

## **BILL ANALYSIS**

H.B. 3184  
By: Hill  
Transportation  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

To clarify the powers of the Texas Transportation Commission (commission) and the Texas Department of Transportation (department) with regard to the financing, construction, improvement, maintenance, and operation of turnpike projects, and to provide additional powers to the commission and the department that are necessary or convenient to the financing, construction, improvement, maintenance, and operation of turnpike projects.

Senate Bill 342, 77<sup>th</sup> Legislature, 2001, added Section 361.005, Transportation Code, to transfer the powers and duties of the former board of directors of the department's Texas Turnpike Authority Division (board) to the commission. The bill did not, however, alter the references in existing law to the board or make changes necessary to fully integrate the Texas Turnpike Authority Division (division) into the department.

Experience with the development of turnpike projects has shown that the department's legal authority with regard to turnpike projects needs some clarification. The language of Chapter 361, Transportation Code, still contains obsolete references to the board or to the Texas Turnpike Authority as an independent entity, and contains numerous provisions that duplicate the substance of other statutes applicable to the department. The existence of obsolete and duplicative provisions has complicated the department's development of turnpike projects. Additional powers are needed to develop turnpike projects in an expeditious and efficient manner.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Transportation Commission in SECTION 1 (Section 201.112(a), 360.032(a), 361.234(a), 361.3025(4)(g), 361.306, Transportation Code) of this bill.

### **ANALYSIS**

SECTION 1. Amends Section 201.112(a), Transportation Code, to include turnpike improvement contracts and other contracts entered into under Chapter 361, Transportation Code among the contracts for which the commission may adopt rules establishing procedures for the informal resolution of contract claims.

SECTION 2. Amends Chapter 361, Transportation Code, as follows:

Sec. 361.001. DEFINITIONS. Deletes the definition of "board." Substitutes department for authority in the definition of "turnpike project."

Sec. 361.002. CHAPTER LIBERALLY CONSTRUED. Same as existing provision.

Sec. 361.003. REGIONAL MOBILITY AUTHORITY. Same as existing provision.

Sec. 361.004. CONSTRUCTION COSTS. Same as existing provision.

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Sec. 361.003. REGIONAL MOBILITY AUTHORITY. Same as existing provision.

Sec. 361.004. CONSTRUCTION COSTS. Same as existing provision.

Sec. 361.005. TRANSFER OF BOARD'S POWERS AND DUTIES. Repealed.

Sec. 361.031. TEXAS TURNPIKE AUTHORITY. Provides that the division is responsible for promoting and coordinating the development of turnpike projects under this chapter, and that the division and other department offices may be assigned duties as appropriate to the proper administration of this chapter. Substitutes department for authority where necessary.

Sec. 361.033. GENERAL POWERS AND DUTIES. Formerly Section 361.042. Removes administrative provisions that are duplicative or inconsistent with existing provisions applicable to the department and substitutes department for authority where necessary.

Sec. 361.043. ENTRANCES AND EXITS OF TURNPIKE PROJECT. Repealed and renumbered as Section 361.105.

Sec. 361.046. COMPENSATION OF EMPLOYEES. Repealed.

Sec. 361.0485. BOARD MEETING BY TELEPHONE CONFERENCE CALL. Repealed.

Sec. 361.049. CONSULTANTS. Repealed.

Sec. 361.050. DISADVANTAGED BUSINESSES. Repealed.

Sec. 361.051. PUBLIC ACCESS. Repealed.

Sec. 361.052. PUBLIC COMPLAINTS. Repealed.

Sec. 361.053. EVIDENCE OF ACTION BY AUTHORITY. Repealed.

Sec. 361.054. AUDIT. Renumbered as new Section 361.037. Substitutes department for authority where necessary, clarifies that audits will review the department's books and accounts for activities under this chapter, and requires that audits be conducted in compliance with existing trust agreements securing bonds issued under this chapter.

Sec. 361.055. SUCCESSOR AGENCY TO AUTHORITY. Repealed.

