

BILL ANALYSIS

S.B. 548
By: Nichols
Transportation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties have expressed concern that the environmental review process for transportation projects, while serving a purpose, can slow the delivery of needed projects. The parties assert that the Texas Transportation Commission should establish standards for processing an environmental review document and should include certain review deadlines in the standards. The parties further assert that affected state agencies should respond to Texas Department of Transportation requests for comments within a certain period. S.B. 548 seeks to address these matters in an effort to minimize delays, increase efficiency, and encourage collaboration and cooperation among the agencies involved in the review process.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Transportation in SECTIONS 1 and 3 of this bill and the Texas Transportation Commission in SECTION 2 of this bill.

ANALYSIS

S.B. 548 amends the Transportation Code, in a provision requiring 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 to periodically examine and revise their memorandum of understanding relating to the review of a highway project, to specify that the period during which the reviewing agency must review the highway project and provide comments to TxDOT is as negotiated by TxDOT and the agency and is prohibited from exceeding 45 days after the date the agency receives a request for comments from TxDOT. The bill includes the specification that comments submitted to TxDOT later than the specified period will be considered by TxDOT to the extent possible. The bill requires TxDOT and each affected state agency, as necessary, to promptly revise their memorandum of understanding relating to review of a highway project to implement the changes made by the bill's provisions. The bill requires TxDOT by rule to establish procedures concerning coordination with agencies in carrying out responsibilities under agreements relating to the review of a highway project.

S.B. 548 requires the Texas Transportation Commission by rule to establish standards for processing an environmental review document for a highway project and requires the standards to accomplish certain goals. The bill makes the standards applicable regardless of whether the environmental review document is prepared by TxDOT or a local government sponsor and specifies that the standards are applicable to work performed by the sponsor and to TxDOT's review process and environmental decision. The bill specifies certain elements that the standards must address for each type of environmental review document. The bill requires the standards to include a process for resolving disputes arising in the environmental review process, provided that the dispute resolution process is concluded within a certain specified time frame.

S.B. 548 limits the authority of a local government sponsor or TxDOT to prepare an

environmental review document to certain highway projects and authorizes a local government sponsor to prepare an environmental review document for a highway project that is not one of those projects if the sponsor submits with its notice to TxDOT proposing that the local government sponsor prepare an environmental review document for the project a fee in an amount established by commission rule but not to exceed the actual cost of reviewing the document. The bill requires the fee to be deposited in the state highway fund and used to pay costs incurred in the environmental review process.

S.B. 548 requires a local government sponsor that prepares an environmental review document to prepare a detailed scope of the project in collaboration with TxDOT before TxDOT may process the document. The bill authorizes the local government sponsor to submit notice to TxDOT proposing that the sponsor prepare the environmental review document for a highway project and requires the notice to include the project scope and a request for classification of the project. The bill sets out the responsibilities of a sponsor that submits such notice. The bill establishes a process and time frame for determining whether an environmental review document submitted by a local government sponsor is administratively complete. The bill authorizes TxDOT to decline to issue a letter confirming that a 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 the department to be missing from the document. The bill requires TxDOT, if the department provides such notice, to undertake all reasonable efforts to cooperate with the local government sponsor in a timely manner to ensure that the document is administratively complete, provides for the resubmission of a document determined by TxDOT not to be administratively complete, and requires TxDOT to issue a determination letter on the resubmitted document within a specified period.

S.B. 548 sets out review deadlines required to be included in the standards for processing an environmental review document for a highway project and specifies that the review deadlines establish 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. The bill specifies that a deadline that falls on a weekend or official state holiday is considered to occur on the next business day. The bill establishes that the computation of review deadlines does not begin until an environmental review document is determined to be administratively complete and is suspended during any period in which certain specified conditions are present.

S.B. 548 authorizes a local government sponsor and TxDOT 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. The bill authorizes the Federal Highway Administration to also be a party to such an agreement for a project for which an environmental decision requires the approval of the Federal Highway Administration and to the extent otherwise permitted by law.

S.B. 548 requires TxDOT, not later than June 30 and December 31 of each year, to submit a report to the commission at a regularly scheduled commission meeting identifying projects being processed under the bill's provisions and the status of each project, including certain specified conditions of the projects. The bill 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 the environmental review process, including the status of each project for the preceding 12-month period. The bill requires TxDOT to post copies of the reports required by the bill's provisions on its Internet website and to provide a copy of the report regarding the implementation of the environmental review process to each member of the legislature who has at least one project covered by the report in the member's district. The bill requires TxDOT to make available on its Internet website and update regularly the status of projects being processed under the environmental review process. The bill defines "day," "Federal Highway Administration," "highway project," and "local

government sponsor."

S.B. 548 requires the commission, not later than March 1, 2012, to adopt rules to implement the bill's provisions relating to the environmental review process.

S.B. 548 authorizes TxDOT, a county, a regional tollway authority, or a regional mobility authority 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 federal law. The bill specifies the authorized and required content of the agreement. The bill authorizes TxDOT to enter into a separate agreement for a transportation project that TxDOT determines has regional importance. The bill specifies that an agreement entered into under these provisions does not diminish or modify the rights of the public regarding review and comment on transportation projects. The bill requires an entity entering into an agreement to make the agreement available on the entity's Internet website.

S.B. 548 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. The bill requires the certification process to be available to TxDOT employees and require continuing education for recertification.

S.B. 548 amends the Parks and Wildlife Code to require recommendations and information relating to resource protection submitted by the Parks and Wildlife Department (TPWD) in response to a request for comments from TxDOT to be submitted not later than the 45th day after the date TPWD receives the request.

EFFECTIVE DATE

September 1, 2011.