

BILL ANALYSIS

Senate Research Center

H.B. 1892
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Transportation & Homeland Security
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Since its creation in 1983 under Chapter 284 (Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties), Transportation Code, the Harris County Toll Road Authority has provided residents in the greater Houston area with much needed mobility solutions for the growing population in the area. Subsequently, leaders in the Dallas-Fort Worth area created the North Texas Tollway Authority with a similar purpose of solving transportation issues locally.

Recently, the Texas Department of Transportation (TxDOT) has sought to take control of locally planned projects, preventing locally created tollway authorities from solving their own transportation issues. There is currently no law preventing TxDOT from requiring payment for the use of right-of-way or connection to the state highway system.

H.B. 1892 grants county tollway authorities created under Chapter 284, Transportation Code, and regional tollway authorities created under Chapter 366 (Regional Tollway Authorities), Transportation Code, with the first option in building projects within their jurisdictions and provides these authorities with the powers to cost-effectively construct and complete such projects. This bill also requires TxDOT to assist such authorities in the completion of projects by providing right-of-way owned by TxDOT and access to the state highway system without requiring payment for those resources.

Furthermore, H.B. 1892 establishes a statewide moratorium on comprehensive development agreements for two years, exempting certain projects in certain areas of the state, and creates a committee to study the policy implications of this transportation funding mechanism. This bill allows any county with a population greater than 10,000 to establish a county toll road authority and makes counties with a population greater than 3.4 million subject to audit by the Federal Highway Administration in regards to projects under Chapter 284, Transportation Code. Finally, this bill prohibits a person who enters into a contract with a county under Chapter 284, Transportation Code, from making a political contribution to a county commissioner or county judge or candidate for those offices and allows persons driving a hybrid vehicle to drive with a passenger on a high occupancy vehicle lane.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Department of Transportation and the Texas Transportation Commission is modified in SECTION 8 (Section 284.004, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter E, Chapter 223, Transportation Code, by adding Section 223.210, as follows:

Sec. 223.210. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS. (a) Defines "toll project" and "toll project entity."

(b) Prohibits a comprehensive development agreement (CDA) entered into with a private participant by a toll project entity on or after the effective date of this subsection for the acquisition, design, construction, financing, operation, or maintenance of a toll project from containing a provision permitting the private

participant to operate the toll project or collect revenue from the toll project, regardless of whether the private participant operates the toll project or collects the revenue itself or engages a subcontractor or other entity to operate the toll project or collect the revenue.

(c) Prohibits a toll project entity, on or after the effective date of this subsection, from selling or entering into a contract to sell a toll project of the entity to a private entity.

(c-1) Provides that Subsections (b) and (c) do not apply to any project within the boundaries of a regional tollway authority (authority) created on September 1, 1997.

(c-2) Requires Section 228.012 to govern to the extent that Subsection (c-1) conflicts with that section.

(c-3) Provides that this section does not apply to a CDA for a managed lane facility toll project the major portion of which is located inside the boundaries of an authority created on September 1, 1997, and for which the Texas Department of Transportation (TxDOT) has issued a request for qualifications before the effective date of this subsection. Requires the commissioners court for any county in which the majority of a toll project described by this subsection is located to pass a supporting resolution containing certain information before TxDOT executes a final contract for such a project.

(d) Creates a nine-member legislative study committee (committee) and sets forth the composition of the committee.

(e) Requires the committee to select a presiding officer from among its members and conduct public hearings and study the public policy implications of including in a CDA entered into by a toll project entity with a private participant in connection with a toll project a provision that permits the private participant to operate and collect revenue from the toll project. Requires the committee to examine the public policy implications of selling an existing and operating toll project to a private entity.

(f) Requires the committee, not later than December 1, 2008, to prepare a written report summarizing certain information and to deliver a copy of the report to certain persons.

(g) Abolishes the committee on December 31, 2008.

(h) Provides that this section expires September 1, 2009.

SECTION 2. Amends Section 228.0055, Transportation Code, as follows:

Sec. 228.0055. USE OF CONTRACT PAYMENTS. (a) Creates this subsection from existing text. Requires payments received by the Texas Transportation Commission (commission) and TXDOT under a CDA to be used by the commission or TXDOT to finance the construction, maintenance, or operation of a transportation project or air quality project in the same TXDOT district as the project or facilities to which the payments are attributable or a TXDOT district adjacent to that district, rather than authorizing payments received by TXDOT under a CDA to be used by TXDOT to finance the construction, maintenance or operation of a transportation project or air quality project in the region.

