

By: Schwertner

H.B. No. 3742

A BILL TO BE ENTITLED

AN ACT

relating to the environmental review of certain transportation projects by the Texas Department of Transportation

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

SECTION 1. Chapter 201, Transportation Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. OPTIONAL ENVIRONMENTAL REVIEW PROCESS

FOR LOCALLY-SPONSORED PROJECTS

Sec. 201.1001 DEFINITIONS. In this Subchapter:

(1) "Environmental decision" means:

(A) for state review projects, the department's approval of a categorical exclusion, a finding of no significant impact, the findings of a re-evaluation, or the execution of a record of decision;

(B) for federal review projects, the Department's submission of an environmental document to FHWA for approval.

(2) "Federal review project" means any project that is subject in its entirety to federal review under the National Environmental Policy Act (42 U.S.C. 4321, et seq.), Section 4(f), Department of Transportation Act of 1966 (23 U.S.C. 138 and 49 U.S.C. 303), and FHWA regulations (23 C.F.R. Parts 771, 772 and 774).

(3) "FHWA" means the Federal Highway Administration of

1 the U.S. Department of Transportation.

2 (4) "Project," including within the terms "state  
3 review project" and "federal review project" means a highway or  
4 related improvement on the state highway system. For the purposes  
5 of this subchapter, "highway," "improvement" and "state highway  
6 system" shall have the meanings assigned by Section 221.001.

7 (5) "Sponsor" means a political subdivision of the  
8 state, including a municipality or a county, a political  
9 subdivision of a county, a group of adjoining counties, a district  
10 organized or operating under Section 52, Article III, or Section  
11 59, Article XVI, Texas Constitution, a regional tollway authority  
12 created under Chapter 366, a regional mobility authority operating  
13 under Chapter 370, or a nonprofit corporation, including a  
14 transportation corporation created under Chapter 431.

15 (6) "State review project" means a transportation  
16 project subject to environmental review by the department, but not  
17 subject to federal review.

18 Sec. 201.1002. CONSTRUCTION COSTS DEFINED. (a) The cost of  
19 acquisition, construction, improvement, extension, or expansion of  
20 a project under this chapter includes the cost of:

21 (1) the actual acquisition, construction,  
22 improvement, extension, or expansion of the project;

23 (2) the acquisition of real property, rights-of-way,  
24 property rights, easements, and other interests in real property;

25 (3) machinery and equipment;

26 (4) interest payable before, during, and for not more  
27 than three years after acquisition, construction, improvement,

1 extension, or expansion as provided in the bond proceedings;

2 (5) traffic estimates, revenue estimates, engineering  
3 and legal services, plans, specifications, surveys, appraisals,  
4 construction cost estimates, and other expenses necessary or  
5 incidental to determining the feasibility of the acquisition,  
6 construction, improvement, extension, or expansion;

7 (6) necessary or incidental administrative, legal,  
8 and other expenses;

9 (7) compliance with laws, regulations, and  
10 administrative rulings, including any costs associated with  
11 necessary environmental mitigation measures;

12 (8) financing;

13 (9) the assumption of debts, obligations, and  
14 liabilities of an entity relating to a project transferred to an  
15 authority by that entity; and

16 (10) expenses related to the initial operation of the  
17 project.

18 (b) Costs attributable to a transportation project and  
19 incurred before the issuance of bonds to finance the project may be  
20 reimbursed from the proceeds of sale of the bonds.

21 Sec. 201.1003. PURPOSES. The purposes of this subchapter  
22 are to:

23 (1) increase public safety;

24 (2) ensure timely compliance with environmental  
25 review requirements;

26 (3) enhance a sponsor's ability to participate in  
27 project development; and

1           (4) prevent delays that substantially increase the  
2 cost of transportation projects.

3           Sec. 201.1004. ELIGIBILITY. (a) A project qualifies for  
4 review under the procedures required by this subchapter if the  
5 sponsor retains, at its own expense, qualified consultants and  
6 legal counsel to ensure the preparation of draft environmental  
7 documents in compliance with applicable law and either:

8           (1) assumes at least 25 percent of project  
9 construction costs as defined by Section 201.1002, either on a  
10 permanent or pass-through basis; or

11           (2) pays an application fee equal to one percent of the  
12 estimated project construction costs as defined by Section  
13 201.1002.

