional

amendment, HJR 10 by Cain, was approved by the voters. In 1995, the Legislature enacted SB 3 by Bivins transferring the regulation of motor carriers and vehicle storage facilities from the Railroad Commission to TxDOT.

TxDOT is governed by the Texas Transportation Commission, consisting of three members appointed by the governor with the consent of the Senate. The commission's primary role is to provide policy direction regarding statewide transportation needs. The commission appoints the executive director of the agency, who runs the day-to-day operations of TxDOT. A separate six-member Motor Vehicle Board regulates the motor vehicle sales and leasing industry. The board is appointed by the governor with the consent of the Senate and oversees warranty compliance and fraud prevention.

TxDOT is funded primarily with revenues dedicated to the highway fund from taxes and fees on fuels, motor lubricants, vehicle registration and other sources. Nearly 50 percent of TxDOT revenues come from the motor fuels tax and is dedicated to acquiring rights-of-way and constructing, maintaining and policing public roadways. Federal reimbursements account for another 30 percent of revenues. Total TxDOT revenues for fiscal 1995 were \$3.43 billion. TxDOT spent nearly 90 percent of its 1995 operating budget on highway construction and maintenance.

The Texas Turnpike Authority was created in 1953 for the purpose of planning and financing through public and private resources, the construction and operation of a system of toll roads, bridges and tunnels. Once bonds on a toll project are fully paid, the project is turned over to TxDOT. TTA currently operates two projects: the Dallas North Tollway System and the Mountain Creek Lake Bridge, both located in the Dallas-Fort Worth area and both entirely supported by the tolls they generate. Bonds on the Dallas North Tollway are scheduled to mature in 2025; bonds on the Mountain Creek Lake Bridge are scheduled to mature in 2007. Two other projects undertaken by TTA have been completed. The Dallas-Fort Worth Turnpike was turned over to TxDOT in 1977 and is now IH-30. The Houston Ship Channel Bridge was turned over to the Harris County Toll Authority in 1994. The Harris County Toll Authority manages 50 miles of toll roads in Harris county and has plans for an additional 32 miles.

TTA is governed by a 12-member board of directors. Nine members are appointed by the governor for staggered six-year terms; three members of the commission serve in an ex-officio capacity. TTA receives its funding from revenue bonds issued for tollway construction projects and tolls generated. Each project must be funded by separate bond issues, and the revenue from one project may not be used to fund another project.

In 1991, a constitutional amendment allowed TxDOT and TTA to embark on joint ventures. To date, only one joint venture has been established, the State Highway 190 project in Dallas, now called the President George Bush Turnpike. The total cost of the project is projected at \$1 billion, with TxDOT putting up \$116 million to build parts of the non-toll portions of the project. Additionally, TTA is working with the Town of Addison to construct the Addison Airport Tunnel.

Both TxDOT and TTA will be abolished September 1, 1997, unless continued by the Legislature.

**DIGEST:**

CSSB 370 would continue the Texas Department of Transportation until September 1, 2009; abolish the Texas Turnpike Authority and move its functions to a division of TxDOT; allow for Regional Tollway Authorities (RTAs); establish the North Texas Tollway Authority (NTTA) to take over current operations of the TTA in Dallas, Tarrant, Collin and Denton counties; and make other changes to the operation of these transportation-related agencies.

CSSB 370 would take effect September 1, 1997.

**Texas Department of Transportation**

**State Infrastructure Bank.** CSSB 370 would create a State Infrastructure Bank (SIB) within the state highway fund to use federal highway financing alternatives available to Texas under the National Highway System Designation Act. The SIB would be set up to encourage public and private investment in transportation and develop new financing techniques for construction, maintenance and operation of transportation projects. The SIB would be funded by federal highway apportionment funds, state matching funds and revenue bonds issued by the commission. The bill would set out

procedures and safeguards for issuing of revenue bonds that conform to state procedures. The commission could use SIB funds to provide financial assistance to any public or private entity for a qualified project. TxDOT would be required to submit a report to the Legislature by January 1, 2001, on the projects funded by the SIB.

**Contractor performance.** TxDOT would be required to develop a schedule for liquidated damages in contracts that adequately reflected actual costs associated with project completion delays. Additionally, the review of contractor bidding capacity would have to ensure that contractors would be able to meet quality and timeliness standards established by the commission.

**Automating functions through electronic means.** CSSB 370 would allow TxDOT to establish a procedure for accepting bids through electronic means. The commission also would be allowed to establish rules for the electronic application, renewal and issuance of licenses and permits, and it could adopt rules for electronic funds transfers for such licenses.

**Privatization.** CSSB 370 would remove the requirement that TxDOT achieve a balance between the use of private employees and department employees for engineering and design contracts. Instead, TxDOT would be required to index the level of expenditures set in the general appropriations act for fiscal 1998-99 and increase expenditures to private sector providers by one percentage point each year until 35 percent of funds used for engineering and design contracts were spent on private sector contracts.

**Traffic congestion.** CSSB 370 would expressly state legislative intent to conserve fuel, decrease traffic congestion, improve air quality, develop new financing techniques and enhance the use of existing facilities. TxDOT would be authorized to construction high occupancy vehicle (HOV) lanes on any multilane highway. The commission could also authorize TxDOT to charge a toll on certain highways or certain lanes, including HOV lanes, to mitigate congestion. Congestion mitigation would include any projects that encouraged carpooling, improved air quality, or reduced traffic congestion. Tolls charged could be collected in cooperation with any RTA, transit authority or any toll project constructed by the TTA. CSSB 370 would allow TxDOT to use standard procedures for collecting tolls and prosecuting violators.

