

## **BILL ANALYSIS**

C.S.H.B. 2702  
By: Krusee  
Transportation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

To revise the provisions of HB 3588, 78th Legislature, regular Session and HB 2, 78th Legislature, Third Called Session, to address issues related in the implementation of the bills and to provide the tools necessary for the Texas Department of Transportation (TxDOT) to address the current transportation. Through HB 3588 and HB 2, the 78th Legislature enacted sweeping changes to the fundamental laws governing transportation financing and development of the Trans Texas Corridor, regional mobility authorities, pass-through tolls, and the financing and development of rail.

During the course of implementing the authority granted by HB 3588 and HB 2, it was determined that the legislation needs to be revised to more effectively and efficiently develop and operate needed transportation projects.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 19 and SECTION 30 of this bill.

### **ANALYSIS**

Section 1. Amends Section 91.004, Transportation Code, to clarify that from the federal government money allocated for rail facilities, except for fixed rail guideway system, be administered by the Transportation Commission.

Section 2. Amends Section 91.051, Transportation Code, to clarify TxDOT's authority to enter into contracts on other than a low bid basis with governmental entities to finance, design, construct, maintain and operate rail facilities with public and private entities to lease rail facilities, and with private entities for a comprehensive development agreement.

Section 3. Amends Section 91.054, Transportation Code, to authorize TxDOT to enter into comprehensive development agreements with private entities to finance, design , acquire, construct, maintain, operate rail facilities.

Section 4. Amends Section 91.074 (c), Transportation Code, add language which states that any rail facility or any system used or lease by a private entity is not exempt from ad valorem taxes and is subject to local zoning and building standards.

Section 5. Amends Section 91.102, Transportation Code, to provide that a developer that leases a rail facility under a rail agreement is exempt from paying property taxes on that rail.

Section 6. Adds Section 201.907, Transportation Code, to authorize TxDOT to contract with a governmental entity for the enforcement of laws applicable to the control of traffic on state highways and the payment of tolls on state highways.

Section 7. Amends Section 202.112, Transportation Code, by adding (d) which states that an option to purchase property under this section may not expire later than the 10th anniversary the option was purchased for the specified purpose. The option may be renewed for subsequent periods that expire no later than the 10th anniversary of the date the property was renewed, by agreement of the commission and grantor of the option.

Section 8. Amends 203.004, Transportation Code, by changing the heading of the section.

Section 9. Amends Section 203.004, Transportation Code, to authorize TxDOT to transfer real property to an entity designated by an agency of the United States, without monetary consideration, for the purposes of mitigation. This section requires that TxDOT offer to purchase a conservation easement from the property owner. If the property owner does not respond before the 61st day after the offer is made, the department may acquire by purchase or condemnation.

Section 10. Amends 203.0521, Transportation Code, to allow TxDOT to negotiate for the purchase of the remainder of a severed tract if the department and the owner agree on the terms. Once the agreement is reached the department shall pay based on value of acquired property and the damages to the remainder due to the severance, including inaccessibility from one tract to the other. The department also may agree to an intangible legal right to a percentage of revenue generated to the applicable segment of the project or a right to use the applicable segment without charge. Any right to receive revenue under (c) (1) is subject to any pledge of revenue under the trust agreement securing the bonds issued for the project.

Section 11. Amends Section 227.021, Transportation Code, which states that the department may not limit the public's direct access to or from the Trans Texas Corridor with intent of benefiting ancillary facilities.

Section 12. Amends Section 227.023, Transportation Code, by adding language which states that a facility licensed or leased to a private entity used for commercial purpose, is used for public purpose if it's operated by the private entity to provide transportation or utility services. Property licensed or leased by a private entity for commercial purpose is not exempt from ad valorem taxes and is subject to local zoning and building standards. If the department contracts with a private entity for the collection of fees, the department shall approve the methodology in collecting the fees.

Section 13. Amends Section 227.028 (a), Transportation Code by referencing changes made to Section 203.004, Transportation Code in Section 10 of the bill.