Sec. 361.101. DETERMINATION OF TURNPIKE PROJECTS. Substitutes department for authority where necessary and requires a commission order approving the designation of a project as a turnpike project, rather than approving the project's location.

Sec. 361.102. PUBLIC HEARINGS. Repealed.

Sec. 361.103. ENVIRONMENTAL REVIEW. Repealed and replaced with new Section 361.103, Application of Other Law, providing that all other law applicable to the department, the commission, and the state highway system applies to the development, construction, maintenance, and operation of a turnpike project unless in conflict with this chapter.

Sec. 361.105. ENTRANCES AND EXITS OF TURNPIKE PROJECT. Contains the provisions in former Section 361.043.

Sec. 361.131. POWERS AND PROCEDURES OF DEPARTMENT IN ACQUIRING PROPERTY. Substitutes department for authority where necessary and clarifies that real property may be acquired and disposed of under this chapter using the same procedures authorized under Chapters 202 and 203, Transportation Code.

Sec. 361.132. ACQUISITION OF PROPERTY. Substitutes department for authority where necessary.

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Sec. 361.132. ACQUISITION OF PROPERTY. Substitutes department for authority where necessary.

Expressly authorizes the department to acquire property for toll houses, toll plazas, and service stations, and to provide locations for ancillary revenue generating facilities.

Sec. 361.133. ACQUISITION OF RIGHTS IN PUBLIC REAL PROPERTY. Substitutes department for authority where necessary.

Sec. 361.134. DESCRIPTION OF REAL PROPERTY. Substitutes department for authority where necessary.

Sec. 361.135. CONDEMNATION OF REAL PROPERTY. Substitutes department for authority where necessary and deletes unnecessary references to the board. Clarifies that the commission may approve the condemnation of real property that is necessary or convenient for the construction or operation of a turnpike project, as defined in Section 361.132(d). Repeals the provision that a supplemental facility may only be constructed on purchased land.

Sec. 361.136. SEVERANCE OF REAL PROPERTY. Substitutes department for authority where necessary.

Sec. 361.137. DECLARATION OF TAKING. Substitutes department for authority where necessary.

Sec. 361.138. POSSESSION OF PROPERTY. Substitutes department for authority where necessary.

Sec. 361.140. RESTORATION OF OR COMPENSATION FOR DAMAGE TO OR DESTRUCTION OF PRIVATE PROPERTY. Same as existing provision.

Sec. 361.141. COMPENSATION FOR AND RESTORATION OF PUBLIC PROPERTY. Substitutes department for authority where necessary.

Sec. 361.142. COVENANTS, CONDITIONS, RESTRICTIONS, OR LIMITATIONS. Substitutes department for authority where necessary.

Sec. 361.171. TURNPIKE REVENUE BONDS. Substitutes commission for authority as the entity that may authorize the issuance of bonds under this chapter and the terms of that issuance, and substitutes department for authority as the entity that may authorize the sale of those bonds.

Sec. 361.172. APPLICABILITY OF OTHER LAWS. Substitutes commission for authority where necessary.

Sec. 361.173. PAYMENT OF BONDS; CREDIT OF STATE NOT PLEDGED. Substitutes commission for authority regarding the entity issuing bonds and commission and department for authority with respect to those entities that are prohibited from incurring financial obligations that cannot be paid from tolls or revenue derived from owning or operating turnpike projects under this chapter or from money provided by law.

Sec. 361.174. SOURCES OF PAYMENT OF AND SECURITY FOR TURNPIKE PROJECT BONDS. Substitutes commission for authority regarding the entity issuing turnpike project bonds and department for authority regarding the use of money available to the department for the payment of bonds. Repeals restriction on making bond payments from revenues derived from other turnpike projects.

Sec. 361.175. TURNPIKE REVENUE REFUNDING BONDS. Substitutes commission for authority regarding the entity authorized to issue refunding bonds and commission and department for authority regarding the entities whose rights and obligations with respect to bonds and bondholders are governed by this chapter.