**Funding issues.** TxDOT would be allowed to distribute federal funds in any manner consistent with federal formulas. Variations would be allowed only by the commission. Economically disadvantaged counties — those with below average per capita taxable property values and income and above average unemployment — could receive funds regardless of their ability to provide local matching funds. The local matching funds required could be adjusted after an evaluation of the political subdivision's effort and ability to meet the requirement.

**Health and human services client services.** CSSB 370 would require TxDOT to consider and include the transportation needs of persons who are clients of health and human services agencies in planning and funding transportation projects.

**Telecommunications facilities.** CSSB 370 would prohibit a telecommunications provider from using structures or equipment installed or maintained by the state except under lease agreement with TxDOT. Lease agreements would have to be awarded through a competitive bidding process.

**Pilot projects and studies.** CSSB 370 would authorize the creation of a four-year pilot project on vehicle maintenance outsourcing in at least three TxDOT districts. TxDOT also would be required to conduct a study of multimodal road usage. After completion of the study, TxDOT would have to initiate and coordinate a public awareness campaign for traffic safety issues. CSSB 370 would require TxDOT to study alternate routes for a second transportation link between South Padre Island and the mainland to be completed by April 30, 1998. It would also require a study of noise abatement programs to determine if noise abatement using sound wall barriers would be practical statewide.

TxDOT would be authorized to adopt rules for a pilot project on the leasing of state highway right-of-way areas for commercial advertising through the means of floral mosaic living logos. Living logo projects would be awarded based on the amount of revenues that would be generated. TxDOT would have authority over the location and content of any living logo; logos could only be created in counties with populations greater than 500,000.

**Miscellaneous changes.** CSSB 370 would make other changes to TxDOT-related statutes, including:

- requiring a cost-benefit analysis of using local materials incorporated into roadways versus materials from other sources;
- allowing TxDOT to enter into an interlocal agreement with any taxing district, other than a school district, to finance transportation infrastructure projects;
- prohibiting TxDOT and the commission from restricting competitive bidding for outdoor advertising licenses, motor carrier licenses, salvage vehicle dealer licenses, and vehicle storage facilities licenses;
- establishing a sign program for major agricultural interests along rural highways paid for by fees collected from the agricultural interests; and
- requiring notice to be given of the expiration of manufacturer and distributor licenses issued by the motor vehicle commission, motor carrier registrations, outdoor advertising licenses, salvage vehicle dealer licenses, and vehicle storage facility licenses and allowing probation of those licenses.

**Standard sunset provisions.** CSSB 370 would include standard Sunset Advisory Commission recommendations on conflict of interest, grounds for removal, commission member training, public testimony at commission meetings, legislative review of funds, compliance with state and federal accessibility laws, development of an equal opportunity policy, career ladders, complaint handling, and advertising practices. Such changes would be applied to the commission, TxDOT, all its divisions, including TTA, and any RTAs, including the NTTA.

### **Texas Turnpike Authority**

CSSB 370 would establish the Texas Turnpike Authority as a division of TxDOT. It would allow toll collections to be used to fund the state highway system and remove the restriction that funds raised for or by one project could be used only on that project. The TTA division would have the same authority as it does under current law for right-of-way acquisition, roadway finance, design and construction, roadway maintenance, and toll collection.

TTA would be governed by a board of seven members. Six public members would be appointed by the governor, and the commission chair or another commissioner designated by the chair would serve as an ex-officio member. All conflict of interest, board member training, grounds for removal, and similar provisions in place for the TTA or customarily added as standard Sunset Advisory Commission recommendations would be applied to TTA.

TxDOT would be allowed to charge a toll on a nontoll segment of the state highway system temporarily if the commission determined the segment was subject to heavy passenger and commercial traffic. Tolls collected would be used to recover the cost of preventative maintenance.

CSSB 370 would expand TTA's authority to acquire property to construct new tollways as well as new authority for expansion, enlargement or improvement of tollways. All acquisitions would have to be necessary and convenient for the project. TTA would have to receive commission concurrence to condemn real property. CSSB 370 would expressly state that covenants, conditions or restrictions affecting property acquired by TTA would not bind it or create a compensable harm for property owners seeking damages for condemnation.

CSSB 370 would allow TTA to transfer a turnpike project to an RTA or a municipality with a population of more than 120,000 adjacent to Mexico.

CSSB 370 would repeal duplicative and unnecessary statutes relating to the operation of TTA as a separate agency.

### **Regional Tollway Authorities**

CSSB 370 would allow two or more counties to create a regional tollway authority. The bill would require that at least one of the counties have a population greater than 300,000 and that the counties be contiguous. Unless one of the counties had a population greater than 1.5 million, the commission would have to approve the creation of the RTA. All RTAs created before January 1, 2000, would be subject to sunset review in 2002. All RTAs created after January 1, 2000, would be subject to review in 2008.

Each RTA would be governed by a board of directors. Each commissioners court of counties served by the RTA would appoint one director. The governor would appoint three directors, two of whom would have to have resided in a county of the RTA for at least one year. The other governor-appointed director would have to have lived in a county adjacent to a county of the RTA for at least one year. The board would be required to select one director to serve as presiding officer. Board members would serve staggered two-year terms. CSSB 370 would apply standard conflict of interest, removal, compensation, public access to meetings, indemnification, and liability insurance requirements to RTAs.

Each director of an RTA would be required to execute a \$25,000 surety bond conditioned on faithful performance. RTAs would be required to establish strategic plans and make annual reports to county commissioners courts. RTA would be expressly allowed to conduct meetings by telephone conference call to the extent allowed by open meetings laws. RTAs would be given access to criminal history records of their employees or applicants in the same manner as is given to other units of state government. The powers and duties of RTAs would parallel those granted to TTA in statute; however, a number of changes would be included.