(b) Prohibits the commission or TXDOT from revising the formula as provided in TXDOT's unified transportation program, or its successor document, in a manner that results in a decrease of a TXDOT district's allocation because of a payment under Subsection (a) or from taking any other action that would reduce funding allocated to a TXDOT district because of payments received under a CDA.

SECTION 3. Amends Subchapter A, Chapter 228, Transportation Code, by adding Section 228.011, as follows:

Sec. 228.011. TOLL PROJECTS IN CERTAIN COUNTIES. (a) Provides that this section applies only to a county acting under Chapter 284 (Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties).

(b) Provides that the county is the entity that has primary responsibility for the financing, construction, and operation of a toll project located in the county.

(c) Requires the commission and TxDOT, to the extent authorized by federal law or required by this title (Roadways), to assist the county in the financing, construction, and operation of a toll project in the county by allowing the county to use highway right-of-way owned by TxDOT and to access the state highway system. Requires the county, in connection with the use by the county of improved state highway right-of-way, to enter into an agreement with the commission or TxDOT as provided by Section 284.004(b).

(d) Provides that Subsections (b) and (c) do not limit the authority of the commission or TxDOT to participate in the cost of acquiring, constructing, maintaining, or operating a turnpike project of the county under Chapter 284.

(e) Requires the commission or TxDOT, before they are authorized to enter into a contract for the financing, construction, or operation of a proposed or existing toll project any part of which is located in the county, to provide the county the first option to finance, construct, or operate, as applicable, the portion of the toll project located in the county on certain terms and in a certain manner.

(f) Prohibits, except as provided by Section 284.004(a), an agreement entered into by the county and the commission or TxDOT in connection with a project under Chapter 284 that is financed, constructed, or operated by the county and that is on or directly connected to the state highway system from requiring the county to make any payments to the commission or TxDOT.

(g) Provides that an agreement entered into by the county and the commission or TxDOT that is financed, constructed, or operated by the county and that is on or directly connected to a highway in the state highway system does not create a joint enterprise for liability purposes.

SECTION 4. Amends Subchapter A, Chapter 228, Transportation Code, by adding Section 228.012, as follows:

Sec. 228.012. TOLL PROJECTS WITHIN BOUNDARIES OF REGIONAL TOLLWAY AUTHORITY. (a) Provides that this section applies only to a toll project located within the boundaries of an authority under Chapter 366 (Regional Tollway Authorities).

(b) Provides that the authority is the entity that has primary responsibility for the financing, construction, and operation of a toll project located within the boundaries of the authority.

(c) Requires the commission and TxDOT, to the extent authorized by federal law or required by this title (Roadways), to assist the authority in the financing, construction, and operation of a toll project located within the boundaries of the authority by allowing the authority to use highway right-of-way owned by TxDOT and to access the state highway system.

(d) Provides that Subsections (b) and (c) do not limit the authority of the commission or TxDOT to participate in the cost of acquiring, constructing, maintaining, or operating a turnpike project of the authority under Chapter 366.

(e) Requires the commission or TxDOT, before they are authorized to enter into a contract for the financing, construction, or operation of a proposed or existing toll project any part of which is located within the boundaries of an authority, to provide the authority the first option to finance, construct, or operate, as applicable, the portion of the toll project located within the boundaries of the authority on certain terms and in a certain manner.

(f) Prohibits an agreement entered into by the authority and the commission or TxDOT in connection with a project under Chapter 366 that is financed, constructed, or operated by the county and that is on or directly connected to the state highway system from requiring the authority to make any payments to the commission or TxDOT.

(g) Provides that an agreement entered into by the authority and the commission or TxDOT in connection with a project under Chapter 366 that is financed, constructed, or operated by the county and that is on or directly connected to a highway in the state highway system does not create a joint enterprise for liability purposes.

(h) Requires the commissioners court for any county in which a majority of the project is located to pass a supporting resolution before a final contract execution by TxDOT for any CDA project.

(i) Provides that once the authority or regional transportation council has received notice from TxDOT relating to a toll project, the authority has 90 days to exercise the first option to finance, construct, or operate, as applicable, the toll project.

SECTION 5. Amends Section 284.001(3), Transportation Code, to redefine "project."

