

SUBJECT: Allowing TxDOT to pay public or private entities to manage mitigation

COMMITTEE: Transportation — favorable, without amendment

VOTE: 8 ayes — Alexander, Hawley, Y. Davis, Edwards, Hill, Noriega, Pickett, Swinford

0 nays

1 absent — Hamric

SENATE VOTE: On final passage, February 21 — 30-0

WITNESSES: None

BACKGROUND: Federal law requires the Texas Department of Transportation (TxDOT), under certain circumstances, to mitigate an adverse environmental impact caused by a highway improvement project by creating or maintaining wetlands or a habitat that offsets the loss in the affected ecosystem. TxDOT also must take actions to reduce or eliminate environmental impacts before starting work on highway projects. If the affected wetlands or habitat affected by a TxDOT project are not within an existing habitat conservation plan, TxDOT must buy and manage mitigation sites to offset the project's impact. TxDOT has a legislatively mandated a memorandum of understanding with the Texas Parks and Wildlife Department (TPWD) under which TPWD must evaluate TxDOT projects for environmental impact prior to TxDOT's permit applications, provide recommendations to reduce the project's environmental impact, and review and manage mitigation.

Many TxDOT projects have a temporary environmental impact that TxDOT must work to correct upon project completion. Other projects have a residual unavoidable impact requiring compensatory mitigation, including purchase and management of mitigation sites to offset the TxDOT project's impact. TxDOT sometimes buys land, which it then gives to TPWD, to offset project impacts. This allows TxDOT greater flexibility in meeting its mitigation obligations. TxDOT is authorized to mitigate against all environmental impacts, not only those required by statute.

TxDOT also must coordinate its projects and environmental impact mitigation efforts with the U.S. Fish and Wildlife Service (endangered species) and the U.S. Army Corps of Engineers (wetlands and U.S. waters).

DIGEST:

SB 416 would allow TxDOT to pay a fee to an appropriate public agency or private entity in lieu of acquiring or agreeing to manage property for the mitigation of an adverse environmental impact resulting from a state highway improvement project. The bill would limit this option to situations authorized by the applicable regulatory authority.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

SB 416 would help improve environmental protection in Texas. TPWD does not have enough staff or resources to keep up with management and mitigation of land pursuant to its memorandum of understanding with TxDOT. Giving TxDOT more flexibility would decrease delays in managing and mitigating these properties. Allowing TxDOT to pay other public agencies or private entities to manage mitigation property also would ease the burden on TPWD.

The bill would allow TxDOT to maximize the impact of its mitigation projects. In many cases, the required mitigation is small and has a minimal impact. SB 416 would allow TxDOT to pay another entity, such as the Nature Conservancy, for its mitigation. The entity then could combine the mitigation payments from several TxDOT projects to buy land for a project that would have a significant environmental benefit. Larger mitigation projects are more effective, have a more significant environmental impact, and are more efficient to run than smaller projects.

SB 416 would provide sufficient safeguards to ensure that TxDOT would use the payment option only when it was environmentally beneficial. TxDOT could make a payment in lieu of acquiring or managing land only if so authorized by the applicable state or federal regulatory agency. That agency would be the one charged with protecting the resource (for example, water or endangered species) on which the TxDOT project had an impact. Regulatory

agency oversight would ensure that TxDOT made payments to entities that were capable of engaging in appropriate mitigation projects.

OPPONENTS
SAY:

SB 416 would not provide sufficient environmental protection guidelines and could open the door to possible abuse. The bill contains no restrictions or requirements of private entities. It would not guarantee that these entities would perform mitigation or that they even would have any experience in mitigation. It would provide no oversight for a private entity paid to perform mitigation. Nor would it provide safeguards for the land in case a private entity went bankrupt or otherwise stopped doing business.

NOTES:

A similar bill, SB 267 by Ogden, which would allow TxDOT to contract with any public or private entity for the management of property used to mitigate an adverse environmental impact, passed the Senate by 30-0 on February 26, and was reported favorably, without amendment, by the House Transportation Committee on March 27.