

SUBJECT: Trans-Texas Corridor and retooling transportation project finance

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Krusee, Phillips, Hamric, Garza, Harper-Brown, Mercer

1 nay — Laney

1 present not voting — Edwards

1 absent — Hill

WITNESSES: None

BACKGROUND: In 2001, Texas modified its longstanding “pay-as-you-go” policy for transportation funding. The 77th Legislature enacted SB 342 by Shapiro, and voters subsequently approved an accompanying constitutional amendment (SJR 16 by Shapiro) allowing toll equity (unreimbursed spending on toll projects), authorizing regional mobility authorities (RMAs), and creating the Texas Mobility Fund (TMF), a revolving state bond fund. As yet, the TMF has no funding source, revenue stream, or deposits.

In 2002, Gov. Rick Perry announced the Trans-Texas Corridor Plan (TTCP), which calls for the Texas Department of Transportation (TxDOT) to build 4,000 miles of multimodal corridors connecting major metropolitan areas over the next two decades. The 1,200-foot-wide corridors would contain highways, toll roads, rail lines, and a variety of utility lines all located parallel to each other in the same right-of-way. Cost estimates range from \$145 billion to \$184 billion.

DIGEST: CSHB 3588 would integrate existing and recent transportation policies with new initiatives and financing mechanisms designed to accelerate project delivery and to generate additional cash flow. The bill incorporates provisions from at least eight other bills, creating new chapters and amending several existing ones in the Transportation Code. CSHB 3588 is divided into 12 major articles dealing with:

- designating, building, and operating the TTCP;
- expanding the powers and duties of RMAs;
- authorizing spending on additional exclusive development (design-build) agreements (EDAs);
- giving TxDOT advance right-of-way acquisition (ROWA);
- creating a driver responsibility program;
- allowing TxDOT to build rail facilities;
- capitalizing the TMF;
- increasing highway bonding authority;
- allowing passthrough (shadow) toll financing;
- applying highway contract claim procedures to the Texas Turnpike Authority Division (TTAD);
- transferring historic property; and
- reallocating traffic violation fine increases.

Trans-Texas Corridor Plan. The bill would allow TxDOT to spend money from any constitutional source on TTCP activities. It would limit annual State Highway Fund (Fund 6) spending on the TTCP to no more than 20 percent of the state's yearly federal highway obligation authority — that is, the amount of federal highway reimbursement funding allocated to Texas per fiscal year. The commission could issue tax-exempt revenue bonds and interim bonds (unrestricted temporary debt in advance of final bond issuance) to finance TTCP projects. Revenue bonds could be repaid only with revenue generated by the corridors, facilities located on them, or agreements associated with them. Bonds would not pledge the state's full faith and credit and would require the attorney general's approval. TxDOT could borrow from its State Infrastructure Bank or the federal government to finance TTCP facilities.

TxDOT could require and set fees for corridor use in excess of its costs. Fee revenue would have to be deposited into Fund 6 and could be used for any authorized purpose.

The bill would apply all existing state highway laws to the TTCP, including environmental mitigation and review, ROWA (unless in conflict), and speed limits set by the commission. The bill would include all corridors in the state highway system, regardless of their builders or operators. The Texas Transportation Commission (TTC) would have to designate corridor elements and could specify their location and work schedules.

TxDOT could designate exclusive lanes on any part of the corridor network.

TxDOT could authorize any other governmental or private entity to build or operate any part of any corridor. Other than ROWA, governmental entities would have the same powers and liabilities as TxDOT and could operate outside their geographic boundaries as needed.

Instead of selling their property outright for ROWA, landowners could enter into corridor participation agreements that would pay them percentages of one or more identified fees related to a corridor segment. TxDOT also could buy land and lease it back to sellers or could pay landowners with rights to use or operate facilities on corridors. TxDOT could buy land from willing sellers in advance of final project location. TxDOT would have to compensate landowners for damages incurred as well as for value if a corridor ROW severed property into noncontiguous parcels. TxDOT could negotiate for or buy any or all of the severed parcels. Leases and franchise rights could not exceed 50 years and could be granted for any purpose. TxDOT could accept anything of value in exchange for leasing, franchising, or licensing rights.

