

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1420
By: Hinojosa et al.
Government Organization
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The predecessor to the Texas Department of Transportation (TxDOT), the Texas Highway Department, was created in 1917 to direct county road construction programs. Since then, TxDOT's mission has evolved to delivering a 21st century transportation system by providing for the safe, efficient, and effective means for the movement of people and goods throughout the state.

TxDOT is subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the legislature. TxDOT underwent a special purpose Sunset review, and this bill contains the recommendations that continue to be appropriate for consideration by the legislature.

The Sunset Advisory Commission concluded that TxDOT has worked diligently to address many of the previous recommendations, but determined more time is needed to judge the depth and effect of the changes before trust and confidence in TxDOT is fully restored. This bill continues the agency and contains several additional statutory modifications that seek to address the demand for more transparency, accountability, and responsiveness from TxDOT.

C.S.S.B. 1420 amends current law relating to the continuation and functions of the Texas Department of Transportation and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Transportation in SECTION 12 (Section 201.703, Transportation Code) of this bill.

Rulemaking authority previously granted to the Texas Transportation Commission (TTC) is rescinded in SECTION 13 (Section 201.801, Transportation Code) of this bill.

Rulemaking authority is expressly granted to TTC in SECTION 13 (Section 201.801, Transportation Code), SECTION 15 (Section 201.807, Transportation Code), SECTION 16 (Sections 201.992, 201.995, 201.996, 201.997, Transportation Code), SECTION 18 (Section 223.002, Transportation Code), SECTION 19 (Section 223.017, Transportation Code), SECTION 21 (Section 391.006, Transportation Code), SECTION 28 (Section 394.006, Transportation Code), and SECTION 30 (Sections 394.0205 and 394.0206, Transportation Code) of this bill.

Rulemaking authority previously granted to TTC is modified in SECTION 22 (Section 391.0355, Transportation Code) and SECTION 24 (Section 391.065, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. (a) Amends Section 201.051, Transportation Code, by adding Subsection (b-1) and amending Subsections (d), (f), (g), (h), and (j), as follows:

(b-1) Prohibits a member of the Texas Transportation Commission (TTC) from accepting a contribution to a campaign for election to an elected office. Provides that if a member of TTC (commissioner) accepts a campaign contribution, the person is

considered to have resigned from the office and the office immediately becomes vacant. Requires that the vacancy be filled in the manner provided by law.

(d) Provides that a person is not eligible to serve as a commissioner, rather than provides that a person, except as provided by Subsection (e), is not eligible for appointment as a commissioner, if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization that is regulated by or receives funds from the Texas Department of Transportation (TxDOT);

(2) directly or indirectly owns or controls more than 10 percent interest in a business entity or other organization that is regulated by or receives funds from TxDOT;

(3) uses or receives a substantial amount of tangible goods, services, or funds from TxDOT, other than compensation or reimbursement authorized by law for TTC membership, attendance, or expenses; or

(4) is registered, certified, or licensed by TxDOT.

(f) Provides that an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, aviation, or outdoor advertising is not eligible to serve as a commissioner. Deletes existing text prohibiting a Texas trade association of automobile dealers from being a commissioner.

(g) Provides that the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, aviation, or outdoor advertising is not eligible to serve as a commissioner. Deletes existing text prohibiting the spouse of an officer, manager, or paid consultant of a Texas trade association of automobile dealers from being a commissioner.

(h) Provides that a person required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of TxDOT is not eligible to, rather than is not authorized to, serve as a commissioner.

(j) Redefines, in this section, "Texas trade association."

SECTION 2. Amends Section 201.053(a), Transportation Code, to require the governor to designate, rather than periodically designate, one commissioner as the chair of TTC, who is required to serve as presiding officer of TTC.

SECTION 3. Amends Section 201.057(a), Transportation Code, as follows:

(a) Provides that it is a ground for removal from TTC if a commissioner:

(1) does not have at the time of taking office , rather than at the time of appointment, or maintain during service on TTC, the qualifications required by Section 201.051;

(2) violates a prohibition provided by Section 201.051;

(3) cannot discharge the commissioner's duties for a substantial part of the term for which the commissioner is appointed because of illness or disability; or

(4) is absent from more than half of the regularly scheduled TTC meetings that the commissioner is eligible to attend during a calendar year, unless the absence is excused by majority vote of TTC.

SECTION 4. Amends Section 201.058, Transportation Code, to require TxDOT to provide to the commissioners, as often as necessary, information concerning the commissioners' qualification for office, rather than the commissioners' qualifications for office under Subchapter B (Texas Transportation Commission), and their responsibilities under applicable laws relating to standards of conduct for state officers.

SECTION 5. Amends Subchapter C, Chapter 201, Transportation Code, by adding Section 201.118, as follows:

Sec. 201.118. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) Requires TTC to develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of TxDOT rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use By Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under TxDOT's jurisdiction.

(b) Requires that TxDOT's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires TxDOT to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

SECTION 6. Amends Section 201.204, Transportation Code, to provide that unless continued in existence as provided by Chapter 325 (Texas Sunset Act), Government Code, TxDOT is abolished September 1, 2015, rather than September 1, 2011.

SECTION 7. Amends Subchapter D, Chapter 201, Transportation Code, by adding Sections 201.210 and 201.211, as follows:

Sec. 201.210. LEGISLATIVE LOBBYING. (a) Prohibits TTC, or a TxDOT employee, in addition to Section 556.006 (Legislative Lobbying), Government Code, from using money under TxDOT's control or engaging in an activity to influence the passage or defeat of legislation.

