

By: Nichols, et al.

S.B. No. 548

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the environmental review process for transportation
3 projects.

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

5 SECTION 1. Section 201.607, Transportation Code, is amended
6 by amending Subsection (a) and adding Subsection (c) to read as
7 follows:

8 (a) Not later than January 1, 1997, and every fifth year
9 after that date, the department and each state agency that is
10 responsible for the protection of the natural environment or for
11 the preservation of historical or archeological resources shall
12 examine and revise their memorandum of understanding that:

13 (1) describes the responsibilities of each agency
14 entering into the memorandum relating to the review of the
15 potential environmental, historical, or archeological effect of a
16 highway project;

17 (2) specifies the responsibilities of each agency
18 entering into the memorandum relating to the review of a highway
19 project;

20 (3) specifies the types of information the department
21 must provide to the reviewing agency and the period during which the
22 department must provide the information;

23 (4) specifies the period during which the reviewing
24 agency must review the highway project and provide comments to the

1 department, as negotiated by the department and the agency but
2 which may not exceed 45 days after the date the agency receives a
3 request for comments from the department; [~~and~~]

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

7 (6) includes any other agreement necessary for the
8 effective coordination of the review of the environmental,
9 historical, or archeological effect of a highway project.

10 (c) The department by rule shall establish procedures
11 concerning coordination with agencies in carrying out
12 responsibilities under agreements under this section.

13 SECTION 2. (a) Chapter 201, Transportation Code, is
14 amended by adding Subchapter I-1 to read as follows:

15 SUBCHAPTER I-1. ENVIRONMENTAL REVIEW PROCESS

16 Sec. 201.751. DEFINITIONS. In this subchapter:

17 (1) "Day" means a calendar day.

18 (2) "Federal Highway Administration" means the United
19 States Department of Transportation Federal Highway
20 Administration.

21 (3) "Highway project" means a highway or related
22 improvement that is:

23 (A) part of the state highway system; or

24 (B) not part of the state highway system but
25 funded wholly or partly by federal money.

26 (4) "Local government sponsor" means a political
27 subdivision of the state that:

1 (A) elects to participate in the planning,
2 development, design, funding, or financing of a highway project;
3 and

4 (B) is a municipality or a county, a group of
5 adjoining counties, a county acting under Chapter 284, a regional
6 tollway authority operating under Chapter 366, a regional mobility
7 authority operating under Chapter 370, a local government
8 corporation, or a transportation corporation created under Chapter
9 431.

10 Sec. 201.752. STANDARDS. (a) The commission by rule shall
11 establish standards for processing an environmental review
12 document for a highway project. The standards must increase
13 efficiency, minimize delays, and encourage collaboration and
14 cooperation by the department with a local government sponsor, with
15 a goal of prompt approval of legally sufficient documents.

16 (b) The standards apply regardless of whether the
17 environmental review document is prepared by the department or a
18 local government sponsor. The standards apply to work performed by
19 the sponsor and to the department's review process and
20 environmental decision.

21 (c) The standards must address, for each type of
22 environmental review document:

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

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

27 (3) the process to be followed in considering each

1 type of environmental review document; and

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

4 (d) The standards must include a process for resolving
5 disputes arising under this subchapter, provided that the dispute
6 resolution process must be concluded not later than the 60th day
7 after the date either party requests dispute resolution.

8 Sec. 201.753. ENVIRONMENTAL REVIEW LIMITED TO CERTAIN
9 PROJECTS. (a) A local government sponsor or the department may
10 prepare an environmental review document for a highway project only
11 if the highway project is:

12 (1) identified in the financially constrained portion
13 of the approved state transportation improvement program or the
14 financially constrained portion of the approved unified
15 transportation program; or

16 (2) identified by the commission as being eligible for
17 participation under this subchapter.

18 (b) Notwithstanding Subsection (a), a local government
19 sponsor may prepare an environmental review document for a highway
20 project that is not identified by the commission or in a program
21 described by Subsection (a) if the sponsor submits with its notice
22 under Section 201.755 a fee in an amount established by commission
23 rule, but not to exceed the actual cost of reviewing the
24 environmental review document.