TxDOT would have to operate railroads associated with the corridor network by private contract, but not using TxDOT employees. It could maintain railroads directly or through private entities and could acquire rolling stock.

The bill would give TxDOT contracting authority for common use of public utilities and other facilities. TxDOT would have to grant utilities reasonable access to the corridors if necessary to maintain utility facilities, but utilities would not be required to relocate onto corridors if other locations were feasible. TxDOT could not charge utilities more than they were paying for road usage if the corridor replaced such roads.

TxDOT could accept donations of real property for the TTCP.

Regional mobility authorities. RMAs could issue revenue and interim bonds and would have to repay them with revenue from projects, agreements with TxDOT or other governmental entities, or surplus revenue. RMAs could combine transportation projects into systems and could transfer turnpike projects with outstanding to TxDOT, under certain conditions.

RMAAs could acquire property by eminent domain and could operate in adjacent counties with the counties' permission. Turnpike projects could not be undertaken in counties where turnpikes existed on November 6, 2001. RMAAs could hire project developers and contractors through EDAs for construction, operation, and maintenance.

Exclusive development (design-build) agreements. TxDOT could spend up to 40 percent of its annual federal highway reimbursement funds on an unlimited number of EDAs each fiscal year. The bill would repeal the current authorization of four EDAs before March 1, 2004. EDAs would have to be awarded through a competitive procurement process providing the best value for the state. TxDOT would request proposals, qualify at least two bidders if possible, and could solicit input from others regarding alternative technical concepts. The bill would make EDA proposals and negotiations confidential and would require performance and payment security.

This part of the bill would take effect immediately if the bill finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003. It would expire in 2011.

Advance property ("quick-take") acquisition. The TTC could acquire property from willing sellers, not through eminent domain condemnation, before making final decisions to locate projects on the property. The property acquired could not be sold or encumbered and could be managed by the General Land Office on TxDOT's request.

Driver responsibility program. The bill would create a point system for identifying drivers who habitually violated traffic laws and would assign points for different kinds of violations. Drivers accumulating six points or more over a 36-month period would pay surcharges of \$100 for six points and \$25 for each additional point. The Department of Public Safety (DPS) would have to notify drivers when they earned the fifth point, as well as of assessment and payment dates. Driving while intoxicated would incur a \$1,000 surcharge per year for three years and \$1,500 per year for third or subsequent violations. Driving with an invalid license or without proof of financial responsibility would incur surcharges of \$250 per year for three years. Driving without a valid license would incur a \$100 annual surcharge for three years. Failure to pay surcharges would result in driver's license

suspension. DPS would have to provide installment payment plans and would have to accept credit-card payment.

DPS could contract for collection with a third party and would keep 1 percent of collections for administrative costs. The remainder would be divided equally between general revenue and a newly created trauma facility and emergency medical services (EMS) account. Money from the latter account could be appropriated only to the Texas Department of Health (TDH) to fund designated trauma facilities, county and regional EMS and trauma care systems. At least 96 percent of the account balance would have to be spent on uncompensated trauma care provided at designated facilities. TDH could suspend payments for up to three years to facilities found to have used the money in violation of state law.

Rail facilities. TxDOT could plan, acquire, finance, build, maintain, and operate passenger or freight rail facilities and systems in Texas. TxDOT could accept grants and loans and would have to contract with public or private entities for rail operations. No TxDOT employees could operate railroads, but maintenance could be performed directly or through contract.

TxDOT would have to coordinate with local governments in considering the feasibility and viability of whether to acquire abandoned or discontinued rail lines. TxDOT would have to award contracts by competitive bidding except for EDAs, which could be awarded through a competitive procurement/best value process. TxDOT could issue revenue bonds to pay for rail facilities.

Disposition of DPS fees. The bill would redirect approximately \$240 million annually in fees for driver's licenses and records and vehicle inspections to the TMF.