14           (b) The eligibility of a project under Subsection (a)(1) of  
15 this section shall not be affected by:

16           (1) an agreement for reimbursement of some or all  
17 project costs between the sponsor and the department, another  
18 agency or political subdivision of the state, the federal  
19 government or any other public or private entity; or

20           (2) the acceptance by the sponsor of funds paid under  
21 an agreement described by Subsection (b)(1).

22           Sec. 201.1005. INITIATION OF ENVIRONMENTAL REVIEW PROCESS.  
23 A sponsor initiates the environmental review process under this  
24 subchapter by submitting to the department a declaration of intent  
25 to proceed that contains the following:

26           (1) a certification of the project's eligibility under  
27 Section 201.1004(a)(1) or payment of the application fee under

1 Section 201.1004(a)(2);

2 (2) a statement of qualifications for the engineers,  
3 consultants and legal counsel retained to provide services in  
4 connection with the environmental review and permitting process;  
5 and

6 (3) a proposed memorandum of agreement to initiate  
7 negotiations under Section 201.1006.

8 Sec. 201.1006. MEMORANDUM OF AGREEMENT. (a) The department  
9 shall enter into a memorandum of agreement with a sponsor who elects  
10 to proceed under this subchapter not later than 45 days after the  
11 date that the sponsor's notice of intent is received by the  
12 Department. Subject to the requirements of subsections (b) and  
13 (c), the agreement must:

14 (1) describe the purpose and need of the project;

15 (2) establish the scope of review;

16 (3) provide plans for public involvement, agency  
17 coordination and legal sufficiency review;

18 (4) provide for the coordination of environmental  
19 review and permitting procedures;

20 (5) include a schedule and related deadlines for tasks  
21 to be performed by the sponsor, which may include delivery of draft  
22 environmental documents, development of comment responses and  
23 revisions to documents, elements of the public involvement and  
24 agency coordination process, and negotiating the issuance of  
25 permits and securing related mitigation; and

26 (6) include a schedule and related deadlines for tasks  
27 to be performed by the department, including review and provision

1 of comments on documents, elements of the public involvement and  
2 agency coordination process, responses to comments, and the  
3 issuance of an environmental decision.

4 (b) An agreement under this section:

5 (1) may include other terms relating to the  
6 environmental review or permitting process that are mutually  
7 acceptable to the sponsor and the department and allowed by  
8 applicable law;

9 (2) may be amended only in writing with the consent of  
10 the parties; and

11 (3) shall not diminish the rights of the public  
12 regarding review and comment on projects.

13 (c) The department may not require the sponsor to consent to  
14 extension of any deadline as a condition to any other approval,  
15 consent or authorization required for the project.

16 Sec. 201.1007. REVIEW TIMEFRAMES. (a) The department shall  
17 render an environmental decision on a project reviewed under this  
18 subchapter by the date specified in the memorandum of agreement  
19 required by Section 201.1006.

20 (b) If the department and the sponsor fail to execute a  
21 memorandum of agreement by the date required in Section  
22 201.1006(a), then the following deadlines apply:

23 (1) state review projects:

24 (A) the department shall issue a classification  
25 letter no later than the 45th day after the date the sponsor's  
26 request for classification is received by the department;

27 (B) for a project classified as a programmatic

1 categorical exclusion, the environmental decision must be rendered  
2 no later than the 60th day after the date the sponsor's supporting  
3 documentation is received by the department;

4 (C) for a project classified as a categorical  
5 exclusion, the environmental decision must be rendered not later  
6 than the 90th day after the date the sponsor's supporting  
7 documentation is received by the department;

8 (D) for a project that requires the preparation  
9 of an environmental assessment:

10 (i) any required notice must be submitted  
11 to the Texas Register for publication not later than the 30th day  
12 after the date the sponsor submits a draft notice to the department;

13 (ii) the department must provide the  
14 sponsor with all department comments on a draft environmental  
15 assessment not later than the 90th day after the date that the draft  
16 is received by the department; and

17 (iv) the department must render an  
18 environmental decision on the project not later than the 60th day  
19 after the date that: (a) the sponsor's revised environmental  
20 assessment is submitted to the department, or (b) the conclusion of  
21 the public involvement process, whichever occurs later;

22 (E) the department must render an environmental  
23 decision on any re-evaluation requested by the sponsor no later  
24 than the 120th day after the date the sponsor's supporting  
25 documentation is received by the department; and

26 (F) for any project that requires the preparation  
27 of an environmental impact statement, the department shall render

1 an environmental decision not later than two years after the date of  
2 the classification letter.

