

BILL ANALYSIS

Senate Research Center
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S.B. 1609
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law is largely silent on access management. The Texas Department of Transportation (TxDOT) outlines those standards that are written in its Access Management Manual, a document that is not part of the Administrative Code. Revision of the manual does not involve stakeholder input or public decision.

As proposed, S.B. 1609 requires a district engineer to detail, in writing, the reason(s) for denial of access; allows the applicant 30 days to appeal the denial; and provides that unanswered appeals are considered granted after 45 days. This bill authorizes an applicant to appeal a denied access request to the State Office of Administrative Hearings (SOAH) and the executive director of TxDOT. The bill specifies that properly platted access points on undeveloped property are subject to the access management rules in effect at the time of platting; requires TxDOT to notify owners of land adjacent to a proposed construction project, 60 days before construction begins, if that project will permanently alter the owner's access to a controlled access highway; and requires TxDOT, when a construction project alters access to a controlled access highway, to reinstate access to the most practicable extent possible. The bill requires TxDOT to adopt standards for determining when a variance to access management criteria may be granted and requires that when such a variance is granted, that variance be considered precedent. Finally, the bill prohibits TxDOT, when a business is demolished or remodeled, from applying new access management standards unless TxDOT finds, in writing, that the remodeled or reconstructed business will significantly impact traffic patterns to the extent that the current access presents a threat to public safety.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 2 (Section 203.035, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 203.031(a), Transportation Code, to authorize the Texas Transportation Commission (TTC), subject to Section 203.035, by order entered in its minutes, to designate, deny, close, erect, and repeal certain orders, access points, and devices.

SECTION 2. Amends Subchapter C, Chapter 203, Transportation Code, by adding Section 203.035, as follows:

Sec. 203.035. REQUIRED PROCEDURES. (a) Requires TTC to comply with this section in managing access to or from a controlled access highway under Section 203.031 (Control of Access).

(b) Requires TTC by rule to:

- (1) require that a decision by a district engineer denying access to a controlled access highway be in writing and include the reasons for the denial;
- (2) provide procedures for appealing a denial under Subdivision (1), including procedures that allow the applicant to appeal the denial to the Texas Department of Transportation's (TxDOT) design division before the

31st day after the date the decision is made; provide that if an appeal under Paragraph (A) (relating to providing certain procedures for appealing a denial under Subdivision (1)) is not decided before the 46th day after the date the appeal was filed, the access applied for is required to be granted; and allow the applicant to appeal the decision of the design division to the executive director and the State Office of Administrative Hearings;

(3) provide that properly platted access points to or from a controlled access highway that are located on undeveloped property are subject to any access management rules in effect at the time the points were platted;

(4) require that owners of land adjacent to a proposed construction project be provided written notice of the project at least 60 days before construction begins if the project will permanently alter the owners' existing access to a controlled access highway; and the access described by Paragraph (A) (relating to requiring that owners of land adjacent to a proposed construction project be provided written notice of the project within a certain amount of time) be reinstated to the most practicable extent possible;

(5) adopt standards for determining when a variance to access management criteria is authorized to be granted, including a variance based on the denial of reasonable access to a business or an undue hardship on a business; and requiring that the granting of a variance be considered precedent and applicable to adjacent landowners; and

(6) clarify that the remodeling or demolition and rebuilding of a business is prohibited from causing new access management standards to apply unless the TxDOT makes an affirmative finding in writing that the remodeled or rebuilt business will significantly impact traffic patterns to the extent that the current access presents a threat to public safety.

(c) Provides that an appeal of a decision by the executive director of TxDOT under Subsection (b) is held in Austin and is a contested case under Chapter 2001 (Administrative Procedure), Government Code, conducted as a de novo hearing by the State Office of Administrative Hearings.

SECTION 3. Effective date: upon passage or September 1, 2009.