

By: Pickett

H.B. No. 2589

A BILL TO BE ENTITLED

AN ACT

1
2 relating to transportation planning and the creation and membership
3 of planning organizations and funding allocations for
4 transportation projects.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Sec. 201.105(a) and (b), Transportation Code are
7 amended to read as follows:

8 Sec. 201.105. DEPARTMENT DISTRICTS. (a) The commission
9 shall divide the state into [~~not more than~~] 25 districts for the
10 purpose of the performance of the department's duties.

11 (b) The [~~In determining a district's boundaries, the~~]
12 commission shall align the district boundaries along the boundaries
13 of the councils of government and consider all costs and benefits,
14 including highway activity in determining [~~and~~] the number of
15 employees required for the districts [~~proposed district~~].

16 SECTION 2. Subchapter H, Chapter 201, Transportation Code,
17 is amended by adding Section 201.6001 to read as follows:

18 Sec. 201.6001. DEFINITIONS. (a) In this Subchapter:

19 (1) "Local government" means a county or municipality.

20 (2) "Planning organization" means a metropolitan
21 planning organization, a rural planning organization, or the
22 department district.

23 (3) "Project cost" means the total cost of a
24 transportation project including all costs associated with the

1 following:

- 2 (A) planning;
- 3 (B) design;
- 4 (C) environmental assessment;
- 5 (D) right-of-way acquisition;
- 6 (E) construction;
- 7 (F) operations;
- 8 (G) maintenance;
- 9 (H) overruns; and
- 10 (I) change orders.

11 (4) "Region" means the area of the metropolitan
12 planning organization or the area outside the boundaries of the
13 metropolitan planning organization that make up the remainder of
14 the council of government.

15 (5) "Rural planning organization" means a planning
16 organization created in accordance with Section 201.6002.

17 (6) "Transportation official" means officials from
18 other state agencies and political subdivisions that have
19 responsibility for the following modes of transportation:

- 20 (A) aviation;
- 21 (B) high-speed railroads;
- 22 (C) highways;
- 23 (D) toll roads;
- 24 (E) mass transportation;
- 25 (F) railroads; and
- 26 (G) water traffic

27 (7) "Transportation project" means:

1 (A) the planning, right-of-way acquisition,
2 expansion, improvement, addition, routine maintenance, contracted
3 routine maintenance, or contract maintenance of a:

4 (i) bridge

5 (ii) highway;

6 (iii) toll road or toll road system; or

7 (iv) railroad.

8 (B) projects which enhance the safety of a
9 roadway to the traveling public;

10 (C) an air quality improvement initiative;

11 (D) an enhancement project in accordance with 23
12 U.S.C. 133; or

13 (E) mass transportation.

14 SECTION 3. Subchapter H, Chapter 201, Transportation Code,
15 is amended by adding Section 201.6002 to read as follows:

16 Sec. 201.6002. RURAL PLANNING ORGANIZATIONS. (a) To carry
17 out the transportation planning process required by this section, a
18 rural planning organization may be created that covers all of the
19 area that is within the boundaries of a council of government and
20 outside the boundaries of a metropolitan planning organization if
21 the units of local government that together represent at least 75
22 percent of the affected population agree to the creation of the
23 organization.

24 (b) A rural planning organization is governed by a board of
25 directors composed of local elected officials and the district
26 engineer of the department district.

27 (c) In order for a rural planning organization to be

1 eligible to receive funding from the state for transportation
2 projects under Section 201.6012, Transportation Code, the make up
3 of the voting members of the board must include at least 50 percent
4 elected officials, which are elected within the boundaries of the
5 rural planning organization.

6 (d) As soon as practicable after a rural planning
7 organization is created, the organization shall send notice of its
8 creation to the commission.

9 (e) The department may use money in the state highway fund
10 to fund the operations of a rural planning organization subject to
11 the limitation set forth in Section 201.6012(h).

12 (f) A rural planning organization shall develop
13 transportation plans and programs for its service area in
14 accordance with Section 201.601.

15 (g) A rural planning organization may provide to the
16 commission recommendations concerning the selection of
17 transportation projects, systems, or programs to be undertaken
18 within the boundaries of the rural planning organization.

