

BILL ANALYSIS

S.B. 21
By: Ogden
Transportation
Committee Report (Amended)

BACKGROUND AND PURPOSE

S.B. 21 clarifies legislation contained in H.B. 3184 and H.B. 3588, 78th Regular Session, in the following areas:

First, S.B. 21 amends the funding provisions contained in H.B. 3588 to reflect legislative intent that certain Department of Public Safety fees go to general revenue (GR) for the 2004-2005 biennium to stabilize the budget and go to the Texas Mobility Fund thereafter.

Second, to re-characterize the \$30 "Additional Court Cost" created by House Bill 3588 as a "State Traffic Fine." A person convicted of an offense under Subtitle C, Title 7 of the Transportation Code shall pay this \$30 traffic fine and the fine shall not be waived by the judge. A county or municipality will retain 5% of all fines collected and sent to the comptroller, the same percentage that they received for collecting the additional court cost implemented by HB 3588. The comptroller shall direct the fines to a dedicated trauma care account and the Texas Mobility Fund .

Third, to clarify that specified portions of Driver Responsibility surcharges and the State Traffic Fine go to the Texas Mobility Fund for the 2004-2005 biennium and then are directed to general revenue thereafter.

Fourth, to give TxDOT the ability to utilize bond proceeds or any amounts deposited in a corresponding debt service reserve fund to pay the principal of, interest on, or redemption premium on the bonds for the particular project.

Fifth, to appropriate \$231,700,000 deposited to the credit of the general revenue fund in state fiscal year 2005 under Section 20.02(c) of HB 3588, 78th Regular Session, 2003 out of the general revenue fund for the state fiscal biennium beginning September 1, 2003, to replace an equal amount of federal fiscal relief funds utilized to certify general revenue appropriations made by House Bill 1, 78th Regular Session. (These funds were not utilized for certification.)

The bill also gives the Harris County Toll Road Authority the same powers regarding "declarations of taking" (i.e. quick take) as the Texas Turnpike Authority.

Lastly, to make technical corrections to Chapter 361 of the Transportation Code referencing the Texas Turnpike Authority. Both House Bill 3588 and House Bill 3184, 78th Regular Session, 2003, amended this law governing TxDOT turnpike projects. The conference committee report for House Bill 3184 inadvertently used the wrong version of the bill, resulting in two different versions of the bill being passed into law. Senate Bill 21 repeals the portions of House Bill 3184 that conflict with House Bill 3588.

Finally, S.B. 21 clarifies additional technical provisions of H.B. 3184, H.B. 3588, S.B. 631, and S.B. 1904.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 19 (Section 361.306, Transportation Code) of this bill.

ANALYSIS

SECTION 1. Amends Section 284.061(c), Transportation Code, to establish that except as provided by Section 361.1375, if applicable, the county is entitled to immediate possession of property subject to a condemnation proceeding brought by the county after a tender of a bond or other security in an amount sufficient to secure the owner for damages and the approval of the bond or security by the court.

SECTION 2. Reenacts Section 361.136, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.136. SEVERANCE OF REAL PROPERTY. (a) Requires the Texas Department of Transportation (TxDOT), if a turnpike project severs an owner's real property, to make certain payments.

(b) Authorizes TxDOT to negotiate for and purchase the severed real property or either part of the severed real property if TxDOT and the owner agree on terms for the purchase. Authorizes TxDOT, instead of a single fixed payment for the real property, to agree to a payment to the owner in the form of an intangible legal right to receive a percentage of identified revenue attributable to the applicable segment of the turnpike project or an exclusive or nonexclusive right to use or operate a segment or part of the turnpike project.

(c) Provides that a right to payment under Subsection (b)(1) is subject to any pledge of the revenue under the term of a trust agreement securing bonds issued for the project.

SECTION 3. Reenacts Section 361.137, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.137. DECLARATION OF TAKING. (a) Authorizes TxDOT to file a declaration of taking with the clerk of the court in which TxDOT files a condemnation petition under Chapter 21 (Eminent Domain), Property Code, or the clerk of the court to which the case is assigned.

(b) Authorizes TxDOT to file the declaration of taking concurrently with or subsequent to the petition but prohibits TxDOT from filing the declaration after the special commissioners have made an award in the condemnation proceeding.

(c) Prohibits TxDOT from filing a declaration of taking before the completion of: all environmental documentation, including a final environmental impact statement or a record of decision, that is required by federal or state law; all public hearings and meetings, including those held in connection with the environmental process and under Sections 201.604 and 203.021, that are required by federal or state law; and all notifications required by Section 203.022.

