

BILL ANALYSIS

C.S.H.B. 2589
By: Pickett
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, the Texas Transportation Commission is responsible for the approval of transportation projects statewide. These projects must first be selected by a metropolitan planning organization and then adopted by the commission in what is known as the unified transportation program. That program is made up of two parts: projects related to new mobility and those related to maintenance and preservation. The Texas Department of Transportation's funding and expenditures, as they relate to the agency's operations, show up in the department's operating budget. The many documents explaining how the department is functioning and spending state resources have created confusion for the public.

The commission currently has a policy allocating revenue to the regions of Texas. However, this policy has not been adopted under the Texas Administrative Code. Thus, the commission has the discretion to shift funding allocations to various regions of Texas by minute order. This process has led to concerns, from both the legislature and the public, about the current means by which the commission selects and funds projects. Under current law, there is also the need for limits on the amount of money the commission may retain for discretionary projects and the need for a new computer system to allow regional planners to submit selected projects directly into the state's tracking system.

C.S.H.B. 2589 requires the department to create a statewide transportation program and budget to include at a minimum the department's operating budget, an official cash flow forecast, the allocation of funds to each region, a 10-year business work plan, and the projects selected by planning organizations, which are defined in the bill as metropolitan planning organizations or, in areas where there is no metropolitan planning organization, the department district that serves the area. The bill requires the commission to adopt rules that create funding formulas for transportation projects. The bill requires all funds received by the department to be allocated by a formula to each planning organization based on performance measures and certain criteria to include the level of congestion, population, safety, and vehicle miles traveled in the boundaries of the organization.

C.S.H.B. 2589 authorizes the commission to annually set aside an amount of funds not to exceed the lesser of 10 percent of the total funds allocated to all districts or \$250 million for the purpose of addressing emergencies or economic development opportunities that requires transportation infrastructure. The bill authorizes the funds to be carried forward from year to year, but prohibits the funds from accumulating to more than \$1 billion. The bill requires the department to develop an interactive web-based system for tracking planning organization allocations and projects. The bill requires planning organizations to be granted access to the system through a secure site to allow the organizations to input information regarding projects and the associated project costs.

C.S.H.B. 2589 establishes requirements for a metropolitan planning organization to be eligible to receive state funds for transportation projects under a transportation allocation funding formula. The bill requires at least 75 percent of the organization's policy board members to be elected officials who are elected in the boundaries of the organization and requires voting members to be elected officials. To ensure proper implementation of the bill's provisions, the bill establishes the legislative oversight committee on transportation. Another supervisory measure included in

the bill is the appointment of an inspector general who reports to the commission. The bill also addresses the voting membership of metropolitan planning organization policy boards and legislative oversight of implementation of the bill's provisions.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 5 of this bill.

ANALYSIS

C.S.H.B. 2589 amends the Transportation Code to establish that the Texas Transportation Commission consists of five members, of which three, rather than all five, are appointed by the governor with the advice and consent of the senate; one is appointed by the lieutenant governor; and one is appointed by the governor with the advice and consent of the senate from a list provided by the speaker of the house of representatives. The bill specifies that the member required to reside in a rural area is one of the members appointed by the governor with the advice and consent of the senate. The bill provides that the terms of the members of the commission serving on the effective date of the bill expire September 1, 2009, and requires members to be appointed in accordance with the bill's provisions for terms to begin September 1, 2009. The bill requires the newly appointed members to draw lots to determine whose terms will expire February 1, 2011, whose terms will expire February 1, 2013, and whose terms will expire February 1, 2015.

C.S.H.B. 2589 requires the commission to divide the state into 25 districts, rather than not more than 25 districts, for the purpose of performing the duties of the Texas Department of Transportation. The bill requires the commission to align the districts' boundaries along the boundaries of regional planning commissions created under state law, and consider all costs and benefits, including highway activity in and the number of employees required for the proposed district, rather than determine a district's boundaries solely on the consideration of these costs and benefits.