19 (h) In this section "elected official" is defined as mayor,
20 county judge, city councilmember, county commissioner, state
21 representative, or state senator.

22 SECTION 4. Section 201.601, Transportation Code, is amended
23 to read as follows:

24 Sec. 201.601. STATEWIDE TRANSPORTATION PROGRAM AND BUDGET
25 [PLAN]. (a) On September first of every odd numbered year
26 following the legislative session, the Chief Financial Officer
27 shall issue a cash flow forecast for each method and category of

1 funding which covers a period to include the next ten years. The
2 forecast shall identify all sources of funding available for
3 transportation projects including bond proceeds. The first two
4 years of the forecast shall be based on the appropriation of funds
5 in the general appropriations act for the department.

6 (b) The Commission shall utilize the cash forecast to
7 allocate funding to the department districts in accordance with
8 Section 201.6012. The funds shall be deposited into a subaccount
9 within the State Highway Fund. The balance of the subaccount shall
10 be carried forward from year to year for the benefit of the region.

11 (c) The planning organization shall develop a ten year
12 transportation plan utilizing the funding allocated to the region.
13 The first four years of the plan shall be developed in order to
14 fulfill the transportation improvement plan requirements of 23
15 U.S.C. 135. The department shall compile the region's project
16 selections to develop the statewide transportation plan in
17 accordance with 23 U.S.C. 135. If there is a Metropolitan Planning
18 Organization within the boundary of the district, it shall select
19 projects and order them in priority. In the area outside the
20 boundaries of the Metropolitan Planning Organization's the rural
21 planning organization shall select projects and order them in
22 priority. If the units of local government have not created a rural
23 planning organization in accordance with Section 201.6002, the
24 district shall select projects with the input from county, city and
25 transportation officials and order them in priority. If the
26 district selects the projects, the district shall submit them to
27 the commission for final approval.

1 (d) The process for developing the plans and programs must
2 provide for consideration of all modes of transportation and must
3 be continuing, cooperative, and comprehensive to the degree
4 appropriate, based on the complexity of the transportation problems
5 to be addressed.

6 (e) A planning organization may also prepare and update
7 periodically a long-range transportation plan for its service area.
8 The first ten years of the long-range plan shall be identical to the
9 plan developed in Subsection (c). Before approving a long-range
10 transportation plan, a planning organization shall provide to
11 residents within its boundaries, affected public agencies, and
12 other interested parties a reasonable opportunity to comment on the
13 long-range transportation plan. A planning organization shall make
14 each of its long-range transportation plans readily available for
15 public review and shall deliver each plan to the commission at the
16 times and in the manner established by the commission.

17 [~~(a) The department shall develop a statewide~~
18 ~~transportation plan that contains all modes of transportation,~~
19 ~~including:~~

- 20 ~~(1) highways and turnpikes,~~
21 ~~(2) aviation,~~
22 ~~(3) mass transportation,~~
23 ~~(4) railroads and high-speed railroads, and~~
24 ~~(5) water traffic.]~~

25 (f~~[b]~~) In developing the plan, the planning organization
26 [~~department~~] shall seek opinions and assistance from
27 transportation officials [~~other state agencies and political~~

1 ~~subdivisions that have responsibility for the modes of~~
2 ~~transportation listed by Subsection (a)].~~

3 (g) As appropriate, the department and [such] a planning
4 organization [an agency or political subdivision shall] may enter
5 into a memorandum of understanding relating to the planning of
6 transportation services.

7 (h) The department shall review the plans of the planning
8 organization to ensure they are in compliance with the requirements
9 of 23 U.S.C. 135, and provide assistance to the planning
10 organization to correct deficiencies.

11 (i[~~e~~]) The plan shall be [must include a component that is
12 not] financially constrained and identify [identifies] all
13 transportation projects and projects for any other mode of
14 transportation not included in Section 201.6001(7). [improvements
15 designed to relieve congestion. In developing this component of
16 the plan, the department shall seek opinions and assistance from
17 officials who have local responsibility for modes of transportation
18 listed in Subsection (a)].