Sec. 361.176. TRUST AGREEMENT. Substitutes commission for authority where necessary.

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Sec. 361.176. TRUST AGREEMENT. Substitutes commission for authority where necessary.

Sec. 361.177. PROVISIONS PROTECTING AND ENFORCING RIGHTS AND REMEDIES OF BONDHOLDERS. Substitutes department for authority and order for resolution where necessary.

Sec. 361.178. FURNISHING OF INDEMNIFYING BONDS OR PLEDGE OF SECURITIES. Substitutes department for authority where necessary.

Sec. 361.179. REVENUE. Substitutes department for authority and order for resolution where necessary. Allows contributions of funds to be deposited in a fund with toll revenue and other revenue and used for the cost of maintaining, repairing, and operating a turnpike project, the payment of the principal of and interest on bonds issued for a turnpike project, and to create reserves.

Sec. 361.180. TOLLS ON CONVERTED HIGHWAYS. Same as existing provision.

Sec. 361.181. EXPENDITURES FOR FEASIBILITY STUDIES. Substitutes department for authority where necessary. Repeals obsolete provision relating to the authority's use of money received from the department for feasibility studies.

Sec. 361.182. TEXAS TURNPIKE AUTHORITY FEASIBILITY STUDY FUND. Substitutes department for authority where necessary. Makes the department's maintenance of the feasibility study fund discretionary. Requires the commission to authorize a feasibility study, but authorizes this power to be delegated to the department's executive director. Repeals obsolete provision relating to funds transferred to the department for the benefit of the authority as part of the 1997 creation of the division and the North Texas Tollway Authority (NTTA). Allows the commission to authorize a feasibility study to be funded with toll equity provided by a grant or a loan.

Sec. 361.183. FEASIBILITY STUDY BY MUNICIPALITY, COUNTY, OR PRIVATE GROUP. Substitutes commission for authority where necessary.

Sec. 361.184. TEXAS TURNPIKE AUTHORITY PROJECT REVOLVING FUND. Substitutes department for authority and commission for board where necessary. Repeals obsolete provision relating to the deposit into the project revolving fund of funds transferred to the department for the benefit of the authority as part of the 1997 creation of the division and the NTTA.

Sec. 361.185. TRUST FUND. Substitutes department for authority and order for resolution where necessary.

Sec. 361.186. REMEDIES. Deletes obsolete reference to bond coupons. Substitutes commission and department for authority with respect to the performance of duties under this chapter, the trust agreement, and a minute order authorizing the issuance of bonds, and substitutes order for resolution where necessary.

Sec. 361.187. EXEMPTION FROM TAXATION OR ASSESSMENT. Substitutes commission for authority regarding exemption from taxation on turnpike projects and certain property and income on property, and substitutes department for authority regarding the exemption from taxation of property acquired or used by the department.

Sec. 361.188. VALUATION OF BONDS SECURING DEPOSIT OF PUBLIC FUNDS. Substitutes commission for authority where necessary and deletes obsolete reference to bond coupons.

Sec. 361.189. USE OF SURPLUS REVENUE. Substitutes order for resolution where necessary.

Sec. 361.191. EXPENDITURE OF MONEY AUTHORIZED BY COMMISSION. Substitutes commission for department as the entity authorizing the expenditure of money for the cost of the acquisition, construction, maintenance, or operation of a turnpike project, and deletes a reference to the authority as an independent entity.

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Sec. 361.191. EXPENDITURE OF MONEY AUTHORIZED BY COMMISSION. Substitutes commission for department as the entity authorizing the expenditure of money for the cost of the acquisition, construction, maintenance, or operation of a turnpike project, and deletes a reference to the authority as an independent entity.

Sec. 361.231. AWARDING OF CONTRACTS. Substitutes department for authority where necessary, revises a cross reference to provisions relating to the department's highway improvement contracts, and deletes duplicative provisions.

