

## **BILL ANALYSIS**

C.S.S.B. 312  
By: Nichols  
Transportation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas Department of Transportation, which oversees the state highway system, is subject to the Texas Sunset Act and will be abolished on September 1, 2017, unless continued by the legislature. C.S.S.B. 312 seeks to continue the department with several statutory modifications.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Transportation Commission in SECTIONS 12, 16, 18, 19, and 20 of this bill.

### **ANALYSIS**

C.S.S.B. 312 amends the Transportation Code to postpone the date on which the Texas Department of Transportation (TxDOT) is abolished under the Texas Sunset Act from September 1, 2017, to September 1, 2029.

C.S.S.B. 312 revises provisions relating to the training and qualifications of a member of the Texas Transportation Commission. The bill requires the executive director of TxDOT to create a training manual that includes the required components of the training program and to annually distribute a copy of the manual to each member of the commission. The bill requires each commission member, on receipt of the manual, to sign and to submit to the director a statement acknowledging receipt of the training manual. The bill makes its provisions relating to the training and qualifications of a member of the commission applicable to a member appointed before, on, or after the bill's effective date and establishes that a member of the commission who, before the bill's effective date, completed the training program as it existed before the bill's effective date is only required to complete additional training on the subjects added by the bill to the program. The bill prohibits such a member from voting, deliberating, or being counted as a member in attendance at a meeting of the commission held on or after December 1, 2017, until the member completes the additional training.

C.S.S.B. 312 revises the required components of the TxDOT statewide transportation plan to include specific and clearly defined transportation system strategies, as well as other performance measures related to the system strategies and long-term transportation goals for the state and includes those strategies and measures in the items TxDOT must consider when selecting transportation projects. The bill requires TxDOT, not later than March 1, 2018, to complete a review and update of the long-term transportation goals contained in the statewide transportation plan and to make changes to the plan that are necessary to implement the changes in law to the plan made by the bill.

C.S.S.B. 312 changes the frequency with which TxDOT is required to update the long-term plan for a statewide passenger rail system from annually to at least once every five years. The bill includes among the required contents of the rail system plan an analysis of short-term and long-term effects of each proposed passenger rail system on state and local road connectivity and an analysis of the effect of each proposed passenger rail system on statewide transportation planning.

C.S.S.B. 312 requires TxDOT, in developing each of its transportation plans and policy efforts, to include in the plan or policy effort the transportation system strategies, goals and measurable targets, and other related performance measures as revised by the bill. The bill requires TxDOT, not later than March 1, 2018, to make any changes to each of TxDOT's transportation plans and policy efforts that are necessary to reflect the changes made by the bill.

C.S.S.B. 312 specifies that certain statistical information derived from accident reports required to be published periodically by TxDOT is required to be published on the TxDOT website.

C.S.S.B. 312 requires TxDOT to conduct a comprehensive review of the project information reporting system; to incorporate feedback from internal and external users of the system and advice from the TxDOT office responsible for public involvement, in conducting the review; and, not later than March 1, 2018, to develop a plan for implementing any needed improvements to the reporting system. The bill requires TxDOT to conduct the comprehensive review on a regular basis, as specified by Texas Transportation Commission rule, and requires the commission, not later than September 1, 2018, to adopt those rules. The bill requires the commission, not later than September 1, 2018, to adopt or modify rules necessary to implement changes made to the project information reporting system by the bill.

C.S.S.B. 312 requires TxDOT, not later than March 1, 2018, to develop and prominently display on its website an easily navigable dashboard that clearly communicates to the public the transportation system strategies, goals and measurable targets, and other related performance measures and TxDOT's progress in meeting those strategies, goals and targets, and performance measures. The bill requires TxDOT to regularly update the dashboard information and to publish on its website the methodology and data used to determine TxDOT progress in meeting those strategies, goals and targets, and performance measures.