19 (j) The commission shall adopt rules allowing the regions to
20 move projects forward or delay projects in the event that there are
21 additional or fewer funds available than identified in the cash
22 forecast in subsection (a). Adjustments to the plan should not be
23 made more than semiannually, unless there are substantial increases
24 or decreases in available funding.

25 (k[~~d~~]) The plan shall include a component, published
26 annually, that describes the evaluation of transportation
27 improvements based on performance measures, such as indices

1 measuring delay reductions or travel time improvements. The
2 planning organization [~~department~~] shall consider the performance
3 measures in selecting transportation improvements.

4 (1) The department shall use the planning organizations'
5 project lists to create the Statewide Transportation Program and
6 Budget. The Statewide Transportation Program and Budget shall
7 include at least the:

8 (1) department's operating budget,

9 (2) official cash forecast from Subsection (a),

10 (3) regions' allocations of funds,

11 (4) projects selected by the planning organization in
12 subsection (c), and

13 (5) work plan, as required by Section 201.621.

14 (m) The Statewide Transportation Program and Budget shall
15 be complete and adopted by June 30 of every even numbered year. The
16 commission shall adopt rules to create a process for planning
17 organizations to amend the plan from July 1 of every even numbered
18 year until August 31 of the following odd numbered year. Amendments
19 to the plan may only reorder projects identified in the same region
20 subject to Section 201.601(j).

21 (n) The commission may adopt rules which allow a region to
22 loan funds to another region at the lending region's discretion in
23 order to avoid the lapsing of federal appropriations authority.
24 The rules must allow the lending region to have a senior position
25 with regards to any future allocated funds of the borrowing region.
26 The lending region may not charge interest on funds borrowed from
27 another region that exceed the current bond rate of outstanding

1 State Highway Fund bonds or in the absence of outstanding debt the
2 prevailing market rate for comparable municipal debt. The
3 commission shall post this rate for all districts. A lending region
4 shall not be penalized in their performance measures if they
5 successfully negotiate a loan with another region.

6 (o) The Statewide Transportation Program and Budget shall
7 be organized first by region, then by mode of transportation
8 followed by the year of the project. The summary tables of the
9 report shall summarize the statewide project cost by mode and then
10 by year. The report shall be made available online in accordance
11 with Section 201.6013.

12 SECTION 5. Subchapter H, Chapter 201, Transportation Code,
13 is amended by adding Sections 201.6012, 201.6013, and 201.6014 to
14 read as follows:

15 Sec. 201.6012 TRANSPORTION ALLOCATION FUNDING FORMULA. (a)
16 The Commission shall adopt rules creating funding formulas for
17 transportation projects. In developing the formulas the commission
18 shall include the input of planning organizations, transportation
19 officials and local government officials.

20 (b) All funds received by the department for highways, toll
21 roads, or toll road systems which provide the state or the
22 department with discretion shall be allocated by formula to each
23 region which is based on performance measures and includes at least
24 the following criteria:

- 25 (1) center lane miles,
26 (2) level of congestion,
27 (3) percentage of population below federal poverty

1 level,

2 (4) population,

3 (5) safety, and

4 (5) vehicle miles traveled.

5 (c) The Commission shall allocate to the regions funding for
6 the project cost of all transportation projects. The commission
7 shall adopt various formulas for the different types of
8 transportation projects. The commission shall adopt rules for all
9 transportation formulas.

10 (d) The funds allocated to the region in this section may be
11 used to:

12 (1) fund the project cost, provide toll equity, or
13 make payments under a pass-through toll agreement, for
14 transportation projects selected by the planning organization;

15 (2) pay debt service;

16 (3) repay monies borrowed from another region; or

17 (4) fund planning organizations' operations in
18 accordance with Sections 201.6012(f), 201.6012(g), or 201.6012(h).

19 (e) Revenue from Sections 228.005, 228.0055, and 228.006
20 shall be allocated in accordance with Transportation Code 228,
21 Subchapter B. The funds from Chapter 228 shall not be considered
22 revenue allocated by the formula in Subsection (a).

23 (f) The allocation of funds shall be encumbered in an amount
24 equal to the engineer's estimate of the project cost and reduced by
25 the actual project cost at the time payments associated with the
26 project are paid.

