

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 1, 2007

TO: Honorable John Carona, Chair, Senate Committee on Transportation & Homeland Security

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

IN RE: SB1929 by Carona (Relating to transportation infrastructure in this state; providing penalties; making an appropriation.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1929, Committee Report 1st House, Substituted: a negative impact of (\$1,584,755,000) through the biennium ending August 31, 2009.

The bill would make an appropriation of \$25,000,000 out of the Texas Emissions Reduction Plan Fund Account No. 5071 for the biennium beginning September 1, 2007.

Appropriations:

Fiscal Year	Appropriation out of <i>TEXAS EMISSIONS REDUCTION PLAN 5071</i>
2008	\$25,000,000
2009	\$0

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$791,194,000)
2009	(\$793,561,000)
2010	(\$795,799,000)
2011	(\$797,965,000)
2012	(\$800,109,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from <i>GENERAL REVENUE FUND 1</i>	Probable (Cost) from <i>TEXAS EMISSIONS REDUCTION PLAN 5071</i>	Probable Revenue (Loss) from <i>GENERAL REVENUE FUND 1</i>	Probable Revenue (Loss) from <i>STATE HIGHWAY FUND 6</i>
2008	(\$659,400,000)	(\$25,000,000)	(\$131,794,000)	(\$15,000)
2009	(\$659,400,000)	\$0	(\$134,161,000)	(\$15,000)
2010	(\$659,400,000)	\$0	(\$136,399,000)	(\$15,000)
2011	(\$659,400,000)	\$0	(\$138,565,000)	(\$15,000)
2012	(\$659,400,000)	\$0	(\$140,709,000)	(\$15,000)

Fiscal Year	Probable Revenue Gain from TEXAS MOBILITY FUND 365
2008	\$135,493,000
2009	\$137,897,000
2010	\$140,172,000
2011	\$142,376,000
2012	\$144,558,000

Fiscal Analysis

Article 2 of the bill would amend the Transportation Code to impose a two-year moratorium on certain provisions in contracts between a private entity and a toll project entity, including the Texas Department of Transportation (TxDOT), a regional tollway authority (RTA), a regional mobility authority (RMA), or a county. The bill would specify that a toll project entity could not enter into a comprehensive development agreement (CDA) containing a provision permitting a private participant to operate and collect revenue from a toll project or enter into a contract to sell a toll project to a private entity. The bill would provide certain exemptions and conditions under which such CDA's are authorized. The moratorium on the applicable CDAs would expire on September 1, 2009. Article 2 would take effect immediately if the bill receives a vote of two-thirds of all members elected to each house or otherwise on September 1, 2007.

Article 3 of the bill would change the sunset date for the authority to enter into a CDA to August 31, 2009, from the current expiration date of August 31, 2011.

Article 4 of the bill would establish general provisions regarding CDAs for highway toll projects that are applicable to toll project entities, including TxDOT, RTAs, RMAs, and county toll road authorities (CTRA). The bill would require the Attorney General to review proposed CDAs for legal sufficiency. The bill would require toll project entities to submit to the Legislative Budget Board and the State Auditor certain information regarding proposed CDAs before entering into a CDA contract. The bill would require a toll project entity to provide the State Auditor with the traffic and revenue report for a project for review and comment. The bill would establish contract guidelines relating to the termination of certain CDAs and prohibitions against contract provisions that would limit or prohibit the construction of transportation projects by a toll project entity or other governmental entity.

Article 5 of the bill would limit the length of certain contracts for the collection tolls or fees by a private entity to a term no longer than 40 years, including contracts relating to the collection of fees on Trans-Texas Corridor facilities.

Article 12 of the bill would amend the Transportation Code to authorize TxDOT, RTAs, RMA's, and counties to use video billing or other tolling methods to permit the registered owner of the vehicle to pay a toll for the use of a state toll project. The bill would authorize such tolls to be set at a different amount than a toll charged at the time a vehicle is driven or towed through a toll collection facility.

Article 13 of the bill would amend the Transportation Code to remove provisions that require the approval of the commissioners court and the voters of an applicable county before a nontolled state highway or segment of state highway could be converted to a toll facility. Article 13 would take effect immediately if the bill receives a vote of two-thirds of all members elected to each house or otherwise on September 1, 2007.