(b) Provides that violation of Subsection (a) is grounds for dismissal of an employee.

(c) Provides that this section does not prohibit TTC or TxDOT employee from using state resources to:

(1) provide public information or information responsive to a request; or

(2) communicate with officers and employees of the federal government in pursuit of federal appropriations or programs.

Sec. 201.211. ETHICS AFFIRMATION AND HOTLINE. (a) Requires a TxDOT employee to annually affirm the employee's adherence to the ethics policy adopted under Section 572.051(c) (requiring each state agency to adopt a written ethics policy for the agency's employees and to distribute a copy of the ethics policy and this subchapter to each new employee and new officer), Government Code.

(b) Requires TxDOT to establish and operate a telephone hotline that enables a person to call the hotline number, anonymously or not anonymously, to report alleged fraud, waste, or abuse or an alleged violation of the ethics policy adopted under Section 572.051(c), Government Code.

SECTION 8. Amends Section 201.401(a), Transportation Code, as follows:

(a) Prohibits a person from being an employee of TxDOT who is employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), rather than prohibits a person from being an employee of TxDOT who is exempt from the state's position classification plan or compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, if the person is:

- (1) an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance or outdoor advertising; or
- (2) the spouse of an officer, manager, or paid consultant described by Subdivision (1).

SECTION 9. Amends Section 201.404(b), Transportation Code, as follows:

(b) Requires the executive director of TxDOT (director) or the director's designee to develop a system of annual performance evaluations that are based on documented employee performance. Requires that all merit pay for TxDOT employees be based on the system established under this subsection. Requires that the annual performance evaluations developed under this subsection include the evaluation of an employee's professionalism, diligence, and, responsiveness to directives and requests from TTC and the legislature.

SECTION 10. Amends Section 201.601, Transportation Code, as follows:

Sec. 201.601. STATEWIDE TRANSPORTATION PLAN. (a) Requires TxDOT to develop a statewide transportation plan covering a period of 24 years that contains all modes of transportation, including:

- (1) highways and turnpikes;
- (2) aviation;
- (3) mass transportation;
- (4) railroads and high-speed railroads; and
- (5) water traffic.

(a-1) Requires that the plan:

- (1) contain specific, long-term transportation goals for the state and measurable targets for each goal;

(2) identify priority corridors, projects, or areas of the state that are of particular concern to TxDOT in meeting the goals established under Subdivision (1); and

(3) contain a participation plan specifying methods for obtaining formal input on the goals and priorities identified under this subsection from other state agencies, political subdivisions, local transportation entities, and the general public.

(b) Requires, as appropriate, TxDOT and the entities listed in Subsection (a-1)(3), rather than TxDOT and such an agency or political subdivision, to enter into a memorandum of understanding relating to the planning of transportation services. Deletes existing text requiring TxDOT, in developing the plan, to seek opinions and assistance from other state agencies and political subdivisions that have responsibility for the modes of transportation listed by Subsection (a).

(c) Makes no changes to this subsection.

(d) Requires TxDOT to consider the goals and measurable targets established under Subsection (a-1)(1) in selecting transportation projects, rather than requires TxDOT to consider the performance measures in selecting transportation improvements. Deletes existing text requiring that the plan include a component, published annually, that describes the evaluation of transportation improvements based on performance measures, such as indices measuring delay reductions or travel time improvements.

(e) Requires TxDOT annually to provide to the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with primary jurisdiction over transportation issues an analysis of TxDOT's progress in attaining the goals under Subsection (a-1)(1). Requires TxDOT to make the information under this subsection available on its Internet website.

(f) Requires TxDOT to update the plan every four years or more frequently as necessary.

SECTION 11. Amends Subchapter H, Chapter 201, Transportation Code, by adding Sections 201.6015 and 201.620, as follows:

Sec. 201.6015. INTEGRATION OF PLANS AND POLICY EFFORTS. Requires TxDOT, in developing each of its transportation plans, programs, and policy efforts, to clearly reference the 24-year plan under Section 201.601 and specify how the plan, program, or policy effort supports or otherwise relates to the specific goals under that section.

Sec. 201.620. COORDINATION WITH METROPOLITAN PLANNING ORGANIZATIONS TO DEVELOP LONG-TERM PLANNING ASSUMPTIONS. Requires TxDOT to collaborate with metropolitan planning organizations to develop mutually acceptable assumptions for the purposes of long-range federal and state funding forecasts and use those assumptions to guide long-term planning in the statewide transportation plan under Section 201.601.

SECTION 12. Amends Section 201.703, Transportation Code, as follows:

Sec. 201.703. New heading: EXPENDITURES AND CONTRACTS FOR TRANSPORTATION PROGRAMS OR PROJECTS NOT ON THE HIGHWAY SYSTEM. (a) Authorizes TxDOT in conjunction with the Federal Highway Administration to spend for a transportation program related to the improvement of a transportation project not on the state highway system, rather than a road not in the state highway system, money appropriated by the United States Congress, allocated by the

United States secretary of transportation to TxDOT, and eligible under federal law for expenditure on the program or project, rather than for expenditure on the road. Authorizes that federal money to be matched or supplemented by an amount of state money necessary for proper construction and performance of the work. Makes a nonsubstantive change.

(b) Prohibits state money from being used exclusively for a transportation program or for the improvement of a transportation project not on the state highway system, rather than for the construction of a road not in the state highway system.

