

BILL ANALYSIS

Senate Research Center

S.B. 548
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The environmental review process for transportation projects, set in place by the National Environmental Policy Act (NEPA), serves a good purpose yet sometimes slows project delivery. Some of these delays are unnecessary and the process might be improved with legislative and administrative changes. Although we cannot address many of the procedures involved with projects using federal dollars, there are opportunities to make the state process more efficient.

S.B. 548 amends current law relating to the environmental review process for transportation projects.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Transportation in SECTION 1 (Section 201.607, Transportation Code) and SECTION 3 (Section 222.006, Transportation Code) of this bill.

Rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 2(a) (Sections 201.752 and 201.753, Transportation Code) and SECTION 2(b) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 201.607, Transportation Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires the Texas Department of Transportation (TxDOT) and each state agency that is responsible for the protection of the natural environment or for the preservation of historical or archeological resources, not later than January 1, 1997, and every fifth year after that date, to examine and revise their memorandum of understanding that:

(1)-(3) Makes no changes to these subdivisions;

(4) specifies the period during which the reviewing agency must review the highway project and provide comments to TxDOT, as negotiated by TxDOT and the agency but which may not exceed 45 days after the date the agency receives a request for comments from TxDOT;

(5) specifies that comments submitted to TxDOT later than the period specified under Subdivision (4) will be considered by TxDOT to the extent possible; and

(6) Redesignates existing Subdivision (5) as Subdivision (6).

Makes a nonsubstantive change.

(c) Requires TxDOT by rule to establish procedures concerning coordination with agencies in carrying out responsibilities under agreements under this section.

SECTION 2. (a) Amends Chapter 201, Transportation Code, by adding Subchapter I-1, as follows:

SUBCHAPTER I-1. ENVIRONMENTAL REVIEW PROCESS

Sec. 201.751. DEFINITIONS. Defines, in this subchapter, "day," "Federal Highway Administration," "highway project," and "local government sponsor."

Sec. 201.752. STANDARDS. (a) Requires the Texas Transportation Commission (TTC) by rule to establish standards for processing an environmental review document for a highway project. Requires that the standards increase efficiency, minimize delays, and encourage collaboration and cooperation by TxDOT with a local government sponsor, with a goal of prompt approval of legally sufficient documents.

(b) Provides that the standards apply regardless of whether the environmental review document is prepared by TxDOT or a local government sponsor. Provides that the standards apply to work performed by the sponsor and to TxDOT's review process and environmental decision.

(c) Requires that the standards address, for each type of environmental review document:

(1) the issues and subject matter to be included in the project scope prepared under Section 201.754;

(2) the required content of a draft environmental review document;

(3) the process to be followed in considering each type of environmental review document; and

(4) review deadlines, including the deadlines in Section 201.759.

(d) Requires that the standards include a process for resolving disputes arising under this subchapter, provided that the dispute resolution process is required to be concluded not later than the 60th day after the date either party requests dispute resolution.

(e) Authorizes the standards for highway projects described in Section 201.753(a), to provide a process and criteria for the prioritization of environmental review documents and criteria for the prioritization of environmental review documents in the event TxDOT makes a finding that it lacks adequate resources to timely process all documents it receives. Requires that standards established pursuant to this subsection provide for notification to a local government sponsor if processing of an environmental review document is to be delayed due to prioritization, and ensure that the environmental review document for each highway project will be completed no later than one year prior to the date planned for publishing notice to let the construction contract for the project, as indicated in a document identifying the projection under Section 201.753(a)(1) or a TTC order under Section 201.753(a)(2).

Sec. 201.753. ENVIRONMENTAL REVIEW LIMITED TO CERTAIN PROJECTS. (a) Authorizes a local government sponsor or TxDOT to prepare and environmental review document for a highway project only if the highway project is:

(1) identified in the financially constrained portion of the approved state transportation improvement program or the financially

constrained portion of the approved unified transportation program; or

(2) identified by TTC as being eligible for participation under this subchapter.

(b) Authorizes a local government sponsor, notwithstanding Subsection (a), to prepare an environmental review document for a highway project that is not identified by TTC or in a program described by Subsection (a) if the sponsor submits with its notice under Section 201.755 a fee in an amount established by TTC rule, but not to exceed the actual cost of reviewing the environmental review document.

(c) Requires that a fee received by TxDOT under Subsection (b) be deposited in the state highway fund and used to pay costs incurred in this chapter.

