

SUBJECT: Continuing the Texas Department of Transportation

COMMITTEE: Transportation — committee substitute recommended

VOTE: 10 ayes — Pickett, Phillips, Callegari, Y. Davis, Guillen, Harper-Brown, McClendon, Merritt, T. Smith, W. Smith

1 nay— Dunnam

WITNESSES: For — Norman Garza, Texas Farm Bureau; Dick Kallerman, Sierra Club; Ross Milloy, Austin-San Antonio Corridor Council; Bruce Ormand, Texas Automotive Recycling Association; Ken Roche, Gulf States Toyota, Alliance of Automotive Manufacturers (*Registered, but did not testify*: Kandice Sanaie, Texas Association of Business; Victor Vandergriff, Vandergriff Automotive Group and Texas Automotive Dealers Association)

Against — Terri Hall and James Micklethwait, Texas TURF; Deborah Parrish, Jack Finger, T.U.R.F Supporters; Ken Whalen, Texas Daily Newspaper Association, Texas Press Association; Woodrow Curd; Patrick Dossey; Roseann Maurer; Babbie Migl; Robert Throckmorton (*Registered, but did not testify*: Mary Anderson, Bruce Burton, and Pamela Dickinson, Texans Against Tolls; Darrin Hall, City of Houston-Office of Mayor Bill White; Shanna Igo, Texas Municipal League; GK Sprinkle, Daily Court Review and Daily Commercial Record; Sue Ann Campbell; Don Dixon; Alicia Drgac, for Harris Harrel; Virginia Faubion; Richard Reeves; Ron Schumacher;)

On — Jennifer Jones, Sunset Commission; Jack Albert, AGC of Texas Highway Heavy Branch; Howard Cowan, Texas Good Roads & Transportation Association; John Esparza, Texas Motor Transportation Association and Southwest Movers Association; Dennis Kearns, BNSF Railway; Margaret Lloyd, Scenic Texas; Kate Robertson, Environmental Defense Fund; Tracy H. Schieffer, AGC of Texas; Steve Stagner, Texas Council of Engineering Companies (*Registered, but did not testify*: Deirdre Delisi, Texas Transportation Commission; Elizabeth Lippincott, Texas Border Coalition; Lawrence Olsen, Texas Good Roads & Transportation Association; Amadeo Saenz, TxDOT)

BACKGROUND: The Texas Department of Transportation (TxDOT) is responsible for managing the state's transportation network and vehicles travelling on state roads. The agency's major duties include:

- planning, maintaining, and expanding the state's highways and bridges, including toll roads;
- managing the state's transportation network, safety improvements on roads, and regulations of outdoor advertising;
- overseeing business activities related to motor vehicles, including dealerships and vehicle salvage; and
- administering divisions responsible for registering vehicles, including motor carriers, and issuing titles and license plates, and oversize and overweight permits.

TxDOT employs about 14,500 staff in Austin and in the agency's 25 district offices statewide. The agency had a budget of \$17.5 billion for fiscal 2008-09, the majority of which was dedicated to planning, building, and maintaining roads and bridges.

The Texas Transportation Commission (TTC) is the policy-making body presiding over TxDOT and is composed of five members appointed by the governor, with the advice and consent of the Senate. Members serve staggered, six-year terms. The Transportation Code requires that commission members be appointed to reflect the diverse geographic regions and population groups of the state, including one member who must reside in a rural area. The commission provides policy direction with regard to TxDOT's major areas of operation, selects certain transportation projects to receive funding, and elects the department's executive director.

TxDOT is funded largely through federal funds and revenue from Fund 6, which collects the vast majority of highway-related revenue from state motor fuels taxes, motor vehicle registrations, concessions payments for the right to develop and operate toll roads, and various fees. The agency also receives bond proceeds from Fund 6 revenue bonds and Texas Mobility Fund (TMF) revenue bonds. The 81st Legislature is considering bills that would appropriate additional proceeds from general obligation bonds authorized by voters through Proposition 12 (SJR 64 by Carona).

TxDOT administers functions related to vehicle titles, registration, and license plates in conjunction with county tax assessor-collectors' offices.

Revenue from registrations is divided between the counties that collect the fees and Fund 6, where it is appropriated for various highway-related purposes. TxDOT also houses the Automobile Burglary and Theft Prevention Authority (ABTPA), which was established to assess problems related to auto burglary and theft in the state and administers a grant program to local governments. The ABTPA has a seven-member board and a budget of about \$30 million for fiscal 2008-09, most of which was granted to local entities. TxDOT also issues permits for vehicles that exceed statutory weight and size limit, which totaled 554,000 in fiscal 2007.

Unless continued by the 81st Legislature, TxDOT will be abolished September 1, 2009.

DIGEST:

CSHB 300 would revise policy and oversight bodies, statewide and local transportation planning, funding for transportation projects, and TxDOT powers, duties, and regulatory oversight. The bill also would move certain agency duties and responsibilities to other agencies and would add provisions governing rail transportation. CSHB 300 would continue TxDOT for four years until September 1, 2013.

REVISIONS TO POLICY AND OVERSIGHT BODIES

Texas Transportation Commission. CSHB 300 would revise appointments of Texas Transportation Commission (TTC) members, while retaining the current five-member structure. Under the bill, four commissioners would be appointed by the governor, including one that would be selected from a list of individuals provided by the speaker of the House, and one commissioner would be appointed by the lieutenant governor. The governor would appoint a commissioner to satisfy an existing requirement that one commissioner represent a rural area. The bill would also require TxDOT's chief financial officer to report directly to the TTC.

Legislative oversight committee. CSHB 300 would establish a legislative oversight committee to conduct analyses and make recommendations for the operation and needs of the state transportation system. The bill would transfer to the oversight committee funds for employees and duties currently in TxDOT's government and public affairs research section. The committee would meet at will and would be composed of six members, including:

- the chairs of the House Committee on Transportation and the Senate Committee on Transportation and Homeland Security;
- two members of the Senate appointed by the lieutenant governor; and
- two members of the House of Representatives appointed by the speaker.

