

- SUBJECT:** Continuing the Texas Department of Transportation
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 12 ayes — Morrison, Martinez, Burkett, Y. Davis, Goldman, Israel, Phillips, Pickett, Simmons, E. Thompson, S. Thompson, Wray
- 0 nays
- 1 absent — Minjarez
- SENATE VOTE:** On final passage, March 21 — 30-0
- WITNESSES:** For — Russ Horton; (*Registered, but did not testify*: Karen Rove, AGC of Texas; Peyton McKnight, American Council of Engineering Companies of Texas; Terri Hall, Texas TURF & Texans for Toll-Free Highways)
- Against — None
- On — Amy Tripp, Sunset Advisory Commission; James Bass and Marc Williams, Texas Department of Transportation; (*Registered, but did not testify*: Lauren Garduno, Bill Hale, Randy Hopmann, and Rich McMonagle, Texas Department of Transportation)
- BACKGROUND:** The Texas Department of Transportation (TxDOT), created by the Legislature in 1917, is an agency charged with managing the state's transportation network.
- Functions.** TxDOT plans, constructs, maintains, and supports Texas' transportation system, which includes roads, bridges, public transportation, railroads, and certain airports. TxDOT also manages operations on the state highway system, including constructing rest areas, regulating outdoor advertising, and efforts to improve traffic safety.
- Governing structure.** TxDOT is directed and overseen by the Texas Transportation Commission, which is composed of five members from

geographically diverse areas of the state serving staggered six-year terms. They are appointed by the governor and subject to confirmation by the Senate.

Funding. In fiscal 2015, TxDOT's expenditures totaled more than \$10.5 billion. More than \$6.6 billion, or 64 percent, of that amount was directed to highway construction and maintenance contracts. The remainder went to finance several functions relating to TxDOT's mission, including transportation planning, design, and research, debt service on previously constructed transportation projects, and public transportation.

Staffing. At the end of fiscal 2015, TxDOT had 11,773 employees, with 2,869 based in Austin and 8,904 in 25 district offices across the state.

TxDOT would be discontinued on September 1, 2017, if not continued in statute.

DIGEST:

CSSB 312 would continue the Texas Department of Transportation (TxDOT) until September 1, 2029. It would revise provisions governing aircraft pooling, project selection, contracting, district performance measures, metropolitan planning organizations, and reports of information to the public.

Aircraft pooling. The bill would amend statute to remove references to the State Aircraft Pooling Board, which the Legislature abolished and transferred to TxDOT in 2005. The bill would require TxDOT to include in the long-range strategic plan for the aircraft pool that it currently prepares:

- estimates regarding the life of aircraft in the pool and a proposed replacement schedule;
- a range of alternatives and scenarios for the number and types of aircraft in the pool;
- an analysis of current usage and maintenance;
- any documented high-risk mechanical issues; and
- an analysis of the costs and benefits of different methods for

meeting air transportation requirements including reliance on private charters services or commercial services.

The bill also would require the long-term plan to include an analysis of the impact of increasing rates to recover the capital costs of replacing aircraft in the pool. The bill would allow TxDOT to establish such rates if it found that it would be a practicable fleet replacement strategy. If rates were set in this manner, revenue for the replacement of aircraft would be deposited into a separate account in the State Highway Fund and could be used only to buy aircraft for the pool operated by TxDOT.

The bill would establish certain restrictions on the use of state aircraft. Specifically, a state official could use a state aircraft only if air transportation was the most cost-effective travel arrangement or emergency circumstances necessitated the use of a state aircraft. Additionally, any state official using a state-operated aircraft would be required to file an affidavit stating the person was traveling on official state business.

Project prioritization. The Texas Transportation Commission (TTC) would be required to evaluate projects for the Statewide Transportation Plan based first on strategic need and potential contribution toward meeting required plan goals. After considering these factors, TTC could consider other factors such as funding availability and project readiness.

The bill would require TxDOT to comprehensively analyze the effect of funding allocations made to funding categories developed under the Unified Transportation Program (UTP). This analysis and its methodology would be publicly available on the internet and updated as part of the annual development of the UTP and the statewide transportation report. Additionally, TTC would be required by rule to adopt a policy comprehensively explaining the approach to public involvement and transparency and make a report on any change to the UTP available on the internet.

District project monitoring. The bill would require TxDOT to develop

performance measures, based on current district work programs, for the project development process in each district's project portfolio. TxDOT would be required to regularly review and evaluate project development activities in each district based on these measures and adopt rules relating to their use and publication.

TxDOT also would be required to review the project information reporting system, solicit feedback from external and internal users, and develop a plan for any needed improvements to the system.

Contracting. TTC would be required to adopt rules to establish a range of contract remedies to be included in all low-bid highway improvement contracts, and develop a process and criteria for when to apply each contract remedy.

For existing rules relating to a schedule of liquidated damages associated with project completion delays, the bill would require that the rules include criteria for identifying projects which have a significant impact on the traveling public and for calculating the true cost of travel delays.

The bill would require rules relating to reviews of specific contractors to include criteria for modifying the ability of a contractor to bid on future contracts when appropriate and an appeals process for this sanction.

Any rules relating to contracting sanctions must be developed to allow TxDOT to consider any events outside of the contractor's control and contractual provisions providing for the consideration of sufficient time.