Bonding. The TTC could issue up to \$5 billion in bonds but not more than \$1 billion per year. At least 20 percent of the proceeds would have to be spent on highway safety improvement projects. Annual bond-related expenditures could not exceed 10 percent of Fund 6 deposits during the immediately preceding year.

Pass-through (shadow) tolls. TxDOT could make toll payments to public entities or private companies for road construction, operation, or both.

Payments would be based on traffic volumes but not made until after the projects were completed. In some situations, localities would pay the tolls and TxDOT would finance construction. This provision would take immediate effect if the bill finally passed by a two-thirds vote of the membership of each house; otherwise, on September 1, 2003.

Texas Turnpike Authority Division. The bill would apply TxDOT's informal claim-resolution procedures for highway improvement contracts to TTAD. This provision would take immediate effect if the bill finally passed by a two-thirds vote of the membership of each house; otherwise, on September 1, 2003.

Property transfer. The TTC could remove segments from the state highway system that no longer were needed. The bill would clarify procedures for selling surplus real estate, including ROW. TxDOT could transfer ownership of historic bridges scheduled for replacement to public or private entities. This provision would take immediate effect if the bill finally passed by a two-thirds vote of the membership of each house; otherwise, September 1, 2003.

Traffic fine increases. The bill would impose an additional \$30 in court costs on traffic violation fees and an additional \$30 administrative fee on the deferred adjudication of certain traffic violations. Of these amounts, \$20 would be deposited into general revenue and \$10 to the tertiary care account for trauma care centers.

The bill would take effect September 1, 2003, except as otherwise noted.

**SUPPORTERS
SAY:**

CSHB 3588 would address the full scope of mobility issues facing Texas. It is the most comprehensive and visionary transportation legislation in the state's history, completely redefining how the state will move people and goods during the 21st century.

The bill would advance transportation project management and would give TxDOT new implementation tools. It would make a long-overdue reallocation of roadway-related fees and would use traffic violation fine and fee increases and penalties on bad drivers to fund the TMF and trauma care. This would improve traffic safety by holding irresponsible drivers accountable for their actions and would reduce the costs they impose on other Texans.

Advancing the use of debt financing for transportation in Texas is long overdue. This method has been used successfully by cities, counties, and other states for years to build large, fixed assets. Additional bonding authority of up to \$5 billion, plus leveraging of the TMF balances, would generate immediate cash flow needed to start more projects sooner. Greater reliance on turnpikes would generate toll revenue, either from motorists or other arrangements, that could be used to expand existing projects or build new ones.

Shadow tolls are a new, innovative finance tool that allows a party with available cash to move forward with a project knowing that it will be repaid over time. A mutually agreed “shadow toll” is decided by agreement in advance, either on a per-vehicle or per-vehicle-mile basis, and the financing/constructing entity is repaid incrementally on that basis for its investment to build the project. Most often, a developer or a local government wanting to build a project sooner would negotiate an agreement with TxDOT enabling the developer to provide up-front cash for the project and to implement it many years before TxDOT could afford to do so. TxDOT would repay the developer over time incrementally, which is significant because TxDOT’s current funding is sufficient to address only about one-third of its identified, legitimate project needs.

Being able to toll lanes on tax-supported roadways would allow managed lane transportation, which can facilitate traffic flow and generate revenue.

TxDOT should have had “quick-take” as part of its ROW acquisition policy years ago, as most other states have and as some turnpike authorities in Texas already have. Quick-take would allow “immediate” possession by TxDOT once a court determined that the public-purpose test of the condemnation law had been met. This would eliminate the time-consuming part of condemnation cases — value (price) determination — and would allow the state to lock in prices and to reduce overall costs.

Greatly expanding RMA powers should encourage more communities to create them (only one exists now, the Central Texas RMA in Travis and Williamson counties). More flexibility in generating revenue, such as bonds, and the ability to partner with TxDOT and other public and private entities would be a key to addressing the mobility crisis.

Removing restrictions on and expanding the use of EDAs would allow road building to begin sooner, under more flexible schedules and management practices that would reflect values other than only the lowest price. Texas needs to move toward this more integrated approach to highway project delivery, which can reduce time and costs.