Oversight

C.S.H.B. 2589 adds a temporary provision, set to expire August 31, 2013, to establish the legislative oversight committee on transportation composed of 10 members as follows: the chair of the Senate Committee on Finance; the chair of the House Committee on Appropriations; the chair of the Senate Committee on Transportation and Homeland Security; the chair of the House Committee on Transportation; three members of the senate appointed by the lieutenant governor; and three members of the house of representatives appointed by the speaker of the house of representatives. The bill requires the committee to monitor the implementation of the statewide transportation program and budget and the transportation allocation funding formulas, the transportation transparency program, the development of performance measures under the bill's provisions, and other tasks assigned by the lieutenant governor and the speaker of the house of representatives.

C.S.H.B. 2589 requires the commission to appoint an inspector general who reports to the commission. The bill requires the inspector general to audit the department's financial condition and the efficiency of its business practices; evaluate the efficiency of the department's administrative practices and performance, including business plan performance measures, relationships with metropolitan planning organizations, performance of department districts and offices, and the need for standardization; identify the need and opportunities for reductions in staff and the need for a better or differently skilled workforce; study the implementation of and improvements to a commitment-based budget or business plan based on outcomes; identify ways to streamline the environmental approval process; evaluate compliance with applicable laws and

legislative intent; and evaluate the efficient use of available funding, personnel, equipment, and office space.

C.S.H.B. 2589 adds a temporary provision, set to expire August 31, 2013, to require, notwithstanding the requirement that the commission appoint the inspector general, the legislative oversight committee on transportation to appoint the inspector general. The bill provides that if appointed under these provisions, the inspector general is subject to removal for good cause by the commission. The bill provides that if the Supreme Court of Texas determines that an appointment under these provisions violates Section 1, Article II, or Section 12, Article IV, Texas Constitution, the commission is required to appoint the inspector general from a list provided by the legislative oversight committee on transportation. The bill requires the commission or the oversight committee, as applicable, to appoint an inspector general not later than December 1, 2009.

C.S.H.B. 2589 establishes that an inspector general's review does not take precedence over the state auditor's review. The bill authorizes the inspector general to meet with the state auditor's office to coordinate a review conducted under the bill's provisions, share information, or schedule work plans. The bill entitles the state auditor, in addition to the authority granted under state law, to access all information maintained by the inspector general, including vouchers, electronic data, internal records, and other information. The bill establishes that any information obtained or provided by the state auditor under these provisions is confidential and not subject to disclosure under the Public Information Act. The bill requires the inspector general to prepare a final report for each review conducted under the bill's provisions. The bill requires the final report to include a summary of the activities performed by the inspector general in conducting the review and a description of any findings in connection with the review. The bill establishes that an inspector general's final reports are subject to disclosure under the Public Information Act. The bill requires the inspector general, unless otherwise prohibited by state law, to deliver a copy of each final report that concerns the implementation or administration of a state or federally funded program to the commission and the executive director of the department, the governor, the lieutenant governor, the speaker of the house of representatives, the state auditor, and the appropriate legislative oversight committees.

Statewide Transportation Planning and Funding Allocation

C.S.H.B. 2589 removes provisions relating to the development of a statewide transportation plan and adds new provisions relating to statewide transportation planning and funding allocation. The bill defines "planning organization" as a metropolitan planning organization or, for an area that is not in the boundaries of a metropolitan planning organization, the department district that serves the area. The bill defines "project cost," "region," "transportation official," and "transportation project." The bill establishes the purpose of the new provisions. The bill requires, on September 1 of each odd-numbered year, the department's chief financial officer to issue a cash flow forecast for each method and category of funding that covers a period of not less than the 10 years following the date the forecast is issued. The bill requires the forecast to identify all sources of funding available for transportation projects, including bond proceeds. The bill requires the first two years of the forecast to be based on the appropriation of funds in the General Appropriations Act for the department for that biennium. The bill requires the commission to use the cash flow forecast to allocate funding to the planning organizations in accordance with the transportation allocation funding formula in the bill. The bill requires the funds to be deposited into subaccounts for each region in the state highway fund and requires the balance of the subaccount to be carried forward from year to year for the benefit of the region.