3 (2) federal review projects:

4 (A) the department shall submit a request for  
5 project classification to FHWA no later than the 30th day after the  
6 receipt of a written request from the sponsor;

7 (B) the requirements of Subsections (b)(1)(B)  
8 and (b)(1)(C) shall apply with respect to those categorical  
9 exclusions that are delegated by FHWA to the department;

10 (C) with respect to environmental decisions  
11 regarding federal categorical exclusions that are not delegated to  
12 the department:

13 (i) for a project classified as a  
14 programmatic categorical exclusion, the department's environmental  
15 decision must be presented to FHWA no later than the 60th day after  
16 the date the sponsor's supporting documentation is received by the  
17 department; and

18 (ii) for a project classified as a  
19 categorical exclusion, the department's environmental decision  
20 must be presented to FHWA no later than the 90th day after the date  
21 the sponsor's supporting documentation is received by the  
22 department;

23 (D) for projects requiring the preparation of an  
24 environmental assessment:

25 (i) the department must provide the sponsor  
26 with all Department comments on a draft environmental assessment  
27 not later than the 90th day after the date that the draft is



1 received by the department;

2 (ii) the department must present the draft  
3 environmental assessment to FHWA for review and comment not later  
4 than the 30th day after the date that the sponsor tenders a revised  
5 draft based on department comments made pursuant to subsection  
6 (b)(2)(D)(i);

7 (iii) the department must present its  
8 environmental decision to FHWA not later than the 60th day after the  
9 date that: (a) the sponsor submits a revised environmental  
10 assessment to the department based on FHWA comments received  
11 pursuant to subsection (b)(2)(D)(ii), or (b) the conclusion of the  
12 public involvement process, whichever occurs later.

13 Sec. 201.1008. RULES. (a) The department may adopt rules  
14 for the implementation of this subchapter.

15 (b) The availability of the process provided by this  
16 subchapter shall not be delayed pending the adoption of rules under  
17 subsection (a).

18 Sec. 201.1009. REPORT TO LEGISLATURE. (a) not later than  
19 December 1 of each year, the department shall submit a report to the  
20 members of the House Committee on Transportation and the Senate  
21 Committee on Transportation and Homeland Security regarding the  
22 implementation of this subchapter, including a status report that  
23 details for each project:

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

26 (2) current status of the environmental review;

27 (3) date that the department is required to make an

1 environmental decision pursuant to a memorandum of agreement with  
2 the project sponsor or Section 201.1006; and

3 (4) an explanation of any delays.

4 (b) The department shall provide a copy of the report  
5 required by subsection (a) to each member of the legislature that  
6 has at least one project covered by the report in their district.

7 Sec. 201.1010. ENFORCEMENT. (a) This chapter may be  
8 enforced only through mandamus or declaratory relief.

9 (b) The Department's immunity from suit is waived in regard  
10 to an action brought by a sponsor under this Chapter.

11 (c) A sponsor's immunity from suit is waived in regard to an  
12 action brought by the Department under this Chapter.

13 SECTION 2. TRANSITION. A sponsor may initiate the optional  
14 procedures provided under this Act regarding any eligible  
15 transportation project for which the department has not issued an  
16 environmental decision as of the effective date of this Act.

17 SECTION 3. EFFECTIVE DATE. This Act takes effect  
18 immediately if it receives a vote of two-thirds of all the members  
19 elected to each house, as provided by Section 39, Article III, Texas  
20 Constitution. If this Act does not receive the vote necessary for  
21 immediate effect, this Act takes effect September 1, 2011.