(d) Requires the declaration to include certain information.

(d-1) Provides that deposit to the registry of the court of an amount equal to the appraised value, as determined by TxDOT, of the property to be condemned must accompany the declaration of taking.

(e) Establishes that the date on which the declaration is filed is the date of taking for the

purpose of assessing damages to which a property owner is entitled.

(f) Requires the case, after a declaration of taking is filed, to proceed as any other cases in eminent domain under Chapter 21, Property Code.

SECTION 4. Amends Subchapter D, Chapter 361, Transportation Code, by adding Section 361.1375, as follows:

Sec. 361.1375. DECLARATION OF TAKING BY CERTAIN COUNTIES. (a) Provides that this section applies only to county with a population of 3.3 million or more that operates under Chapter 284.

(b) Provides that if, in connection with projects under Chapter 284, the director authorizes the county to proceed in the manner provided by Section 361.137, the county may file a declaration of taking proceed in the manner provided by Section 361.137 on any project of the county under Chapter 284 and a reference to the department in Section 361.137 means the county.

SECTION 5. Reenacts Section 361.138(b), Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, to prohibit TxDOT from taking possession sooner than the 91st day after the date of service under Subsection (a), if the condemned property is a homestead or a portion of the homestead as defined by Section 41.002 (Definition of Homestead), Property Code.

SECTION 6. Reenacts Section 361.171, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.171. TURNPIKE REVENUE BONDS. (a) Authorizes the Texas Transportation Commission (TTC) by order to authorize the issuance of turnpike revenue bonds to pay all or part of the cost of a turnpike project. Requires each project to be financed and built by a separate bond issue. Authorizes the proceeds of a bond issue may to used solely for the payment of the project for which the bonds were issued and prohibits it from being divided between or among two or more projects. Provides that each project is a separate undertaking, the cost of which is to be determined separately.

(b) Requires the bonds of each issue, as determined in the order authorizing the issuance, to be dated; bear interest at the rate or rates provided by the order and beginning on the dates provided by the order and as authorized by the law, or bear no interest; mature at the time or times provided by the order, not exceeding 40 years from their date or dates; and be made redeemable before maturity, at the price or prices and under the terms provided by the order.

(c) Authorizes TTC to sell the bonds at public or private sale in the manner and for the price it determines to be in the best interest of TxDOT.

(d) Requires the proceeds of each bond issue to disbursed in the manner and under the restrictions, if any, TTC provides in the order authorizing the issuance of the bonds or in the trust agreement securing the bonds.

(e) Authorizes additional bonds to be issued in the same manner to pay the costs of a turnpike project, if the proceeds of a bond issue are less than the turnpike project cost. Establishes that unless otherwise provided in the order authorizing the issuance of the bonds or in the trust agreement securing the bonds, the additional bonds are on a parity with and are payable, without preference or priority, from the same fund as the bonds first issued. Authorizes TTC, in addition, to issue bonds for a turnpike project secured

by a lien on the revenue of the turnpike project subordinate to the lien on the revenue securing other bonds issued for the turnpike project. Makes a nonsubstantive change.

(f) Requires the surplus to be segregated from other TTC money and used only for the purposes specified in the order authorizing the issuance, if the proceeds of a bond issued exceed the cost of the turnpike project for which the bonds were issued.

(g) Authorizes the proceeds of a bond issue, in addition to other permitted uses, to be used to pay cost incurred before the issuance of the bonds, including costs of environmental review, design, planning, acquisition of property, relocation assistance, construction, and operations.

(h) Provides that bonds issued and delivered under this chapter and interest coupons on the bonds are a security under Chapter 8 (Investment Security), Business & Commerce Code.

(i) Provides that the bond issued under this chapter and income from the bonds, including any profits made on the sale or transfer of the bonds, are exempt from taxation in this state.

SECTION 7. Reenacts Section 361.172, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, as follows

Sec. 361.172. **APPLICABILITY OF OTHER LAW; CONFLICTS.** Establishes that all laws affecting the issuance of bonds by governmental entities, including Chapters 1201, 1202, 1204, 1207, and 1371, Government Code, apply to bonds issued under this chapter. Provides that to the extent of a conflict between those laws and this chapter, the provisions of this chapter prevail.

SECTION 8. Reenacts Section 361.173(a), Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, to provide that the principal of, interest on, and any redemption premium on bonds issued by TTC under this chapter are payable solely from the revenue of the turnpike project for which the bonds were issued, including tolls pledged to pay the bonds and amounts received under a credit agreement relating to the turnpike project for which the bonds are issued.