Presiding officers of the committee, who would be appointed alternatively by the speaker of the House and the lieutenant governor, would serve a two-year term expiring February 1 of each odd-numbered year.

The committee would be responsible for monitoring TxDOT's planning, programming, and funding of the state's transportation system. The committee would analyze the cost-effectiveness of using various funds to improve the transportation system, critical problems facing the system, and long-term transportation needs. The committee would recommend strategies to solve transportation problems and policy priorities addressing the state's long-range needs. The committee would also assist the Legislature in developing legislation to improve the effectiveness of the state transportation system.

The committee would have other powers and duties available to special committees but could not recommend funding or developing a specific project. The committee would issue a report in the same fashion as interim reports issued by other committees. The committee could also contract with an independent consulting firm to make recommendations for improvements to TxDOT. A consultant would assume specific review functions relating to TxDOT's operations and management of the state's transportation system. The committee would oversee the implementation of any recommendations offered by a consultant.

The committee also would review and comment on TxDOT's research program, including individual research projects and activities, before the agency implemented the program. The committee could request assistance from a university transportation research program to assist with this responsibility.

STATEWIDE AND LOCAL TRANSPORTATION PLANNING

The bill would revise provisions governing statewide surface transportation planning and funding. A planning organization would be

defined as a metropolitan planning organization (MPO), a rural planning organization (RPO), or a TxDOT district that served an area that was not in the boundaries of an MPO.

Changes to TxDOT districts. The bill would delete a requirement that there may not be more than 25 regional districts in the state established to perform TxDOT's duties in the area. The commission would align district boundaries in congruity with regional planning commissions, such as a council of government, except as necessary to avoid:

- adverse economic impact on local communities caused by closing one or more department offices;
- cost inefficiencies caused by the realignment of existing district boundaries; or
- significant disruptions to the existing workforce of one or more districts.

The commission would have to send a report to relevant parties explaining the reason for any variance in district and regional planning commission boundaries.

Rural planning organizations. The bill would provide for the creation of RPOs to serve areas within the boundaries of a council of government but outside the boundaries of an MPO. An RPO would develop a transportation plan and program for its service area and could recommend transportation projects to the TTC. If an RPO did not offer recommendations, TxDOT would seek input from the RPO and local officials on transportation projects and programs in the area. To establish an RPO, the governing bodies representing at least 75 percent of the area's population would have to adopt a resolution to this effect.

RPO boards would comprise local elected officials and the corresponding TxDOT district engineer. For an RPO to receive funds, three-fourths of the board members would have to be elected officials holding office in the represented geographic area, and board votes would have to be restricted to elected officials. TxDOT could use State Highway Fund (Fund 6) revenue to pay for the operations of an RPO.

Metropolitan planning organizations. CSHB 300 would require MPOs to develop transportation plans and programs for metropolitan areas in cooperation with other entities. A program would provide for the

development and management of transportation systems and would take into consideration all modes of transportation. MPOs would cooperate with TxDOT to develop long-range transportation plans, annually updated transportation improvement programs, and an annual unified work program. Plans would have to adhere to specific criteria. MPOs would:

- prepare a congestion management system for the metropolitan area;
- assist TxDOT in mapping transportation planning boundaries required by state or federal law;
- assist TxDOT in performing its duties relating to managing access, the classification of roads, and data collection;
- execute all agreements or certifications necessary to comply with applicable state or federal law;
- represent all the jurisdictional areas in the metropolitan area in the formulation of a transportation plan or program as required; and
- perform all other duties required by state or federal law.

MPO board. An MPO board would be subject to state laws governing open meetings. Board members would not be allowed to vote by proxy. For an MPO to receive funds, three-fourths of the board members would have to be elected officials holding office in the represented geographic area and board votes would have to be restricted to elected officials. An existing MPO that did not comply with the new provisions could restructure accordingly. Transportation authorities or other agencies that have been established by law to perform transportation functions in certain metropolitan areas could be granted voting membership on an MPO board.

An MPO also would appoint a technical advisory committee to serve at its pleasure. The advisory committee would be responsible for considering safe access to schools in its review of transportation project priorities and would coordinate actions with local school boards and other local programs. An MPO would also employ an executive director and other staff as necessary and could contract with another entity to accomplish planning and program duties. Any new state laws governing MPOs that conflicted with a federal law would be superseded.

Local transportation plans. Planning organizations would have to develop a 10-year transportation plan for the use of funds allocated to the area. Portions of the plan could be used to satisfy current federal laws governing transportation improvement plans. A planning organization would collaborate with other entities to develop acceptable assumptions to

be used in the planning process. Planning organizations could also prepare and update a longer-range transportation plan for their areas.

Statewide plans. Planning organizations would select and prioritize transportation projects for their areas. A TxDOT district outside an MPO or RPO would select and prioritize projects with input from local officials and submit the list to the TTC for approval. TxDOT would use project priority lists submitted by planning organizations to create the statewide transportation program and budget. The statewide transportation program and budget would include TxDOT's operating budget, the department's cash flow forecast, allocations of funds to different regions, projects selected by planning organizations, and the department's 10-year business work plan. The plan would be adopted biennially.

TxDOT would be required to complete a 10-year business work plan based on the prioritized lists of projects submitted by planning organizations. The plan would include a list of projects that would be planned or developed in the duration of the projected plan, expected progress to be made on projects by quarter, and funding estimated for each project. The department would also complete a biennial project plan that included a schedule for authorizing funds for each project. The project plan would be subject to a review and status report by the commission.