**Financing.** RTAs would be allowed to incur bond indebtedness to fund tollway projects. Bonds issued would be the responsibility of the RTA and would not pledge the state or the counties to repay the bonds. The attorney general would have to approve all bonds and bond proceedings before they became valid and enforceable. Bonds issued could be divided among projects.

**Acquisition of property.** Except as provided by law, RTAs would have the same powers as the commission or TxDOT to acquire property. Language allowing acquisition of property would parallel TTA authority, including provisions added by CSSB 370 excluding covenants, conditions or restrictions on property from applying to RTAs or becoming compensable property interests. The declaration of a taking by an RTA could not be filed for 90 days after the condemnation petition was filed. The RTA would be required to deposit to the registry of the court an amount equal to the fair market value of the property to be condemned or tender a bond or other security to the owner for the value of the property taken.



CSSB 370 would affirmatively state that the date of the declaration would be the date on which the fair market value of the property was assessed. RTAs would have full easements or rights-of-way through publicly owned land to construct or operate turnpike projects.

**Revenues.** RTAs would have the same power as TTA to collect tolls to provide for the cost of maintaining, repairing and operating projects and paying the principal and interest on the bonds issued for the project. RTAs, however, would be allowed to use revenues from one project to pay the costs of other projects. CSSB 370 would remove restrictions on the use of surplus revenue on construction projects that were in operation in 1993 — the Dallas North Tollway System and the Mountain Creek Lake Bridge, which would be turned over to NTTA. RTAs would be allowed to charge tolls on free roads transferred to the RTA, but could not modify a segment of the state highway system without commission approval.

**Project construction and operation.** RTAs would be allowed to advertise the use of tollways. RTAs also would be allowed to control access to a tollway but any access restricted from a segment of the state highway system would have to be approved by the commission. All contracts would have to be awarded through competitive bidding processes.

**RTA agreements.** RTAs would be allowed to enter into agreements with TxDOT, public or private entities, and local governmental entities consistent with the Constitution. Agreements could cover financing, construction, maintenance, operation or other needs of the project.

**North Texas Tollway Authority.** CSSB 370 would create the NTTA to include Collin, Dallas, Denton and Tarrant counties. The authority could extend to other counties by agreement. All provisions governing RTAs would apply to the NTTA. The assets, liabilities, rights and other property of the TTA located in the NTTA area would be transferred to the NTTA, including the Dallas North Tollway System, the Mountain Creek Lake Bridge, the President George Bush Turnpike, and the Addison Airport Tunnel. NTTA would be required to pay the TTA division of TxDOT \$10 million by December 31, 1997, as additional consideration for the properties transferred to NTTA. Employees of TTA could elect to become employees of TxDOT or the NTTA subject to employment openings and requirements.

SUPPORTERS  
SAY:

The changes to the transportation-related agencies proposed by CSSB 370 would promote funding flexibility, privatization, increased revenues, increased cooperation between state and local governments, reduced traffic congestion, and better governance and accountability.

**Texas Department of Transportation**

**Continuing TxDOT.** TxDOT has done well its assigned tasks of highway maintenance and construction, motor vehicle registration, dealer regulation, aviation support, and public transportation support. TxDOT has continually sought to improve its functions and operations. Its contract dispute resolution processes are a model for other state agencies to follow. The functions of TxDOT are unique to the agency and should continue to grow to encompass other statewide transportation interests.

The improvements made to TxDOT governance through the Sunset process this session and those made when it was created in 1991 have created a strong agency capable of meeting the transportation needs of the state. The continuation of TxDOT for an additional 12 years would be a standard continuation for an agency that was well established and has received a positive review through the sunset process. CSSB 370 would give TxDOT additional authorizations to conduct studies and other projects to determine the best way to use agency resources and increase revenues.

**Funding issues.** While TxDOT oversees one of the largest and fastest growing transportation systems in the country, funding of TxDOT functions has not grown to meet increasing demands for new construction and maintenance of existing highways. Many revenue generating fees have declined, including the motor fuels tax, which generates nearly 50 percent of TxDOT funding. Revenues from motor fuels taxes have declined due to the increased fuel efficiency of newer vehicles. Many of the changes proposed in CSSB 370 would help TxDOT find new sources of income using existing assets.

Allowing TxDOT to distribute federal funds in any manner consistent with federal formulas would increase the amount of flexibility for such funds. Currently, these funds make up nearly 30 percent of TxDOT's revenues and should be allowed to be disbursed in any manner possible to achieve their

most efficient use. Much of the funding TxDOT receives from state sources is dedicated to certain projects or goals and cannot be used to help fund new or innovative solutions to transportation issues. While federal funds would continue to be used to support traditional TxDOT functions, these funds could also be used to support other projects that might allow TxDOT to save money in other areas.

Exempting economically distressed areas from full local matching fund requirements is another funding flexibility issue that would help to allow TxDOT to continue to provide needed services in these areas. Without such flexibility, matching funds required for certain projects would force the projects to go to other areas. These exemptions would only be used in areas that demonstrated a commitment to finding local funds but failed to be able to raise the amount needed because of the economically distressed nature of the area.

**State Infrastructure Bank.** The SIB would significantly improve transportation funding flexibility by using funds from a wide variety of sources. Texas is one of 10 states given funding by the federal government to create a SIB using federal money and state matching funds. The SIB would be used to provide financial assistance to highway toll and nontoll projects. It could be expanded to other transit modes as well if additional funding becomes available. The assistance provided by the SIB would generate interest income at below-market rates that would help to continue the SIB. TxDOT would be required to report to the Legislature on the status of the SIB after four years, and changes could be made at that time for its long-term future.