27 (g) If a region elects to utilize bond proceeds to advance a

1 project, the allocation of funds shall be encumbered by the annual
2 cost of debt service and reduced when debt service payments are
3 paid.

4 (h) A metropolitan planning organization operating in a
5 Metropolitan Management Area as defined by 23 U.S.C 134(k) may
6 utilize the allocated funds to pay for the operations cost of the
7 planning organization. The amount that may be allocated to pay for
8 operations of the planning organization may not exceed the lesser
9 of \$10 million or ten percent of the regions total funds.

10 (i) A metropolitan planning organization as defined by 23
11 U.S.C 134(d) may utilize the allocated funds to pay for the
12 operations cost of the planning organization. The amount that may
13 be allocated to pay for operations of the planning organization may
14 not exceed the lesser of \$3 million or ten percent of the regions
15 total funds.

16 (j) A rural planning organization created under 201.6002
17 may utilize the allocated funds to pay for the operations cost of
18 the planning organization. The amount that may be allocated to pay
19 for operations of the planning organization may not exceed the
20 lesser of \$1 million or ten percent of the regions total funds.

21 Sec. 201.6013 COMMISSION EMERGENCY AND ECONOMIC
22 DEVELOPMENT FUNDS (a) Notwithstanding Section 201.601(b) the
23 commission may choose to set aside an amount of funds not to exceed
24 the lesser of ten percent of the total funds allocated to the
25 districts or \$250 million annually for the purpose of addressing
26 emergencies or economic development opportunities that require
27 transportation infrastructure. The funds may be carried forward

1 from year to year and may not accumulate to exceed an amount equal
2 to \$1 billion.

3 (b) If the commission elects to set aside an amount of funds
4 allowed in subsection (a) then the total amount of funds shall be
5 reduced by the amount prior to the allocation of funds by the
6 formula.

7 (c) The funds shall be encumbered in an amount equal to the
8 engineer's estimate of the project cost and reduced by the actual
9 project cost at the time payments associated with the project are
10 paid.

11 (d) If the commission elects to utilize bond proceeds to
12 advance a project, the funds shall be encumbered by the annual cost
13 of debt service and reduced when debt service payments are paid.

14 (e) The funds identified in subsection (a) may only be used
15 to pay cost overruns and change orders of projects selected under
16 this section.

17 (f) The commission may only use the funds from subsection
18 (a) to make payments for projects funded in accordance with Section
19 222.104 or to provide toll equity if the commission selects the
20 projects using a competitive project selection process.

21 Sec. 201.6014 TRANSPORTATION TRANSPARENCY PROGRAM (a) The
22 department shall develop an interactive web based system for the
23 tracking of regional allocations and projects. The planning
24 organizations shall be granted access to the system through a
25 secure site to input projects and the associated project costs.

26 (b) The system shall provide the planning organization with
27 their allocation of funding for the region and the federal and state

1 requirements for each source of funding.

2 (c) The department shall assign a project number to the
3 project that correlates to the region in which the project is
4 located.

5 (d) The department shall develop standardized reports to
6 assist the district engineers and executive staff in tracking the
7 efficiency of the project development and to ensure the prudent use
8 of funds by the region.

9 (e) The system shall be linked to a publicly accessible
10 website which enables the tracking of project development and the
11 expenditure of funds. Each project shall contain a map identifying
12 the location of the project and a report that identifies the
13 project, a general scope of work, the allocation of funds
14 associated with the project, and a current report of expenditures.

15 (f) The web site shall include mapping of projects by
16 district to allow easy identification of projects within each
17 district.

18 SECTION 6. Subchapter H, Chapter 201, Transportation Code,
19 is amended by adding Sections 201.621, 201.622, 201.623 to read as
20 follows:

21 Sec. 201.621. WORK PLAN. (a) Upon completion of the
22 ten-year transportation plan in Section 201.601(c), the department
23 shall utilize the projects listed to develop a proposed ten-year
24 business work plan. The work plan shall be adopted no later than
25 August 31 of each even numbered year and include:

26 (1) a list of projects for which planning, permitting,
27 design, right-of-way acquisition, or construction work will be

1 conducted during the period;

2 (2) the state fiscal quarter in which key milestones
3 for each project will be completed, including environmental
4 clearance, completion of final engineering plans, completion of
5 right-of-way acquisition, letting to contract, and completion of
6 construction; and

7 (3) the funding allocated or estimated in each state
8 fiscal year for each category of work for each project.