TxDOT would work with planning organizations to develop a statewide connectivity plan. The department would adopt rules to establish criteria for designating a project as a statewide connectivity project and would develop benchmarks for evaluating the progress and timeline of such a project. The plan would be adopted formally by the Texas Transportation Commission.

FUNDING FOR TRANSPORTATION PROJECTS

Allocation of funds to local entities. TxDOT's chief financial officer would release a cash flow forecast of at least 10 years into the future containing anticipated funding available for transportation projects in the state. The Texas Transportation Commission would use the cash flow forecast to allocate funding to planning organizations by an adopted funding formula. The commission would develop funding formulas with the input of planning organizations and other officials. Funds would be deposited into subaccounts in Fund 6 for each region. The TTC could set aside for emergencies or economic development opportunities no more

than \$250 million or 10 percent of all funds allocated to districts, whichever was less.

Funds TxDOT received for highways, including toll roads with revenue not reserved for local uses, allocated at the agency's discretion would be disbursed based on performance measures and would have to include at least a consideration of centerline miles, congestion, population, percent of people in poverty, safety, and vehicle miles traveled. Performance measures would be adopted through a biennial project plan and would include a number of criteria related to the status of transportation projects within a planning organization, demand on transportation facilities, the condition of local infrastructure, and other considerations.

The TTC would allocate funding to planning organizations for all transportation project costs. The commission would have to adopt formulas that varied based on the type of transportation project and would have to adopt rules for all funding formulas.

Funds allocated to a planning organization could be used to:

- pay project costs, provide toll equity, or make other payments for projects selected by the planning organization;
- pay debt service or repay money borrowed from another region; or
- fund a planning organization's operation costs.

Planning organizations could use only a portion of total funds, which would vary based on the type of organization, to pay for operations costs.

Lending among local entities. The commission could adopt rules to allow lending funds between planning organizations. Funds could be loaned only as a means to avoid lapsing federal appropriations authority. Interest charged by a planning organization could be no greater than the interest on outstanding Fund 6 revenue bonds or the prevailing market rate for comparable municipal debt if no revenue bonds were outstanding.

Transportation reinvestment zones. CSHB 300 would allow a municipality or county to establish a transportation reinvestment zone for any transportation project. If any part of the project was subject to TxDOT oversight, the municipality or county could request that the agency delegate to it full responsibility for the development of the project. If the project was on the state highway system, it would have to comply with

state design criteria unless TxDOT made a specific exception. The bill would make conforming changes to state law to reflect the expanded range of transportation projects eligible for reinvestment zones. TxDOT could take any reasonable action necessary to comply with a federal requirement and enable the state to receive federal-aid highway funds.

A municipality or county could contract with a public or private entity to develop or otherwise improve a road in a reinvestment zone and could pledge funds from the zone to the entity. A municipality or county could not rescind a contract to pay an entity that owed a debt on bonds or other securities until those debts were satisfied. The boundaries of a zone could be adjusted as needed, but the area of the zone could not be reduced if the change might affect any outstanding bonds or other obligations used to fund the project.

An ordinance or other law designating a transportation reinvestment zone would have to designate the base year used to establish a tax increment in the municipality or county. The bill would require the portion of the money deposited into the tax increment account, as specified by the municipality, to be used in funding the transportation project associated with the zone and for aesthetic improvements within the zone. Remaining funds from the increment could be used for other purposes.

A county could assess the cost of a road development project against property within the zone. An assessment of property in the zone could be paid in installments following established procedures, but an installment could not exceed the value of a tax abatement authorized under existing law. A county could apply procedures in current law governing designated improvement districts for the purposes of assessing value and issuing bonds for the cost of the transportation project in a reinvestment zone.

A municipality or county could not be penalized with a reduction in traditional transportation funds due to the establishment of a transportation reinvestment zone. Funds that TxDOT designated for a project prior to the establishment of a reinvestment zone could not be reduced due solely to the designation of the zone. Funds for TxDOT districts could similarly not be reduced due to the establishment of a reinvestment zone by a county or municipality in the district.

Landscaping. TxDOT would allocate one-half of one percent of the cost of a contract for a highway project located in a federally designated non-

attainment area for landscaping improvements for the project or for landscaping other projects in the district. Landscaping improvements would include planting native or adapted trees suitable for the local climate and preparing the soil and installing irrigation systems for the growth of trees and plants. The added provisions would apply equally to a toll project entity contracting for a project in a non-attainment area.

Public transportation funds. The Texas Transportation Commission would adopt rules to allocate funds to public transportation providers in the state. The commission would have to distribute to providers at least 90 percent of the amount allocated through established funding formulas and more than 10 percent of discretionary funds available.

RELOCATING CERTAIN TxDOT DIVISIONS AND FUNCTIONS

CSHB 300 would move certain functions overseen by TxDOT into other agencies and offices.

Department Of Motor Vehicles. CSHB 300 would create the Texas Department of Motor Vehicles (DMV) as a separate state agency. The bill would charge the department with administering and enforcing current laws governing:

- certificates of title and motor vehicle registration;
- motor carrier registration, including federal motor carrier registration;
- the sale and lease of motor vehicles;
- salvage vehicle dealers;
- oversize and overweight vehicle regulation and permitting;
- markings on commercial motor vehicles;
- motor transportation brokers; and
- foreign commercial motor transportation.

The DMV would be organized into divisions to accomplish assigned functions and duties, including divisions for administration, motor carriers, motor vehicles, and vehicle titles and registration.

The bill would make conforming changes to statutes governing the Texas Department of Transportation (TxDOT) to reflect the transferred responsibilities and associated appropriations. Powers and duties

consolidated in the DMV would be transferred to the agency on December 1, 2009.

The DMV would be abolished on September 1, 2015, unless continued by the Legislature.