C.S.S.B. 312 requires TxDOT to take the following actions: conduct a comprehensive analysis regarding the effect of funding allocations made to certain funding categories and project selection decisions on accomplishing the goals described in the statewide transportation plan; provide the analysis to metropolitan planning organizations, the public, and each member of the commission for the purpose of informing deliberations on funding decisions for the unified transportation program; update the analysis as part of TxDOT's annual update to the unified transportation program and any other formal update to that program and as part of the required evaluation and report of the status of each transportation goal for the state; promptly publish the analysis on its website in its entirety and in summary form; publish the methodology and data used to create the analysis on its website and make the methodology and data available to the metropolitan planning organizations, the public, and the commission; and promptly publish the report on the status of each transportation goal for the state on its website in summary form.

C.S.S.B. 312 requires the Texas Transportation Commission by rule to adopt a policy comprehensively explaining TxDOT's approach to public involvement and transparency related to the unified transportation program and requires the commission to adopt the rules not later than September 1, 2018. The bill requires TxDOT, at a minimum, to make a report on any change to the unified transportation program available on its website and to provide the report to the commission in a public meeting, regardless of any rules adopted for public hearings and approvals. The bill requires the commission to collaborate with stakeholders in developing the policy. The bill requires the commission, not later than September 1, 2018, to adopt or modify

rules necessary to implement provisions relating to the unified transportation program. The bill specifies that the certain annual funding and cash flow forecasts TxDOT is required to develop and publish must be published on its website. The bill requires the commission, in prioritizing and approving projects that are included in the unified transportation program, to first evaluate projects on strategic need and potential contribution toward meeting the transportation goals of the statewide transportation plan. The bill authorizes the commission, after conducting the initial evaluation, to conduct a secondary evaluation based on other factors such as funding availability and project readiness.

C.S.S.B. 312 replaces the requirement that each TxDOT district develop a 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 with a requirement that each district develop a project portfolio based on the program covering a period of at least four years that contains all such projects. The bill requires TxDOT to develop comprehensive performance measures for key steps in the project development process for projects included in each district's project portfolio and to use the performance measures to track and report whether each district is developing an appropriate mix of projects and is on track to meet letting targets that are consistent with applicable TxDOT policy. The bill removes provisions requiring a work program to contain information regarding the progress of certain major transportation projects and a summary of the progress on other district projects. The bill requires TxDOT to regularly review project development activities in each district's project portfolio for monitoring and evaluation purposes and to seek key stakeholder input as appropriate in conducting such review. The bill requires the commission, in consultation with a stakeholder group and not later than September 1, 2018, to adopt and regularly update rules governing the overall planning, review, and monitoring process of district project portfolios; specifying how planning and project stakeholders can become involved in such a process; and requiring TxDOT to regularly report in a certain manner applicable results to the commission and the public. The bill requires the commission, not later than September 1, 2018, to adopt or modify rules necessary to implement the bill's provisions relating to the district project portfolios.

C.S.S.B. 312 requires the Texas Transportation Commission by rule to prioritize and approve projects included in the unified transportation program in order to provide applicable financial assistance. The bill requires the commission, not later than September 1, 2018, and in consultation with a stakeholder group, to adopt rules governing the following: the alignment of TxDOT state and federal funding forecasts with the funding forecasts of metropolitan planning organizations; the alignment of the statewide project recommendation criteria developed by TxDOT with the project recommendation criteria developed by metropolitan planning organizations that relate to statewide transportation goals, particularly for major mobility projects using a mix of several funding sources and selected by different entities; TxDOT's timelines and review process for the required 10-year transportation plans; TxDOT's process for allowing metropolitan planning organizations direct access to TxDOT information systems, software, and technical assistance for the purpose of accomplishing statewide transportation goals; and TxDOT's process for collaborating with metropolitan planning organizations to regularly evaluate the availability, consistency, and quality of data and other information needed to fully develop a more performance-based transportation planning and project selection system. The bill requires a rule relating to TxDOT's timelines and review process for certain 10-year transportation plans to take into consideration a metropolitan planning organization's other deadlines and applicable federal law requirements. The bill requires the commission by rule to require a hearing for projects that substantially change the layout or function of a connecting roadway or an existing facility, including the addition of managed lanes, high-occupancy vehicle lanes, bicycle lanes, bus lanes, and transit lanes.