(c) Provides that the expenditure of state money is limited to:

(1) the cost of construction and engineering, overhead, and other costs on which the application of federal money is prohibited or impractical; and

(2) the cost of providing oversight required under federal law.

(d) Authorizes TxDOT, with regard to work for a transportation project that is not on the state highway system, to:

(1) enter into a contract for the work in the same manner as for work on a transportation project that is on the state highway system; or

(2) by rule authorize a local government to enter into a contract for the work in the same manner as a local government is authorized to contract for work on a comparable project on the state highway system.

SECTION 13. (a) Amends Section 201.801, Transportation Code, as follows:

Sec. 201.801. New heading: COMPLAINTS. (a) Requires TxDOT to maintain a system to promptly and efficiently act on complaints filed with TxDOT. Requires TxDOT to maintain information about the parties to and the subject matter of a complaint and a summary of the results of the review or investigation of the complaint and the disposition of the complaint.

(b) Creates this subsection from existing text. Requires TxDOT to make information available describing its procedures for complaint investigation and resolution. Deletes existing text requiring TxDOT to prepare information of public interest describing the functions of TxDOT and TxDOT's procedures by which a complaint is filed with TxDOT and resolved by TxDOT. Deletes existing text requiring TxDOT to make the information available to the public and appropriate state agencies.

(c) Redesignates existing Subsection (d) as Subsection (c). Requires TxDOT to periodically, rather than at least quarterly and until final disposition of a written complaint that is filed with TxDOT and that TxDOT has the authority to resolve, notify the parties to the complaint of its status until final disposition unless the notice would jeopardize an undercover investigation.

(d) Requires TTC to adopt rules applicable to each division and district to establish a process to act on complaints filed with TxDOT.

(e) Requires TxDOT to develop a standard form for submitting a complaint and make the form available on its Internet website. Requires TxDOT to establish a method to submit complaints electronically.

(f) Requires TxDOT to develop a method for analyzing the sources and types of complaints and violations and establish categories for the

complaints and violations. Requires TxDOT to use the analysis to focus its information and education efforts on specific problem areas identified through the analysis.

(g) Requires TxDOT to:

(1) compile:

(A) detailed statistics and analyze trends on complaint information, including the nature of the complaints, their disposition, and the length of time to resolve complaints; and

(B) complaint information on a district and a divisional basis; and

(2) report the information on a monthly basis to the division directors, office directors, and district engineers and on a quarterly basis to TTC.

Deletes existing Subsection (b) requiring TTC by rule to establish methods by which consumers and service recipients are notified of TxDOT's name, mailing address, and telephone number for directing complaints to TxDOT. Deletes existing text authorizing TTC to provide for that notification through certain means as set forth.

Deletes existing Subsection (c) requiring TxDOT to keep an information file about each written complaint filed with TxDOT that TxDOT has the authority to resolve, and provide the person who filed the complaint, and each person or entity that is the subject of the complaint, information about the TxDOT's policies and procedures relating to complaint investigation and resolution.

Deletes existing Subsection (e) requiring TxDOT, with regard to each complaint filed with TxDOT, to keep certain information as set forth.

(b) Requires TTC to adopt rules under Section 201.801, Transportation Code, as amended by this section, not later than March 1, 2012.

SECTION 14. Amends Section 201.802(a), Transportation Code, to require TTC to develop and implement policies that provide the public with a reasonable opportunity to appear before TTC and speak on any issue under the jurisdiction of TxDOT, rather than TTC.

SECTION 15. (a) Amends Subchapter J, Chapter 201, Transportation Code, by adding Sections 201.807, 201.808, 201.809, 201.810, and 201.811, as follows:

Sec. 201.807. PROJECT INFORMATION REPORTING SYSTEM. (a) Defines, in this section, "department project."

(b) Requires TxDOT to establish a project information reporting system that makes available in a central location on TxDOT's Internet website easily accessible and searchable information regarding all of the TxDOT's transportation plans and programs, including the unified transportation program required by Section 201.992. Requires TxDOT to post information on its Internet website as required by this subsection as the information becomes available to TxDOT and in a manner that is not cost prohibitive. Requires that the project information reporting system contain information about:

(1) each TxDOT project, including:

(A) the status of the project;

- (B) each source of funding for the project;
- (C) benchmarks for evaluating the progress of the project;
- (D) timelines for completing the project;
- (E) a list of TxDOT employees responsible for the project, including information to contact each person on that list; and
- (F) the results of the annual review required under Subsection (e); and

(2) TxDOT's funds, including each source for TxDOT's funds, and the amount and general type or purpose of each expenditure as described in the comptroller's statewide accounting system, reported by each:

- (A) TxDOT district;
- (B) program funding category as required by Section 201.992(b)(2); and
- (C) type of revenue, including revenue from a comprehensive development agreement or a toll project.

(c) Requires TxDOT, in developing the project information reporting system, to collaborate with:

- (1) the legislature;
- (2) local transportation entities as defined by Section 201.991; and
- (3) members of the public.

(d) Requires TxDOT to make the statistical information provided under this section available on TxDOT's Internet website in more than one downloadable electronic format.

(e) Requires TxDOT, as a component of the project information reporting system required by this section, to conduct an annual review of the benchmarks and timelines of each project included in TxDOT's transportation plans, including the unified transportation program, to determine the completion rates of the projects and whether the projects were completed on time.