DMV board. The DMV would have an executive director appointed by a board that would meet quarterly and would consist of nine members serving staggered, six-year terms. The board would be appointed by the governor no later than October 1, 2009, with the advice and consent of the Senate. Appointments to the board would include:

- three members who hold a license for the sale or lease of motor vehicles, two of whom are franchised dealers and one of who is an independent dealer;
- one member who represents a license-holding vehicle manufacturer or distributor;
- one member who would be a county tax assessor-collector;
- one member to represent the motor carrier industry;
- one member who would be a law enforcement officer, but not a state employee; and
- two members to represent the general public.

No public member of the board or that member's spouse could be registered, certified, or licensed by the DMV, could participate in or control a business entity regulated by or receiving funds from the DMV, or receive substantial goods, services or money from the DMV outside board-related expenses. Board members would only be entitled to receive reimbursement for expenses incurred as part of exercising official duties. A board member could be removed for not meeting conditions specified in statute or if the member was absent for more than half of the regularly scheduled meetings. The DMV's executive director could notify relevant parties of potential grounds for removing a board member.

Standard sunset recommendations. CSHB 300 would permit the board to adopt any rules necessary to implement powers and duties assigned to it in law. The bill would implement standard recommendations generally contained in Sunset Commission reports on agencies, including requiring the board to:

- implement a policy on technological solutions to enhance functions;
- develop and encourage negotiated rulemaking and alternative dispute resolution procedures; and
- develop policies that provide the public with a reasonable opportunity to offer public comment.

Board members also would be prohibited from serving if they were subject to conflict of interest as defined in statute. The board and all employees would be subject to statewide standards of ethics, and registered lobbyists would not be able to assume certain leadership positions in the department. The DMV would maintain a system to act promptly on any complaints filed with the department and would keep parties informed of the status of their complaints.

The board would also develop and implement policies to distinguish clearly the responsibilities of the board from those of the director and departmental staff. The board of the DMV and the TTC would adopt a joint memo of understanding regarding sharing information necessary to each department's respective duties.

The bill would transfer to the DMV responsibilities for regulating and permitting oversize and overweight vehicles. Duties related to the payment of bonds or letters of credit would remain at TxDOT. The bill would require a joint study between the DMV's motor carrier division and TxDOT to determine improvements to the regulation of oversize and overweight vehicles. The study would include a review of specific practices that could be implemented with respect to oversize and overweight vehicles and fees.

The DMV board would establish separate advisory committees for the motor carrier, motor vehicles, and vehicle titles and registration divisions. Advisory committees would include members to represent specific industries.

Automobile Burglary And Theft Prevention Authority. The bill would revise statutes governing the Automobile Burglary and Theft Prevention Authority (ABTPA) to transfer its authority from TxDOT to the Office of the Governor. Conforming changes would be made to reflect the transfer.

REVISIONS TO TXDOT POWERS AND DUTIES

Bids and contracts. TxDOT would be able to fill only one in five positions funded in its transportation planning, design, and management functions until staffing levels were reduced 40 percent from levels at the end of fiscal 2009, or to fewer than 2,500 positions. The Legislative Budget Board (LBB) could modify this requirement if it found, following a study by the State Council on Competitive Government, that it was not possible to obtain private sector services on an effective basis with the reduction in force. A study conducted by the council could be performed by an independent contractor and would have to analyze:

- the full costs of the department 's total plan/design/manage function, with indirect costs figured in a manner comparable to private providers;
- TxDOT's historic costs of procuring services from private sector providers;
- the costs that other public entities have for procuring project delivery and engineering services from private sector providers for large-scale construction projects; and
- engineering management practices used by other public entities that could improve the efficiency of the department 's project delivery and engineering management system.

Design-build contracts. The bill would allow TxDOT to enter into a design-build contract for a non-tolled highway project. A "design-build" contract would be defined as an agreement with a private entity for the design and construction, expansion, or improvement of a highway project, not including the financing or operation of the highway. TxDOT would adopt rules specifying the conditions under which a design-build contract could be considered. Rules adopted for design-build contracts would have to be consistent with existing procedures in statute for local government entities.

Toll projects. CSHB 300 would amend current statutes regarding the conversion of existing free state highways into toll roads. The bill would add language authorizing the conversion of a free road into a tolled road only if a road that had access, function, and control devices similar to the converted highway or segment before the conversion was constructed adjacent to the tolled road. The bill would delete provisions allowing the

TTC to convert a free highway into a toll road by following specific procedures.

Local tolling entities, such as certain counties, regional tollway authorities, and regional mobility authorities would be able to request that TxDOT delegate all responsibility for obtaining environmental review required for a highway development. TxDOT would have to delegate this authority to the extent permitted by law, and the local tolling entity would have to conduct its activities in conformity with state procedures, provide the agency with the environmental information, and meet any applicable federal approval.

The bill would delete provisions allowing TxDOT to promote the development and use of toll projects and would add language stating that marketing, advertising, and other activities aimed at influencing public opinion about toll road would not be authorized.

A comprehensive development agreement allowing a private entity to operate or receive revenue from a toll project would have to be reviewed for legal sufficiency by the attorney general and reviewed for financial viability by the comptroller and would have to be signed by the TTC.

Inspector general. The legislative oversight committee would appoint an inspector general, who would be subject to removal for good cause by the TTC. If the Texas Supreme Court determined that this appointment violated separation-of-powers provisions in the Texas Constitution, then the inspector general would be appointed by the TTC from a list of people supplied by the legislative oversight committee. The inspector general would:

- audit the department's financial condition and the efficiency of its business practices;
- evaluate the efficiency of the department's administrative practices and performance,
- identify the need and opportunities for reductions in staff and workforce improvement;
- study the implementation of a commitment-based budget or business plan based on outcomes;
- identify ways to streamline the environmental approval process;
- evaluate compliance with applicable laws and legislative intent; and
- access the efficient use of available funding, personnel, equipment, and office space.