Sec. 361.232. SUBSTITUTION FOR AND EFFECT ON EXISTING ROADS. Substitutes department for authority where necessary.

Sec. 361.233. RIGHT OF ENTRY. Substitutes department for authority where necessary.

Sec. 361.234. PUBLIC UTILITY FACILITIES. Substitutes commission for authority as the entity authorized to adopt rules relating to the use of a turnpike project for the installation, construction, maintenance, relocation, and removal of public utility facilities, and department for authority as the entity regulating such use. Deletes unnecessary provisions granting the authority powers equivalent to the commission with respect to a public utility's use of highway right of way.

Sec. 361.235. USE OF STATE REAL PROPERTY. Substitutes department for authority where necessary.

Sec. 361.236. MAINTENANCE OF TURNPIKE PROJECT. Substitutes department for authority where necessary.

Sec. 361.237. OPERATION OF TURNPIKE PROJECT. Repealed as it is duplicative of Section 361.251.

Sec. 361.238. PAYMENT OF BOND INDEBTEDNESS; CESSATION OR CONTINUATION OF TOLLS. Substitutes department for authority where necessary.

Sec. 361.251. TURNPIKE PROJECT A STATE HIGHWAY. Clarifies that turnpike projects are state highways subject to all laws applicable to the regulation and control of traffic on a state highway.

Sec. 361.252. FAILURE OR REFUSAL TO PAY TOLL; OFFENSE. Same as existing provision.

Sec. 361.253. ADMINISTRATIVE FEE; NOTICE; OFFENSE. Substitutes department for authority where necessary. Authorizes the department to contract with a person to collect unpaid tolls prior to referring the matter to a court with jurisdiction over the offense. Provides for deposit of collected tolls and fees in the depository bank used for that purpose.

Sec. 361.254. PRESUMPTIONS; PRIMA FACIE EVIDENCE; DEFENSES. Same as existing provision.

Sec. 361.255. USE AND RETURN OF TRANSPONDERS. Substitutes department for authority where necessary.

Sec. 361.256. AUTOMATED ENFORCEMENT TECHNOLOGY. Substitutes department for authority where necessary.

Sec. 361.281. APPLICABILITY OF SUBCHAPTER. Applies this subchapter to regional mobility authorities.

Sec. 361.282. LEASE, SALE, OR CONVEYANCE OF TURNPIKE PROJECT. Substitutes department for authority where necessary and authorizes the department to lease, sell, or otherwise convey a turnpike project to a regional mobility authority.

Sec. 361.283. DISCHARGE OF OUTSTANDING BOND INDEBTEDNESS. Substitutes department for authority where necessary.

Sec. 361.231. AWARDING OF CONTRACTS. Substitutes department for authority where necessary, revises a cross reference to provisions relating to the department's highway improvement contracts, and deletes duplicative provisions.

Sec. 361.232. SUBSTITUTION FOR AND EFFECT ON EXISTING ROADS. Substitutes department for authority where necessary.

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Sec. 361.282. LEASE, SALE, OR CONVEYANCE OF TURNPIKE PROJECT. Substitutes department for authority where necessary and authorizes the department to lease, sell, or otherwise convey a turnpike project to a regional mobility authority.

Sec. 361.283. DISCHARGE OF OUTSTANDING BOND INDEBTEDNESS. Substitutes department for authority where necessary.

Sec. 361.284. REPAYMENT OF DEPARTMENT'S EXPENDITURES. Requires an agreement to lease, sell, or convey a turnpike project to provide for the reimbursement of department expenditures for the project that have not been reimbursed with bond proceeds unless waived by the commission because the transfer will result in substantial net benefits.

Sec. 361.285. APPROVAL OF AGREEMENT BY ATTORNEY GENERAL. Revised to recognize that turnpike projects may be transferred to a regional mobility authority.