9 (b) In addition to the plan required by Subsection (a) and
10 other provisions of this chapter, on or before August 31 of each
11 odd-numbered year, the department shall finalize a project plan for
12 the time period of September 1 of that odd numbered year until
13 August 31 of the following odd numbered year. The plan must include
14 a project schedule with funding for each phase of each project, a
15 consultant acquisition plan with a schedule for contract
16 selections, a right-of-way acquisition plan, and a letting plan.

17 (c) The department shall develop a set of performance
18 measures for the plan described in Subsection (b) intended to
19 measure:

20 (1) the execution of the work program;

21 (2) the efficiency and cost-effectiveness of its
22 business practices;

23 (3) the preservation of the system investment;

24 (4) the addition of new capacity to the system;

25 (5) safety initiatives; and

26 (6) utilization of minority, disadvantaged, and small
27 businesses.

1 (d) At a minimum, the performance measures adopted under
2 Subsection (c) must include:

3 (1) the percentage of projects for which environmental
4 clearance is obtained on or before the planned date;

5 (2) the number of engineering contracts or work orders
6 executed in contrast with the number planned;

7 (3) the average time between selection and execution
8 of a contract for engineering services;

9 (4) the number of right-of-way parcels acquired and
10 the number scheduled to be acquired;

11 (5) the percentage of projects for which right-of-way
12 acquisition is completed on or before the planned date;

13 (6) the percentage of parcels acquired through
14 negotiation;

15 (7) the percentage of negotiated parcels acquired for
16 an amount that does not exceed 120 percent of the initial department
17 offer;

18 (8) the total amount spent for right-of-way as a
19 percentage of the original estimated amount;

20 (9) the number of construction contracts entered into
21 in contrast with the number planned;

22 (10) the percentage of construction contracts
23 executed on or before the planned letting date;

24 (11) the total amount spent for construction contracts
25 as a percentage of the original estimated amount;

26 (12) for all construction contracts completed during
27 the state fiscal year, the percentage completed within 20 percent

- 1 of the original contract time;
2 (13) for all construction contracts completed during
3 the state fiscal year, the percentage completed within 10 percent
4 of the original contract price;
5 (14) construction contract adjustments as a
6 percentage of original contract price;
7 (15) the percentage of bridge structures on the state
8 highway system that have a rating of good or excellent;
9 (16) the percentage of bridge structures on the state
10 highway system that have a posted weight limitation;
11 (17) the number of bridge repair contracts let in
12 contrast with the number planned;
13 (18) the number of bridge replacement contracts let in
14 contrast with the number planned;
15 (19) the percentage of lane miles on the state highway
16 system that have a pavement condition rating of excellent or good;
17 (20) the number of lane miles on the state highway
18 system that were resurfaced in contrast with the number planned;
19 (21) the number of lane miles of capacity improvement
20 projects let in contrast with the number planned;
21 (22) of the federal funds subject to forfeiture at the
22 end of the state fiscal year, the percentage that was committed by
23 the department;
24 (23) the amounts of cash receipts and disbursements in
25 contrast with the forecasted amounts;
26 (24) the amount spent in connection with contracts
27 with minority business enterprises as a percentage of the amount

1 spent on all contracts;

2 (25) the number of construction contracts let in
3 contrast with the number let in previous state fiscal years;

4 (26) the peak hour travel congestion in the seven
5 largest metropolitan areas in contrast with previous state fiscal
6 years;

7 (27) the number of vehicle miles traveled in contrast
8 with previous state fiscal years; and

9 (28) the number of lane miles added as a percentage of
10 the number of previously existing lane miles.

11 (e) The department shall consult with the legislative
12 oversight committee on transportation in developing the
13 performance measures under Subsection (c).