25 (c) A fee received by the department under Subsection (b)
26 must be deposited in the state highway fund and used to pay costs
27 incurred under this subchapter.

1 Sec. 201.754. SCOPE OF PROJECT. If an environmental review
2 document is prepared by a local government sponsor, the local
3 government sponsor must prepare a detailed scope of the project in
4 collaboration with the department before the department may process
5 the environmental review document.

6 Sec. 201.755. NOTICE TO DEPARTMENT. (a) A local
7 government sponsor may submit notice to the department proposing
8 that the local government sponsor prepare the environmental review
9 document for a highway project.

10 (b) The notice must include:

- 11 (1) the project scope prepared under Section 201.754;
12 and
13 (2) a request for classification of the project.

14 Sec. 201.756. LOCAL GOVERNMENT SPONSOR RESPONSIBILITIES. A
15 local government sponsor that submits notice under Section 201.755
16 is responsible for preparing all materials for:

- 17 (1) project scope determination;
18 (2) environmental reports;
19 (3) the environmental review document;
20 (4) environmental permits and conditions;
21 (5) coordination with resource agencies; and
22 (6) public participation.

23 Sec. 201.757. DETERMINATION OF ADMINISTRATIVELY COMPLETE
24 ENVIRONMENTAL REVIEW DOCUMENT. (a) A local government sponsor's
25 submission of an environmental review document must include a
26 statement from the local government sponsor that the document is
27 administratively complete, ready for technical review, and

1 compliant with all applicable requirements.

2 (b) Not later than the 20th day after the date the
3 department receives a local government sponsor's environmental
4 review document, the department shall either:

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

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

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

18 (b) If the department provides notice under Subsection (a),
19 the department shall undertake all reasonable efforts to cooperate
20 with the local government sponsor in a timely manner to ensure that
21 the environmental review document is administratively complete.

22 (c) The local government sponsor may resubmit any
23 environmental review document determined by the department under
24 Section 201.757 not to be administratively complete, and the
25 department shall issue a determination letter on the resubmitted
26 document not later than the 20th day after the date the document is
27 resubmitted.

1 Sec. 201.759. REVIEW DEADLINES. (a) The following
2 deadlines must be included in the standards adopted under Section
3 201.752:

4 (1) the department shall issue a classification letter
5 not later than the 30th day after the date the department receives
6 notice from a local government sponsor under Section 201.755;

7 (2) for a project classified as a programmatic
8 categorical exclusion, the environmental decision must be rendered
9 not later than the 60th day after the date the supporting
10 documentation is received by the department;

11 (3) for a project classified as a categorical
12 exclusion, the environmental decision must be rendered not later
13 than the 90th day after the date the supporting documentation is
14 received by the department;

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

17 (A) the department must provide all department
18 comments on a draft environmental assessment not later than the
19 90th day after the date the draft is received by the department; and

20 (B) the department must render the environmental
21 decision on the project not later than the 60th day after the later
22 of:

23 (i) the date the revised environmental
24 assessment is submitted to the department; or

25 (ii) the date the public involvement
26 process concludes;

27 (5) the department must render the environmental

1 decision on any reevaluation not later than the 120th day after the
2 date the supporting documentation is received by the department;
3 and

4 (6) for a project that requires the preparation of an
5 environmental impact statement, the department shall render the
6 environmental decision not later than the 120th day after the date
7 the draft final environmental impact statement is submitted.

8 (b) Review deadlines under this section specify the date by
9 which the department will render the environmental decision on a
10 project or the time frames by which the department will make a
11 recommendation to the Federal Highway Administration, as
12 applicable.

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

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

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

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

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

1 Sec. 201.761. AGREEMENT BETWEEN LOCAL GOVERNMENT SPONSOR
2 AND DEPARTMENT. Notwithstanding any provision of this subchapter
3 or any other law, a local government sponsor and the department may
4 enter into an agreement that defines the relative roles and
5 responsibilities of the parties in the preparation and review of
6 environmental review documents for a specific project. For a
7 project for which an environmental decision requires the approval
8 of the Federal Highway Administration and to the extent otherwise
9 permitted by law, the Federal Highway Administration may also be a
10 party to an agreement between a local government sponsor and the
11 department under this section.

