

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 29, 2005

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Tom Craddick, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB2702 by Krusee (Relating to the construction, acquisition, financing, maintenance, management, operation, ownership, and control of transportation facilities and the progress, improvement, policing, and safety of transportation in this state; providing a penalty.),
Conference Committee Report

No significant fiscal implication to the State is anticipated.

The bill would amend various provisions in the Transportation Code to provide the Texas Transportation Commission (TTC) and the Texas Department of Transportation (TxDOT) additional flexibility to acquire, finance, maintain, manage, operate, own, and control transportation facilities in Texas.

The bill would allow TTC to grant TxDOT the authority to borrow money from any source to carry out the functions of the department. The bill would specify that any money borrowed through the issuance of notes by TxDOT would be considered a state security and would be subject to approval by the Bond Review Board.

The bill would require utilities to pay for the cost of relocating their facilities to accommodate a toll project unless the utility has a property interest or the toll project was in development prior to September 1, 2005.

The bill would authorize TxDOT, a regional mobility authority, a regional tollway authority, or a county acting under Chapter 284 to enter into an agreement for the payment of pass-through tolls for the payment to an authority or county, for maintaining a highway or portion of a state highway transferred to the mobility authority or county and converted to a toll facility. The bill would authorize the payment to TxDOT of pass-through tolls by an authority or county as reimbursement for all or a portion of the costs incurred by the department to design, develop, finance, construct, and maintain a state highway or portion of a state highway transferred to the authority or county and converted to a toll facility. The bill would require that money repaid to TxDOT be deposited to the credit of the fund from which the money was originally provided.

The bill would authorize TxDOT to enter into a Comprehensive Development Agreement (CDA) for non-toll highway projects.

The bill would authorize certain counties to transfer to TxDOT transportation projects that have outstanding bond indebtedness, provided that TTC agrees to the transfer and agrees to assume the outstanding bond indebtedness.

The bill would clarify and specify procedures to be used by TxDOT to enter into and operate in CDAs for the purpose of providing rail transportation facilities. The bill would remove the annual cap on monies that can be disbursed from the State Highway Fund for rail facilities.

The bill would remove the annual cap of \$25 million on state and federal funds that TxDOT may disburse for non-highway facilities on the Trans Texas Corridor.

This bill would authorize TxDOT to enter into pass-through fare agreements with a public or private entity that would reimburse, from any available funds, the public or private entity for costs incurred in the acquisition, design, development, financing, construction, relocation, maintenance, or operation of a passenger or freight rail facility. The bill would require the TTC to develop criteria and adopt rules for determining the amount of pass-through fares to be paid.

The bill would specify that, except for funds received from toll revenue bonds issued to pay for all or part of the cost of a toll project and toll revenue collected from non-tolled highways converted to toll roads, toll revenue collected or received by TxDOT be deposited in the State Highway Fund.

The bill would authorize a regional tollway authority (RTA) to transfer all or any of its assets, including work product for a project under development, to a regional mobility authority (RMA), only with the approval of each RTA member county commissioners court. If work product is transferred, the RMA must reimburse the RTA its expenses. The bill would allow an RMA to transfer assets to an RTA and would establish the procedures for such a transfer. An election would be required, with approval by each city in a rapid transit district, before the district could dissolve and transfer its assets to an RMA. If an authority were to acquire a transit provider with taxing authority, the authority may impose a sales and use tax at a permissible rate that does not exceed the rate approved by the voters who reside in the service area of the transit provider's transit system. The permissible rates that could be imposed would range from one-quarter of one percent to one percent, in one-quarter of one percent increments.

The bill would authorize the assessment of compensable damages to a property owner, as determined by court-appointed special commissioners in a condemnation proceeding, for early possession of real property for a toll project. The bill would also require the special commissioners to consider decreased access to or from remaining property resulting from the condemnation of a tract or parcel of real property for any state highway system purposes.

The bill would abolish the State Aircraft Pooling Board (SAPB) and transfer all powers and duties of SAPB to TxDOT.

The bill would repeal Section 222.103(h), Transportation Code, which establishes an annual limit of \$800 million for money granted each year, by TxDOT, for participation in the cost of a toll facility.

The bill would authorize TxDOT to seek funding from public and private sources to acquire and operate hydrogen-fueled vehicles and to establish and operate hydrogen refueling stations in accordance with the provisions of the bill. The bill would authorize TxDOT to purchase and operate in each area in which a refueling station is established four vehicles with hydrogen internal combustion engines and either three fuel-cell vehicles, one hydrogen internal combustion engine bus, or one fuel-cell bus, upon receiving such funding. The bill would also authorize TxDOT to establish hydrogen refueling stations on the Trans-Texas Corridor.

