

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 16, 2005**

**TO:** Honorable Todd Staples, Chair, Senate Committee on Transportation & Homeland Security

**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.), **Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2702, Committee Report 2nd House, Substituted: a negative impact of (\$1,900,000) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	(\$1,150,000)
2007	(\$750,000)
2008	\$0
2009	\$0
2010	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE FUND</i> <b>1</b>	Probable Revenue Gain/(Loss) from <i>STATE HIGHWAY FUND</i> <b>6</b>
2006	(\$1,150,000)	\$1,150,000
2007	(\$750,000)	\$750,000
2008	\$0	\$0
2009	\$0	\$0
2010	\$0	\$0

**Fiscal Analysis**

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 clarify and specify procedures to be used by TxDOT to enter into and operate in Comprehensive Development Agreements for the purpose of providing rail transportation facilities. The bill would increase the annual cap on monies that can be disbursed from the State Highway Fund for rail facilities from \$12.5 million to \$25 million.

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 Transportation Commission to develop criteria and adopt rules for determining the amount of pass-through fares to be paid.

The bill would authorize TxDOT to construct a state highway project and be reimbursed by a public or private entity under a pass-through toll agreement.

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 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 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). The transfer would require approval of each RTA member county commissioners court. If work product is transferred, the RMA must reimburse the RTA its expenses. The bill would also allow an RMA to transfer assets to an RTA. The bill would establish the procedures for an RTA and an RMA to make the transfer, including a provision that if an RTA transfers all of its assets in a county to an RMA, including any work product for a project under development, that the RMA would no longer be subject to decisions by the RTA regarding the RMA's turnpikes in that county. An RMA would be prohibited from providing passenger rail within the area of an Intermunicipal Rail District existing as of September 1, 2005, without the approval of the district. In addition, an RMA would be prohibited from providing transit services within any part of Denton County without the approval of that county's transit authority. 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.

This bill would specify that TxDOT would assume the operations of the State Aircraft Pooling Board. The bill would amend Section 2205.040, Government Code, to require TxDOT to adopt rates for interagency aircraft services sufficient to recover all direct costs for the services provided. The bill would require that TxDOT deposit all revenue received under this provision to the credit of the State Highway Fund, including proceeds from the sale of surplus and salvage property formerly belonging to the State Aircraft Pooling Board.

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 a toll facility.

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.

## **Methodology**

Based on information provided by TxDOT, it is assumed two surplus aircraft would be sold in fiscal year 2006 and one in fiscal year 2007. Proceeds from the sale of these aircraft are estimated to be \$1,150,000 in fiscal year 2006 and \$750,000 in fiscal year 2007, which would be deposited to the State Highway Fund. Under current law, these proceeds would be deposited in the General Revenue Fund to the credit of the State Aircraft Pooling Board.

The bill would authorize TxDOT to reimburse, through pass-through-fare agreements, public or private entities for costs they incurred in the acquisition, design, development, financing, construction, relocation, maintenance, or operation of a passenger, or freight rail facility. Current law allows 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, which is defined in statute as a per vehicle fee or a per vehicle mile fee that is determined by the number of vehicles using the highway. The table above 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.

The table above also 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. Therefore, the table above does not include an estimate of increased property acquisition costs that may be incurred by TxDOT.

## **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:** 405 Department of Public Safety, 601 Department of Transportation, 802 Parks and Wildlife Department, 304 Comptroller of Public Accounts

**LBB Staff:** JOB, SR, MW, TG, KJG