Section 14. Amends Section 227.029 (b), Transportation Code, by adding language that states if TxDOT changes location of a facility, it shall reconstruct the facility at the location that restores the utility of the facility.

Section 15. Adds Section 221.032, and Section 227.033 Transportation Code, which states that TxDOT shall make reasonable effort to connect the Trans Texas Corridor with significant farm-to-market, ranch-to-market and major county and city arterials included in local MPO plan. TxDOT shall also take into consideration financial feasibility, solicit advice from county commissioners, municipalities and MPOs, circuitry of travel to landowners, access for emergency vehicles and traffic volume. Adds language which states that when TxDOT receives an offer to locate a pipeline in its ROW for the transport of water, it has to notify any water district and the county commissioners court in the county from where the water is pumped of that offer. Subsection (b) states that TxDOT can only drill for and pump groundwater from locations within its ROW only if the water is used for the construction, operation or maintenance of the project.

Section 16. Section 227.041, Transportation Code, by adding language which includes mitigation of adverse environmental effects to the section. This section also states that the commission may not condemn property contiguous to a planned segment of the Trans Texas Corridor for an ancillary facility. It also makes reference subsection (a) and to Section 227.043 of the bill.

Section 17. Adds Section 227.047, and Section 227.048 Transportation Code, to allow TxDOT to negotiate for the purchase of the remainder of a severed tract if the department and the owner agree on the terms. The department shall offer to purchase a remainder if the department determines that the remainder has little or no value or utility, and if the entire tract could be acquired for the same compensation as the partial tract. When acquiring the tract the department shall pay the value of the property and damages to the remainder caused by the severance including loss of reasonable access between portions of the bisected tract. The department is not

required to offer to purchase a remainder if an investigation indicates the presence of hazardous materials.

Section 18. Amends Section 227.082, Transportation Code, by adding language which states that TxDOT may grant a franchise or license only if the agreement is approved by the commissioners court in which the property, facility or segment of the Trans Texas Corridor is located.

Section 19. Amends Section 284.009, which allows for the conversion or transfer of a non-tolled state highway to county for the purposes of converting it to a tolled facility. This section also explains the conversion process for county roads.

Section 20. Amends Chapter 361.005, and 361.006, Transportation Code, which provides that toll revenue from TxDOT toll projects shall be deposited into Fund 006. This section also states that if TxDOT utilizes a comprehensive development agreement the money from the development must be used by the region.

Section 21. Amends Chapter 361.137 (c), Transportation Code, by adding language which states that when TxDOT files a declaration of taking, the property owner will receive a 90 day notice that the property is going to be acquired. They will also receive a 30 day notice (after receiving the 90 day notice) to vacate the property.

Section 22. Amends Section 361.179 (f), Transportation Code, by adding language to allow revenue to be used for state highway projects as well as turnpike projects.

Section 23. Adds Section 361.237, Transportation Code, which states that TxDOT may enter into agreements in order to operate a turnpike project.

Section 24. Amends Section 361.255, Transportation Code, by changing the heading of the section

Section 25. Amends Section 361.255, Transportation Code, by adding language to allow TxDOT to enter into agreements to sell transponders to customers and to charge reasonable fees for administering electronic toll collection. The section also ensures that the customer account information is confidential.

Section 26. Amends Section 361.302, Transportation Code, by adding (f) which would allow TxDOT to combine, in a comprehensive development agreement, a turnpike project and a rail facility.

Section 27. Amends Section 361.3022 (i) and (j), Transportation Code, to allow TxDOT to negotiate with a private entity for best value for the purpose of establishing the terms of the comprehensive development agreement.

Section 28. Amends Section 361.303, Transportation Code, by adding language which states that a state highway leased under a comprehensive development is used for a public purpose if it is leased to a private entity for a public purpose. Any portion of the highway leased to a private entity is not exempt from ad valorem taxes and is subject to local zoning and building standards.