(f) Requires TxDOT to update the information contained in the project information reporting system on a regular basis, as specified by TTC rule.

Sec. 201.808. **TRANSPORTATION EXPENDITURE PRIORITIES.** (a) Requires TxDOT to develop a process to identify and distinguish between the transportation projects that are required to maintain the state infrastructure and the transportation projects that would improve the state infrastructure in a manner consistent with the statewide transportation plan required by Section 201.601.

(b) Requires TxDOT to establish a transportation expenditure reporting system that makes available in a central location on the TxDOT's Internet website easily accessible and searchable information regarding the priorities of transportation expenditures for the identified transportation projects.

(c) Requires TxDOT to include in the transportation expenditure reporting system:

(1) reports prepared by TxDOT or an institution of higher education that evaluate the effectiveness of the TxDOT's expenditures on transportation projects to achieve the transportation goal;

(2) information about the condition of the pavement for each highway under the jurisdiction of TxDOT, including the percentage of pavement that the department determines to be in good or better condition;

(3) the condition of bridges, including information about bridge condition scores;

(4) information about peak hour travel congestion in the eight largest metropolitan areas of the state; and

(5) information about the number of traffic fatalities per 100 million miles traveled.

(d) Requires TxDOT to provide the information made available under Subsection (c) in a format that allows a person to conduct electronic searches for information regarding a specific county, highway under the jurisdiction of TxDOT, or type of road.

(e) Requires TxDOT to establish criteria to prioritize the transportation needs for the state that are consistent with the statewide transportation plan.

(f) Requires each TxDOT district to enter information into the transportation expenditure reporting system, including information about:

(1) each district transportation project; and

(2) the category to which the project has been assigned and the priority of the project in the category under Section 201.996.

(g) Requires that the transportation expenditure reporting system allow a person to compare information produced by that system to information produced by the project information reporting system.

Sec. 201.809. STATEWIDE TRANSPORTATION REPORT. (a) Requires TxDOT annually to evaluate and publish a report about the status of each transportation goal for this state. Requires that the report include:

(1) information about the progress of each long-term transportation goal that is identified by the statewide transportation plan;

(2) the status of each project identified as a major priority;

(3) a summary of the number of statewide project implementation benchmarks that have been completed; and

(4) information about the accuracy of previous TxDOT financial forecasts.

(b) Requires TxDOT to disaggregate the information in the report by TxDOT district.

(c) Requires TxDOT to provide a copy of the district report to each member of the legislature for each TxDOT district located in the member's legislative district, and at the request of a member, a TxDOT employee is required to meet with the member to explain the report.

(d) Requires TxDOT to provide a copy of each district report to the political subdivisions located in the TxDOT district that is the subject of the report, including:

- (1) a municipality;
- (2) a county; and
- (3) a local transportation entity as defined by Section 201.991.

Sec. 201.810. DEPARTMENT INFORMATION CONSOLIDATION. (a) Authorizes TxDOT, to the extent practicable and to avoid duplication of reporting requirements, to combine the reports required under this subchapter with reports required under other provisions of this code.

(b) Requires TxDOT to develop a central location on TxDOT's Internet website that provides easily accessible and searchable information to the public contained in the reports required under this subchapter and other provisions of this code.

Sec. 201.811. PUBLIC INVOLVEMENT POLICY. (a) Requires TxDOT to develop and implement a policy for public involvement that guides and encourages public involvement with TxDOT. Requires that the policy:

- (1) provide for the use of public involvement techniques that target different groups and individuals;
- (2) encourage continuous contact between TxDOT and persons outside TxDOT throughout the transportation decision-making process;
- (3) require TxDOT to make efforts toward:
 - (A) clearly tying public involvement to decisions made by TxDOT; and
 - (B) providing clear information to the public about specific outcomes of public input; and
- (4) apply to all public input with TxDOT, including input:
 - (A) on statewide transportation policy-making;
 - (B) in connection with the environmental process relating to specific projects; and
 - (C) into TTC's rulemaking procedures.

(b) Requires TxDOT to document the number of positive, negative, or neutral public comments received regarding all environmental impact statements as expressed by the public through TxDOT's public involvement process. Requires TxDOT to present this information to TTC in an open meeting, and report this information on the TxDOT's Internet website in a timely manner.

(b) Requires TxDOT, not later than September 1, 2011, to establish the central location on TxDOT's Internet website required by Section 201.810, Transportation Code, as added by this section.

SECTION 16. Amends Chapter 201, Transportation Code, by adding Subchapter P, as follows:

SUBCHAPTER P. UNIFIED TRANSPORTATION PROGRAM

Sec. 201.991. DEFINITION. Defines, in this subchapter, "local transportation entity."

Sec. 201.992. UNIFIED TRANSPORTATION PROGRAM. (a) Requires TxDOT to develop a unified transportation program covering a period of 10 years to guide the development of and authorize construction of transportation projects. Requires that the program:

- (1) annually identify target funding levels; and
- (2) list all projects that the TxDOT intends to develop or begin construction of during the program period.

(b) Requires TTC to adopt rules that:

- (1) specify the criteria for selecting projects to be included in the program;
- (2) define program funding categories, including categories for safety, maintenance, and mobility; and
- (3) define each phase of a major transportation project, including the planning, programming, implementation, and construction phases.

(c) Requires TxDOT to publish the entire unified transportation program and summary documents highlighting project benchmarks, priorities, and forecasts in appropriate media and on TxDOT's Internet website in a format that is easily understandable by the public.

