

By: Watson

S.B. No. 1323

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) "Construction costs" has the same meaning assigned by Section 370.004, Transportation Code.

(2) "Environmental decision" means 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.

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

(4) "Sponsor" means a political subdivision of the state that elects to participate in the planning, development or construction of a state review project, including a municipality or a county, a political subdivision of a county, a group of adjoining

1 counties, a district organized or operating under Section 52,
2 Article III, or Section 59, Article XVI, Texas Constitution, a
3 regional tollway authority created under Chapter 366, a regional
4 mobility authority operating under Chapter 370, or a nonprofit
5 corporation, including a transportation corporation created under
6 Chapter 431.

7 (5) "State review project" means a transportation
8 project subject to environmental review by the department, but that
9 does not require, in its entirety, federal review under the
10 National Environmental Policy Act (42 U.S.C. 4321, et seq.) or
11 Section 4(f), Department of Transportation Act of 1966 (23 U.S.C.
12 138 and 49 U.S.C. 303).

13 Sec. 201.1002. PURPOSES. The purposes of this subchapter
14 are to:

- 15 (1) increase public safety;
16 (2) ensure timely compliance with environmental
17 review requirements for state review projects;
18 (3) enhance a sponsor's ability to participate in
19 project development; and
20 (4) prevent delays that substantially increase the
21 cost of state review projects.

22 Sec. 201.1003. ELIGIBILITY. (a) A state review project
23 qualifies for review under the procedures provided by this
24 subchapter if the sponsor retains, at its own expense, qualified
25 engineers, consultants and legal counsel to ensure the preparation
26 of draft environmental documents in compliance with applicable law
27 and either:

1 (1) assumes at least 25 percent of project
2 construction costs, either on a permanent or pass-through basis; or

3 (2) pays an application fee equal to one percent of the
4 estimated project construction costs.

5 (b) The eligibility of a project under Subsection (a)(1) of
6 this section shall not be affected by an agreement for
7 reimbursement of some or all project costs between the sponsor and
8 the department, another agency or political subdivision of the
9 state, or any other public or private entity.

10 Sec. 201.1004. INITIATION OF ENVIRONMENTAL REVIEW PROCESS.

11 A sponsor initiates the environmental review process under this
12 subchapter by submitting to the department a declaration of intent
13 to proceed that contains the following:

14 (1) a certification of the project's eligibility under
15 Section 201.1003(a)(1) or payment of the application fee under
16 Section 201.1003(a)(2);

17 (2) a statement of qualifications for the engineers,
18 consultants and legal counsel retained to provide services in
19 connection with the environmental review process; and

20 (3) a proposed memorandum of agreement pursuant that
21 satisfies the requirements of Section 201.1005.

22 Sec. 201.1005. MEMORANDUM OF AGREEMENT. (a) The

23 department shall enter into a memorandum of agreement with a
24 sponsor who elects to proceed under this subchapter not later than
25 45 days after the date that the sponsor's notice of intent is
26 received by the department. Subject to the requirements of
27 subsections (b) and (c), the agreement must:

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

2 (2) establish the scope of review;

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

5 (4) provide for the coordination of environmental
6 review and permitting procedures;

7 (5) include a schedule and related deadlines for tasks
8 to be performed by the sponsor, which may include delivery of draft
9 environmental documents, development of comment responses and
10 revisions to documents, elements of the public involvement and
11 agency coordination process, and negotiating the issuance of
12 permits and securing related mitigation; and

13 (6) include a schedule and related deadlines for tasks
14 to be performed by the department, including review and provision
15 of comments on documents, elements of the public involvement and
16 agency coordination process, responses to comments, and the
17 issuance of an environmental decision.

18 (b) An agreement under this section:

19 (1) may include other terms relating to the
20 environmental review or permitting process that are mutually
21 acceptable to the sponsor and the department and allowed by
22 applicable law;

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

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

27 (c) The department may not require the sponsor to consent to

1 extension of any deadline as a condition to any other approval,
2 consent or authorization required for the project.

3 Sec. 201.1006. REVIEW TIMEFRAMES. (a) The department
4 shall render an environmental decision on a state review project
5 reviewed under this subchapter by the date specified in the
6 memorandum of agreement required by Section 201.1005.

7 (b) If the department and the sponsor fail to execute a
8 memorandum of agreement by the date required in Section
9 201.1005(a), then the following deadlines apply:

10 (1) the department shall issue a classification letter
11 no later than the 45th day after the date the sponsor's request for
12 classification is received by the department;

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

17 (3) for a project classified as a categorical
18 exclusion, the environmental decision must be rendered not later
19 than the 90th day after the date the sponsor's supporting
20 documentation is received by the department;

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

23 (A) the department must provide the sponsor with
24 all department comments on a draft environmental assessment not
25 later than the 90th day after the date that the draft is received by
26 the department; and

27 (B) the department must render an environmental

1 decision on the project not later than the 60th day after the date
2 that: (i) the sponsor's revised environmental assessment is
3 submitted to the department, or (ii) the conclusion of the public
4 involvement process, whichever occurs later;

5 (5) the department must render an environmental
6 decision on any re-evaluation requested by the sponsor no later
7 than the 120th day after the date the sponsor's supporting
8 documentation is received by the department; and

9 (6) for any project that requires the preparation of
10 an environmental impact statement, the department shall render an
11 environmental decision not later than two years after the date of
12 the classification letter.

13 Sec. 201.1007. 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 SECTION 2. TRANSITION. A sponsor may initiate the optional
19 procedures provided under this Act regarding any eligible state
20 review project for which the department has not issued an
21 environmental decision as of the effective date of this Act.

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