Allowing revenue bonds to be issued to help support the SIB would ensure that the SIB could be adequately funded at the outset and allow for increased funding of projects that would help to bring in revenues for other projects. The bonding authority granted to TxDOT would be subject to approval by the bond review board, and other statutory and constitutional limitations on the issuance of such bonds to ensure that they were only issued when justified.

**Privatization.** Current law requires TxDOT to attempt to achieve a balance in between in-house and contracted for engineering and design services.

This vague requirement has caused some to criticize TxDOT for providing too little privatization while others have complained that there has been too much. The changes made by CSSB 370 would help to clarify the requirements. For design and engineering services, CSSB 370 would require TxDOT to attempt to increase its privatization of such services until 35 percent of the total amount of money spent was privatized. This goal would be set out in clearly defined increments.

TxDOT also would be required to conduct a study of privatization of vehicle maintenance services. It has been suggested that TxDOT could achieve substantial savings in this area with privatization. A pilot program, conducted in at least three of the 25 TxDOT districts, would allow TxDOT to determine if and how privatization of this function should occur. Without such a study, privatization of this important function could end up costing more than current in-house costs.

**Automated electronic bidding and license application.** By allowing TxDOT to increase the use of electronic means to conduct many of its common transactions, it could reduce costs and speed efficiency of these services. Electronic bidding is sorely needed as current law requires complex bids to be manually checked and verified. Allowing contractors to submit such bids electronically would help to improve accuracy and verification.

**Pilot projects.** Many of the pilot projects proposed in CSSB 370 are designed to increase funding to TxDOT without creating additional costs. The outsourcing of vehicle maintenance is one such program. Others include the living logos programs and contracts for major agricultural interest signs. These programs would provide services requested of TxDOT, but in such a way that would increase revenues.

**Fuel tax collections.** CSSB 370 would not include a requirement that the comptroller and TxDOT study point-of-collection changes to the motor fuels tax because changing the point of collection of such taxes would place a significant burden on small petroleum retailers. In order for such retailers to receive fuel from a refinery, they would have to prepay the tax on that fuel before they collected payment of the tax from the consumer. In many cases, this prepayment would be a significant amount that many small retailers

could not afford. The prepayment of taxes that are yet to be collected would essentially amount to an interest-free loan of the amount of the taxes by the retailers to the state. Any study of changing the collection point of taxes should be done exclusively by the comptroller as the main taxing authority of the state.

**Contractor performance.** CSSB 370 would help to improve contractor performance by establishing liquidated damages at a level that would cover the actual cost of delays. It also would allow TxDOT to take timeliness into consideration in determining if contractors are suitable to compete in the bidding process. Following the original Sunset Commission staff recommendation of prohibiting contractors who failed to meet timeliness requirements on previous projects from participating in the bidding process would increase contract costs because low bidders would often be excluded. Additionally, timeliness is not necessarily a good predictor of future performance as unforeseen and uncontrollable conditions, such as weather, often play a large part in timeliness.

**Traffic congestion and noise.** CSSB 370 would give TxDOT needed flexibility to study and implement methods of reducing traffic congestion and noise on the state highway system. Any changes would be subject to the approval of the commission. One of the most important functions given to TxDOT would be ability to collect tolls in order to force congestion mitigation. By placing tolls on heavily used segments of the state highway system at certain times of the day, traffic congestion on those segments could be spread out more evenly among other roads in the highway system. Tolls also could be used to fund preventative maintenance that would allow TxDOT to fix problems before they became so large as to necessitate the closure or severe limitation of traffic on the segment of the highway.

**Condemnation.** CSSB 370 would not include proposals to pay for additional costs when property is condemned. These additional costs, called the *Schmidt* and *Westgate* factors for the names of the Texas Supreme Court cases that expressly disallowed their inclusion as a compensable property interest, would significantly raise the cost of obtaining rights-of-way for the construction of highways.

In *State v. Schmidt*, 867 S.W.2d 769 (Tex. 1993), the Supreme Court determined that, after part of a property was condemned for highway purposes, the loss of market value to the remaining property did not include any loss in value due to traffic patterns, convenience of access, visibility or disruption due to construction activities. The factors excluded from market value in the *Schmidt* case had never been allowed in any previous condemnation proceeding precisely because of the cost to local governments and the state in making transportation planning decisions. When buying a piece of property, a landowner has no expectation of the traffic flow or visibility of the property remaining exactly the same as it is when the property was purchased. The changes to traffic flow and visibility are all costs of living in a city. The owners of the property enjoy the benefits of improvements to these items, but in order to enjoy those benefits, they must bear the risk that such changes could cause a diminishment in their property value.

In *Westgate, Ltd. v. State*, 843 S.W.2d (Tex. 1992), the Supreme Court held that a property owner could not receive compensation for any loss in market value caused by a proposed project until the date of the hearing by the condemnation commissioners. The court found that condemnation occurred at the time of the hearing and, thus, any compensation for losses occurring before that date would be purely prospective. The plaintiffs in *Westgate* argued that property started to diminish in value from the time a project was finalized. The court found that, if a property owner could be allowed to determine market value before condemnation occurred, it would allow prospective takings and create significant uncertainty in the cost of transportation construction projects.

**Heavy truck damage.** CSSB 370 would not modify the registration fees or limit the ability of heavy trucks to travel on state roadways because it would severely impede the flow of NAFTA traffic through the state. Vehicle overweight permits were used long before the authority to grant such permits was given to TxDOT, but in order to receive a permit, a motor carrier would have to receive an individual permit from each county the carrier would travel through. Allowing for a central location of such permits provides for a more efficient system of permitting for such traffic.

