

## **BILL ANALYSIS**

C.S.H.B. 2377  
By: Hill  
Transportation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

To clarify the Texas Transportation Commission's authority to remove highways from the state highway system and to provide methods for the Texas Department of Transportation to transfer ownership of certain highways and bridges that are no longer needed for state highway purposes.

Chapter 201 of the Transportation Code authorizes the commission to establish the state highway system.

Chapter 202 of the Transportation Code sets forth the procedure the department must follow in disposing of surplus real property. Section 202.021 currently requires the department to offer surplus right of way first to the adjacent landowner and then to the general public, but courts have held that this requirement does not apply when a governmental entity with the power to condemn the property offers to acquire it.

Unneeded personal property must be disposed of in accordance with the provisions of Chapter 2175 of the Government Code, which places certain limitations on an agency's ability to donate property to other entities.

As a condition of obtaining federal reimbursement for bridge replacement projects, Title 23 USC §144 requires the department to make historically significant bridges scheduled for replacement available for donation to other entities that will maintain and preserve the historic features of the bridge.

While current law gives the commission clear authority to establish a state highway system, once a highway has been placed on the system there is no specific authority to remove the facility from the system when it is no longer operated as a state highway. Since former state highways are often turned over to local governments for use as local roads or streets, this could invite claims that these local facilities are in fact still part of the state highway system and that the department should take responsibility for them.

Under current law, in order for a state highway to be converted into a city street or county road, either the local governmental entity must purchase the underlying real estate or the department must retain ownership of a facility that it has no authority to operate or control. The value to the department of having another entity take on the cost and responsibility of maintaining a segment of highway is often greater than the price of the real estate. If payment could be waived, cities and counties would be more willing to take over highways that the department no longer needs.

The department cannot fully comply with both state and federal law in transferring ownership of historically significant bridges that are scheduled for replacement. Federal law requires that historic bridges be offered for donation only to public or private entities that have the desire and the ability to preserve the bridges' historic features. State law allows agencies to make surplus property available to public entities at no cost only on a first-come, first-served basis. The only private entities to which a state agency can donate surplus property are "assistance organizations," the definition of which excludes the very groups that might want to acquire a historic bridge.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to

a state officer, department, agency, or institution.

## **ANALYSIS**

SECTION 1. Amends Section 201.103, Transportation Code, to authorize the commission to designate highways as part of the state highway system and to remove them from the system when they are no longer needed.

SECTION 2. Amends Section 202.021, Transportation Code, to clarify that the department may sell any property it no longer needs, and that it must sell surplus real property other than right of way to the general public. This section also codifies the common law rule that when selling surplus right of way, the department must give first priority to a governmental entity with the authority to condemn the property. SECTION 2 also authorizes the department to waive payment from the governmental entity if the cost of future maintenance would equal or exceed the fair value of the property, and allows for the executive director, rather than the governor, to execute deeds for parcels valued under \$10,000.

SECTION 3. Amends Section 202.030, Transportation Code, to require attorney general approval of the transfer or conveyance of property only when the value of the property transferred or conveyed is \$10,000 or more.

SECTION 4. Adds Section 202.033, Transportation Code, to authorize the department to transfer ownership of a historic bridge scheduled for replacement to a public or private entity that assumes full responsibility for the preservation and maintenance of the bridge.

## **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the act takes effect September 1, 2003.

## **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The differences between HB 2377 as filed and the committee substitute:

1. In Section 2, Sec. 202.021(a)(2) was revised to clarify that TxDOT may sell any property not needed for a state highway purpose, rather than just for a highway purpose. This way there's no question that another entity can continue to operate it as a highway.
2. Subsection (b) was added to Sec. 202.031 to clarify that non-right of way property is sold to the general public. The filed version did not address non-right of way property.
3. Sec. 202.021(h) now allows the executive director to execute a deed only if the value of the property is less than \$10,000. The filed version would have granted the ED this authority based on the property's fair value, a figure that is based on the commission's opinion rather than hard numbers.