C.S.H.B. 2589 requires each planning organization to develop a 10-year transportation plan for the use of the funding allocated to the region and requires the first four years of the plan to be developed to meet the transportation improvement plan requirements of federal law. The bill requires the department to compile the planning organizations' project selections to develop the

statewide transportation plan in accordance with federal law. The bill requires each metropolitan planning organization, for the area in its boundaries, to select projects and order them in priority. The bill requires the applicable department district, for an area not included in the boundaries of a metropolitan planning organization, to select projects and order them in priority with input from municipal and county officials and transportation officials and submit the projects to the commission for final approval. The bill requires the process for developing the plans and programs to provide for consideration of all modes of transportation; be continuing, cooperative, and comprehensive to the extent appropriate, based on the complexity of the transportation problems to be addressed; and give consideration to statewide connectivity of transportation services and infrastructure. The bill authorizes a planning organization to also prepare and update periodically a long-range transportation plan for its region. The bill requires the first 10 years of the long-range plan to be identical to the plan developed under the 10-year plan. The bill requires a planning organization, before approving a long-range transportation plan, to provide to residents in its boundaries, affected public agencies, and other interested parties a reasonable opportunity to comment on the long-range transportation plan. The bill requires a planning organization to make each of its long-range transportation plans readily available for public review and to deliver each plan to the commission at the times and in the manner required by the commission. The bill requires a planning organization, in developing a plan under these provisions, to seek the opinions and assistance of the appropriate transportation officials. The bill authorizes, as appropriate, the department and a metropolitan planning organization to enter into a memorandum of understanding relating to the planning of transportation services. The bill requires the department to review the plans of each planning organization to ensure compliance with the requirements of federal law and to provide assistance to a planning organization to correct deficiencies. The bill requires a plan under these provisions to be financially constrained and to identify transportation projects and projects for any other mode of transportation not included in the definition of "transportation project." The bill requires the commission to adopt rules to allow a planning organization to move projects forward or delay projects if there are additional or less funds available than identified in the cash flow forecast. The bill prohibits adjustments to the plan from being made more than semiannually unless there are substantial increases or decreases in available funding. The bill requires a plan under these provisions to include a component, published annually, that describes the evaluation of transportation improvements based on performance measures, such as indices that measure delay reductions or travel time improvements. The bill requires the planning organization to consider the performance measures in selecting transportation improvements.

C.S.H.B. 2589 requires the department to use the planning organizations' project lists to create the statewide transportation program and budget. The bill requires the statewide transportation program and budget to include at least the department's operating budget, the official cash flow forecast, the regions' allocations of funds, the projects selected by the planning organization, and the work plan required by the bill's provisions. The bill requires the statewide transportation program and budget to be complete and adopted not later than June 30 of each even-numbered year. The bill requires the commission to adopt rules to create a process for planning organizations to amend the plan from July 1 of each even-numbered year until August 31 of the following year. The bill establishes that amendments to the plan may only reorder projects identified in the same region subject to allowable plan adjustments under the bill's provisions. The bill authorizes the commission to adopt rules to allow a planning organization to loan funds to another planning organization at the lending organization's discretion. The bill establishes that funds may be loaned only to avoid the lapsing of federal appropriations authority. The bill requires the rules to allow the lending planning organization to have a senior position with regard to any future allocated funds of the borrowing planning organization. The bill prohibits the lending planning organization from charging interest on funds borrowed by another planning organization that exceed the current bond rate of outstanding state highway fund bonds or, in the absence of outstanding debt, the prevailing market rate for comparable municipal debt. The bill requires the commission to notify all districts of that rate. The bill prohibits a planning organization from being penalized in its performance measures if it successfully negotiates a loan with another planning organization. The bill authorizes the commission to be involved in

the coordination of a loan of funds under these provisions. The bill requires the statewide transportation program and budget to be organized first by region, then by mode of transportation, followed by the year of the project. The bill requires the summary tables of the statewide transportation program and budget to summarize the statewide project cost by mode and then by year and to be made available online in accordance with the bill's provisions.