Rail is an overlooked component that TxDOT needs in order to relieve congestion, encourage competition, and enhance economic opportunities, such as the recent Toyota plant locating in San Antonio.

All of these tools need to be at Texas' disposal to move the state away from project-specific, piecemeal improvement to the statewide approach embodied in the TTCP. It would allow trucks and rail to bypass urban areas, yet still serve them, improving safety in transporting hazardous materials and reducing air pollution. The corridor approach also would make high-speed rail more feasible.

**OPPONENTS
SAY:**

The Trans-Texas Corridor is an idea whose time has not yet come. It certainly is innovative and would be a great asset to Texas if it were affordable. Unfortunately, most Texas motorists and businesses are choking to death on urban congestion and the air pollution it brings. The corridor concept may be sound, but questions of financial feasibility and other transportation priorities demand that it be postponed.

Despite the fee hikes and fine increases, Texas cannot afford to forgo almost \$100 million in general revenue this biennium, as indicated by the bill's fiscal note. For all its financial innovation, the bill would not solve that problem.

TxDOT and the yet-to-be-created RMAs would branch out into uncharted territory, such as rail, with a virtual blank check and little experience in the kinds of creative financing and cooperative agreements that CSHB 3588 would enable. The bill would provide too few safeguards for property owners tempted to do business with the state's new megahighway consortium and too few guidelines for an agency that heretofore has done little else besides contract for highway construction. The state should try some of these ideas in pilot projects before making wholesale policy changes backed by huge debt structures and unreliable toll revenue.

CSHB 3588 is a tax bill in disguise. Texas taxpayers, especially low- and middle-income families and inner-city residents, cannot afford the fee and fine hikes this bill would mandate. The Legislature should be willing to raise taxes if it needs more money for worthwhile projects, including highways.

OTHER
OPPONENTS
SAY:

Some of the bill's funding priorities are backwards. For example, the proportional distribution of the \$30 speeding-ticket fine increase should be reversed so that \$20 would go to trauma centers and \$10 to the TMF. If inner-city taxpayers are going to subsidize rural and intercity megahighways, their health-care needs, often related to traffic, should receive a greater share of the revenue this bill would generate.

NOTES:

According to the fiscal note, the bill's estimated net cost to general revenue would be \$90.5 million during fiscal 2004-05. From 2006 through 2008, the bill would produce a net general revenue gain of \$108 million. The probable net loss to the State Highway Fund would be \$306 million in fiscal 2004-05, with losses increasing in subsequent years. The Texas Mobility Fund would gain about \$450 million during fiscal 2004-05, and the trauma and tertiary care accounts would gain about \$172 million and \$94 million, respectively, with gains increasing in subsequent years.

The committee substitute would specify mechanisms for implementing intermodal transportation systems and how various modes would be integrated into the TTCP. It also would authorize TxDOT's participation in rail facilities; add RMA powers; authorize shadow tolls; expand EDAs; and address financing in more detail, including bond issuance and fee revenue increases and redirection.

Other bills this session that are included partially or wholly in CSHB 3588:

- HB 1198 by Krusee, establishing the Trans-Texas Corridor Plan;
- HB 3085 by Puente, granting rail authority to TxDOT;
- HB 3206 by King, allocating \$30 from moving violation citations to the state (\$20 to general revenue and \$10 to trauma centers);
- HB 2459 by Krusee, granting RMAs eminent domain and bonding authority;
- HB 3412 by Krusee, shifting fee revenue generated by motor-vehicle registration and inspection and driver's licensing to the TMF;

- HB 2962 by Krusee, allowing local transportation authorities to authorize TxDOT expansion of roadways with commitments to fund on a per-vehicle basis (shadow tolls);
- HB 2377 by Hill, allowing TxDOT to transfer roads, bridges, and other property to local governments; and
- HB 3203 by Delisi, establishing a point system and accelerating fines for certain driving offenses, with half the revenue allocated to trauma care and half to general revenue.

The companion bill, SB 1927 by Ogden, was considered in a public hearing by the Senate Infrastructure Development and Security Committee on May 2 and left pending.