The inspector general would prepare a final report for each review containing a description of any findings. A review by the inspector general would not take precedence over a review by the State Auditor's Office, which would be entitled to access all information maintained by the inspector general.

Executive and employee conduct. A commissioner or TxDOT employee could not use any department funds to engage in an activity to influence legislation and doing so would be ground for dismissal. A commissioner or employee could use state resources to provide public information or communicate with federal employees in the pursuit of federal appropriations. TxDOT would have to establish a phone line to allow people to call in an report an alleged violation of the department's ethics policy. The bill would strike language requiring that TxDOT's executive director be a registered professional engineer.

The bill would amend current law regarding performance review of employees to require the commission and TxDOT's director to consider whether an employee with unsatisfactory performance should be terminated. Evaluations would have to include the extent to which an employee was professional, diligent, and responsive to directives and requests from the commission and the Legislature.

Website reporting system. TxDOT would establish a project information reporting system on its website that would provide for tracking project development and related expenses. The reporting system would contain specific information about transportation projects and funding, including reports evaluating the effectiveness of project funding. As part of providing this information, TxDOT would conduct a performance review of each project in the statewide transportation program that included the status of the project and if the project met projected timelines. The website would include information on the condition of the state's bridges and traffic congestion and delays.

Standard Sunset recommendations. The bill would include standard sunset recommendations concerning filing and acting on complaints, developing a policy for public involvement, negotiated rulemaking and alternative dispute resolution, and technological solutions.

REVISIONS TO REGULATORY OVERSIGHT

Household goods carriers, motor carriers, and salvage dealers. The bill would expand the TTC's authority to adopt rules regarding household goods carriers to include requiring a carrier to submit information on whether it regularly obtains criminal history record information on employees and if it incorporates this information into hiring practices. Information received regarding criminal record practices of household goods carriers would be made available through TxDOT's website. TxDOT could order household goods carrier to pay a refund to a customer that resulted from an informal settlement in addition to or in lieu of imposing administrative penalties. A refund could not exceed the amount a customer paid for a service or for an item damaged by a motor carrier.

TxDOT could suspend the registration of a motor carrier if it determined the carrier's operations posed a continuing and immediate threat to the public safety and welfare. TxDOT could issue an emergency cease and desist order to a motor carrier if it appeared that the carrier was not properly registered to transport household goods for compensation and was violating state laws or rules. The order would have to follow designated procedures.

The bill would allow TxDOT to impose an administrative penalty up to \$5,000 on businesses involved in the sale and lease of motor vehicles, including salvage vehicle dealers. Penalties would be based on the severity of the violation, in addition to other specific considerations, and would have to adhere to specific processes.

Outdoor advertising. CSHB 300 would revise statutes governing outdoor advertising and the Texas Highway Beautification Account. The bill would require a municipality to provide compensation for an outdoor advertisement removed due to a road project and prohibited from being relocated by a municipal ordinance or other regulation. In these cases, the municipality would pay compensation only for the right, title, and interest in the sign and right to erect and maintain the outdoor advertisement.

The bill would create a process for licensing and bonding a person displaying outdoor advertising on rural roads. The bill would add provisions prohibiting an individual from erecting or maintaining an off-premise advertisement on a rural road without a license and would

establish a misdemeanor punishable by a fine between \$500 and \$1,000 for this offense.

TxDOT would have to establish rules for accepting and resolving written complaints related to outdoor advertising. The department would have to follow procedures for denying or revoking a permit for outdoor advertising.

The bill would amend provisions to allow funds from the highway beautification account to be used for regulating outdoor signs on rural roads. Certain civil penalties assessed for violations of outdoor advertising provisions would be redirected from Fund 6 to the beautification account. The bill would provide for administrative penalties in lieu of a suit to collect a civil penalty. The TTC would adopt procedures for suspending or otherwise revoking a license for outdoor advertising and could deny renewing a license for failing to conform to permit requirements. Notice would have to be provided to a party who had a permit to display an outdoor advertisement revoked or denied.

RAIL TRANSPORTATION PROVISIONS

Rail transportation division. CSHB 300 would charge the TTC with organizing a rail transportation division within TxDOT to assume related functions and duties in the state. The division would:

- assure that rail transportation was an integral part of the department's transportation planning process;
- coordinate and oversee rail projects that are financed with TxDOT funds, including money from the Texas Rail Relocation and Improvement Fund;
- develop and plan for improved passenger and freight rail facilities and services; and
- coordinate the efforts of TxDOT, the federal government, local governments, and private entities to continue the development of rail transportation facilities and services.

High-speed rail authorities. CSHB 300 would authorize the creation of higher-speed rail authorities to serve the Texas-Mexico and Texas-Louisiana border regions. The rail authorities would have the power to buy property, issue bonds, exercise eminent domain, buy rolling stock, enter into agreements, sue, and construct and maintain higher-speed rail

infrastructure. The bill would allow authorities to lease or contract with private companies to operate higher-speed rail systems. Trains would operate at speeds between 70 and 110 miles per hour.

Board of Directors. The Texas-Mexico border higher-speed rail authority would be governed by a board of directors consisting of seven county judges from the most populated counties in the region and four directors, selected by the judges, to represent the other counties in the region. The Texas-Louisiana higher-speed rail authority would be governed by a board of directors consisting of five county judges from the most populated counties in the region and two directors, selected by the judges, to represent the other counties in the region.

Eminent domain. Eminent domain could be used only if acquisition of the property were a public necessity. Property owners who lost land through eminent domain could, with their consent, receive payment in the form of a legal right to receive a percentage of fees related to the applicable segment of the system.

Joint ownership agreements. The bill would permit the authorities to enter into joint ownership agreements. The bill also would permit authorities to make agreements with and receive grants and loans from state agencies and other government entities including the U.S. and Mexican federal governments, U.S. and Mexican state governments, and local governments.