C.S.S.B. 312 revises provisions relating to contractor performance under statutory provisions relating to competitive bids for highway projects by removing certain TxDOT duties in that regard and instead requiring the commission, not later than September 1, 2018, to adopt rules, developed in consultation with certain parties, considering certain applicable criteria, and

requiring certain TxDOT action, as appropriate, to establish a range of contract remedies to be included in all low-bid highway improvement contracts; to implement a schedule for liquidated damages that accurately reflects the costs associated with project completion delays; and to develop a contractor performance evaluation process and an applicable evaluation tool. The bill requires the rules to require contractual provisions providing for the consideration of sufficient time and to require TxDOT to consider any events outside a contractor's control before assessing a penalty against the contractor.

C.S.S.B. 312 repeals provisions relating to the requirement that an operator of a motor vehicle file certain accident reports. The bill, effective September 1, 2019, specifies that a law enforcement officer's written report of a motor vehicle accident is required to be filed electronically. The bill specifies that TxDOT is required to publish on its website, not later than December 1 of each year, information reported to TxDOT by a local authority relating to the number and type of traffic accidents at an intersection with a photographic traffic signal enforcement system. The bill repeals a provision establishing TxDOT requirements relating to an unsatisfactory performance evaluation for certain TxDOT employees.

C.S.S.B. 312 repeals Government Code provisions establishing and administering the State Aircraft Pooling Board and amends the Government Code to update provisions relating to the previous transfer to TxDOT of the powers and duties of the board relating to state-operated aircraft under the State Aircraft Pooling Act. The bill removes the requirement for the proceeds from the sale of surplus and salvage property of the State Aircraft Pooling Board to be deposited to the credit of the board and instead requires the proceeds from the sale of surplus and salvage property of TxDOT relating to TxDOT duties under the State Aircraft Pooling Act to be deposited to the credit of TxDOT. The bill conditions the requirement for TxDOT to include a long-range plan for its pool of aircraft in its legislative appropriations request on TxDOT identifying the need for additional appropriations and the additional appropriations being related to TxDOT duties under the act. The bill expands the required contents of the long-range plan and requires TxDOT to update the plan annually and to make the plan available on its website. The bill requires TxDOT, not later than September 1, 2018, to adopt the first long-range plan reflecting the bill's provisions.

C.S.S.B. 312 revises the criteria for use of state-operated aircraft to remove as an exception to the prohibition against the provision of aircraft transportation to a destination for certain state-affiliated persons that the time required to use a commercial carrier interferes with passenger obligations and includes among such exceptions that the aircraft transportation is the most cost-effective travel arrangement and that emergency circumstances necessitate the use of a state aircraft. The bill codifies provisions relating to an affidavit regarding official state business travel and the use of a state-operated aircraft. The bill requires an administrative head of a state agency to certify that an employee's transportation complies with state-operated aircraft transportation requirements before the executive director of TxDOT or the director's designee may authorize the employee to use a state-operated aircraft.

C.S.S.B. 312 authorizes TxDOT to adopt rates for interagency aircraft services provided by TxDOT that are sufficient to recover, in the aggregate and to the extent possible, all direct costs for such services and the capital costs of replacing aircraft in the pool if TxDOT's most recent long-term plan contains an analysis that finds that including capital recovery costs in the rates is a practicable fleet replacement strategy. The bill requires the portion of the rates collected for the capital costs of replacing aircraft in the pool to be deposited in a separate account in the state highway fund if TxDOT adopts such rates. The bill restricts use of money in the account to the acquisition of aircraft for the pool operated by TxDOT.

C.S.S.B. 312 repeals the following provisions of the Government Code:

- Section 2205.003
- Section 2205.004

- Section 2205.005
- Section 2205.006
- Section 2205.007
- Section 2205.008
- Section 2205.009
- Section 2205.010
- Section 2205.011
- Section 2205.013
- Section 2205.014
- Section 2205.015
- Section 2205.017

C.S.S.B. 312 repeals the following provisions of the Transportation Code:

- Section 201.404(b-2)
- Section 550.061
- Section 601.004

**EFFECTIVE DATE**

Except as otherwise provided, September 1, 2017.

**COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

SENATE ENGROSSED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 21.069(a), Transportation Code, is amended.	SECTION 1. Same as engrossed version.
SECTION 2. Section 201.059, Transportation Code, is amended.	SECTION 2. Same as engrossed version.
SECTION 3. Section 201.204, Transportation Code, is amended.	SECTION 3. Same as engrossed version.
SECTION 4. Sections 201.601(a-1) and (d), Transportation Code, are amended.	SECTION 4. Same as engrossed version.
SECTION 5. Section 201.6013, Transportation Code, is amended.	SECTION 5. Same as engrossed version.
SECTION 6. Section 201.6015, Transportation Code, is amended.	SECTION 6. Same as engrossed version.
SECTION 7. Section 201.806(a), Transportation Code, is amended.	SECTION 7. Same as engrossed version.
SECTION 8. Section 201.807,	SECTION 8. Same as engrossed version.

Transportation Code, is amended.

SECTION 9. Subchapter J, Chapter 201, Transportation Code, is amended.

SECTION 10. Section 201.808, Transportation Code, is amended.

SECTION 11. Section 201.809(a), Transportation Code, is amended.

SECTION 12. Section 201.991, Transportation Code, is amended.

SECTION 13. Section 201.992(b), Transportation Code, is amended.

SECTION 14. Sections 201.993(a) and (c), Transportation Code, are amended.

SECTION 15. Section 201.995, Transportation Code, is amended.

SECTION 16. Section 201.998, Transportation Code, is amended.

SECTION 17. Section 201.9991(a), Transportation Code, is amended.

SECTION 18. Subchapter P, Chapter 201, Transportation Code, is amended.

SECTION 19. Subchapter B, Chapter 203, Transportation Code, is amended.

SECTION 20. Section 223.012, Transportation Code, is amended to read as follows:

Sec. 223.012. CONTRACTOR PERFORMANCE. (a) The commission [~~department~~] shall adopt rules to:

(1) establish a range of contract remedies to be included in all highway improvement contracts, including enforceable corrective action plans and criteria for prohibiting contractors with significant project completion delays from bidding on new projects, and develop a process and criteria for when to apply each contract remedy;

(2) develop and implement a schedule for liquidated damages that accurately reflects the costs associated with project completion delays, including administrative and travel

SECTION 9. Same as engrossed version.

SECTION 10. Same as engrossed version.

SECTION 11. Same as engrossed version.

SECTION 12. Same as engrossed version.

SECTION 13. Same as engrossed version.

SECTION 14. Same as engrossed version.

SECTION 15. Same as engrossed version.

SECTION 16. Same as engrossed version.

SECTION 17. Same as engrossed version.

SECTION 18. Same as engrossed version.

SECTION 19. Same as engrossed version.

SECTION 20. Section 223.012, Transportation Code, is amended to read as follows:

Sec. 223.012. CONTRACTOR PERFORMANCE. (a) The commission [~~department~~] shall adopt rules to:

(1) establish a range of contract remedies to be included in all low-bid highway improvement contracts, including enforceable corrective action plans and criteria for prohibiting contractors with significant project completion delays from bidding on new projects, and develop a process and criteria for when to apply each contract remedy;

(2) develop and implement a schedule for liquidated damages that accurately reflects the costs associated with project completion delays, including

delays; and

(3) develop a contractor performance evaluation process and an evaluation tool that:

(A) allows for the [(2)] review of contractor bidding capacity to ensure that contractors meet each quality, safety, and timeliness standard established by the commission; and

(B) contains criteria for modifying a contractor's bidding capacity for competitively bid highway improvement contracts when appropriate [(3) conduct a review to determine whether commission rules or state law should be changed to realize significant cost and time savings on state highway construction and maintenance projects].

(b) In developing the rules required by Subsection (a)(1), the commission must:

(1) consult with industry contractors; and

(2) consider contract remedies used by:

(A) other state agencies; and

(B) departments of transportation in other states [Not later than December 1, 1998, the department shall file a report with the governor, the lieutenant governor, and the speaker of the house of representatives containing:

[(1) the results of the review conducted under Subsection (a)(3); and

[(2) recommendations on legislation the commission determines is necessary to realize significant cost and time savings on state highway construction and maintenance].