C.S.H.B. 2589 requires the commission to adopt rules that create funding formulas for transportation projects. The bill requires the commission, in developing the formulas, to consider the input of planning organizations, transportation officials, and county and municipal officials. The bill requires all funds received by the department for highways, including toll roads and toll road systems, that may be allocated in this state's or the department's discretion to be allocated by a formula to each planning organization that is based on performance measures and includes at least the following criteria: centerline miles; level of congestion; percentage of population below federal poverty level; population; safety; and vehicle miles traveled. The bill requires the commission to allocate to the planning organizations funding for the project costs of all transportation projects, to adopt various formulas for the different types of transportation projects, and to adopt rules for all transportation formulas. The bill authorizes funds allocated to a planning organization to be used to pay project costs, provide toll equity, or make payments under a pass-through toll agreement, for transportation projects selected by the planning organization; pay debt service; repay money borrowed from another region; or fund a planning organization's operations. The bill requires surplus revenue and contract payments to be allocated in accordance with state law. The bill establishes that funds associated with state highway toll projects are not considered revenue allocated by a formula under the bill's provisions. The bill requires the allocation of funds to be encumbered in an amount equal to the engineer's estimate of the project cost and reduced by the actual project cost at the time payments associated with the project are paid. The bill requires, if a planning organization elects to use bond proceeds to advance a project, the allocation of funds to be encumbered by the annual cost of debt service and reduced when debt service payments are paid.

C.S.H.B. 2589 authorizes a metropolitan planning organization operating in a transportation management area as defined by federal law to use the allocated funds to pay for the operations costs of the planning organization. The bill prohibits the amount that may be allocated to pay for the operations of the planning organization from exceeding the lesser of \$10 million or 10 percent of the planning organization's total funds. The bill authorizes a metropolitan planning organization operating in an area that is not a transportation management area to use the allocated funds to pay for the operations costs of the planning organization. The bill prohibits the amount that may be allocated to pay for the operations of the planning organization from exceeding the lesser of \$3 million or 10 percent of the planning organization's total funds.

C.S.H.B. 2589 authorizes the commission to annually set aside an amount of funds not to exceed the lesser of 10 percent of the total funds allocated to all districts or \$250 million for the purpose of addressing emergencies or economic development opportunities that require transportation infrastructure. The bill specifies that the funds may be carried forward from year to year but may not accumulate to more than \$1 billion. The bill requires, if the commission elects to set aside an amount of funds, the total amount of funds available for allocation to be reduced by the amount set aside before the allocation of funds by the formula. The bill requires the funds to be encumbered in an amount equal to the engineer's estimate of the project cost and reduced by the actual project cost at the time payments associated with the project are paid. The bill authorizes the commission to use funds set aside under these provisions for emergency and economic development opportunities that require transportation infrastructure in the same manner a planning organization may use money allocated under the bill's provisions. The bill requires, if the commission elects to use bond proceeds to advance a project, the funds to be encumbered by the annual cost of debt service and reduced when debt service payments are paid. The bill authorizes funds that are set aside to be used to pay cost overruns and change orders only for projects selected by the commission under these provisions. The bill authorizes the commission to use set aside funds to make payments for projects funded in accordance with the law

governing pass-through tolls or to provide toll equity only if the commission selects the projects using a competitive project selection process.

C.S.H.B. 2589 requires the department to develop an interactive web-based system for the tracking of planning organization allocations and projects. The bill requires the planning organizations to be granted access to the system through a secure site to input information regarding projects and the associated project costs. The bill requires the system to provide the planning organization information regarding the organization's allocation of funding for the region and the federal and state requirements for each source of funding. The bill requires the department to assign a project number to each project that correlates to the region in which the project is located and to develop standardized reports to assist district engineers and executive staff in tracking the efficiency of project development and to ensure the prudent use of funds by the planning organization. The bill requires the system to be linked to a publicly accessible website that enables the tracking of project development and the expenditure of funds. The bill requires the website to contain, for each project, a map identifying the location of the project and a report that identifies the project, a general scope of work, the allocation of funds associated with the project, and a current report of expenditures. The bill requires the website to include mapping of projects by district to allow easy identification of projects in each district.