Financing. CSHB 300 would permit authorities to issue bonds to fund higher-speed rail projects. Bonds would be authorized investments for:

- banks;
- trust companies;
- savings and loan associations; and
- insurance companies.

The authorities would be required to adopt a budget before beginning operations. The bill would exempt border higher-speed rail authorities from state and local taxes but items sold at rail stations would remain taxable. The bill would allow authorities to use tax benefits as incentives to encourage private investment. Authorities would also be able to make agreements involving foreign currency with companies that have good credit.

General provisions. Contracts worth more than \$15,000 would be selected through a competitive bidding process. Competitive bidding would not apply to personal or professional services, acquiring existing railroads, or contracts to construct lines on lines owned by the carrier.

Authorities would be able to establish routes for high speed train transit. The bill would give border rail authorities the ability to make use of public and private roads. The authority would be required to obtain TxDOT approval before using property in the state highway system. The authority would also be required to obtain permission from a railroad company before using the railroad. The bill would advise authorities to use existing infrastructure as much as possible.

The authorities would be subject to sunset review every 12 years.

GENERAL PROVISIONS

CSHB 300 would include provisions requiring the TTC to adopt rules to allow the placement of privately funded memorials for peace officers and special investigators killed in the line of duty. The rules would have to closely resemble those governing memorials for Department of Public Safety (DPS) troopers killed in the line of duty.

The bill would add provisions requiring TxDOT to actively manage a system of changeable message signs located on highways in its jurisdiction to provide information about traffic incidents, weather conditions, an Amber or Silver Alert currently in effect, road construction, alternative routes, and services available during an evacuation.

The bill would amend miscellaneous provisions of the Transportation Code to require that a municipality imposing certain user fees provide notice to TxDOT and the party paying the fee.

The TTC could waive matching or other funds for a designated Texas Highway Trunk System project located in certain counties.

The bill would take effect September 1, 2009. Changes affecting MPOs would take effect January 1, 2010. Appointments to the legislative oversight committee would be made by January 1, 2010.

SUPPORTERS
SAY:

CSHB 300, the TxDOT Sunset bill, would promote transparency, accountability, efficiency of operations, and local control over transportation projects. The bill would make structural changes to agency oversight, revise TxDOT's powers and duties, and establish new procedures for transportation planning and funding.

Texas Transportation Commission. CSHB 300 would add a key element of accountability to the TTC by revising commissioner appointments. Allowing the lieutenant governor to make an appointment to the commission and restricting one gubernatorial appointment to a list selected by the speaker of the House would provide more direct accountability for two commission members. This change would strike a balance between the often competing principals of fair geographic representation, electoral accountability, and specialized knowledge that have proved a challenge to attaining a consensus.

While other proposals may have merit, many have associated weaknesses that eclipse their promise. A single appointed official or single elected commissioner, for instance, could be more directly accountable, but to only to a majority of voters. A single official could leave large areas of the state with no representation on the commission. Further, adding elected officials could politicize the process of selecting transportation projects in the state and result in decisions made for political expediency and not the state's best interests.

In other respects, a single commissioner may actually reduce accountability and transparency by eliminating a need and opportunity for discussion of transportation projects at commission meetings. One commissioner could act unilaterally without the need to justify decisions or associated reasoning to fellow commissioners.

Major structural modifications to the commission would not address core issues with transportation management in the state — the need to make organizational, leadership, and cultural changes within TxDOT.

Changes to planning and funding. The bill would empower local planning organizations to choose which transportation projects were constructed in their areas with available funds. Under current practices, local MPOs and TxDOT districts prioritize transportation projects in their region, but these projects ultimately require approval in some form or other from the TTC. The TTC determines the funds available to districts

and MPOs through a formula that is developed internally, subject to change, and the subject of much confusion in recent years. Requiring TxDOT to establish the formula in rule and to deposit funds the formula yielded into subaccounts for each region in the state would remove much of the confusion about the allocation of funding. Local entities would know the exact sum available to them to spend on transportation projects and would have access to the formula that yielded the funds.

Department of Motor Vehicles. CSHB 300 would consolidate key customer service functions currently housed in TxDOT into a new state agency, the Texas Department of Motor Vehicles. Moving functions carried out by the motor vehicle titles and registration division, the motor vehicle division, and the motor carrier division to the DMV would allow TxDOT to focus on expanding and managing the state's transportation system. TxDOT currently is saddled with too many exacting responsibilities related to the state's transportation network to devote adequate attention to managing the divisions serving Texas drivers. An agency the size of TxDOT is prohibitively difficult to restructure internally without causing disruptions to other divisions and activities. Moving the functions to an independent agency would provide the best opportunity for any further restructuring or other revisions that could be necessary in the long term.

Creating a separate agency with an emphasis on customer service for Texas drivers would improve registration processing times and reduce administrative lags that inconvenience citizens and businesses. A stand-alone agency would also improve transparency and accountability by creating clear responsibility for overseeing the transferred functions and subjecting the agency to direct scrutiny from a number of sources, including the Legislature, the State Auditor's Office, and the industries affected by the office's operations.

Transportation reinvestment zones. CSHB 300 would be a logical progression in the use of transportation reinvestment zones to fund road developments and improvements. Under current law, transportation reinvestment zones — which allow a local entity to dedicate additional tax revenue generated by increased property values around a transportation project to the costs of developing the project — are confined to projects funded in a pass-through tolling agreement with TxDOT. A pass-through tolling agreement allows a local entity to pay the development costs of a

road project, then seek reimbursement from TxDOT based on the estimated number of vehicles that travel on the road.

CSHB 300 would broaden local governments' ability to establish transportation reinvestment zones for transportation projects. It also would clarify and update existing laws on reinvestment zones and make assurances that a government could not rescind certain agreements attached to a zone, nor modify a zone if the proposed change had an impact on pre-committed revenue. These changes would help ensure the viability of transportation zones and reassure parties seeking to develop a highway project in such a zone.