The bill would transfer the Commission's rail safety program to the Texas Department of Transportation (TxDOT).

The bill would authorize counties to issue bonds, with a maximum maturity of 40 years, to construct, maintain, or operate toll or non-toll projects or facilities on the state highway system in the county, or as a continuation of the project or facility in adjacent counties. The bill would authorize the county to pledge, for the payment of bonds issued pursuant to the bill, revenues from any available source, including payments received under agreements with TxDOT, and including pass-through toll agreements.

The bill would amend the Transportation Code to add new Section 222.035 relating to the creation of a private activity bond program for highway facilities or surface freight transfer facilities in Texas. The bill would stipulate that, if the Texas Attorney General made a determination that the United States Congress had enacted legislation amending the Internal Revenue Code to include highway facilities or surface freight transfer facilities among the types of facilities for which private activity bonds could be used, TxDOT would be required to administer the program and establish a process by which the agency would receive and evaluate applications for the issuance of private activity bonds for

these purposes.

This analysis does not reflect the fiscal implications related to pass-through fares because no information was provided by TxDOT to indicate that any pass-through fare agreements would be implemented within the next five years.

This analysis does not reflect revenues associated with the payment to TxDOT of pass-through tolls as a reimbursement for costs incurred to design, develop, finance, construct, or maintain a state highway or portion of state highway that is transferred to a regional mobility authority or county and converted to a toll facility because it is assumed any such revenues would be utilized for other transportation related purposes.

TxDOT reports that increased property acquisition costs would result from the assessment of compensable damages in condemnation proceedings for decreased access to property owners. Based on an estimated total value of \$800 million for real property from which partial tracts were acquired in fiscal year 2004, TxDOT estimates property acquisition costs could increase by at least \$480 million from the assessment of damages for decreased access. Because these assessments would be determined by court-appointed special commissions consisting of other local landowners, this analysis does not speculate the amount of any increased damages that may be awarded.

Based on the assumption of TxDOT that any funding received from private and public sources for establishing hydrogen refueling stations and purchasing hydrogen-fueled vehicles would be in an amount sufficient to cover the cost of implementing the provisions of the bill, it is assumed that duties associated with implementing the provisions of the bill would be accomplished by utilizing existing resources. In the event that secured public and private funding would not be available in an amount sufficient to cover the entire costs of implementing the provisions of the bill, it is assumed that State Highway Funds would be used to cover the difference.

It is estimated the transfer of state rail safety programs to TxDOT would require the transfer of 16.1 FTEs and \$906,212 in General Revenue to TxDOT, out of current funds appropriated to the Railroad Commission by the Legislature. It is assumed any costs related with the transfer of functions could be absorbed within existing state resources.

Current statute does not allow counties to issue bonds to construct, maintain, or operate toll or non-toll facilities on the state highway system. However, current law does allow a private or public entity to construct state highway projects and be repaid by TxDOT, using any available funds, through the pass-through toll method. Under provisions of the bill, counties could issue bonds for transportation facility projects on the state highway system and could pledge revenues from any source, including pass-through toll agreements with TxDOT, to pay the bonds. TxDOT assumes the agency would experience an increase in pass-through toll applications as a result of implementation of the provisions of the bill, but that the agency could absorb an increase in related workload using existing resources.

Financial obligations related to the issuance of private activity bonds for highway facilities or surface freight transfer facilities would be the sole responsibility and liability of the private entities who become the final borrowers. Based on the analysis of the Office of the Attorney General, Comptroller of Public Accounts, and TxDOT, it is assumed duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

This bill would take effect immediately upon receiving a vote of two-thirds of all members elected to each house; otherwise, the bill would take effect September 1, 2005.

Local Government Impact

It is assumed that costs to local governments for participating in the creation, administration, operation, and financing of transportation systems in this state would depend on the size of the local body and the size and type of projects that are constructed. Costs associated with the bill would eventually be offset by revenue generated by tolls, fees, bonds, donations, or other sources.

If an RTA or an RMA were to pursue making a transfer of assets, the authorities would incur the costs

of an election. Based on costs reported to the Secretary of State in the summer of 2004 by a sampling of counties, municipalities, and special districts, the average cost incurred by a local government entity for an election is \$1.29 per registered voter. If a special election were to be held on the general election date, the local government would experience an increase in costs that would not likely be significant (because the state pays the majority of the costs). If a special election were to be held on a uniform election date other than the general election date, the local government would incur the full costs associated with conducting the special election (pay to workers, fee for use of polling locations, publishing notice in newspapers, printing of ballots).

Source Agencies:

LBB Staff: JOB, SD, TG