

## **BILL ANALYSIS**

Senate Research Center  
83R3295 JXC-F

S.B. 466  
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Transportation  
2/26/2013  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 466 is intended to expedite the development and construction of highways and other transportation infrastructure projects by reducing the amount of time it currently takes for the Texas Department of Transportation (TxDOT) to obtain approval of environmental documents required under the National Environmental Policy Act (NEPA) and other federal laws.

Under current state law, TxDOT is unable to take advantage of recent changes in federal law that return power to the states by enabling state departments of transportation to enter into agreements with the Federal Highway Administration (FHWA) that would allow FHWA to delegate to TxDOT the authority to approve an environmental review document.

S.B. 466 satisfies the requirements in 23 U.S.C. Sections 326 and 327 concerning the terms of delegation, including the requirement that the state waive sovereign immunity from suit in federal court for its NEPA decisions, which will enable TxDOT to obtain authority from FHWA to review and approve environmental documents.

The bill will not reduce the number and nature of federal environmental requirements, but will substantially improve the efficiency of the environmental review process for transportation projects in Texas because it enables TxDOT to complete environmental reviews in-house, rather than having to forward environmental documents to the FHWA's Texas office, which has a small number of staff available to review and approve them.

Under a pilot project authorized by Congress in 2005, FHWA granted the California Department of Transportation, known as "Caltrans," authority to review and approve NEPA documents. Over the past five years, Caltrans has used that authority to substantially reduce the amount of time required for certain environmental reviews and thus expedite the construction of many transportation projects. For projects that require an environmental assessment (a mid-level type of review), Caltrans has documented a 25 percent time savings.

Under any delegation agreement, if a person later challenges a NEPA document approved by TxDOT, the person would bring suit in federal district court against TxDOT, rather than against FHWA. Currently, a person usually sues both FHWA and TxDOT. Under a delegation agreement, in the event of a lawsuit to block a transportation project, TxDOT alone would usually be the entity defending the approval of the NEPA document.

As proposed, S.B. 466 amends current law relating to the authority of the Texas Department of Transportation to participate in certain federal transportation programs.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 1 (Section. 201.6035, Transportation Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter H, Chapter 201, Transportation Code, by adding Section 201.6035, as follows:

Sec. 201.6035. AUTHORIZATION TO PARTICIPATE IN CERTAIN FEDERAL TRANSPORTATION PROGRAMS. (a) Authorizes the Texas Department of Transportation (TxDOT) to assume responsibilities of the United States Department of Transportation with respect to duties under the National Environmental Policy Act of 1969 (42 U.S.C. Section 4321 et seq.) and with respect to duties under other federal environmental laws. Authorizes TxDOT to assume responsibilities under 23 U.S.C. Sections 326 and 327 and enter into one or more agreements, including memoranda of understanding, with the United States secretary of transportation related to designating categorical exclusions from federally required environmental assessments or impact statements for highway projects as provided by 23 U.S.C. Section 326 or the federal surface transportation project delivery program for the delivery of transportation projects, including highway, railroad, public transportation, and multimodal projects, as provided by 23 U.S.C. Section 327.

(b) Authorizes the Texas Transportation Commission to adopt rules to implement this section and to adopt relevant federal environmental standards as the standards for this state for a program described by Subsection (a).

(c) Provides that, except as provided by Subsection (d), sovereign immunity to suit in federal court and from liability is waived and abolished with regard to the compliance, discharge, or enforcement of a responsibility assumed by TxDOT under this section.

(d) Provides that Subsection (c) does not create liability for TxDOT that exceeds the liability created under 23 U.S.C. Section 326(c) (3) or 327(d).

SECTION 2. Effective date: upon passage or September 1, 2013.