Sec. 201.754. **SCOPE OF PROJECT.** Requires the local government sponsor to prepare a detailed scope of the project in collaboration with TxDOT before TxDOT is authorized to process the environmental review document if an environmental review document is prepared by a local government sponsor.

Sec. 201.755. **NOTICE TO DEPARTMENT.** (a) Authorizes a local government sponsor to submit notice to TxDOT proposing that the local government sponsor prepare the environmental review document for a highway project.

(b) Requires that the notice include:

(1) the project scope prepared under Section 201.754; and

(2) a request for classification of the project.

Sec. 201.756. **LOCAL GOVERNMENT SPONSOR RESPONSIBILITIES.** Provides that a local government sponsor that submits notice under Section 201.755 is responsible for preparing all materials for:

(1) project scope determination;

(2) environmental reports;

(3) the environmental review document;

(4) environmental permits and conditions;

(5) coordination with resource agencies; and

(6) public participation.

Sec. 201.757. **DETERMINATION OF ADMINISTRATIVELY COMPLETE ENVIRONMENTAL REVIEW DOCUMENT.** (a) Requires that a local government sponsor's submission of an environmental review document include a statement from the local government sponsor that the document is administratively complete, ready for technical review, and compliant with all applicable requirements.

(b) Requires TxDOT, not later than the 20th day after the date TxDOT receives a local government sponsor's environmental review document, to:

(1) issue a letter confirming that the document is administratively complete and ready for technical review; or

(2) decline to issue a letter confirming that the document is administratively complete and ready for technical review, in accordance with Section 201.758.

Sec. 201.758. DEPARTMENT DECLINES TO CONFIRM THAT DOCUMENT IS ADMINISTRATIVELY COMPLETE. (a) Authorizes TxDOT to decline to issue a letter confirming that an environmental review document is administratively complete and ready for technical review only if TxDOT sends a written response to the local government sponsor specifying in reasonable detail the basis for its conclusions, including a listing of any required information determined by TxDOT to be missing from the document.

(b) Requires TxDOT, if TxDOT provides notice under Subsection (a), to undertake all reasonable efforts to cooperate with the local government sponsor in a timely manner to ensure that the environmental review document is administratively complete.

(c) Authorizes the local government sponsor to resubmit any environmental review document determined by TxDOT under Section 201.757 not to be administratively complete, and requires TxDOT to issue a determination letter on the resubmitted document not later than the 20th day after the date the document is resubmitted.

Sec. 201.759. REVIEW DEADLINES. (a) Requires that the following review deadlines be included in the standards adopted under Section 201.752:

(1) requires TxDOT to issue a classification letter not later than the 30th day after the date TxDOT receives notice from a local government sponsor under Section 201.755;

(2) requires that the environmental decision be rendered not later than the 60th day after the date the supporting documentation is received by TxDOT for a project classified as a programmatic categorical exclusion;

(3) requires that the environmental decision be rendered not later than the 90th day after the date the supporting documentation is received by TxDOT for a project classified as a categorical exclusion;

(4) for a project that requires the preparation of an environmental assessment:

(A) requires TxDOT to provide all TxDOT comments on a draft environmental assessment not later than the 90th day after the date the draft is received by TxDOT; and

(B) requires TxDOT to render the environmental decision on the project not later than the 60th day after the later of:

(i) the date the revised environmental assessment is submitted to TxDOT; or

(ii) the date the public involvement process concludes;

(5) requires TxDOT to render the environmental decision on any reevaluation not later than the 120th day after the date the supporting documentation is received by TxDOT; and

(6) requires TxDOT to render the environmental decision not later than the 120th day after the date the draft final environmental impact statement is submitted for a project that requires the preparation of an environmental impact statement.

(b) Provides that review deadlines under this section specify the date by which TxDOT will render the environmental decision on a project or the time frames by which TxDOT will make a recommendation to the Federal Highway Administration, as applicable.

(c) Provides that a deadline that falls on a weekend or official state holiday is considered to occur on the next business day.

Sec. 201.760. SUSPENSION OF TIME PERIODS. Provides that the computation of review deadlines under Section 201.759 does not begin until an environmental review document is determined to be administratively complete, and is suspended during any period in which:

(1) the document that is the subject of the review is being revised by or on behalf of the local government sponsor in response to TxDOT comments;

(2) the highway project is the subject of additional work, including a change in design of the project, and during the identification and resolution of new significant issues; or

(3) the local government sponsor is preparing a response to any issue raised by legal counsel for TxDOT concerning compliance with applicable law.