Section 29. Amends Section 361.305 (a), Transportation Code, by making reference to section 12 of this bill.

Section 30. Amends Section 362.0041, Transportation Code, by transferring it to Chapter 361 and designating it as Subchapter K. This section defines the process by which TxDOT can convert a state highway to a toll road. The conversion must receive county commissioner approval from each county within which the highway is located. The conversion must receive approval by a public vote held on the first uniform election date where the proposed conversion is to occur.

Section 31. Amends Section 366.035, Transportation Code, by defining the conversion process for the commission to transfer a road to an authority under this section.

Section 32. Amends Section 370.035, Transportation Code, by changing the heading of the section.

Section 33. Amends Section 370.035, Transportation Code, by defining the conversion process for the commission to transfer a road to an authority under this section.

Section 34. Amends Section 11.11, Tax, Code by adding language which states that any facility owned by TxDOT that is part of the Trans Texas Corridor, rail facility or system, or is a state highway licensed or leased to a private entity is public property used for public purpose. Any part leased to a private entity is not exempt from taxation.

Section 35. Repeals various Section listed in the bill.

Section 36. Effective date: immediately if by 2/3 or September 1, 2005.

### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute differs from the original by:

(1) adding new SECTION 1 to provide that money appropriated or allocated by the United States for the construction and maintenance in this state of rail facilities owned by any public or private entity shall be administered by the commission and may be spent only under the supervision of the department, and to provide that this requirement does not apply to money appropriated or allocated for a fixed rail guideway system constructed by certain transit authorities, transportation authorities, and transit departments;

(2) amending SECTION 2 of the bill as filed to provide, in SECTION 3 of the substitute, that the department may enter into a comprehensive development agreement under Chapter 91, Transportation Code, for a rail facility or system to the extent and in the manner that the department enters into a comprehensive development agreement under Chapter 361, Transportation Code, with regard to a turnpike project, instead of defining that authority in Chapter 91, and to authorize the department to combine in a comprehensive development agreement a rail facility or system and a turnpike project as defined by Section 361.001;

(3) striking SECTION 3 of the bill as filed that amends Section 91.071, Transportation Code, to delete existing text relating to disbursements from the state highway fund that limit the amount of funding that could be used by the department to implement Chapter 91, Transportation Code;

(4) amending SECTION 4 to provide that any portion of a rail facility or system that is used or leased by a private entity for a commercial purpose is not exempt from ad valorem taxation and is subject to local zoning regulations and building standards;

(5) striking SECTION 5 of the bill as filed that amends Chapter 91, Transportation Code, to add Section 91.075, relating to pass-through fares;

(6) amending SECTION 6 to provide that the exemption from taxation of or assessment on a rail facility or system leased under Section 91.102, Transportation Code, applies to the portion of the rail facility or system used for the purpose of providing rail transportation services;

(7) striking SECTION 7 of the bill as filed that amends Section 201.001, Transportation Code, to define "toll project";

(8) amending SECTION 8 of the bill as filed to provide, in SECTION 9 of the substitute, that the department may perform certain mitigation measures if authorized by an applicable regulatory authority, rather than if directed by such an authority, and to require the department, before the

commission acquires real property to mitigate an adverse environmental impact, to offer to purchase a conservation easement from the owner of the real property;

(9) amending SECTION 9 of the bill as filed to provide, in SECTION 6 of the substitute, that the department or a public or private entity contracted to operate a toll project may contract for certain services of peace officers;

(10) adding new SECTION 7 in the substitute to provide that an option to acquire property purchased by the commission may not expire later than the 10th anniversary of the date the option was purchased and may be renewed for subsequent 10 year periods;

(11) striking SECTION 10 of the bill as filed that provides that certain property is necessary or convenient to a state highway and may be acquired under Section 203.052, Transportation Code;