SECTION 9. Reenacts Section 361.174, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.174. **SOURCES OF PAYMENT OF AND SECURITY FOR TURNPIKE PROJECT BONDS.** Establishes that notwithstanding any other provisions of this chapter, turnpike project bonds may be payable from and secured by payments made under an agreement with a local governmental entity as provided by Subchapter A, Chapter 362, and may state on their faces any pledge of revenue or taxes and any security for the bonds under the agreement.

SECTION 10. Reenacts Section 361.177, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.177. **PROVISIONS PROTECTING AND ENFORCING RIGHTS AND REMEDIES OF BONDHOLDERS.** Authorizes a trust agreement or order providing for the issuance of bonds to contain certain provisions to protect and enforce the rights and remedies of the bondholders.

SECTION 11. Reenacts Section 361.178, Transportation Code, as amended by House Bills 3184

and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.178. FURNISHING OF INDEMNIFYING BONDS OR PLEDGE OF SECURITIES. Provides that a bank or trust company incorporated under the laws of this state and that acts as depository of the proceeds of bonds or of revenue may furnish indemnifying bonds or pledge securities that TxDOT requires.

SECTION 12. Reenacts Section 361.179(a), Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, to authorize TxDOT to take certain actions, including imposing tolls for the use of each turnpike project and the different segments or parts of each project.

SECTION 13. Reenacts Section 361.185(a), Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, to provide that all money received under this chapter, whether as proceeds from the sale of bonds or as revenue, is a trust fund to be held and applied as provided by this chapter. Establishes that, notwithstanding any other law, including Section 9, Chapter 1123, Acts of the 75th Legislature, Regular Session, 1997, and without the prior approval of the comptroller, funds held under this chapter shall be held in trust by a banking institution chosen by TxDOT or, at the discretion of TxDOT, in trust in the state treasury outside the general revenue fund.

SECTION 14. Reenacts Section 361.189, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.189. USE OF SURPLUS REVENUE. Authorizes TTC by order to authorize the use of surplus revenue of a turnpike project to pay the costs of another turnpike project within the region. Provides that TTC may in the order prescribe terms for the use of the revenue, including the pledge of the revenue, but prohibits it from taking an action under this section that violates, impairs, or is inconsistent with a bond order, trust agreement, or indenture governing the use of the surplus revenue.

SECTION 15. Reenacts Section 361.302, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.302. COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Authorizes TxDOT, subject to Section 361.3021, to enter into a comprehensive development agreement with a private entity to construct, maintain, repair, operate, extend, or expand a turnpike project.

(b) Redefines “comprehensive development agreement.”

(c) Authorizes TxDOT to negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement.

(d) Provides that the money distributed by TxDOT under comprehensive development agreement is not included in the amount required to be spent in a state fiscal biennium for engineering and design contracts under Section 223.041; or appropriated in Strategy A.1.1. Plan/Design/ Manage of the General Appropriations Act for that biennium for purpose of making computation under Section 223.041.

(e) Provides that the Texas Turnpike Authority (authority) to enter into comprehensive development agreements provided by section expires on August 31, 2001.

SECTION 16. Reenacts Section 361.3021, Transportation Code, as added by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.3021. **LIMITATION ON DEPARTMENT FINANCIAL PARTICIPATION.** Prohibits the amount of money disbursed by TxDOT from the state highway fund and the Texas mobility fund during a federal fiscal year to pay the costs under comprehensive development agreements from exceeding 40 percent of the obligation authority under the federal-aid highway program that is distributed to this state for the fiscal year.

SECTION 17. Reenacts Section 361.303(a), Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, to provide that a turnpike project that is the subject of a comprehensive development agreement with a private entity, including the facilities acquired or constructed on the project, is public property and belongs to TxDOT.

SECTION 18. Reenacts Section 361.305, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, and amends it, as follows:

Sec. 361.305. **TERMS OF PRIVATE PARTICIPATION.** (a) Requires TxDOT to negotiate the terms of private participation in a turnpike project, including methods to determine the applicable cost, profit, and project distribution between the private equity investors and TxDOT; reasonable methods to determine and classify toll rates; acceptable safety and policing standards; and other applicable professional, consulting, construction, operation, and maintenance standards, expenses, and costs.

(b) Requires a comprehensive development agreement entered into under Section 361.302 to include a provision authorizing TxDOT to purchase, under terms and conditions agreed to by the parties, the interest of a private equity investor in a turnpike agreement.