Article 14 of the bill would require TxDOT to provide public access to certain information regarding the Trans-Texas Corridor and to post on the department's website the costs incurred by TxDOT in connection with the Trans-Texas Corridor, copies of any associated contracts entered into by TxDOT, financial forecasts, and expenditure reports. The bill would prohibit TxDOT from using department personnel to make revenue projections for tolled segments of the Trans-Texas Corridor and would require the department to enter into an interagency contract with the Comptroller of Public Accounts (CPA) to make projections and project toll revenue for each geographic region of a tolled segment before TxDOT enters into a CDA for a segment. The bill would require TxDOT to submit a proposed

agreement to the Attorney General and obtain approval of a contract before TxDOT could enter into a CDA with a term greater than four years or requiring a total expenditure of more than \$250 million.

Article 15 of the bill would specify that surplus toll revenue from a Trans-Texas Corridor project is to be deposited in the State Highway Fund and that the funds may be expended only in connection with a project located in the department district in which a tolled segment or combined segment of the TTC was located. Article 15 would take effect immediately if the bill receives a vote of two-thirds of all members elected to each house or otherwise on September 1, 2007.

The bill would require TTC or TxDOT to provide a CTRA the first option to finance, construct, or operate a portion of a toll project in the county or region before TTC or TxDOT could enter into a contract for those purposes. The bill would require the TTC and TxDOT to allow a CTRA, RTA, or RMA to use TxDOT-owned highway right of way and to access the state highway system. The bill would specify that TxDOT or the TTC may not require payment for the right-of-way or access, except to reimburse TxDOT or TTC for costs incurred or to be incurred by a third-party, including the federal government, as a result of the use by the county. The bill would authorize a CTRA or RTA to enter into CDAs with private entities to design, develop, finance, construct, maintain, repair, operate, extend, or expand a project. The bill would grant a county or RTA all powers of TxDOT related to the development of a Trans-Texas Corridor project if a county requests or a county or RTA is requested by TxDOT to participate in the project.

Article 26 of the bill would amend the Transportation Code, relating to the use of the State Highway Fund, to remove provisions authorizing the use of constitutionally-dedicated money by the Department of Public Safety (DPS) to police the state highway system and to administer state traffic and safety laws on public roads. The bill would specify that other nonconstitutionally-dedicated money in the State Highway Fund may only be used to improve the state highway system, except as otherwise provided by the Transportation Code. The bill would repeal Section 222.002 of the Transportation Code, which authorizes use of money in the State Highway Fund that is not required to be spent for public roadways by the Texas Constitution or federal law. This article would only take effect if the constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, to limit the purposes for which revenues from motor vehicle registrations, fees, taxes on motor fuels and lubricants, and certain revenues received from the federal government could be used if approved by the voters.

Article 27 of the bill would amend Chapter 2302 and 2303 of the Occupations Code to dedicate each fee collected from salvage vehicle dealers and vehicle storage facilities to be deposited to the credit of the Texas Mobility Fund 365 (Fund 365). The bill would amend the Transportation Code to change the deposit of \$5 received on each motor vehicle title transfer application to Fund 0365 from the General Revenue Fund 1 (GR Fund 1). The bill would amend the Transportation Code to change the deposit of \$38.75 of each \$40 fee received on the sale of a personalized license plate to Fund 365 from GR Fund 1. The bill would amend the Transportation Code to change the deposit of certain excess fines received by the Comptroller from a municipality with a population of less than 5,000 to Fund 365 from GR Fund 1. The bill would amend the Transportation Code to change the deposit of 67 percent of all \$30 state traffic fine revenues to Fund 365 from GR Fund 1 and would repeal Transportation Code Section 542.4031(h), which dedicates collections of certain portions of the \$30 state traffic fine exceeding \$250 million. The bill would amend the Transportation Code to increase the base permit fee amount for a permit for excess axle or gross weight to \$200 from \$75 and require the additional \$125 to be deposited to Fund 365. In addition, the bill would deposit to the credit of Fund 365 certain permit fees for oversize and overweight vehicles currently deposited to the credit of State Highway Fund 6. The bill would dedicate revenues collected from the sale of permits for single-trip, 30-day, 60-day, 90-day, or other oversize or overweight vehicles to Fund 365 instead of GR Fund 1. The bill would amend the Transportation Code to deposit to the credit of Fund 365 all fees and penalties collected by TxDOT for motor carrier registration and single state registration that are currently deposited to GR Fund 1.