SECTION 6. Amends Section 284.002, Transportation Code, as follows:

Sec. 284.002. New heading: **APPLICABILITY OF CHAPTER**. Provides that this chapter applies only to a county that has a population of 10,000 or more, except as provide by Subsection (b), rather than only to a county that has a population of 50,000 or more and borders the Gulf of Mexico or a bay or inlet opening into the gulf, has a population of 1.5 million or more, is adjacent to a county that has a population of 1.5 million or more, or borders the United Mexican States.

SECTION 7. Amends Section 284.003, Transportation Code, as follows:

Sec. 284.003. **PROJECT AUTHORIZED; CONSTRUCTION, OPERATION, AND COST.** (a) Creates this subsection from existing text. Authorizes a county, acting through the commissioners court of the county, or a local government corporation, without state approval, supervision, or regulation, to, in connection with a project and on adoption of an order, exercise the powers of a regional mobility authority under Chapter 370 (Regional Mobility Authorities) and to enter into a CDA with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a proposed or existing project in the county to the extent and in the manner applicable to TxDOT under Chapter 223 (Bids and Contracts for Highway Projects) or to a regional tollway authority under Chapter 366. Makes nonsubstantive changes.

(b) Authorizes the county or a local government corporation to exercise a power of a regional mobility authority operating under Chapter 370 only in a manner consistent with the other powers provided by this chapter. Provides that this chapter prevails to the extent of a conflict between this chapter and Chapter 370.

(c) Provides that a project or any portion of a project that is owned by the county and licensed or leased to a private entity or operated by a private entity under this chapter to provide transportation services to the general public is public property

used for a public purpose and exempt from taxation by this state or a political subdivision of this state.

(d) Requires a county that constructs, acquires, improves, operates, maintains, or pools a project under this chapter, to submit to TxDOT, before December 31 of each even-numbered year, a plan for the project that includes the time schedule for the project and described the use of project funds. Authorizes the plan to provide for and permit the use of project funds and other money, including state or federal funds, available to the county for roads, streets, highways, and other related facilities in the county that are not part of a project under this chapter. Provides that a plan is not subject to approval, supervision, or regulation by the commission or TxDOT.

(e) Provides that an action of a county taken under this chapter is not subject to approval, supervision, or regulation by a metropolitan planning organization, except as provided by federal law.

(f) Authorizes the county to enter into a protocol or other agreement with the commission or TxDOT to implement this section through the cooperation of the parties to the agreement.

SECTION 8. Amends Subchapter A, Chapter 284, Transportation Code, by adding Sections 284.0031 and 284.0032 and amending Section 284.004, as follows:

Sec. 284.0031. **OTHER ROAD, STREET, OR HIGHWAY PROJECTS.** (a) Authorizes the commissioners court of a county or a local government corporation, without state approval, supervision, or regulation, to authorize the use of surplus revenue of a project for certain purposes and to prescribe terms for the use of the surplus revenue, including for certain purposes.

(b) Authorizes a county to enter into an agreement with the commission, TxDOT, a local government entity, or another political subdivision of this state to implement this section.

(c) Prohibits a country from taking an action under this section that violates or impairs a bond resolution, trust agreement, or indenture that governs the use of the revenue of a project.

(d) Provides that a county has the same powers and is authorized to use the same procedures in certain respects that are available to the county with respect to a project under this chapter, except as provided by this section.

(e) Requires, notwithstanding any other law, a metropolitan rapid transit authority created pursuant to Chapter 451 (Metropolitan Rapid Transit Authorities) that is located primarily in a county with a population of more than 3.3 million to which this chapter applies and in which the voters have authorized the dedication of a portion of its sales and use tax revenue for street improvements and mobility projects within the metropolitan rapid transit authority's service area to account for the entire amount of that liability on its financial statements in accordance with generally accepted accounting principles.

Sec. 284.0032. **TRANS-TEXAS CORRIDOR PROJECTS.** Provides that the county, in connection with the project and in addition to the other powers granted by this chapter, has all the powers of TxDOT related to the development of a project that has been designated as part of the Trans-Texas Corridor if a county requests or is requested by the commission to participate in the development of a project under this chapter that has been designated as part of the Trans-Texas Corridor.