(c) Authorizes TxDOT to enter into a comprehensive development agreement under Section 361.302 with a private equity investor only if the project is identified in TxDOT's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan.

SECTION 19. Reenacts Section 361.306, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.306. **RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATING PROCESS.** (a) Requires TTC to adopt rules, procedures, and guidelines governing selection and negotiations to promote fairness, obtain private participants in turnpike projects, and promote confidence among those participants. Requires the rules to contain criteria relating to the qualifications of the participants and the award of the contracts.

(b) Requires TxDOT to have up-to-date procedures for participation in negotiations on turnpike projects.

(c) Provides that TxDOT has exclusive judgment to determine the terms of an agreement.

(d) Requires TxDOT to include the attorney general or the attorney general's designated representative in a negotiation with a private participant.

SECTION 20. Reenacts Section 361.307, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.307. **AGREEMENTS WITH PRIVATE ENTITIES AND OTHER**

GOVERNMENTAL AGENCIES. (a) Authorizes TxDOT and a private entity jointly to enter into an agreement with another governmental agency or entity, including a federal agency, an agency of this or another state, including the United Mexican States or a state of the United Mexican States, or a political subdivision, to independently or jointly provide services, to study the feasibility of a turnpike project, or to finance, construct, operate, and maintain a turnpike project.

(b) Prohibits TxDOT from entering into an agreement with the United Mexican States or a state of the United Mexican States without the approval of the governor.

SECTION 21. Amends Section 361.281, Transportation Code, by amending House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, to provide that this subchapter applies only to a county with a population of more than 1.5 million; a local government corporation serving a county with a population of more than 1.5 million; an adjacent county in a joint turnpike authority with a population of more than 1.5 million; a municipality with a population of more than 100,000 that is adjacent to the United Mexican States; a regional tollway authority created under Chapter 366; or a regional mobility authority organized, rather than created, under Chapter 370 or Section 361.003, as that section existed before June 22, 2003.

SECTION 22. Amends the heading of Section 542.4031, Transportation Code, as added by House Bill 3588, Acts of the 78th Legislature, Regular Session, 2003, to STATE TRAFFIC FINE

SECTION 23. Amends Section 542.4031, Transportation Code, as added by House Bill 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

In subsections (a) - (d), all references to court costs are changed to "state traffic fines".

(h) Provides that the comptroller shall deposit 67 percent of the state traffic fines and Driver Responsibility surcharges to the credit of the general revenue fund only until the total amount of those fines and surcharges equals \$250 million for that year. To the extent those fines and surcharges exceed \$250 million, the excess shall be deposited to the credit of the Texas mobility fund.

SECTION 24. Amends Article 26.13(a), Code of Criminal Procedure by adding the following language: (a) Before accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of: (6) the fact that the state imposes additional fees or financial obligations on the defendant in connection with the plea and the amounts of those fees and financial obligations.

SECTION 25: Amends Article 45.051, Code of Criminal Procedure, as amended by Senate Bills 631 and 1904, Acts of the 78th Legislature, Regular Session, 2003, to provide that the state traffic fine of \$30 is imposed pursuant to the failure of a defendant to comply with the terms of a judge for dismissing the complaint if the offense is defined under Subtitle C, Title 7, Transportation Code.

SECTION 26. Amends Article 45.051(c-1), Code of Criminal Procedure, as added by Senate Bill 1904, Acts of the 78th Legislature, Regular Session, 2003, as follows:

(c-1) Requires the justice, at the conclusion of the deferral period, if the defendant presents satisfactory evidence that the defendant has complied with the requirements imposed, to impose the state traffic fine of \$30.

SECTION 27. Reenacts Article 45.0511(l), Code of Criminal Procedure, as amended by Senate Bills 631 and 1904, Acts of the 78th Legislature, Regular Session 2003, and amends it as follows:

Requires the court, when a defendant complies with Subsection (c), to take certain actions, including removing the judgment and dismissing the charge and reporting to DPS that the driver has taken the appropriate safety course.

SECTION 28. Amends Article 45.0511, Code of Criminal Procedure, by adding Subsections (1-1) as follows:

(1-1) Requires the court, if the offense is defined by Subtitle C, Title 7, Transportation Code, to impose a fine of \$30 on the defendant.

SECTION 29. Amends Section 780.002(c), Health and Safety Code, to delete text requiring the comptroller to divide the deposit of certain excess funds between the Texas mobility fund and the special account established under this chapter. Makes conforming changes.