(c) The rules adopted under Subsection (a)(2) must:

(1) include criteria for identifying projects that have a significant impact on the traveling public; and

(2) require the department to calculate project-specific liquidated damages for projects described by Subdivision (1) that reflect the true cost of travel delays.

(d) In developing the evaluation tool required by Subsection (a)(3), the commission must consult with industry contractors.

(e) The rules adopted under Subsection (a)(3) must:

(1) provide for a process for contractors to appeal the contractors' evaluations; and

(2) include criteria for the use of the evaluations by the department to address

administrative and travel delays; and

(3) develop a contractor performance evaluation process and an evaluation tool that:

(A) allows for the [(2)] review of contractor bidding capacity to ensure that contractors meet each quality, safety, and timeliness standard established by the commission; and

(B) contains criteria for modifying a contractor's bidding capacity for competitively bid highway improvement contracts when appropriate [(3) conduct a review to determine whether commission rules or state law should be changed to realize significant cost and time savings on state highway construction and maintenance projects].

(b) In developing the rules required by Subsection (a)(1), the commission must:

(1) consult with industry contractors; and

(2) consider contract remedies used by:

(A) other state agencies; and

(B) departments of transportation in other states [Not later than December 1, 1998, the department shall file a report with the governor, the lieutenant governor, and the speaker of the house of representatives containing:

[(1) the results of the review conducted under Subsection (a)(3); and

[(2) recommendations on legislation the commission determines is necessary to realize significant cost and time savings on state highway construction and maintenance].

(c) The rules adopted under Subsection (a)(2) must:

(1) include criteria for identifying projects that have a significant impact on the traveling public; and

(2) require the department to calculate project-specific liquidated damages for projects described by Subdivision (1) that reflect the true cost of travel delays.

(d) In developing the evaluation tool required by Subsection (a)(3), the commission must consult with industry contractors.

(e) The rules adopted under Subsection (a)(3) must:

(1) provide for a process for contractors to appeal the contractors' evaluations; and

(2) include criteria for the use of the evaluations by the department to address

contractor performance problems.  
(f) Rules adopted under this section must require:  
(1) contractual provisions providing for the consideration of sufficient time; and  
(2) the department to consider any events outside a contractor's control before assessing a penalty against the contractor.

SECTION 21. Section 550.025(a), Transportation Code, is amended.

SECTION 22. Effective September 1, 2019, Section 550.062(b), Transportation Code, is amended.

SECTION 23. Section 550.064(b), Transportation Code, is amended.

SECTION 24. Section 550.065(a), Transportation Code, is amended.

SECTION 25. Section 550.067(c), Transportation Code, is amended.

SECTION 26. Section 550.068, Transportation Code, is amended.

SECTION 27. Section 601.005, Transportation Code, is amended.

SECTION 28. Sections 601.007(b) and (c), Transportation Code, are amended.

SECTION 29. Section 601.154(c), Transportation Code, is amended.

SECTION 30. Section 707.004(f), Transportation Code, is amended.

SECTION 31. Sections 730.003(4) and (6), Transportation Code, are amended.

SECTION 32. Section 2167.001(a), Government Code, is amended.

SECTION 33. Section 2175.191(c), Government Code, is amended.

SECTION 34. The heading to Subchapter A, Chapter 2205, Government Code, is amended.

SECTION 35. Section 2205.002(1),

contractor performance problems.  
(f) Rules adopted under this section must require:  
(1) contractual provisions providing for the consideration of sufficient time; and  
(2) the department to consider any events outside a contractor's control before assessing a penalty against the contractor.

SECTION 21. Same as engrossed version.

SECTION 22. Same as engrossed version.

SECTION 23. Same as engrossed version.

SECTION 24. Same as engrossed version.

SECTION 25. Same as engrossed version.

SECTION 26. Same as engrossed version.

SECTION 27. Same as engrossed version.

SECTION 28. Same as engrossed version.

SECTION 29. Same as engrossed version.

SECTION 30. Same as engrossed version.

SECTION 31. Same as engrossed version.

SECTION 32. Same as engrossed version.

SECTION 33. Same as engrossed version.

SECTION 34. Same as engrossed version.

SECTION 35. Same as engrossed version.



Government Code, is amended.

SECTION 36. Section 2205.012, Government Code, is amended. SECTION 36. Same as engrossed version.