(12) amending SECTION 11 of the bill as filed to provide, in SECTION 10 of the substitute, that the department may negotiate for and purchase either part of a severed tract if the department and the owner agree on terms for the purchase, to define the compensation to be paid by the department for the acquisition of a tract of property, to authorize the department to agree to a payment in the form of a right to use without charge a segment or part of the toll project, and to make conforming changes;

(13) striking SECTION 12 of the bill as filed, relating to acquisition of rights in public real property;

(14) striking SECTION 13 of the bill as filed, relating to a declaration of taking;

(15) striking SECTION 14 of the bill as filed that amends Section 221.001(1), Transportation Code, to redefine "highway" as a tolled or nontolled public road or part of a public road or other necessary structure, including buildings;

(16) striking SECTION 15 of the bill as filed that makes certain changes to Section 222.104, Transportation Code, relating to pass-through tolls;

(17) striking SECTION 16 of the bill as filed that amends Section 244.151(9), Transportation Code, to redefine "restricted lane";

(18) striking SECTION 17 of the bill as filed that amends Section 227.001(9), Transportation Code, to redefine "turnpike";

(19) adding new SECTION 7 in the substitute to provide that the department may not limit the public's direct access to or from the Trans-Texas Corridor with the intent to benefit the economic viability of an ancillary facility;

(20) amending SECTION 18 of the bill as filed to provide, in SECTION 12 of the substitute, that a portion of a facility that is licensed or leased to private entity, other than certain facilities used for commercial purposes, is used for a public purpose and is therefore exempt from ad valorem taxation if the facility is operated by the private entity to provide utility or transportation services, to provide that facilities licensed or leased for a commercial purpose is also subject to local building standards, and to impose certain requirements on a private entity with which the department contracts for the collection of a fee for the use of a facility that is part of the Trans-Texas Corridor;

(21) adding new SECTION 13 in the substitute to provide that any property acquired or used to mitigate environmental effects arising from the construction or operation of the Trans-Texas Corridor is subject to Section 203.004(a-1), Transportation Code;

(22) adding new SECTION 14 in the substitute to provide that if the department finds it necessary to change the location of a portion of a facility because of a facility that is part of the Trans-Texas Corridor, it shall reconstruct the other facility at a location the department determines restores the utility of that facility;

(23) adding new SECTION 15 in the substitute to require the department to ensure that, at the intersection of certain highways and a segment of a state highway that is designated as part of the Trans-Texas Corridor, that the highways are directly accessible to each other, and to impose certain conditions on the department relating to the pumping, extraction, and transportation of groundwater from the right-of-way of the Trans-Texas Corridor;

(24) amending SECTION 19 of the bill as filed to provide, in SECTION 16 of the substitute, that the commission may not condemn property contiguous to an existing or planned segment of the Trans-Texas Corridor for an ancillary facility, to encourage the department to acquire an option to purchase property or to lease back purchased land if the property is not immediately needed for department purposes, and to make conforming changes;

(25) adding new SECTION 17 in the substitute to prescribe requirements for the acquisition of a remainder resulting from the acquisition of a tract of real property for the Trans-Texas Corridor;

(26) adding new SECTION 18 in the substitute to provide that the department may only lease property on the Trans-Texas Corridor or grant a franchise or license to use or operate a portion of the Trans-Texas Corridor if the agreement is approved by the commissioners court of the county in which the property or facility is located, and to provide that the requirement for county approval does not apply to a lease, franchise, or license to a private entity for the purpose of operating a highway, turnpike, rail facility, or utility facility under a comprehensive development agreement;

(27) striking SECTIONS 20-32 of the bill as filed, that transfer, redesignate, and amend certain provisions in Chapter 361, Transportation Code, relating to department turnpike projects;

(28) amending SECTION 33 of the bill as filed to provide, in SECTION 19 of the substitute, that the requirements of Section 284.009, Transportation Code, do not apply to certain highways or segments transferred by the commission to a county, and to make conforming changes;