The bill would take important steps toward securing another transportation financing option to local governments in an era of increasing congestion and limited resources. While raising the motor fuels tax may be another reasonable approach, this has proved a political impossibility in recent sessions. With fixed state and federal funds for transportation projects, it is critical to maximize options for developing transportation projects.

Toll roads. CSHB 300 would address abuses in managing development of toll roads that came to light during Sunset hearings. The bill would further restrict the ability to convert existing free roads into tolled roads by requiring any new free roads to closely resemble a road being converted, such as by having the same control devices as the converted segment. The bill would address criticisms that TxDOT spends taxpayer resources to launch campaigns supporting toll roads by not allowing the department to promote the development and use of toll projects.

While the bill would include some provisions on toll roads, most of these changes should rightfully be included in another bill dealing specifically with tolling authority and comprehensive development agreements. Toll road administration is only one TxDOT function and should not subsume the larger Sunset process.

Legislative oversight committee. Current legislative oversight of TxDOT, while valuable, is insufficient for the guidance and review necessary to restore trust and confidence in the agency and to ensure the intent of the Legislature is carried out after a legislative session. Current committees must review a wide range of functions with limited staff resources. A formal oversight committee tasked with specific duties in how transportation projects are implemented and funded in the state could

go a long way in providing direct guidance for the agency's operations. Further, providing the committee with \$1.2 million would provide the resources needed for thorough review and oversight of the agency.

Outdoor advertising. The bill would rightly place the burden on municipalities to pay compensation for a billboard that had to be removed as part of a road expansion project and could not be relocated due to city ordinances or other regulations. Condemning billboards can be expensive because the value includes opportunity costs for future revenue lost as a result of the condemnation. Some estimates of billboard value have surpassed \$1 million, which TxDOT is currently obligated to pay for an expansion of a road on the state highway system. Municipalities may choose to alter local regulations to allow for the relocation of certain billboards on a limited basis. This is problematic because the ultimate cause of the condemnation is the municipality that enacted the ordinance prohibiting the billboard from being relocated. The state should not have to pay taxpayer funds for the policy of a municipality that is benefitting from an expanded road.

Rail provisions. Establishing a rail transportation division in TxDOT would elevate the status of rail within the agency. It also would create a framework for operating programs and receiving funds that could eventually be dedicated through the Texas rail and relocation fund. Creating rail authorities in border regions would create jobs and attract businesses to two of the state's border areas. High-speed rail has the potential to employ thousands of Texans in construction, engineering, operation, and design. High-speed passenger trains would allow business commuters to travel easily throughout border regions. Efficient transportation is vital to business success, and creating higher-speed rail authorities would make Texas an ideal place to locate a business.

OPPONENTS
SAY:

CSHB 300 would miss an important opportunity to restructure TxDOT in ways that promote the long-term interests of the state.

Texas Transportation Commission. CSHB 300 would not substantially change the structure of the Texas Transportation Commission. While the bill would allow for an appointment by the lieutenant governor and some influence from the speaker of the House, most appointments would remain with the governor and the number of commissioners would not change. The Sunset Advisory Commission found a pervasive atmosphere of distrust surrounding TxDOT and recommended decisive action. Sunset

argued that a single commissioner would help restore accountability, trust, and responsiveness to the agency. Retaining the five-member commission with a few modifications of appointments would not adequately reflect current discontent with TxDOT operations. The state needs significant change in how transportation projects are planned and implemented in the state that would not be realized by the current recommendations in the bill.

The TTC should be significantly restructured to include a single appointed or elected representative or multiple, elected representatives. A change of this magnitude would send a strong message to TxDOT and fundamentally alter the commission to make its policymaking functions responsive to the public and its representatives.

Toll roads. CSHB 300 would not adequately protect the public's interest with regard to toll roads. While the bill would include minor adjustments to TxDOT's role in promoting toll roads, it would not clearly restrict the agency in continuing similar, unacceptable practices in toll road development.

For instance, the bill still would allow the conversion of existing roads to toll projects if a free adjacent road were provided. The bill would not completely close this loophole, identified in the Sunset Commission hearing, but instead would qualify the permissible conditions for converting a free road into a toll road. TxDOT has proved in the past very capable of finding and exploiting vague language restricting the development of toll projects. Free roads should not be converted to toll roads, and the exception for this in the law should be deleted.

Further, allowing a local tolling entity to assume control over the environmental review for a transportation project would fatally bias the process. A toll entity cannot give fair consideration to the possibility of developing a road without tolls. A preordained bias would defeat the core purpose of an environmental review — to conduct an objective analysis of the options for developing a transportation project.

Changes to planning and funding. CSHB 300 would subordinate statewide transportation planning to local planning entities not focused on the needs of the state. This would place projects that span many local organizations at a district disadvantage. Texas is a center of commerce and a hub for international and domestic trade, and a strong statewide road system is critical to maintaining the state's competitive business

advantage. A statewide transportation program must be coordinated by the state, not local entities. Weakening the state's role would threaten the long-term viability of the state's transportation system.

TxDOT has been designated by the federal government as the lead transportation entity for the state. Decentralizing transportation planning and funding powers in local organizations could threaten this role and the state's ability to receive and effectively distribute federal funds.

Further, the bill would prevent non-elected officials on a planning organization board, such as TxDOT district engineers, from voting. While representation from local elected officials is important, they may not have strong backgrounds in engineering and transportation planning. Preventing TxDOT district engineers and other experts from voting on a board would rob them of any real influence over the selection process and could result in the selection of some questionable projects.

