

**SUBJECT:** Gubernatorial approval of TxDOT equipment claims settlements

**COMMITTEE:** Civil Practices — favorable, without amendment

**VOTE:** 8 ayes — Nixon, Gattis, Capelo, Davis, Hartnett, King, Rose, Woolley  
0 nays  
1 absent — Krusee

**SENATE VOTE:** On final passage, March 27 — 31-0

**WITNESSES:** None

**BACKGROUND:** Before fiscal 2002, the Texas Department of Transportation (TxDOT) carried private liability insurance. TxDOT currently is self-insured, so any tort claims against TxDOT for wrongful acts other than breach of contract are governed by Civil Practice and Remedies Code, ch. 101. Sec. 101.105 requires the governor to approve any proposed tort claim settlements for state agencies not covered by outside insurance.

**DIGEST:** SB 724 would allow TxDOT to settle equipment liability claims of less than \$10,000 raised under Civil Practice and Remedies Code, ch. 101, without the governor's approval if TxDOT's executive director determined that the settlement was in TxDOT's best interest. Settlements under this provision would preclude claimants from bringing any further legal action involving the same subject matter against TxDOT employees on whose actions or omissions the claims were based.

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, 2003.

**SUPPORTERS SAY:** SB 724 would speed up payment of small liability claims by removing an unnecessary step in a process to which TxDOT was not subject until recently. Bureaucratic delays of these settlements hinder TxDOT's ability to pay parties promptly for losses that TxDOT employees and contractors have caused.

TxDOT operates a fleet of more than 13,000 vehicles and self-propelled equipment, more than any other state agency, as well as 12 ferries and 13 boats. Although its collision rate averages less than six per million vehicle-miles traveled, accidents involving TxDOT employees and the public are inevitable. These include “fender-benders,” cracked windshields, and minor injuries, but in greater numbers than most other agencies.

Previously, TxDOT’s liability insurer, assisted by TxDOT’s in-house claims adjusters, handled claims settlements, including those involving vehicles and equipment. The company settled more than half the claims that involved motorized equipment during fiscal 2001, typically processing them in about two weeks. More than 90 percent of the settlements were worth less than \$10,000, according to TxDOT, with claims averaging \$500 to \$600. TxDOT projects total payments of all fiscal 2002 claims to be \$1.4 million, the vast majority of which are vehicle and equipment claims.

Prompted by a 30 percent premium increase, TxDOT became self-insured in fiscal 2002 and converted its premium fund to a claims fund. Consequently, its claims settlements, like those of most other state agencies, now must be approved by the governor as well as by the attorney general and comptroller. To date, the Governor’s Office has approved all 108 proposed settlements submitted by TxDOT. Often, however, obtaining this approval takes six to eight weeks, and sometimes as many as 12 weeks. Such delays are perplexing to claimants since TxDOT has admitted liability and has agreed to pay a sum certain. Citizens who have negotiated in good faith with their government deserve prompt compensation for their damages and losses caused by state agencies. Some claimants have had to postpone repairs or incur credit-card interest charges due to delays. Moreover, claimants may have less incentive to settle quickly if the process is prolonged.

Both the governor and attorney general have approved forgoing the governor’s right to approve equipment claims under \$10,000. The governor would continue to approve equipment claims exceeding \$10,000 as well as other liability claims. The role of the attorney general’s transportation division would remain unchanged.

**OPPONENTS  
SAY:**

The governor’s oversight is an important safeguard and should be retained. It ensures that taxpayer money is paid out wisely while providing a check and

balance on the prudence of agency settlements and the number of claims incurred. Gubernatorial approval allows for revision if new information emerges on claims that might affect settlements. In most cases, delays of a few weeks in receiving relatively small payments should not cause severe or undue hardship to claimants.

Rather than granting TxDOT an exception, the Legislature should examine what appears to be a rather high rate of ongoing claim activity and should seek ways to reduce it.

**OTHER  
OPPONENTS  
SAY:**

The settlement approval threshold should be lower, given that claims are averaging less than \$1,000. Claims in the thousands of dollars are significant and should be subject to additional scrutiny to protect taxpayers against potential fraud and abuse.

Rather than remove the Governor's Office from the approval process, the bill should require adding staff or streamlining the process to expedite settlement payments.