(d) Requires TTC, in developing the rules required by this section, to collaborate with local transportation entities.

Sec. 201.993. ANNUAL UPDATE TO UNIFIED TRANSPORTATION PROGRAM.

(a) Requires TxDOT to annually update the unified transportation program.

(b) Requires that the annual update include:

- (1) the annual funding forecast required by Section 201.994;
- (2) the list of major transportation projects required by Section 201.995(b); and
- (3) the category to which the project has been assigned and the priority of the project in the category under Section 201.996.

(c) Requires TxDOT to collaborate with local transportation entities to develop the annual update to the unified transportation program.

Sec. 201.994. ANNUAL FUNDING AND CASH FLOW FORECASTS. (a) Requires TxDOT to:

- (1) develop and publish a forecast of all funds TxDOT expects to receive, including funds from this state and the federal government; and
- (2) use that forecast to guide planning for the unified transportation program.

(b) Requires TxDOT to collaborate with local transportation entities to develop scenarios for the forecast required by Subsection (a) based on mutually acceptable funding assumptions.

(c) Requires TxDOT, not later than September 1 of each year, to prepare and publish a cash flow forecast for a period of 20 years.

Sec. 201.995. MAJOR TRANSPORTATION PROJECTS. (a) Requires TTC by rule to:

(1) establish criteria for designating a project as a major transportation project;

(2) develop benchmarks for evaluating the progress of a major transportation project and timelines for implementation and construction of a major transportation project; and

(3) determine which critical benchmarks must be met before a major transportation project may enter the implementation phase of the unified transportation program.

(b) Requires TxDOT annually to update the list of projects that are designated as major transportation projects.

(c) Requires TTC, in adopting rules required by this section, to collaborate with local transportation entities.

Sec. 201.996. PROGRAM PRIORITY IN PROGRAM CATEGORIES. (a) Requires TTC by rule to:

(1) establish categories in the unified transportation program;

(2) assign each project identified in the program to a category; and

(3) designate the priority ranking of each project within each category.

(b) Requires TxDOT to collaborate with local transportation entities when assigning each project included in the unified transportation program to a category established under Subsection (a).

(c) Requires that the highest priority projects within an applicable category of the unified transportation program be projects designated as major transportation projects.

Sec. 201.997. FUNDING ALLOCATION. (a) Requires TTC by rule, for each funding category established under Section 201.992(b)(2), to specify the formulas for allocating funds to districts and metropolitan planning organizations for:

(1) preventive maintenance and rehabilitation of the state highway system in all districts;

(2) mobility and added capacity projects in metropolitan and urban areas;

(3) mobility and added capacity projects on major state highways that provide statewide connectivity between urban areas and highway system corridors;

(4) congestion mitigation and air quality improvement projects in nonattainment areas;

(5) metropolitan mobility and added capacity projects within the boundaries of designated metropolitan planning areas of metropolitan planning organizations located in a transportation management area;

(6) transportation enhancements project funding; and

(7) projects eligible for federal or state funding, as determined by the applicable district engineer.

(b) Requires TTC, subject to applicable state and federal law, to determine the allocation of funds in all of the other categories established under Section 201.992(b)(2), including a category for projects of specific importance to the state, including projects that:

(1) promote economic opportunity;

(2) increase efficiency on military deployment routes or that retain military assets; and

(3) maintain the ability of appropriate entities to respond to emergencies.

(c) Requires TTC to update the formulas established under this section at least every four years.

Sec. 201.998. **FUND DISTRIBUTION.** (a) Requires TxDOT to allocate funds to TxDOT districts based on the formulas adopted under Section 201.997.

(b) Prohibits TxDOT, in distributing funds to TxDOT districts, from exceeding the cash flow forecast prepared and published under Section 201.994(c).

Sec. 201.999. **WORK PROGRAM.** (a) Requires each TxDOT district to develop a consistently formatted work program based on the unified transportation program covering a period of four years that contains all projects that the district proposes to implement during that period.

(b) Requires that the work program contain:

(1) information regarding the progress of projects designated as major transportation projects, according to project implementation benchmarks and timelines established under Section 201.995; and

(2) a summary of the progress on other district projects.

(c) Requires TxDOT to use the work program to:

(1) monitor the performance of the district; and

(2) evaluate the performance of district employees.

(d) Requires TxDOT to publish the work program in appropriate media and on TxDOT's Internet website.

SECTION 17. Amends Section 202.021, Transportation Code, by amending Subsection (e) and adding Subsection (e-1), as follows:

(e) Authorizes TTC to waive payment for real property transferred to a governmental entity under this section if:

(1) the estimated cost of future maintenance on the property equals or exceeds the fair value of the property; or

(2) the property is a highway right-of-way and the governmental entity assumes or has assumed jurisdiction, control, and maintenance of the right-of-way for public road purposes.

(e-1) Requires that a grant transferring real property under Subsection (e)(2) contain a reservation providing that if property described by that subsection ceases to be used for public road purposes, that real property is required to immediately and automatically revert to this state.

SECTION 18. Amends Section 223.002, Transportation Code, as follows:

Sec. 223.002. New heading: NOTICE OF BIDS. Deletes existing designation of Subsection (a). Requires TxDOT to give notice to interested persons regarding the time and place, rather than publish notice of the time and place, at which bids on a contract will be opened and the contract awarded. Requires TTC by rule to determine the most effective method for providing the notice required by this section.