### **Texas Turnpike Authority**

**Moving TTA to TxDOT.** The transfer of the TTA to TxDOT would allow TxDOT to construct new tollways in addition to its current program of constructing highways. Tollways can be very useful in the development of a state highway system because they can be paid for entirely with the tolls collected on the roads. The current operation of TTA receives no state appropriations; it is entirely self-sustaining. Allowing such projects to be included in TxDOT's planning for expansion of the state highway system would promote greater financial flexibility and allow for the construction of additional roads to meet the demands of a fast-growing population.

Toll roads are used extensively in other areas of the country to fund highway construction and have been very successful in the areas in Texas where they have been built. Toll roads allow a greater nexus between the use and the financing of the road. Under current funding structure, all Texas taxpayers pay for the construction of new roads though motor fuels tax regardless of whether they use those roads or not. By linking use to funding, only those who actually use the road would be required to pay for its construction, maintenance and operation. Toll roads also have the benefit of charging motorists from out of state for the use of these roads. With the increased traffic volume due to international trade, the use of the Texas highway system by those who do not support it has increased. Allowing TxDOT to charge all persons who use the road a fee for its use would allow TxDOT to collect from those who use the road but would not otherwise support it. The transfer of toll road authority to TxDOT would not result in a proliferation of toll roads throughout the state because toll roads are only viable in areas where the volume of traffic would be able to sustain the cost of construction and maintenance of the road.

The transferred TTA division would have all of the powers of TTA and would be improved to provide better service. The board of TTA would be trimmed, and many functions would be transferred to TxDOT to promote efficiency. More importantly, CSSB 370 would remove the restriction that funds from one project could not be used to help support other projects. By removing this restriction, toll projects that are bringing in surplus revenue could help to fund additional toll and nontoll projects. The imposition of this restriction on TTA projects has hampered its ability to expand the number of projects because each must be independently funded.

TxDOT would continue to use the same proven practices of TTA in constructing toll roads and ensuring their financial success. It would be able to draw upon the experience of TTA in its construction projects to determine what projects to undertake and how to avoid any problems with such projects. It also would be able to more fully integrate these toll roads into the overall state highway system so that they are spread out across the state and are used to help spread the traffic burden from the free roads in the state highway system.

### **North Texas Tollway Authority and Other Regional Tollway Authorities**

**Creating NTTA.** The NTTA is the logical successor to TTA in the Dallas-Fort Worth Metroplex. Due to the transfer of the TTA to TxDOT in Austin, a local successor authority would be needed to continue the work of the TTA in the area, maintain close ties with the region to continue the smooth operation of current projects, plan for future development in the area, and ensure that surplus revenue of North Texas tollways are not funnelled to other parts of the state.

The current scope of TTA is very similar to NTTA. While TTA is billed as a statewide organization, it is headquartered in Dallas and once it transferred its rights in the Houston Ship Channel Bridge to the Harris County Tollway Authority, all of its current projects have been located in the Dallas-Fort Worth area. NTTA would focus its efforts in the Metroplex, allowing those projects underway in the area to receive the full attention of the authority. TTA has been distracted from its current projects by examining other areas where tollways could be built. NTTA could concentrate just on the region that already has significant toll road success and plan for its future growth. TTA is currently considering six projects in the Dallas Metroplex and six projects in other areas. The funding for those other projects would be transferred with TTA to TxDOT, but the six projects in the Metroplex would continue to be examined by NTTA.

NTTA would enhance local control of transportation needs in the area. Rather than have a board composed of persons from all over the state who may not care about the transportation needs of the Metroplex, NTTA's board would be composed of people inside and adjacent to the region who



have a direct interest in how the system operated. Additionally, because four of the members would be appointed by the counties in the area, they would be more accountable to the residents of the region for raising toll rates and failing to maintain the roads.

The separation of the NTTA into a different structure from TxDOT and TTA would not create any problems of misplanning transportation needs. A problem occurred in the construction of the Houston Ship Channel Bridge when funding for the feeder roads leading to the bridge ran short, and they were not completed by the time the bridge was completed. A scenario like that would not occur again because of that experience and also because of the increased cooperation that would be needed between any RTA and TxDOT to construct new projects. In the current market, it is highly unlikely that revenue bonds alone would be sufficient to completely fund a project. Such a shortfall of funding has led to the recent partnerships between TTA and TxDOT in the construction of current TTA projects. CSSB 370 would require cooperation between RTAs and TxDOT in any new projects because TxDOT would have to partially fund the project.

RTAs and the NTTA also would be required to prepare system plans that would show the projected growth in the area and where toll roads may be needed in the future. Such plans would allow coordination with TxDOT's statewide plan to ensure that all roads constructed combined to meet the state's transportation needs. Additionally, examination of toll road revenue bonds today is much more sophisticated. The bonds issued for such construction would not be purchased on the market unless it was clear that the project was viable and would have sufficient connections to other roadways.

NTTA would not be a unique organization. Harris County has its own tollway authority established specifically for that county, and the Dallas-Fort Worth area should be allowed the same advantages as have been given to Houston.

**Allowing other RTAs.** RTAs should be allowed for the same reason the state would allow the creation of the NTTA and the Harris County Tollway Authority: local control and responsiveness to local needs. These RTAs would not be patched together to build roads without proper financial

stability and support. The most likely scenario of starting up these local RTAs would be to allow TxDOT to build a toll road, then once its investment was paid off, transfer that road to a local RTA that could use it to expand the system in the area. RTAs could be especially useful along the border where traffic from Mexico could be charged for using Texas roads. Because of the requirements of the bill, no additional RTAs would be created that were not approved by the commission. Such a strict scrutiny would help to ensure that RTAs were only created that have sufficient assets to meet the needs of the area.