Article 28 of the bill would create the Toll Project Equity Fund as a special account in the General Revenue Fund to be used only for toll or turnpike projects. The fund would consist of proceeds from bonds and notes issued by the Texas Public Finance Authority (TPFA), loan payments deposited to the fund, investment income, and interest earned on money in the fund. The bill would authorize TPFA

to issue and sell general obligation bonds and notes of the state as authorized by the Texas Constitution for the purpose of providing money to make loans to an RTA, RMA, or a county or local government corporation. The aggregate principal amount of bonds and notes issued each year could not exceed \$3 billion, not including refunding bonds. The bill would establish a program by which local toll project entities may apply for and receive loans from the fund, pledge revenue of the toll project entity for the repayment of loans, and prescribe the duties of TPFAs under the program. The bill would pledge GR funds for the payment of principal and interest on outstanding obligations if TPFAs determine that there are not sufficient funds in the applicable interest and sinking accounts and would require the CPA to transfer funds from GR to the applicable accounts. The bill would authorize TPFAs to issue and sell revenue bonds to provide loan funds and issue revenue bonds for a toll project secured by revenue of the project, which would not be a debt or pledge of the full faith and credit of the state. The provisions for the issuance of general obligation bonds and notes by TPFAs, and any appropriation required by the authority under Article 28 would take effect January 1, 2008, if the constitutional amendment proposed by Senate Joint Resolution 46, 80th Legislature, Regular Session, 2007, takes effect.

Article 31 of the bill would authorize TxDOT to acquire, finance, construct, reconstruct, relocate, maintain, and operate privately owned passenger or freight rail facilities if the TTC first determines that the actions will be in the best interest of the state and achieves certain benefits as defined by the bill. The bill would allow TxDOT to finance rail facilities with surplus revenue of certain state toll projects, money awarded from the Texas Enterprise Fund, and money from the Texas Rail Relocation and Improvement Fund. The bill would expand allowable uses of the Texas Rail Relocation and Improvement Fund for certain privately owned rail facilities and would establish a loan program from the fund to be administered by TxDOT. Article 31 would take effect immediately if the bill receives a vote of two-thirds of all members elected to each house or otherwise on September 1, 2007.

Article 32 of the bill would amend the Health and Safety Code to authorize the Texas Commission on Environmental Quality (TCEQ) to include as an eligible infrastructure project, a project to reduce air pollution and engine idling by relieving congestion at a certain rail intersection located in a nonattainment area, and appropriate \$25 million in the Texas Emissions Reduction Plan Fund 5071 to TCEQ for this purpose in the 2008-09 fiscal biennium.

Except as otherwise provided by the bill, the bill would take effect on September 1, 2007.

Methodology

Based on the analysis of the Office of the Attorney General (OAG), it is assumed the CDA contract reviews under Article 4 of the bill would require three additional staff positions and approximately \$350,000 for salaries, employee benefits, and general operating expenses. It is assumed the costs could be absorbed within the agency's existing resources.

Based on the analysis of the State Auditor's Office (SAO), the provisions of the bill requiring the SAO to audit annual financial statements for segments of the Trans-Texas Corridor would require approximately 1,600 audit hours for an estimated cost of \$154,000 in 2008 increasing to 4,800 hours at a cost of \$461,000 in 2012. It is assumed the costs to the SAO would be reimbursed by TxDOT and could be absorbed within existing state resources. It is assumed the costs of reviewing traffic and revenue reports for proposed CDAs could be absorbed within existing resources and would be reimbursed by TxDOT.

This analysis does not estimate revenue impacts from toll collections associated with video billing or other alternative tolling methods that would be authorized under Article 12 of the bill.