(29) adding new SECTION 20 in the substitute, relating to the deposit of revenue from a turnpike project in the state highway fund, that amends a similar provision in SECTION 21 of the bill as filed, and to provide that payments received by the department under a comprehensive development agreement may be used by the department to finance transportation and air quality projects in the region;

(30) adding new SECTION 21 in the substitute to provide that the department may not file a declaration of taking of property needed for a turnpike project prior to written notification to the owner of property that includes a business, farm, or ranch of certain information, including that they will not be required to move before the 90th day after the date of the notice;

(31) adding new SECTION 22 in the substitute to provide that the revenue from one turnpike project may not be used to pay the cost of another project except as authorized in Section 361.189, and in Section 361.006, relating to the use of payments under a comprehensive development agreement;

(32) adding SECTION 23 in the substitute to authorize the department to enter into certain agreements relating to the operation of a turnpike project that is substantially similar to the authority granted in SECTION 26 of the bill as filed;

(33) adding SECTIONS 24 and 25 in the substitute to authorize the department to perform certain acts relating to electronic toll collection that is substantially similar to the authority granted in SECTION 26 of the bill as filed, and to provide that contracts for a toll project must ensure the confidentiality of electronic toll collection customer account information;

(34) adding new SECTION 26 in the substitute to authorize the department to combine in a comprehensive development agreement under Chapter 361, Transportation Code, a turnpike project and a rail facility as defined by Section 91.001, Transportation Code;

(35) adding new SECTION 27 in the substitute to provide that the department may enter into negotiations with the private entity whose proposal offers the apparent best value for the purpose

of establishing the final terms of a comprehensive development agreement, and to make conforming changes to Section 361.3022(i) and (j), Transportation Code;

(36) adding SECTION 28 in the substitute to amend provisions in SECTION 32 of the bill as filed relating to the exemption from ad valorem taxation of certain property used or leased by a private entity under a comprehensive development agreement;

(37) adding new SECTION 29 in the substitute to provide that terms negotiated by the department for private participation in a turnpike project under a comprehensive development agreement are subject to Section 227.023(e), Transportation Code;

(38) amending SECTION 30 of the bill to require voter approval of the conversion of a nontolled highway by the commission, and to provide that the requirements of new Subchapter K, Chapter 361, Transportation Code, relating to the conversion of a nontolled highway, do not apply to certain highways or segments;

(39) striking SECTION 34 of the bill as filed that amends Section 284.061(c), Transportation Code, to make a conforming change;

(40) striking SECTION 35 of the bill as filed that amends Subchapter C, Chapter 284, Transportation Code, by adding Section 284.0615, relating to declaration of taking by certain counties;

(41) adding new SECTION 31 in the substitute to amend Section 366.035, Transportation Code, relating to the conversion of a nontolled segment of the state highway system to a turnpike project and the transfer of the project to a regional tollway authority;

(42) adding new SECTIONS 32 and 33 in the substitute that amend provisions in SECTION 36 of the bill as filed, and to provide that the requirements of Section 370.035, Transportation Code, relating to the transfer of a segment of the state highway to a regional mobility authority, do not apply to certain nontolled segments of the state highway system;

(43) striking SECTION 37 of the bill as filed that amends Section 370.163(a), Transportation Code, to make conforming changes, and to delete existing text relating to the concurrence of the commission;

(44) adding new SECTION 34 to the substitute to provide that any portion of a facility owned by the department that is part of the Trans-Texas Corridor, is a rail facility or system, or is a state highway, and that is licensed or leased to a private entity under Chapter 91, 227, or 361, Transportation Code, is public property used for a public purpose, and therefore is exempt from ad valorem taxation, if the facility or highway is operated by the private entity to provide transportation or utility services, and to provide that any part of a facility or highway that is licensed or leased for a commercial purpose is not exempt from taxation;

(45) amending SECTION 38 of the bill as filed, relating to the repeal of certain provisions of the Transportation Code; and

(46) striking SECTION 39 of the bill as filed relating to the applicability of certain changes in law made by this Act.