Deletes existing Subsection (b) requiring that the notice be published in a newspaper published in the county in which the improvement is to be made once a week for at least two weeks before the time set for awarding the contract and in two other newspapers that TxDOT may designate.

Deletes existing Subsection (c) authorizing the notice, instead of the notice required by Subsection (b), if TxDOT estimates that the contract involves an amount less than \$300,000, to be published in two successive issues of a newspaper published in the county in which the improvement is to be made.

Deletes existing Subsection (d) requiring that the notice, if a newspaper is not published in the county in which the improvement is to be made, be published in a newspaper in the county nearest the county seat of the county in which the improvement is to be made, and in which a newspaper is published.

SECTION 19. Amends Subchapter A, Chapter 223, Transportation Code, by adding Section 223.017, as follows:

Sec. 223.017. DESIGN-BUILD CONTRACTS FOR NONTOLLED HIGHWAY PROJECTS. (a) Defines, in this section, "design-build contract."

(b) Authorizes TxDOT to enter into a design-build contract for a nontolled highway project.

(c) Requires TxDOT, notwithstanding Section 223.0041, if TxDOT enters into a design-build contract under this section, to use a competitive procurement process that provides the best value for TxDOT.

(d) Requires TTC to adopt rules specifying the conditions under which a design-build contract may be considered. Requires TTC, in developing rules, to address:

- (1) the size and complexity of an eligible project;
- (2) the time constraints for delivery of an eligible project;
- (3) the level and training of the staff required to manage an eligible project; and
- (4) other factors TTC considers important.

SECTION 20. Amends Section 391.004, Transportation Code, as follows:

Sec. 391.004. New heading: DISPOSITION OF FEES. Requires that money TTC receives under this chapter be deposited to the credit of the state highway fund, rather than the Texas highway beautification fund account. Requires TTC to use money in the state highway fund, rather than the Texas highway beautification fund account, to

administer this chapter and Chapter 394 (Regulation of Outdoor Signs on Rural Roads). Deletes existing text providing that the Texas highway beautification fund account is an account in the general revenue fund.

SECTION 21. (a) Amends Subchapter A, Chapter 391, Transportation Code, by adding Section 391.006, as follows:

Sec. 391.006. COMPLAINTS; RECORDS. (a) Requires TTC by rule to establish procedures for accepting and resolving written complaints related to outdoor advertising under this chapter. Requires that the rules include:

(1) a process to make information available describing TxDOT's procedures for complaint investigation and resolution, including making information about the procedures available on the TxDOT's Internet website;

(2) a system to prioritize complaints so that the most serious complaints receive attention before less serious complaints; and

(3) a procedure for compiling and reporting detailed annual statistics about complaints.

(b) Requires TxDOT to provide to each person who files a written complaint with TxDOT, and to each person who is the subject of a complaint, information about TxDOT's policies and procedures relating to complaint investigation and resolution.

(c) Requires TxDOT to keep, pursuant to TxDOT's approved records retention schedule, an information file about each written complaint filed with TxDOT that TxDOT has authority to resolve. Requires TxDOT to keep the following information for each complaint for the purpose of enforcing this chapter:

(1) the date the complaint is filed;

(2) the name of the person filing the complaint;

(3) the subject matter of the complaint;

(4) each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) if TxDOT does not take action on the complaint, an explanation of the reasons that action was not taken.

(d) Requires TxDOT, if a written complaint is filed with TxDOT that TxDOT has authority to resolve, at least quarterly and until final disposition of the complaint, to notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an ongoing TxDOT investigation.

(b) Requires TTC to adopt rules under Section 391.006, Transportation Code, as added by this section, not later than September 1, 2012.

SECTION 22. Amends Subchapter B, Chapter 391, Transportation Code, by adding Section 391.0355, as follows:

Sec. 391.0355. ADMINISTRATIVE PENALTY. (a) Authorizes TTC, in lieu of a suit to collect a civil penalty, after notice and an opportunity for a hearing before TTC, to impose an administrative penalty against a person who violates this chapter or a rule adopted by TTC under this chapter. Provides that each day a violation continues is a separate violation.

(b) Prohibits the amount of the administrative penalty from exceeding the maximum amount of a civil penalty under Section 391.035 (Civil Penalty).

(c) Provides that a proceeding under this section is a contested case under Chapter 2001, Government Code.

(d) Provides that judicial review of an appeal of an administrative penalty imposed under this section is under the substantial evidence rule.

(e) Requires that an administrative penalty collected under this section be deposited to the credit of the state highway fund.

SECTION 23. Amends Section 391.063, Transportation Code, to authorize TTC to set the amount of a license fee according to a scale graduated by the number of units of outdoor advertising and the number of off-premise signs under Chapter 394 owned by a license applicant.

SECTION 24. Amends Section 391.065(b), Transportation Code, to require TTC, for the efficient management and administration of this chapter and to reduce the number of employees required to enforce this chapter, to adopt rules for issuing standardized forms that are for submission by license holders and applicants and that provide for an accurate showing of the number, location, or other information required by TTC for each license holder's or applicant's outdoor advertising or off-premise signs under Chapter 394.

SECTION 25. Amends Section 391.066, Transportation Code, by adding Subsection (d), to authorize TTC to deny the renewal of a license holder's license if the license holder has not complied with the permit requirements of this chapter or Chapter 394.