C.S.H.B. 2589 requires the department, on completion of the 10-year transportation plan required under the bill's provisions, to use the lists of projects to develop a proposed 10-year business work plan. The bill requires the work plan to be adopted not later than August 31 of each even-numbered year and include a list of projects for which planning, permitting, design, right-of-way acquisition, or construction work will be conducted during the period; the state fiscal quarter in which key milestones for each project will be reached, including environmental clearance, completion of final engineering plans, completion of right-of-way acquisition, letting to contract, and completion of construction; and the funding allocated or estimated in each state fiscal year for each category of work for each project.

C.S.H.B. 2589 requires, in addition to the 10-year business work plan and other plans under provisions of this bill and not later than August 31 of each odd-numbered year, the department to finalize a project plan for the period that begins on September 1 of that year and ends on August 31 of the following odd-numbered year. The bill requires the plan to include a project schedule with funding for each phase of each project, a consultant acquisition plan with a schedule for contract selections, a right-of-way acquisition plan, and a letting plan. The bill requires the department to develop a set of performance measures for the finalized biennial project plan intended to measure the execution of the work program; the efficiency and cost-effectiveness of its business practices; the preservation of the system investment; the addition of new capacity to the system; safety initiatives; and utilization of minority, disadvantaged, and small businesses. The bill requires, at a minimum, the performances measures to include:

- the percentage of projects for which environmental clearance is obtained on or before the planned date;
- the number of engineering contracts or work orders executed in contrast with the number planned;
- the average time between selection and execution of a contract for engineering services;
- the number of right-of-way parcels acquired and the number scheduled to be acquired;
- the percentage of projects for which right-of-way acquisition is completed on or before the planned date;
- the percentage of parcels acquired through negotiation;
- the percentage of negotiated parcels acquired for an amount that does not exceed 120 percent of the initial department offer;
- the total amount spent for right-of-way as a percentage of the original estimated amount;

- the number of construction contracts entered into in contrast with the number planned;
- the percentage of construction contracts executed on or before the planned letting date;
- the total amount spent for construction contracts as a percentage of the original estimated amount;
- the percentage completed within 20 percent of the original contract time for all construction contracts completed during the state fiscal year;
- the percentage completed within 10 percent of the original contract price for all construction contracts completed during the state fiscal year;
- construction contract adjustments as a percentage of original contract price;
- the percentage of bridge structures on the state highway system that have a rating of good or excellent;
- the percentage of bridge structures on the state highway system that have a posted weight limitation;
- the number of bridge repair contracts let in contrast with the number planned;
- the number of bridge replacement contracts let in contrast with the number planned;
- the percentage of lane miles on the state highway system that have a pavement condition rating of excellent or good;
- the number of lane miles on the state highway system that were resurfaced in contrast with the number planned;
- the number of lane miles of capacity improvement projects let in contrast with the number planned;
- the percentage that was committed by the department of the federal funds subject to forfeiture at the end of the state fiscal year;
- the amounts of cash receipts and disbursements in contrast with the forecasted amounts;
- the amount spent in connection with contracts with minority business enterprises as a percentage of the amount spent on all contracts;
- the number of construction contracts let in contrast with the number let in previous state fiscal years;
- the peak hour travel congestion in the seven largest metropolitan areas in contrast with previous state fiscal years;
- the number of vehicle miles traveled in contrast with previous state fiscal years; and
- the number of lane miles added as a percentage of the number of previously existing lane miles.

C.S.H.B. 2589 adds a temporary provision, set to expire August 31, 2013, to require the department to consult with the legislative oversight committee on transportation in developing the performance measures described above.

C.S.H.B. 2589 requires the commission, not later than December 1 of each odd-numbered year, to review the performance of the department's activities described in the finalized biennial project plan and make the review available to the public. The bill requires the review to include a report on the level of achievement of each performance measure listed above, statewide and by department district, and a status report on each major project under development.

C.S.H.B. 2589 amends provisions relating to the distribution of federal funds to require the commission, if the commission intends to vary from the distribution procedure set forth in those provisions, to allocate the funding in accordance with a transportation allocation funding formula

adopted under the bill's provisions.