SECTION 37. Section 2205.032, Government Code, is amended. SECTION 37. Same as engrossed version.

SECTION 38. Section 2205.034, Government Code, is amended. SECTION 38. Same as engrossed version.

SECTION 39. Section 2205.035, Government Code, is amended. SECTION 39. Same as engrossed version.

SECTION 40. Section 2205.036, Government Code, is amended. SECTION 40. Same as engrossed version.

SECTION 41. Section 2205.038, Government Code, is amended. SECTION 41. Same as engrossed version.

SECTION 42. Section 2205.039, Government Code, is amended. SECTION 42. Same as engrossed version.

SECTION 43. Section 2205.040, Government Code, is amended. SECTION 43. Same as engrossed version.

SECTION 44. Section 2205.041, Government Code, is amended. SECTION 44. Same as engrossed version.

SECTION 45. Section 2205.042, Government Code, is amended. SECTION 45. Same as engrossed version.

SECTION 46. Section 2205.043(b), Government Code, is amended. SECTION 46. Same as engrossed version.

SECTION 47. Section 2205.044, Government Code, is amended. SECTION 47. Same as engrossed version.

SECTION 48. Section 2205.045(a), Government Code, is amended. SECTION 48. Same as engrossed version.

SECTION 49. Section 2205.046, Government Code, is amended. SECTION 49. Same as engrossed version.

SECTION 50. Section 2205.047, Government Code, is amended. SECTION 50. Same as engrossed version.

SECTION 51. The following provisions are repealed: SECTION 51. Same as engrossed version.

(1) Sections 2205.003, 2205.004, 2205.005, 2205.006, 2205.007, 2205.008, 2205.009, 2205.010, 2205.011, 2205.013, 2205.014, 2205.015, and 2205.017, Government Code; and

(2) Sections 201.404(b-2), 550.061, and 601.004, Transportation Code.

SECTION 52. (a) Except as provided by Subsection (b) of this section, Section 201.059, Transportation Code, as amended by this Act, applies to a member of the Texas Transportation Commission appointed before, on, or after the effective date of this Act.

(b) A member of the Texas Transportation Commission who, before the effective date of this Act, completed the training program required by Section 201.059, Transportation Code, as that law existed before the effective date of this Act, is only required to complete additional training on the subjects added by this Act to the training program as required by Section 201.059, Transportation Code, as amended by this Act. A member of the commission described by this subsection may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission held on or after December 1, 2017, until the member completes the additional training.

SECTION 53. (a) Not later than March 1, 2018, the Texas Department of Transportation shall:

(1) complete a review and update of the long-term transportation goals contained in the statewide transportation plan under Section 201.601, Transportation Code, and make any changes to the statewide transportation plan that are necessary to implement the change in law made by this Act to Section 201.601, Transportation Code, including adopting specific and clearly defined transportation system strategies, long-term transportation goals for the state and measurable targets for each goal, and other related performance measures, to ensure that the department uses a single set of transportation goals in all of the department's transportation plans and policy efforts;

(2) make any changes to each of the department's transportation plans and policy efforts that are necessary to implement the change in law made by this Act to Section 201.6015, Transportation Code;

(3) develop the plan required by Section 201.807(g)(3), Transportation Code, as added by this Act; and

(4) develop and publish on the department's Internet website the dashboard required by

SECTION 52. Same as engrossed version.

SECTION 53. Same as engrossed version.

Section 201.8075, Transportation Code, as added by this Act.

(b) Not later than September 1, 2018, the Texas Department of Transportation shall adopt the first long-range plan containing the information required by Section 2205.032(c), Government Code, as amended by this Act.

(c) Not later than September 1, 2018, the Texas Transportation Commission shall:

(1) adopt the rules required by Sections 201.807(h), 201.991(b-1), 201.998(f), and 201.9992, Transportation Code, as added by this Act, and Section 223.012, Transportation Code, as amended by this Act; and

(2) adopt or modify any rules necessary to implement the changes in law made by this Act to Sections 201.807, 201.991, and 201.998, Transportation Code.

SECTION 54. This Act takes effect September 1, 2017.

SECTION 54. Same as engrossed version.