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S.B. No. 548

A BILL TO BE ENTITLED

AN ACT

1  
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 category 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.