Metropolitan Planning Organization coordination. Before September 1, 2018, TTC would be required to adopt rules governing:

- the alignment of TxDOT's funding forecasts with funding forecasts of Metropolitan Planning Organizations (MPOs);
- the alignment of statewide project recommendation criteria with criteria of MPOs;
- processes for allowing MPOs access to TxDOT's information

- systems, software, and technical assistance; and
- processes for collaborating with MPOs to evaluate data needed to develop a performance-based planning and project selection system.

Reporting. The bill would require law enforcement to submit all accident reports to TxDOT electronically. The bill also would remove the requirement that TxDOT receive crash reports from individual drivers.

If any project substantially changed the layout or function of a connecting roadway or an existing facility, a public hearing would be required.

The bill would require the plan for a statewide passenger rail system to be updated at least once every five years, instead of every year as under current law, and include an analysis of any potential impact on local road connectivity and statewide transportation planning.

Under the bill, TxDOT would be required to publish certain information relating to the Statewide Transportation Plan on its website under a regularly-updated dashboard that clearly communicates certain information to the public.

Training. The bill also would amend provisions relating to the training of members of TTC to conform with the Sunset Advisory Commission's across-the-board policies.

The bill would take effect September 1, 2017.

SUPPORTERS
SAY:

CSSB 312 appropriately would continue the Texas Department of Transportation (TxDOT) for 12 years, allowing it to continue its vital work of ensuring the safe and efficient transport of people and citizens across Texas and building on recent measures to increase the agency's transparency.

TxDOT manages and successfully has maintained the state's aging aircraft fleet. However, with five of the six planes more than 30 years old, the

sheer age of the aircraft causes increased maintenance costs and serious safety concerns as the risk of structural or systemic failure grows. The bill would provide much-needed direction to TxDOT, allowing it to plan for replacing the aircraft or study alternatives, such as private charters.

Additionally, current law governing fleet usage is too broad and enables convenience rather than cost-effectiveness. The bill would require verification that the requested travel was for official state business and restrict the definition of cost-effectiveness to ensure appropriate use of the state's aircraft.

The evaluation of strategic needs should be considered before and separate from the more practical scheduling considerations when selecting a project. Practical matters could still be considered under the bill, but project selection should be prioritized in accordance with the strategic goals in the Statewide Transportation Plan.

Studying the effects of funding allocations would complement the reforms made by HB 20 by Simmons in 2015 by requiring TxDOT to quantify the link between progress toward performance goals and funding decisions for certain types of projects in the Unified Transportation Plan.

The bill would allow TxDOT's central management to understand more clearly how each district was doing on individual projects. Specifically, requiring TxDOT to finally implement a project portfolio review process and mandating improvements to the online project tracker system would ensure that TxDOT and its partners could better monitor district progress on individual projects, identify and correct backlogs, and promote better communication.

TxDOT frequently struggles with significant contractor-fault construction delays on low-bid contracts because its current low-bid process does not have available to it some contract remedies typical of other states' departments of transportation. As a result, TxDOT has few options to incentivize enforcement of a contract without declaring that the contractor is in default. The bill would require TTC to develop and implement

appropriate contract remedies and evaluate past performance of a particular contractor before considering a bid, thereby increasing TxDOT's ability to enforce contracts and ensure projects were completed on time.

The bill would clarify the relationship between TxDOT and MPOs and improve collaboration on complex projects. Developing rules to govern the relationship would increase the effectiveness of both TxDOT and MPOs as they establish mechanisms and procedures to plan and select complementary projects.

The bill would require law enforcement to submit crash data electronically, which would ultimately save TxDOT about \$1 million every year. Current law allows reports to be submitted by mail, which can delay data collection for months and cause data entry errors. As TxDOT uses this data to evaluate traffic safety and select projects, it is vital to update the crash reporting system. Additionally, current law needlessly requires certain individual drivers to submit a crash report to TxDOT, a requirement that drivers often are not aware of and that serves no purpose.

The bill appropriately would require TxDOT to hold hearings when a project would result in substantial changes to existing transportation infrastructure, which could significantly impact citizens in the area. Requiring TxDOT to hold hearings would increase the ability of users of the local transportation networks to give the department feedback and keep adequately informed.

**OPPONENTS
SAY:**

Under CSSB 312, certain factors such as funding availability and project readiness would be secondary to long-term strategic considerations. Instead, they should be considered on equal footing to allow TTC the flexibility to prioritize projects which were more immediately practical and to avoid delays in putting funding to work.

While the focus on helping MPOs align with TxDOT is valid, the bill effectively would require TxDOT to align its project recommendation criteria and funding forecasts with those of MPOs. TxDOT provides

funding and support to MPOs and therefore should not have to rely on MPO forecasts or project recommendation criteria.

The bill should not require public hearings on a project that would substantially change the layout or function of an existing road. Such a public hearing currently is held on request, and the state already is required to hold certain public meetings under the National Environmental Policy Act. Because TxDOT must rent a venue, prepare presentations, and pay for travel costs of engineering staff, the bill could impose a substantial cost per hearing, most of which likely would not be well attended.

OTHER
OPPONENTS
SAY:

CSSB 312 should include some requirement relating to the reporting of contract overruns and delays and any associated reasons, especially for MPOs, whose board members are not necessarily transportation experts focused on the outcomes of the contracts.

The bill should include some guidance for TxDOT relating to the enforcement of certain regulations on outdoor signs. The department is responsible for enforcement of certain regulations on billboards and sometimes does so inconsistently due to a lack of clarity in the law.

NOTES:

CSSB 312 differs from the Senate-passed version in that the committee substitute would require the Texas Transportation Commission to adopt rules establishing contract remedies for low-bid contracts, rather than all contracts.