14 Sec. 201.622. PERFORMANCE REVIEW. Not later than December
15 1 of each odd-numbered year, the commission shall review the
16 performance of the department's activities described in Section
17 201.621(b) and make the review available to the public. The review
18 must include a report on the level of achievement of each
19 performance measure listed in Section 201.621(c), statewide and by
20 department district, and a status report on each major project
21 under development.

22 Sec. 201.623. LEGISLATIVE OVERSIGHT COMMITTEE ON
23 TRANSPORTATION. (a) In this section, "committee" means the
24 legislative oversight committee on transportation.

25 (b) The committee is composed of 10 members as follows:

26 (1) the chair of the Senate Finance Committee;

27 (2) the chair of the House Appropriations Committee;

1 (3) the chair of the Senate Transportation and
2 Homeland Security Committee;

3 (4) the chair of the House Transportation Committee;

4 (5) three additional members of the senate appointed
5 by the lieutenant governor; and

6 (6) three additional members of the house of
7 representatives appointed by the speaker of the house of
8 representatives.

9 (c) The committee shall monitor:

10 (1) the implementation of:

11 (i) the Statewide Transportation Program
12 and Budget,

13 (ii) the transportation allocation funding
14 formula's,

15 (2) the transportation transparency program;

16 (3) the development of performance measures under
17 Section 201.621(c); and

18 (4) other tasks assigned by the lieutenant governor
19 and the speaker of the house of representatives.

20 (d) This section and Section 201.621(e) expire August 31,
21 2013.

22 SECTION 7. Subchapter F, Chapter 201, Transportation Code,
23 is amended by adding Section 201.407 to read as follows:

24 Sec. 201.407. INSPECTOR GENERAL. (a) The commission shall
25 appoint an inspector general who reports to the commission.

26 (b) The inspector general shall:

27 (1) audit the department's financial condition and the

1 efficiency of its business practices;

2 (2) evaluate the efficiency of the department's
3 administrative practices and performance, including business plan
4 performance measures, relationships with metropolitan planning
5 organizations, performance of department districts and offices,
6 and the need for standardization;

7 (3) identify the need and opportunities for reductions
8 in staff and the need for a better or differently skilled workforce;

9 (4) study the implementation of and improvements to a
10 commitment-based budget or business plan based on outcomes;

11 (5) identify ways to streamline the environmental
12 approval process;

13 (6) evaluate compliance with applicable laws and
14 legislative intent; and

15 (7) evaluate the efficient use of available funding,
16 personnel, equipment, and office space.

17 SECTION 8. Section 222.034(b), Transportation Code is
18 amended to read as follows:

19 (b) The commission may vary from the distribution procedure
20 provided by Subsection (a) if it issues a ruling or minute order
21 identifying the variance and providing a particular justification
22 for the variance. If the commission intends to vary from the
23 distribution procedure it shall allocate the funding in accordance
24 with a formula adopted in Section 201.6012.

25 SECTION 9. Subchapter D, Chapter 472, Transportation Code,
26 is amended by adding Section 472.034 to read as follows:

27 Sec. 472.034 ELIGIBILITY FOR STATE ALLOCATION OF FUNDING;

1 BOARD MEMBERSHIP (a) In order for a metropolitan planning
2 organization to be eligible to receive funding from the state for
3 transportation projects under Section 201.6012, Transportation
4 Code, the make up of the voting members of the board must include at
5 least 50 percent elected officials, which are elected within the
6 boundaries of the metropolitan planning organization.

7 (b) A metropolitan planning organization which does not
8 meet the requirements set forth in subsection (a) may redesignate
9 the board in compliance with the redesignation procedures set forth
10 in 23 U.S.C. 134, in order to become eligible to receive an
11 allocation of funding from the state under Section 201.6012,
12 Transportation Code.

13 (c) In this section "elected official" is defined as mayor,
14 county judge, city councilmember, county commissioner, state
15 representative, or state senator.

16 SECTION 10. The commission shall appoint an Inspector
17 General to carry out the duties outlined in Section 201.407 no later
18 than December 1, 2009.

19 SECTION 11. This act takes effect immediately if it
20 receives a vote of two-thirds of all the members elected to each
21 house, as provided by Section 30, Article III, Texas Constitution.
22 If this Act does not receive the vote necessary for immediate
23 effect, this Act takes effect September 1, 2009.