Sec. 201.761. AGREEMENT BETWEEN LOCAL GOVERNMENT SPONSOR AND DEPARTMENT. Authorizes a local government sponsor and TxDOT, notwithstanding any provision of this subchapter or any other law, to enter into an agreement that defines the relative roles and responsibilities of the parties in the preparation and review of environmental review documents for a specific project. Authorizes the Federal Highway Administration to also be a party to an agreement between a local government sponsor and TxDOT under this section for a project for which an environmental decision requires the approval of the Federal Highway Administration and to the extent otherwise permitted by law.

Sec. 201.762. REPORTS TO COMMISSION AND LEGISLATURE. (a) Requires TxDOT, not later than June 30 and December 31 of each year, to submit a report to TTC at a regularly scheduled TTC meeting identifying projects being processed under the procedures of this subchapter and the status of each project, including:

(1) how the project was classified for environmental review;

(2) the current status of the environmental review;

(3) the date on which TxDOT is required to make an environmental decision under applicable deadlines;

(4) an explanation of any delays; and

(5) any deadline under Section 201.759 missed by TxDOT.

(b) Requires TxDOT, not later than December 1 of each year, to submit a report to the members of the standing legislative committees with primary jurisdiction over matters related to transportation regarding the

implementation of this subchapter, including a status report for the preceding 12-month period that contains the information described in Subsection (a).

(c) Requires TxDOT to post copies of the reports required under this section on its Internet website and to provide a copy of the report required by Subsection (b) to each member of the legislature who has at least one project covered by the report in the member's district.

(d) Requires TxDOT to make available on its Internet website and update regularly the status of projects being processed under this subchapter.

(b) Requires TTC to adopt rules to implement Subchapter I-1, Chapter 201 (General Provisions and Administration), Transportation Code, as added by this Act, not later than March 1, 2012.

(c) Makes application of Subchapter I-1, Chapter 201, Transportation Code, as added by this Act, prospective.

SECTION 3. Amends Subchapter A, Chapter 222, Transportation Code, by adding Sections 222.005 and 222.006, as follows:

Sec. 222.005. **AUTHORIZATION TO PROVIDE ASSISTANCE TO EXPEDITE ENVIRONMENTAL REVIEW.** (a) Authorizes TxDOT, a county, a regional tollway authority operating under Chapter 366 (Regional Tollway Authorities), or a regional mobility authority operating under Chapter 370 (Regional Mobility Authorities) to enter into an agreement to provide funds to a state or federal agency to expedite the agency's performance of its duties related to the environmental review process for the applicable entity's transportation projects, including those listed in the applicable metropolitan planning organization's long-range transportation plan under 23 U.S.C. Section 134.

(b) Provides that, except as provided by Subsection (c), an agreement entered into under this section:

(1) may specify transportation projects the applicable entity considers to be priorities for review; and

(2) must require the agency receiving money to complete the environmental review in less time than is customary for the completion of environmental review by that agency.

(c) Authorizes TxDOT to enter into a separate agreement for a transportation project that TxDOT determines has regional importance.

(d) Provides that an agreement entered into under this section does not diminish or modify the rights of the public regarding review and comment on transportation projects.

(e) Requires an entity entering into an agreement under this section to make the agreement available on the entity's Internet website.

Sec. 222.006. **ENVIRONMENTAL REVIEW CERTIFICATION PROCESS.** Requires TxDOT by rule to establish a process to certify TxDOT district environmental specialists to work on all documents related to state and federal environmental review processes. Requires that the certification process:

(1) be available to TxDOT employees; and

(2) require continuing education for recertification.

SECTION 4. Amends Section 12.0011, Parks and Wildlife Code, by adding Subsection (b-1), to require that recommendations and information submitted by the Texas Parks and Wildlife Department (TPWD) under Subsection (b) (relating to providing what TPWD's resource protection activities include) in response to a request for comments from TxDOT be submitted not later than the 45th day after the date TPWD receives the request.

SECTION 5. Makes application of Section 201.607(a), Transportation Code, as amended by this Act, and Section 12.0011(b-1), Parks and Wildlife Code, as added by this Act, prospective. Requires TxDOT and each affected state agency to promptly revise the memorandum of understanding required by Section 201.607 (Environmental, Historical, or Archeological Memorandum of Understanding), Transportation Code, to implement the change made by this Act to Section 201.607(a), Transportation Code, as necessary.

SECTION 6. (a) Effective date, Section 222.005, Transportation Code: upon passage or September 1, 2011.

(b) Effective date, except as provided by Subsection (a): September 1, 2011.