**Changing financing.** CSSB 370 would remove the restriction currently applied to TTA that funds from one project could not be used to fund or begin any other projects. This restriction would also be removed for the TTA division transferred to TxDOT. The purpose of removing this prohibition would be to provide greater flexibility in financing additional projects based on past successes. NTTA and other RTAs would still have to abide by the financially conservative requirements of toll road construction so that they would not over extend themselves beyond what they could afford to pay off.

**Condemnation of property.** CSSB 370 would impose an additional restriction on the condemnation of property by TTA and any RTAs that would require them to wait at least 90 days between the filing of a petition for condemnation and the declaration of a taking. This change would be helpful to property owners who would be given the opportunity to get the information and the resources necessary to properly contest a valuation if they thought it was below the market value of their property. Allowing TTA or any other RTA to immediately move onto property after this declaration was filed, using a procedure called a “quick take,” would not adequately protect property owners.

CSSB 370 also would affirmatively place the holding of the Texas Supreme Court in the *Westgate* case into statute by stating that the date the declaration was filed for that property would be the date on which the fair market value of the property would be judged. Such a change would help to promote certainty in valuation of property and ensure that owners have the opportunity to get information on what they believe the market value of their property was before the taking was declared.

**Sunset review.** CSSB 370 would build in a quick review time for the NTTA and other RTAs created before 2000 in order to ensure that such organizational structures were beneficial to the overall transportation system in Texas. This review would be strictly for information purposes, there is no authority to disband the NTTA or any other RTA if the Legislature failed to continue the agencies. While sunset review does take some time away from agency operations, it has been proven to be effective in improving operations to a point that the time used for the review has been more than made up in other savings. Sunset review of NTTA would be proper because of the substantial amount of state assets transferred to the NTTA by CSSB 370.

**OPPONENTS  
SAY:**

CSSB 370 would fail to address transportation needs as the Texas transportation system heads into the 21st Century because it would not attempt to remedy wasted administrative costs in transportation construction and maintenance, it would fail to increase the use of privatization for certain functions, it would expand the amount of bureaucracy by allowing the creation of RTAs, and it would not change the way property owners are compensated for takings of their property.

**Texas Department of Transportation**

**Continuing TxDOT.** While TxDOT does serve a number of important functions and should be continued, a number of inefficiencies remain that should be have been addressed by the Sunset process and would not be changed by CSSB 370. The worst of these problems is the excessive administrative costs and bureaucracy associated with TxDOT.

According to federal highway administration figures, administrative costs make up 10.9 percent of all Texas expenditures for highway construction and maintenance. The national average is 7.4 percent. According to one critical review of TxDOT, the agency has increased its bureaucracy over the past decade, increased administrative costs, and been unwilling to conform to changes and suggestions that have helped to improve other state agencies, such as expansion of privatization and greater accountability.

**Funding issues.** Funding flexibility may be helpful in creating new ways for TxDOT to meet its shortfall of funds for construction and maintenance,

but such flexibility should be controlled to ensure that all funds are spent on projects that support TxDOT's core function of creating and maintaining an excellent transportation system.

TxDOT has recently branched out into areas that do not support its core functions, such as the promotion of tourism and travel in Texas. These functions should be handled by the Department of Commerce, the agency designated to promote tourism in Texas. The funds that TxDOT has spent on these projects have detracted from other, more essential, functions of the agency. The Texas Highways magazine, for example, was supposed to be entirely self sustaining but has operated in a shortfall for several years. The creation of other supposedly self-sustaining or revenue-generating projects could also suffer the same fate.

**State Infrastructure Bank.** The SIB would require matching funds from the state to begin operations. Because no new appropriations would be included to fund such matching amounts, they would have to be drawn from existing TxDOT funds. Such a shift in funds would reduce the dollar volume of projects that could be completed during the time that TxDOT builds the nucleus of the funds needed to make the SIB operational. This may result in some projects that are ready for funding being temporarily delayed.

Revenue bonds should not be used until the SIB is established as a successful source of providing funding. The recommendation of the Sunset Advisory Commission was to not allow the SIB to obtain bonding authority until it could demonstrate its usefulness at the end of an initial four-year period. Allowing the SIB to directly start up with revenue bonds would allow the state to incur debts for an unproven financing structure that may not be a viable source of funding for future transportation needs.

**Privatization.** CSSB 370 would reduce the current statutory goal of creating a balance between in-house and private sources for contracting for engineering and design services. It also would begin only a small pilot project to study the effectiveness of motor vehicle maintenance privatization. More privatization should be required of TxDOT, and studies of privatization should increase.

TxDOT has begun to contract out maintenance services for the highway system and has found significant savings, but the amount of privatization is still low, ranging from 22 to 37 percent in the various districts. Those figures are also inflated because of the calculation system TxDOT uses to determine its privatization levels. TxDOT should be required to attempt to achieve an equal amount of private and in-house services.

**Fuel tax collections.** The Sunset Advisory Commission recommended requiring TxDOT and the comptroller to conduct a cost-benefit analysis of changing the point of collection of the motor fuels tax. The motor fuels tax supplies nearly 50 percent of TxDOT operating revenues. Currently, the tax is collected at the distribution point. If the tax collection were shifted to the terminal, the amount of fraud and tax avoidance currently in the system could be reduced. Various sources estimate the amount that could be gained by changing the point of tax collection at anywhere from \$10 to \$100 million annually. Increased revenues also would benefit Texas schools as one-fourth of motor fuels tax revenue is dedicated to the Available School Fund.