Sec. 361.301. AGREEMENTS WITH PUBLIC OR PRIVATE ENTITIES TO CONSTRUCT, MAINTAIN, REPAIR, AND OPERATE TURNPIKE PROJECTS. Substitutes department for authority where necessary. Clarifies that the requirements of Section 361.231 and Subchapter A, Chapter 2254, Government Code do not apply to an agreement entered into under this subchapter.

Sec. 361.302. EXCLUSIVE DEVELOPMENT AGREEMENTS WITH PRIVATE ENTITIES. Substitutes department for authority where necessary. Clarifies that the requirements of Section 361.231 and Subchapter A, Chapter 2254, Government Code do not apply to an exclusive development agreement. Makes the use of private funding for a project developed under an exclusive development agreement discretionary. Removes limitations on the number of exclusive development agreements that may be entered. Provides that proposals for projects developed under an exclusive development agreement and related information are confidential.

Sec. 361.3025. PERFORMANCE AND PAYMENT SECURITY. Requires a private entity entering into an exclusive development agreement to provide performance and payment bonds or alternative forms of security authorized under this section, and prescribes the amount of security. Requires the commission to prescribe by rule requirements for alternate forms of security.

Sec. 361.303. OWNERSHIP OF TURNPIKE PROJECT. Substitutes department for authority where necessary.

Sec. 361.304. LIABILITY FOR PRIVATE OBLIGATIONS. Substitutes department for authority where necessary.

Sec. 361.305. TERMS OF PRIVATE PARTICIPATION. Substitutes department for authority where necessary.

Sec. 361.306. RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATION PROCESS. Substitutes commission for authority as the entity required to adopt rules governing the selection and negotiation process for obtaining private participants in turnpike projects, and department for authority in other circumstances relating to this process. Authorizes the department to pay to unsuccessful proposers a stipulated amount of the final contract price for any costs incurred in preparing a proposal, providing the amount paid does not exceed the value of work product contained in the proposal that can be used by the department.

Sec. 361.307. AGREEMENTS WITH PRIVATE ENTITIES AND OTHER GOVERNMENTAL AGENCIES. Substitutes department for authority where necessary.

Sec. 361.308. PARTICIPATION ON CERTAIN OTHER BOARDS, COMMISSIONS, OR PUBLIC BODIES. Repealed.

Sec. 361.331. POOLED TURNPIKE PROJECTS. Substitutes department for authority where necessary, and commission for authority as the entity that may designate a pooled turnpike project.

Sec. 361.332. RELATIONSHIP TO OTHER LAW OR TRUST AGREEMENT. Same as existing provision.



Sec. 361.284. REPAYMENT OF DEPARTMENT'S EXPENDITURES. Requires an agreement to lease, sell, or convey a turnpike project to provide for the reimbursement of department expenditures for the project that have not been reimbursed with bond proceeds unless waived by the commission because the transfer will result in substantial net benefits.

Sec. 361.285. APPROVAL OF AGREEMENT BY ATTORNEY GENERAL. Revised to recognize that turnpike projects may be transferred to a regional mobility authority.

Sec. 361.301. AGREEMENTS WITH PUBLIC OR PRIVATE ENTITIES TO CONSTRUCT, MAINTAIN, REPAIR, AND OPERATE TURNPIKE PROJECTS. Substitutes department for authority where necessary. Clarifies that the requirements of Section 361.231 and Subchapter A, Chapter 2254, Government Code do not apply to an agreement entered into under this subchapter.

Sec. 361.302. EXCLUSIVE DEVELOPMENT AGREEMENTS WITH PRIVATE ENTITIES. Substitutes department for authority where necessary. Clarifies that the requirements of Section 361.231 and Subchapter A, Chapter 2254, Government Code do not apply to an exclusive development agreement. Makes the use of private funding for a project developed under an exclusive development agreement discretionary. Removes limitations on the number of exclusive development agreements that may be entered. Provides that proposals for projects developed under an exclusive development agreement and related information are confidential.

Sec. 361.3025. PERFORMANCE AND PAYMENT SECURITY. Requires a private entity entering into an exclusive development agreement to provide performance and payment bonds or alternative forms of security authorized under this section, and prescribes the amount of security. Requires the commission to prescribe by rule requirements for alternate forms of security.