Department of Motor Vehicles. The bill would create a new agency to address problems that could be addressed with changes to the management of the divisions that would be moved. The state did have a separate department for motor vehicle registrations until the early 1990s, when it was merged to form TxDOT. Reversing that decision would not necessarily resolve problems with turnaround times and understaffing. Moving the functions to a new agency could relocate the sources of problems without addressing underlying issues, such as lack of resources.

Functions moved from TxDOT to the DMV should not include regulation and permitting of oversize and overweight vehicles through the motor vehicle division. These functions should remain with TxDOT because they require specialized knowledge in engineering and other technical traffic and vehicular knowledge that TxDOT is best equipped to provide.

Transportation reinvestment zones. CSHB 300 would continue the state's piecemeal approach to providing transportation funding without addressing the core issue facing the state — a motor fuels tax that has been declining in relative value since 1991.

Transportation reinvestment zones likely would be limited to select areas and would not address statewide highway funding shortfalls. The state needs to address the core issue and increase or index to inflation the motor fuels tax — preferably both. Reinvestment zones also would be a

diversion from this necessity and would expand the troubling practice of using property taxes to fund transportation improvements. This questionable use of property taxes could create an incentive to increase appraisals of property in the zone. Further, the increment dedicated to the costs of transportation projects would be diverted from other needs of local governments.

Legislative oversight committee. The legislative oversight committee would not substantially change any authority or review process that currently applies to TxDOT. A number of legislative committees and subcommittees already oversee TxDOT and can review the implementation and funding of transportation projects. More legislative oversight is likely to result in more time and resources devoted to reviewing TxDOT, with no guarantee the reviews will result in real change at the agency.

Outdoor advertising. CSHB 300 would unfairly place the burden on a municipality to compensate for a billboard condemned as a result of highway expansion. This would unfairly transfer costs for expanding highways on the state system to a municipality. The change would place a municipality in a difficult position of deciding to pay outrageous sums to condemn billboards or exercising their right under the law to regulate billboards in communities in their jurisdiction. The condemnation of a billboard stems most directly from the highway expansion and should be considered a cost incurred as part of a highway project.

The calculation of compensation for billboards and other outdoor advertising are conspicuously unfair. Billboards enjoy benefits afforded to no other business or resident subject to condemnation through eminent domain. Property owners subject to condemnation do not get to factor into the market value any opportunity costs they might incur as a result of losing their property. Billboard companies pay taxes on a fraction of the valuation they would be awarded in a condemnation case. Lawmakers should focus on resolving this conspicuous double-standard in law before simply attempting to transfer the cost of condemning outdoor advertising from one source of taxpayer funds to another.

Bids and contracts. The bill would apply a very specific method of delivery for transportation contracts, design-build contracts, to standard contracts that should be procured with standard processes. Allowing TxDOT to use design-build contracting for any non-tolled highway project

would not make sense because only a fraction of highway projects are suited for procurement through specialized forms of contract. Allowing an expanded use of design-build contracts would have few benefits and could present a number of risks based on how these contracts are structured.

Rail provisions. The higher-speed rail authorities authorized in the bill would be endowed with a number of unusual powers, such as the ability to circumvent certain competitive procurement standards. The bill would give the authorities a broad grant to use the power of eminent domain and would convey a number of additional powers to the authorities to take actions that could have consequences for the citizens of the state. Establishing rail authorities in border regions would be premature because there is not a clear, demonstrable need for the services they would provide.

Such strong measures to establish entities with broad grants of authority should be preceded by a careful feasibility study that demonstrates a pressing need and provides an objective evaluation of the conditions under which high-speed rail could succeed in the state.

NOTES:

CSHB 300 includes provisions from a number of related bills, including:

- CSHB 1810 by Pickett, revising provisions governing transportation reinvestment zones, placed on the General State Calendar for May 4;
- CSHB 2589 by Pickett, adding provisions regarding transportation planning and funding, sent to the House Calendars Committee;
- CSHB 3650 by Merritt, creating higher-speed rail authorities along Mexico and Louisiana borders, placed on the General State Calendar for May 4;
- HB 3786 by Rodriguez, creating privately funded memorials honoring certain peace officers killed in the line of duty, sent to the House Calendars Committee;
- HB 4180 by Guillen, revising funding for public transportation, passed by the House;
- SB 220 by Nichols, revising conditions for converting a free state highway to a toll road, passed by the Senate.

The Legislative Budget Board (LBB) has estimated that CSHB 300 would have no net fiscal impact on general revenue in fiscal 2010-11. The LBB estimates that the bill could have a cost to Fund 6 of about \$1.2 million for fiscal 2010-11. The expenses would come from additional employees in

executive management and support positions at the DMV, as well as travel and support expenses for the board. Establishing a rail transportation division would require one additional employee to act as division director.

The LBB estimates that 707 full-time employees and \$94.4 million each fiscal year would be transferred from TxDOT to the newly created DMV, and five full-time employees and \$15.1 million for each fiscal year would be transferred from TxDOT to the governor's office for the Automobile Burglary and Theft Prevention Authority.

The substitute adopted a number of changes from the original version, some of which include:

- modifying the Texas Transportation Commission from a single appointed member to a five-member body;
- requiring TxDOT and local planning organizations to develop plans and programs that would reflect projects selected by the planning organizations;
- restricting TxDOT from filling more than one in five positions funded in its transportation planning, design, and management functions until staffing levels were reduced 40 percent from levels at the end of fiscal 2009, or to fewer than 2,500 positions;
- establishing requirements for a metropolitan planning organization to be eligible to receive funds under a transportation allocation formula;
- revising current laws governing transportation reinvestment zones;
- deleting provisions allowing TxDOT to promote the development and use of toll projects;
- transferring the Automobile Burglary and Theft Prevention Authority to the governor, as opposed to the DMV; and
- authorizing higher-speed rail authorities in border regions.

The companion bill, SB 1019 by Hegar, was left pending in the Senate Committee on Transportation and Homeland Security.