**Contractor performance.** TxDOT should increase the link between meeting timeliness requirements and the ability of a contractor to get future contracts, as recommended by the staff of the Sunset Advisory Commission. A number of contractors are routinely awarded contracts regardless of how far behind they were on other projects, including delays in current projects. In order to cut down on costly delays, TxDOT should be required to link timeliness and the ability of a contractor to bid on future contracts. TxDOT should also consider the use of incentives to help contractors complete projects on time or ahead of schedule.

**Tolls for congestion mitigation.** Adding tolls on previously nontoll roads is poor policy even if used for good purposes. These roads have been paid for by the taxpayers of the state, and they should not be forced to pay tolls to use those roads even in order to pay for maintenance. If TxDOT needs additional money for such functions, it should present its case to the Legislature for additional funding. Toll roads, especially the ones proposed for congestion mitigation that would only operate on certain segments and at certain times of the day, are a regressive tax on the use of the road. If used at all, tolls should only be used to finance the initial construction and

operation of a road; once a road has been cleared of its debt, it should become a free public road.

**Condemnation.** Current law on takings as defined in two Texas Supreme Court cases, *Schmidt* and *Westgate*, fails to compensate property owners for the full amount of the loss of value they suffer when their property or a portion of that property is taken for public use. Both cases involved takings by TxDOT. The damages that property owners failed to be awarded because of the decisions in these cases included damages for any loss in market value due to traffic patterns, convenience of access, visibility, disruption due to construction activities or the loss in value from the time the project was finalized until the time the property was actually condemned by TxDOT. Unless these limitations are changed, those whose property is condemned would not receive full compensation for that taking, as is required under Art. 1, sec. 17 of the Texas Constitution. The amount of money that would be required to compensate these property owners is small compared to the total amount of the TxDOT budget for such property acquisition.

**Heavy truck damage.** HB 2060 by Russell, enacted in 1989, established an overweight permit authorizing vehicles to exceed statutory axle and gross weight tolerances on certain roads, essentially allowing vehicles of up to 84,000 pounds to travel on most Texas roads. The damage caused by these heavy trucks is not made up for by the permit fees required, and it creates an unfair burden on taxpayers who must pay to fund the repairs needed because of these trucks. One proposal would be to increase the motor fuels tax on diesel fuel to fund joint TxDOT and county projects to repair the damage caused by these trucks.

### **Texas Turnpike Authority**

**Moving TTA to TxDOT.** Moving TTA to TxDOT would be an empty gesture designed simply to authorize TxDOT to construct toll roads. Because the entire assets and operations of TTA would be transferred to NTTA, the only thing TxDOT would gain from the move would be the authority to build toll roads, a few TTA employees who did not wish to join NTTA or were not accepted, and \$10 million.

One of the stated purposes for the transfer of TTA to TxDOT is the ability for one statewide agency to have control over the planning of the state transportation system. The need for this sort of central control became apparent in the construction of the Houston Ship Channel Bridge, constructed by TTA. The bridge did not have TxDOT roads leading to it or away from it and thus was used at less than its full capacity. While moving the construction of new toll roads to TxDOT would help remedy such coordination problems, allowing new RTAs, including the NTTA, would diffuse planning of the state's transportation system even more than it was with TTA. Such a diffusion could cause additional planning problems where roads are changed by one agency and the plans are not communicated to the other agencies affected, creating inefficiency in the highway system.

Allowing TxDOT to construct toll roads would create a greater reliance on using tolls to fund additional transportation projects and would add additional burdens to motorists in Texas. Toll roads are a completely different method of road finance than what has traditionally been done in Texas. All roads constructed by TxDOT are paid for and the maintenance and operation of those roads is funded by a tax on motor fuels. Toll roads, on the other hand, would allow the state to incur a debt to pay for the construction of the road and then charge those who use the road in order to pay off that debt and pay for the operation and maintenance of that road. This method of finance could allow a proliferation of toll roads because of decreases in funding at the federal level and loss of revenues from the motor fuels tax.

Toll roads are a type of regressive tax on the persons who use the road. The regressivity of tolls is based on the fact that it takes a larger percentage of income from lower-income travelers to use toll roads than wealthy travellers. Roads should not be built for only those who can afford to use them but for the benefit of all. Those who cannot afford to use the toll road every day would be forced to spend more for the gas to go around the road and would have to travel on other congested and poorly maintained roads.

TxDOT's inexperience with toll road construction, and its history of construction delays and administrative costs, could be very harmful to the construction and operation of these debt-financed roads. In order to receive investments for these funds, the agency constructing the roads must have a

good reputation of delivering the product in a timely and cost-efficient manner. TxDOT has failed to do this on its other construction projects, and there is no reason to expect it would perform any better on toll road projects.

### **North Texas Tollway Authority And Other Regional Tollway Authorities**

**Creating NTTA.** The NTTA would essentially be the successor agency to the TTA, taking over all its assets and liabilities except for \$10 million paid to TxDOT. While the transfer should not have any significant repercussions on the operation of the current tollways because most of the employees of TTA would be transferred to NTTA, problems could occur in this new organization. TTA has spent many years developing a reputation in the bond community as providing a sound and solid investment. While the same functions and many of the same people would move to NTTA, the fact that it would be a new organization without a proven track record would hamper its ability to receive the kind of investment trust given to TTA. A lack of experience could also promote waste and inefficiency in the new agency as it attempts to determine its niche in the transportation system.