12 Sec. 201.762. REPORTS TO COMMISSION AND LEGISLATURE.

13 (a) Not later than June 30 and December 31 of each year, the
14 department shall submit a report to the commission at a regularly
15 scheduled commission meeting identifying projects being processed
16 under the procedures of this subchapter and the status of each
17 project, including:

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

20 (2) the current status of the environmental review;

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

23 (4) an explanation of any delays; and

24 (5) any deadline under Section 201.759 missed by the
25 department.

26 (b) Not later than December 1 of each year, the department
27 shall submit a report to the members of the standing legislative

1 committees with primary jurisdiction over matters related to
2 transportation regarding the implementation of this subchapter,
3 including a status report for the preceding 12-month period that
4 contains the information described in Subsection (a).

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

10 (d) The department shall make available on its Internet
11 website and update regularly the status of projects being processed
12 under this subchapter.

13 (b) The Texas Transportation Commission shall adopt rules
14 to implement Subchapter I-1, Chapter 201, Transportation Code, as
15 added by this Act, not later than March 1, 2012.

16 (c) Subchapter I-1, Chapter 201, Transportation Code, as
17 added by this Act, applies only to a notice of a local government
18 sponsor proposing the sponsor's preparation of an environmental
19 review document that is received by the Texas Department of
20 Transportation on or after the effective date of this Act.
21 Submissions to the Texas Department of Transportation received
22 before the effective date of this Act are governed by the law in
23 effect on the date the submission was received, and that law is
24 continued in effect for that purpose.

25 SECTION 3. Subchapter A, Chapter 222, Transportation Code,
26 is amended by adding Sections 222.005 and 222.006 to read as
27 follows:

1 Sec. 222.005. AUTHORIZATION TO PROVIDE ASSISTANCE TO
2 EXPEDITE ENVIRONMENTAL REVIEW. (a) The department, a county, a
3 regional tollway authority operating under Chapter 366, or a
4 regional mobility authority operating under Chapter 370 may enter
5 into an agreement to provide funds to a state or federal agency to
6 expedite the agency's performance of its duties related to the
7 environmental review process for the applicable entity's
8 transportation projects, including those listed in the applicable
9 metropolitan planning organization's long-range transportation
10 plan under 23 U.S.C. Section 134.

11 (b) Except as provided by Subsection (c), an agreement
12 entered into under this section:

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

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

18 (c) The department may enter into a separate agreement for a
19 transportation project that the department determines has regional
20 importance.

21 (d) An agreement entered into under this section does not
22 diminish or modify the rights of the public regarding review and
23 comment on transportation projects.

24 (e) An entity entering into an agreement under this section
25 shall make the agreement available on the entity's Internet
26 website.

27 Sec. 222.006. ENVIRONMENTAL REVIEW CERTIFICATION PROCESS.

1 The department by rule shall establish a process to certify
2 department district environmental specialists to work on all
3 documents related to state and federal environmental review
4 processes. The certification process must:

- 5 (1) be available to department employees; and
6 (2) require continuing education for recertification.

7 SECTION 4. Section 12.0011, Parks and Wildlife Code, is
8 amended by adding Subsection (b-1) to read as follows:

9 (b-1) Recommendations and information submitted by the
10 department under Subsection (b) in response to a request for
11 comments from the Texas Department of Transportation must be
12 submitted not later than the 45th day after the date the department
13 receives the request.

14 SECTION 5. Subsection (a), Section 201.607, Transportation
15 Code, as amended by this Act, and Subsection (b-1), Section
16 12.0011, Parks and Wildlife Code, as added by this Act, apply only
17 to a request for comments from the Texas Department of
18 Transportation received by a state agency on or after the effective
19 date of this Act. As necessary, the Texas Department of
20 Transportation and each affected state agency shall promptly revise
21 the memorandum of understanding required by Section 201.607,
22 Transportation Code, to implement the change made by this Act to
23 Subsection (a), Section 201.607, Transportation Code.

24 SECTION 6. This Act takes effect September 1, 2011.