Sec. 284.004. New heading: **USE OF COUNTY PROPERTY AND STATE HIGHWAY ALIGNMENT, RIGHT-OF-WAY, AND ACCESS.** (a) Creates this subsection from existing text. Authorizes a county under this chapter, notwithstanding

any other law, to use any state highway right-of-way or access to the state highway system, regardless of when or how the right-of-way or access is acquired. Authorizes TxDOT or the commission to require the county to comply with any covenant, condition, restriction, or limitation that affects state highway right-of-way, but prohibits TxDOT or the commission from adopting rules or establishing policies that have certain effects related to the use of right-of-way or access or from requiring the county to pay for the use of the right-of-way or access, except under certain conditions.

(b) Requires the county and the commission or TxDOT, if a project of the county under this chapter includes the proposed use of improved state highway right-of-way, to enter into an agreement that includes reasonable terms to accommodate that use of the right-of-way by the county and to protect the interests of the commission and TxDOT in the use of the right-of-way for operations of TxDOT.

(c) Provides that the commission and TxDOT, notwithstanding any other law, are not liable for the damages that result from a county's use of state highway right-of-way or access to the state highway system under this chapter, regardless of the legal theory, statute, or cause of action under which liability is asserted.

SECTION 9. Amends Sections 284.008(c) and (d), Transportation Code, as follows:

(c) Provides that a project becomes a part of the state highway system and requires the commission to maintain the project without tolls when all of the bonds and interest on the bonds that are payable from or secured by revenues of the project have been paid by the issuer of the bonds or another person with the consent or approval of the issuer or when a sufficient amount for the payment of all bonds and the interest on the bonds to maturity has been set aside by the issuer of the bonds or another person with the consent or approval of the issuer in a trust fund held for the benefit of the bondholders, except as provided by Subsection (d).

(d) Deletes existing text conditioning that a county is authorized to request that the commission adopt an order that a project will not become part of the state highway system under Subsection (c) only before construction on a project under this chapter begins.

SECTION 10. Amends Subchapter A, Chapter 284, Transportation Code, by adding Section 284.0092, as follows:

Sec. 284.0092. **AUDIT BY FEDERAL HIGHWAY ADMINISTRATION.** Provides that the accounts and records of a county relating to a project under this chapter located in a county that has a population of more than 3.4 million and is within 100 miles of the Gulf of Mexico are subject to audit by the Federal Highway Administration as deemed necessary by that agency.

SECTION 11. Amends Subchapter A, Chapter 284, Transportation Code, by adding Section 284.010, as follows:

Sec. 284.010. **CONTRACTOR CONTRIBUTIONS PROHIBITED.** Prohibits a person who enters into a contract with a county under this chapter from making a political contribution to a person who is a commissioner or county judge of the county or who is a candidate for the office of commissioner or county judge of the county.

SECTION 12. Amends Sections 284.065(b) and (c), Transportation Code, as follows:

(b) Authorizes an existing project to be pooled in part with another existing project.

(c) Authorizes a project to be pooled more than once, rather than prohibiting a project from being pooled more than once.

SECTION 13. Amends Subtitle G, Title 6, Transportation Code, by adding Chapter 371, as follows:

CHAPTER 371. PROVISIONS APPLICABLE TO MORE THAN
ONE TYPE OF TOLL PROJECT

Sec. 371.001. VEHICLES DISPLAYING "HYBRID VEHICLE" INSIGNIA. (a)
Defines "toll project."

(b) Authorizes a motor vehicle displaying the "hybrid vehicle" insignia authorized by Section 502.1861 in an easily readable location on the back of the vehicle to use a high occupancy vehicle lane located on a toll project regardless of the number of occupants in the vehicle unless the use would impair the receipt of federal transit funds.

SECTION 14. Amends Subchapter D, Chapter 502, Transportation Code, by adding Section 502.1861, as follows:

Sec. 502.1861. "HYBRID VEHICLE" INSIGNIA FOR CERTAIN MOTOR VEHICLES. (a) Requires TxDOT, at the time of registration or reregistration of the motor vehicle, to issue a specially designed "hybrid vehicle" insignia for a motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and from a rechargeable energy storage system.

(b) Requires TxDOT to issue a "hybrid vehicle" insignia under this section without the payment of any additional fee to certain persons.

SECTION 15. Repealer: Section 370.031(c) (relating to the creation of a regional mobility authority), Transportation Code.

SECTION 16. Effective date of Section 228.012, Transportation Code, as added by this Act, notwithstanding any other provision of this Act: upon passage or September 1, 2007.

SECTION 17. Effective date: upon passage or September 1, 2007.