SECTION 30. Amends Section 370.003(l), Transportation Code, as added by House Bill 3588, Acts of the 78th Legislature, Regular Session, to redefine "authority."

SECTION 31. Amends Section 20.02, House Bill 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

(a) Deletes existing Subsection (a) and redesignates (b) as (a). Establishes that, notwithstanding Sections 780.002(b) and (c), rather than 780.002(a) and (b), Health and Safety Code, as added by this Act, of the money allocated to the undedicated portion of the general revenue fund by Section 780.002(b), Health and Safety Code, rather than 780.002(a), Health and Safety Code, as added by this Act, other than money that may only be appropriated to the Department of Public Safety, in fiscal years 2004 and 2005 the comptroller shall deposit that money to the credit of the Texas mobility fund instead of to the credit of the general revenue fund, rather than to the debt service account which is subject to the provisions of Subsection (d). Deletes text requiring the comptroller to establish the Texas mobility fund debt service account as a dedicated account within the general revenue fund.

(b) Redesignated from Subsection (c). Provides that notwithstanding Section 542.4031(g)(1), Transportation Code, as added by this Act, of the money allocated to the undedicated portion of the general revenue fund in Section 542.4031(g)(1), Transportation Code, in fiscal years 2004 and 2005 the comptroller shall deposit that money to the credit of the Texas mobility fund instead of to the credit of the general revenue fund. Deletes text requiring the deposit to be made to the Texas mobility fund debt service account, which is subject to the provisions of Subsection (d).

(c) Deletes Subsection (d). Redesignates Subsection (e) as (c). Makes conforming changes.

SECTION 32. Provides that an amount of funds estimated to be \$231,700,000 deposited to the credit of the general revenue fund in state fiscal year 2005, is appropriated out of general revenue for the state fiscal biennium beginning September 1, 2003, to replace an equal amount of federal fiscal relief funds utilized to certify general revenue appropriations made by House Bill 1, Acts of the 78th Legislature, Regular Session, 2003. The federal fiscal relief funds so replaced are appropriated to the comptroller for fiscal biennium beginning September 1, 2003, for the purposes described in Section 11.28(a), Article IX, House Bill 1, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 33. Amends Section 11.28(a), Article IX, House Bill 1, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriation Act), to provide that, notwithstanding other provisions of this Act, based upon passage of federal legislation that provides federal funds for the purpose of state fiscal relief, such funds are appropriated to the comptroller of public accounts in the fiscal year in which the funds are received for the purpose of transferring funds to state agencies for state fiscal relief, as directed by the governor and Legislative Budget Board under Chapter 317, Government Code, and in accordance with Subsection (b) of this section. Deletes text referencing Section 11.15, Contingency Appropriation Reduction and Contingency Appropriation.

SECTION 34. Repealer: Section 361.181, Transportation Code (expenditures for feasibility studies).

Repealer: Section 361.182, Transportation Code (Texas turnpike authority feasibility study fund).

Repealer: Section 361.184, Transportation Code (Texas turnpike authority project revolving fund).

Repealer: Section 361.3025, Transportation Code .

SECTION 35. Repealer: Section 521.427(c), Transportation Code, as added by Section 11.04, House Bill 3588, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 36. (a) Effective date: immediately if two-thirds vote except as provided by Subsection (b).

(b) Effective date of Sections 22-29 and 35, if this Act receives the necessary two-thirds vote: September 1, 2003.

(c) Provides that if this Act does not receive the vote necessary for effect on that date, this Act takes effect on the 91st day after the last day of the legislative session

EFFECTIVE DATE

Sections 22 through 29 and 35 take effect September 1, 2003, and the remaining sections take effect immediately, or, if the Act does not receive the necessary vote, the Act takes effect on the 91st day after the last day of the legislative session.

EXPLANATION OF AMENDMENTS

Committee Amendment No. 1 allows TxDOT to make a single bond issuance for a project that will ultimately be a continuous facility even though the project is not in a single metropolitan planning organization or located in two adjacent TxDOT districts. The bill as currently written does not allow TxDOT to do this type of system financing (i.e. a single bond issuance) unless the transportation project is within a single MPO or two adjacent TxDOT districts.

Committee Amendment No. 2 allows TxDOT to exceed the \$12.5 million cap on rail spending if the source of the funds are federal dollars earmarked for rail projects or grant money from the Texas Enterprise Fund. This does not increase the amount of Fund 6 dollars that can be spent on rail above the \$12.5 million cap.