SECTION 26. Amends Subchapter C, Chapter 391, Transportation Code, by adding Section 391.0661, as follows:

Sec. 391.0661. APPLICABILITY OF LICENSE. Provides that, in addition to authorizing a person to erect or maintain outdoor advertising, a license issued under this chapter authorizes a person to erect or maintain an off-premise sign under Chapter 394.

SECTION 27. Amends Section 394.005, Transportation Code, to require that money TTC receives under this chapter, rather than a registration fee collected under Section 394.048 (Registration of Certain Off-Premise Signs) by TTC, be deposited to the credit of the state highway fund.

SECTION 28. (a) Amends Subchapter A, Chapter 394, Transportation Code, by adding Section 394.006, as follows:

Sec. 394.006. COMPLAINTS; RECORDS. (a) Requires TTC by rule to establish procedures for accepting and resolving written complaints related to signs under this chapter. Requires that the rules include:

(1) a process to make information available describing TxDOT's procedures for complaint investigation and resolution, including making information about the procedures available on TxDOT's Internet website;

(2) a system to prioritize complaints so that the most serious complaints receive attention before less serious complaints; and

(3) a procedure for compiling and reporting detailed annual statistics about complaints.

(b) Requires TxDOT to provide to each person who files a written complaint with TxDOT, and to each person who is the subject of a complaint, information about the TxDOT's policies and procedures relating to complaint investigation and resolution.

(c) Requires TxDOT to keep, pursuant to TxDOT's approved records retention schedule, an information file about each written complaint filed with TxDOT that TxDOT has authority to resolve. Requires TxDOT to keep the following information for each complaint for the purpose of enforcing this chapter:

(1) the date the complaint is filed;

(2) the name of the person filing the complaint;

(3) the subject matter of the complaint;

(4) each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) if TxDOT does not take action on the complaint, an explanation of the reasons that action was not taken.

(d) Requires TxDOT, if a written complaint is filed with TxDOT that TxDOT has authority to resolve, at least quarterly and until final disposition of the complaint, to notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an ongoing TxDOT investigation.

(b) Requires TTC to adopt rules under Section 394.006, Transportation Code, as added by this section, not later than September 1, 2012.

SECTION 29. Amends the heading to Subchapter B, Chapter 394, Transportation Code, to read as follows:

SUBCHAPTER B. LICENSE AND PERMIT FOR OFF-PREMISE SIGN

SECTION 30. (a) Amends Subchapter B, Chapter 394, Transportation Code, by adding Sections 394.0201, 394.0202, 394.0203, 394.0204, 394.0205, 394.0206, 394.0207, 394.027, 394.028, and 394.029, as follows:

Sec. 394.0201. ERECTING OFF-PREMISE SIGN WITHOUT LICENSE; OFFENSE. (a) Provides that a person commits an offense if the person willfully erects or maintains an off-premise sign on a rural road without a license under this subchapter.

(b) Provides that an offense under this section is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,000. Provides that each day of the proscribed conduct is a separate offense.

(c) Provides that a person is not required to obtain a license to erect or maintain an on-premise sign.

Sec. 394.0202. ISSUANCE AND PERIOD OF LICENSE. (a) Requires TTC to issue a license to a person who:

(1) files with TTC a completed application form within the time specified by TTC;

(2) pays the appropriate license fee; and

(3) files with TTC a surety bond.

(b) Authorizes a license to be issued for one year or longer.

(c) Requires TTC, at least 30 days before the date on which a person's license expires, to notify the person of the impending expiration. Requires that the notice be in writing and sent to the person's last known address according to the records of TTC.

Sec. 394.0203. LICENSE FEE. Authorizes TTC to set the amount of a license fee according to a scale graduated by the number of off-premise signs and units of outdoor advertising under Chapter 391 owned by a license applicant.

Sec. 394.0204. SURETY BOND. (a) Requires that the surety bond required of an applicant for a license under Section 394.0202 be:

(1) in the amount of \$2,500 for each county in the state in which the person erects or maintains an off-premise sign; and

(2) payable to TTC for reimbursement for removal costs of an off-premise sign that the license holder unlawfully erects or maintains.

(b) Prohibits a person from being required to provide more than \$10,000 in surety bonds.

Sec. 394.0205. RULES; FORMS. (a) Authorizes TTC to adopt rules to implement Sections 394.0201(a), 394.0202, 394.0203, 394.0204, and 394.0206.

(b) Requires TTC, for the efficient management and administration of this chapter and to reduce the number of employees required to enforce this chapter, to adopt rules for issuing standardized forms that are for submission by license holders and applicants and that provide for an accurate showing of the number, location, or other information required by TTC for each license holder's or applicant's off-premise signs or outdoor advertising under Chapter 391.

(c) Prohibits TTC from adopting a rule under this chapter that restricts competitive bidding or advertising by the holder of a license issued under this chapter other than a rule to prohibit false, misleading, or deceptive practices. Provides that the limitation provided by this section applies only to rules relating to the occupation of outdoor advertiser and does not affect TTC's power to regulate the orderly and effective display of an off-premise sign under this chapter. Prohibits a rule to prohibit false, misleading, or deceptive practices from:

(1) restricting the use of:

(A) any legal medium for an advertisement;

(B) the license holder's advertisement under a trade name;
or

(C) the license holder's personal appearance or voice in an advertisement, if the license holder is an individual; or

(2) relate to the size or duration of an advertisement by the license holder.