It is assumed Article 26 of the bill would prohibit the expenditure of State Highway Fund 6 (Fund 6) monies by DPS and other state agencies for non-highway use or any other use that is not authorized under the Transportation Code. Under the current General Appropriations Act (GAA), the 2006-07 biennial appropriations and transfers of Fund 6 to agencies other than TxDOT are approximately \$1.3 billion, including approximately \$13.3 million to the OAG for certain legal services on behalf of TxDOT. Additionally, it is assumed the Automobile Theft Prevention Authority and vehicle dealer regulation functions within TxDOT would no longer be eligible uses of Fund 6 (approximately \$38

million in the 2006-07 GAA). With the approval of the constitutional amendment and the enactment of the bill, it is assumed these agencies and programs, with the exception of the OAG, would receive appropriations from GR Fund 1 in lieu of Fund 6 to continue operations at current levels. Therefore, it is assumed the annual cost to GR Fund 1 would be approximately \$659.4 million each year. It is assumed the fiscal implications would be greater if other functions performed by TxDOT that currently utilize Fund 6 were not explicitly authorized for the use of Fund 6 under the Transportation Code.

Based on the analysis of the Comptroller of Public Accounts (CPA), the provisions of Article 27 of the bill that dedicate fees to Fund 365 would result in a revenue gain of approximately \$135.5 million to Fund 365 and revenue losses of approximately \$131.8 million to GR Fund 1 and \$15,000 to Fund 6 beginning in fiscal year 2008.

Based on the analysis of the Texas Public Finance Authority (TPFA), it is assumed that General Obligation (GO) Bonds authorized under Article 28 of the bill (contingent upon the passage of a constitutional amendment) would be fully self-supporting and would not represent a cost to GR Fund 1. It is assumed the \$3 billion in GO Bonds authorized by the bill would be issued at a 6.0 percent interest rate with a 30-year level debt service structure, including principal and interest, which would result in average annual debt service payments of approximately \$216 million, which would be supported by loan repayments from local tolling entities. However, it is assumed that GR Funds would be required to pay debt service if TPFA determines that loan payments and other eligible monies in the Toll Project Equity Fund are not sufficient to cover the costs.

The establishment of a loan fund out of or the issuance bond obligations backed by the Texas Rail Relocation and Improvement Fund to provide financing for rail projects authorized by Article 31 of the bill is contingent upon revenue being deposited to the credit of the fund and certification by the Comptroller of Public Accounts, pursuant to Section 201.973 of the Transportation Code. Currently, there is no revenue deposited to or available balance in the fund. Therefore, this analysis does not estimate any expenditures from the fund associated with the provisions of Article 31.

It is assumed the appropriation of \$25 million from the Texas Emissions Reduction Plan Fund 5071 under Article 32 would be expended or encumbered in fiscal year 2008 for the air quality project authorized by the bill.

TxDOT indicates that the bill would delay the development and procurement of several proposed CDA projects totaling \$5.5 billion and delay the receipt of any associated concession fees to the state until fiscal year 2010 or later. TxDOT also indicates that limiting the terms of certain CDA's to a maximum of 40 years could impact CDA project financing and the amount of concession fees paid to the state. Based on the information provided by TxDOT, it is assumed the fiscal implications to the state would depend on the number and scope of potential CDA projects and concession agreements that could be implemented under current law but would be delayed or prohibited as a result of the enactment of the bill and, therefore, cannot be determined.

TxDOT indicates that the state's federal highway funding could be jeopardized under certain provisions of the bill, and it is assumed federal penalties could accrue depending on the number and scope of projects in violation of federal requirements. Currently, TxDOT is the state administrative entity granted authority by the federal government to oversee or conduct environmental and design and build reviews for any major roadway receiving federal aid or intersecting a federal-aid highway or a transit system subsidized by the federal government.

According to the CPA, the bill would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Local Government Impact

It is assumed that a local tolling authority would enter into a contract to finance, construct, and operate a toll project only if sufficient funds were available. These entities could see savings for these projects

from not having to pay TxDOT or TTC for use of state highway right-of-way or access to the state highway system, but the savings, if any, would depend on the size of the local body and the size of the project.

It is assumed that a local tolling authority would use a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend or expand a turnpike project only if sufficient funding were available.

Source Agencies: 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 347 Public Finance Authority, 405 Department of Public Safety, 582 Commission on Environmental Quality, 601 Department of Transportation

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