Sec. 361.303. OWNERSHIP OF TURNPIKE PROJECT. Substitutes department for authority where necessary.

Sec. 361.304. LIABILITY FOR PRIVATE OBLIGATIONS. Substitutes department for authority where necessary.

Sec. 361.305. TERMS OF PRIVATE PARTICIPATION. Substitutes department for authority where necessary.

Sec. 361.306. RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATION PROCESS. Substitutes commission for authority as the entity required to adopt rules governing the selection and negotiation process for obtaining private participants in turnpike projects, and department for authority in other circumstances relating to this process. Authorizes the department to pay to unsuccessful proposers a stipulated amount of the final contract price for any costs incurred in preparing a proposal, providing the amount paid does not exceed the value of work product contained in the proposal that can be used by the department.

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Sec. 361.331. POOLED TURNPIKE PROJECTS. Substitutes department for authority where necessary, and commission for authority as the entity that may designate a pooled turnpike project.

Sec. 361.332. RELATIONSHIP TO OTHER LAW OR TRUST AGREEMENT. Same as existing provision.

Sec. 361.333. ISSUANCE OF TURNPIKE REVENUE BONDS, PLEDGE OF PROJECT REVENUE. Substitutes commission for authority and order for resolution where necessary.

Sec. 361.334. ISSUANCE OF TURNPIKE REVENUE REFUNDING BONDS. Substitutes commission for authority and order for resolution where necessary.

Sec. 361.335. ISSUANCE OF BONDS AND PLEDGE OF TURNPIKE PROJECT REVENUE WITHOUT REGARD TO WHETHER BONDS ARE REFUNDED. Substitutes commission for authority and order for resolution where necessary.

SECTION 3. Amends Section 362.001, Transportation Code, to delete the definition of "authority."

SECTION 4. Amends Section 362.003(b) and (c), Transportation Code, to provide that the provisions of Chapters 1201 and 1371, Government Code, and Subchapters A-C, Chapter 1207, Government Code, are applicable to bonds issued by the commission under this chapter, and to authorize the department to enter into all agreements necessary or convenient to effectuate the purposes of this chapter.

SECTION 5. Amends Section 362.007(a) and (b), Transportation Code, to substitute department for authority where necessary.

SECTION 6. Amends Section 362.008, Transportation Code, to substitute department for authority where necessary.

SECTION 7. Amends the section heading to Section 545.354, Transportation Code, to delete an unnecessary reference to the Texas Turnpike Authority.

SECTION 8. Amends Section 545.354(a)(1), Transportation Code, to delete an unnecessary reference to the Texas Turnpike Authority.

SECTION 9. Amends Section 621.102, Transportation Code, to delete a duplicative provision providing the Texas Turnpike Authority with the same powers as the commission with respect to setting maximum weights of certain vehicles and loads.

SECTION 10. Repealer: Section 362.052 (Commission Review of Bonds) and Section 362.053 (Contracts Between Commission and Texas Turnpike Authority), Transportation Code.

SECTION 11. Repealer: Subsections (i) and (j), Section 222.103(Cost Participation), Transportation Code.

#### **EFFECTIVE DATE**

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

Sec. 361.333. ISSUANCE OF TURNPIKE REVENUE BONDS, PLEDGE OF PROJECT REVENUE. Substitutes commission for authority and order for resolution where necessary.

Sec. 361.334. ISSUANCE OF TURNPIKE REVENUE REFUNDING BONDS. Substitutes commission for authority and order for resolution where necessary.

Sec. 361.335. ISSUANCE OF BONDS AND PLEDGE OF TURNPIKE PROJECT REVENUE WITHOUT REGARD TO WHETHER BONDS ARE REFUNDED. Substitutes commission for authority and order for resolution where necessary.

SECTION 3. Amends Section 362.001, Transportation Code, to delete the definition of "authority."

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