Sec. 394.0206. REVOCATION OR SUSPENSION OF LICENSE; APPEAL. (a) Authorizes TTC to revoke or suspend a license issued under this subchapter or place on probation a license holder whose license is suspended if the license holder violates this chapter or a rule adopted under this chapter. Authorizes TxDOT, if the suspension of the license is probated, to require the license holder to report regularly to TTC on any matter that is the basis of the probation.

(b) Requires that the judicial appeal of the revocation or suspension of a license be initiated not later than the 15th day after the date of TTC's action.

(c) Authorizes TTC to adopt rules for the reissuance of a revoked or suspended license and to set fees for the reissuance.

(d) Authorizes TTC to deny the renewal of a license holder's existing license if the license holder has not complied with the permit requirements of this chapter or Chapter 391.

Sec. 394.0207. APPLICABILITY OF LICENSE. Provides that, in addition to authorizing a person to erect or maintain an off-premise sign, a license issued under this chapter authorizes a person to erect or maintain outdoor advertising under Chapter 391.

Sec. 394.027. DENIAL OF PERMIT; APPEAL. Authorizes TTC to create a process by which an applicant may appeal a denial of a permit under this subchapter.

Sec. 394.028. FEE AMOUNTS. Prohibits the license and permit fees required by this subchapter from exceeding an amount reasonably necessary to cover the administrative costs incurred to enforce this chapter.

Sec. 394.029. EXCEPTIONS FOR CERTAIN NONPROFIT ORGANIZATIONS. (a) Prohibits the combined license and permit fees under this subchapter from exceeding \$10 for an off-premise sign erected and maintained by a nonprofit organization in a municipality or a municipality's extraterritorial jurisdiction if the sign relates to or promotes only the municipality or a political subdivision whose jurisdiction is wholly or partly concurrent with the municipality.

(b) Provides that the nonprofit organization is not required to file a bond as provided by Section 394.0202(a)(3).

(b) Provides that the change in law made by Section 394.0201, Transportation Code, as added by this section, applies only to an off-premise sign erected or for which the permit expires on or after the effective date of this Act. Provides that an off-premise sign for which a permit is issued before the effective date of this Act is covered by the law in effect when the permit was issued, and the former law is continued in effect for that purpose.

SECTION 31. Amends Section 394.050, Transportation Code, as follows:

Sec. 394.050. New heading: VARIANCE. Authorizes TTC or a person designated by TTC, in an appropriate case and subject to an appropriate condition or safeguard, to make a special exception to this chapter regarding a permit for an off-premise outdoor sign on a rural road. Deletes existing text requiring TTC to provide for a board of variance.

SECTION 32. Amends Sections 394.082(a) and (d), Transportation Code, as follows:

(a) Authorizes TTC, in lieu of a suit to collect a civil penalty, after notice and an opportunity for a hearing before TTC, to impose an administrative penalty against a person who violates, rather than intentionally violates, this chapter or a rule adopted by TTC under this chapter. Provides that each day a violation continues is a separate violation.

(d) Provides that judicial review of an appeal of an administrative penalty imposed under this section is under the substantial evidence rule, rather than by trial de novo.

SECTION 33. Amends Subchapter D, Chapter 472, Transportation Code, by adding Section 472.035, as follows:

Sec. 472.035. COORDINATION WITH DEPARTMENT TO DEVELOP LONG-TERM PLANNING ASSUMPTIONS. Requires each metropolitan planning organization to work with TxDOT to develop mutually acceptable assumptions for the purposes of long-range federal and state funding forecasts and use those assumptions to guide long-term planning in the organization's long-range transportation plan.

SECTION 34. Amends Chapter 544, Transportation Code, by adding Section 544.013, as follows:

Sec. 544.013. CHANGEABLE MESSAGE SIGN SYSTEM. (a) Defines, in this section, "changeable message sign."

(b) Requires TxDOT, in cooperation with local governments, to actively manage a system of changeable message signs located on highways under the jurisdiction of TxDOT to mitigate traffic congestion by providing current information to the traveling public, including information about traffic incidents, weather conditions, road construction, and alternative routes when applicable.

SECTION 35. Amends Subchapter A, Chapter 621, Transportation Code, by adding Section 621.008, as follows:

Sec. 621.008. STUDY REGARDING OVERSIZE AND OVERWEIGHT VEHICLES.

(a) Requires TxDOT to conduct a study to determine improvements to the regulation of oversize and overweight vehicles.

(b) Requires TxDOT, in conducting the study, to consider:

(1) prohibiting overweight vehicles or vehicle combinations from traveling on state highways if the vehicle or combination will cause damage to a road or bridge, based on the weight or load specifications to which the road or bridge was built;

(2) requiring each applicant for a permit under Chapter 623 to pay a graduated highway maintenance fee based on weight and the amount of damage done by the permitted vehicle or vehicle combination to roads and bridges;

(3) requiring each fee collected for an overweight or oversize vehicle permit to be deposited in the state highway fund;

(4) eliminating all exemptions for overweight vehicles; and

(5) the feasibility and impact of different approaches to regulating oversize and overweight vehicles that would help reduce damage to roads and bridges and provide increased funding for maintenance costs in the future.

(c) Requires TxDOT, not later than December 31, 2011, to report the results of the study conducted under this section to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate oversight committee of each house of the legislature.

(d) Provides that this section expires September 1, 2012.

SECTION 36. Repealer: Section 201.0545 (Recommendations to Legislature), Transportation Code.

SECTION 37. Effective date, except as otherwise provided by this Act: September 1, 2011.