C.S.H.B. 2589 establishes that a policy board of a metropolitan planning organization is subject to the Open Meetings Act. The bill establishes that for a metropolitan planning organization to be eligible to receive state funds for transportation projects under a transportation allocation funding formula, at least 75 percent of the organization's policy board members must be elected officials who are elected in the boundaries of the metropolitan planning organization, and only elected officials may be voting members of the organization's policy board. The bill authorizes a metropolitan planning organization that is not eligible under these provisions to redesignate the board in compliance with the redesignation procedures in federal law to become eligible to receive an allocation of funds under these formulas. The bill defines "elected official" for purposes of these provisions to mean the presiding officer or a member of the governing body of a municipality, a county judge, a county commissioner, a state representative, or a state senator.

C.S.H.B. 2589 prohibits a policy board from allowing its members to vote by proxy and makes conforming changes.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2589 adds a provision not in the original to modify the process for appointing the members of the Texas Transportation Commission. The substitute requires the commission to align district boundaries along the boundaries of regional planning commissions, whereas the original requires district boundaries to be aligned along the boundaries of the councils of government. The substitute differs from the original by removing all provisions relating to the creation and operation of rural planning organizations. The substitute adds provisions not in the original to require the legislative oversight committee on transportation to appoint the inspector general until the provisions expire August 31, 2013, to authorize the commission to remove for good cause an inspector that is appointed by the committee, and to make conforming changes to this addition. The substitute adds provisions not in the original to provide for the cooperation and coordination of the inspector general and the state auditor and to require final review reports by the inspector general. The substitute adds provisions not in the original to set forth the purpose of provisions relating to statewide transportation planning and funding allocation. The substitute adds a provision not in the original to specify that the required cash flow forecast covers a period of not less than the 10 years following the date the forecast is issued, whereas the original required the forecast to include the next 10 years. The substitute differs from the original by requiring the commission to use the cash flow forecast to allocate funding to planning organizations, rather than department districts as in the original, and makes conforming changes. The substitute adds a provision not in the original to require the process for developing plans and programs to give consideration to statewide connectivity of transportation services and infrastructure. The substitute differs from the original by authorizing a planning organization to prepare and update a long-range transportation plan for its region, rather than its service area as in the original. The substitute requires the commission to adopt rules to allow planning organizations, rather than regions, as in the original, to make plan adjustments. The substitute authorizes the commission to adopt rules to allow a planning organization to loan funds to another planning organization, whereas the original authorizes the commission to adopt rules to allow a region to loan funds to another region, and makes conforming changes. The substitute adds a provision not in the original to authorize funds to be loaned between planning organizations only to avoid the lapsing of federal appropriations authority. The substitute adds a provision not in the original to authorize the commission to be involved in the coordination of such a loan. The substitute adds a provision not in the original to authorize the commission to use funds set aside for emergencies or economic development opportunities that require

transportation infrastructure in the same manner a planning organization is authorized to use money allocated under a transportation allocation funding formula. The substitute adds a provision not in the original to specify that funds set aside for emergencies or economic development opportunities are authorized to be used only for eligible projects selected by the commission. The substitute adds a provision not in the original to specify that the requirement for the Texas Department of Transportation to consult with the legislative oversight committee on transportation regarding performance measures for the required biennial project plan expires August 31, 2013.

C.S.H.B. 2589 adds a provision not in the original to make a meeting of a metropolitan planning organization's policy board subject to the Open Meetings Act. The substitute requires at least 75 percent of a policy board's membership to be locally elected officials, rather than 50 percent as in the original, in order for the planning organization to be able to receive state funds under a transportation allocation funding formula and adds a provision not in the original to establish that only elected officials may be voting members of a policy board. The substitute specifies that the term "elected official" for purposes of policy board membership includes the presiding officer or a member of the governing body of the municipality, rather than a mayor as in the original. The substitute adds a provision not in the original to prohibit a policy board from allowing its members to vote by proxy and makes conforming changes. The substitute adds provisions not in the original to establish that the terms of commission members serving on the effective date of the bill expire September 1, 2009, and to require new members to be appointed in accordance with the bill's provisions for terms to begin September 1, 2009. The substitute adds a provision not in the original to require the new members, as soon as practicable after appointment, to draw lots to determine varying term lengths to ensure the staggered appointment of future members.