NTTA would be subject to political pressures because of the influence of local politics on the authority. A majority of the members of the board of NTTA would be selected by the county commissioners of the four counties in the system. These four representatives would be pressured by their own counties to run NTTA in a way that is beneficial to each county, while not necessarily taking the benefits to the whole area into account. TTA, in contrast, consists of members that are appointed by the governor and represent different parts of the state. Because they are somewhat removed from the local politics of the area, they have been able to make more objective decisions about the operation of current projects and development of future projects in the area.

**Allowing other RTAs.** One of the goals of the Sunset review process is to eliminate bureaucracy and waste in state government. One of the reasons given for the transfer of TTA to TxDOT is the ability to save on administrative costs and other costs through economies of scale. Allowing the establishment of any number of regional turnpike authorities would



negate any savings gained by the transfer of this agency. Additionally, these local RTAs would be more likely to suffer from problems when they attempt projects without the experience of TTA. That agency has spent decades gaining a good reputation in the bond community and discovering the potential problems involved in tollway construction. Allowing new agencies to attempt to do the same thing may cause problems including situations where unforeseen delays could cause these RTAs to default on bonds.

**Changing financing.** One of the protections added to ensure that the TTA would adopt a conservative financial approach to indebtedness was to prohibit funds from one project to help pay for another. Once projects are linked together in this manner, the failure of one project could harm the financial stability of the other project. Until these RTAs, including the NTTA, prove that they can manage their financial requirements, they should continue to be prohibited from co-mingling funds from different projects.

**Condemnation of property.** Requiring turnpike authorities, including the TTA division of TxDOT, to wait 90 days before being able to file a declaration of takings would severely hamper construction projects. Toll roads, being financed by bonds and other debt structures, are extremely time critical. Any delays can be very costly to the project and to the ability of the authority to sell bonds on future projects. Requiring a 90-day waiting period for takings actions to proceed would delay these projects and could severely hamper their cost savings.

**Sunset review.** CSSB 370 would require the NTTA and any RTA created before 2000 to undergo sunset review in 2002. While sunset reviews can be a valuable tool to determine changes that could be made to agencies, sunset review is very costly to the state and extremely disruptive to the agency subject to review. In order to comply with the review, the agency must, in most cases, virtually stop all of its productive work to focus on the review process. This redirection of efforts can be very costly in time-pressured projects like those that would be undertaken by these RTAs. These agencies, even though they would be new, should be subject to the standard 12-year cycle of review, so that they at least have the opportunity to establish a working history before being reviewed to determine if their functions should be continued.

NOTES: **Comparison of Senate-passed version to committee substitute.**

The committee substitute to SB 370 would make a number of changes, including:

**TxDOT**

- deleting requiring TxDOT to install, operate and maintain an emergency call box system paid for by a \$1 assessment on motor vehicle insurance policies. (This proposal failed to be passed by the House as HB 1437 by Carter);
- deleting allowing TxDOT to provide relocation assistance to transferred employees;
- redirecting savings from the vehicle maintenance privatization pilot project from county road assistance to the State Infrastructure Bank;
- requiring bond issues by the commission for the SIB to be reviewed by the Texas Bond Review Board;
- adding the noise abatement pilot project;
- requiring the commission to adopt rules for the living logo program, limiting logos to counties with population of 500,000 or more;
- allowing the commission to enter into contracts for major agricultural interest signs;

**TTA**

- requiring TxDOT to find heavy passenger and commercial traffic before allowing tolls on nontoll segments of the state highway system;
- deleting specific compensation for the administrative head of the TTA division;
- adding standard Sunset Advisory Commission provisions to TTA;

**RTAs**

- prohibiting RTAs from filing a takings declaration for 90 days after the condemnation petition was filed;
- requiring advances made to RTAs to be repaid as required under the Constitution;

- removing the requirement that one county in an RTA have a population of 500,000 unless along a border;
- specifying when RTAs would be subject to sunset review;
- subjecting rules adopted by RTAs to the Administrative Procedures Act;
- allowing an RTA to contract with TxDOT;
- requiring RTAs to pay actual damages when entering property;
- allowing RTAs to condemn property to mitigate environmental effects resulting from the construction or operation of a tollway;

#### **NTTA**

- requiring the NTTA to pay \$10 million by December 31, 1997. (The Senate-passed version of SB 370 would have required NTTA to pay an amount agreed to by NTTA and TxDOT by October 31, 1997.)

#### **Related bills**

- HB 2740 by Uher would have allowed property owners to be compensated for *Schmidt* factors in condemnation proceedings. HB 2740 was set on the House General State Calendar but was not considered by the House;
- HB 1794 by Krusee would have allowed property owners to set a date before the date of the commissioners' hearing to determine market value of the property. The date would be allowed to go back as far as the date the first property was condemned in relation to the project. HB 1794 was set on the House General State Calendar but was not considered by the House;
- HB 1898 by Alexander, allowing the relocation of utility structures in a manner similar to that allowed in CSSB 370, passed the House on May 1 and has been reported favorably by the Senate International Relations, Trade and Technology Committee;
- SB 566 by Truan, which has passed both the House and Senate, would require TxDOT to conduct a study of additional transportation needs caused by NAFTA and increased international trade;

- SB 698 by Armbrister, which has been sent to the governor, would allow TxDOT to contract with research institutions other than the University of Texas and Texas A&M to conduct research studies;
- SB 927 by Lindsay, which has been sent to the governor, would allow the commission to authorize TxDOT, in certain cases, to acquire the entire tract of land rather than just a portion needed for construction when condemning property;
- SB 1376 by Ellis, which passed the Senate and has been reported favorably by the House Civil Practices Committee, would place the TxDOT contract dispute resolution process in statute; and
- SB 1661 by Shapiro, which has passed both the House and the Senate, would allow TxDOT, at its discretion, to waive the payment of indirect costs by local governmental entities in transportation construction projects.