

BILL ANALYSIS

C.S.S.B. 1747
By: Uresti
Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been reported that the state's increased revenue can be directly attributed to the increased production of the oil and gas industry. It also has been reported that accelerated road degradation in several counties can be attributed to the unexpected increase in vehicle traffic related to oil and gas exploration. Interested parties note that many county roads were not intended to support the heavy trucks that are used in this exploration process. The parties further note that county road and bridge budgets are not sufficiently funded to routinely maintain these affected roads and that counties are often left with severe road damage directly related to energy exploration and production. The parties contend that a solution is needed to help repair these roads. C.S.S.B. 1747 seeks to address these issues by establishing provisions relating to funding and donations for county transportation projects, including projects of county energy transportation reinvestment zones.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Transportation in SECTION 6 of this bill.

ANALYSIS

C.S.S.B. 1747 amends the Transportation Code to establish the transportation infrastructure fund for county energy transportation reinvestment zones as a dedicated fund in the state treasury outside the general revenue fund to consist of any federal funds received by the state deposited to the credit of the fund, matching state funds in an amount required by federal law, funds appropriated by the legislature to the credit of the fund, a gift or grant, any fees paid into the fund, and investment earnings on the money on deposit in the fund. The bill restricts appropriation of money in the fund to the Texas Department of Transportation (TxDOT) for the fund's purposes, and exempts the fund from Government Code provisions relating to the use of dedicated revenue and the disposition of interest on investments.

C.S.S.B. 1747 requires TxDOT to administer a grant program to make grants for transportation infrastructure projects located in a county containing at least one county energy transportation reinvestment zone if the fund has a positive balance. The bill requires TxDOT to develop criteria for the awarding of grants for transportation infrastructure projects on county roads and sets out criteria requirements and provisions regarding the grant application process. The bill defines "transportation infrastructure project" as the planning for, construction of, reconstruction of, or maintenance of transportation infrastructure, including roads, bridges, and culverts, intended to alleviate degradation caused by the exploration, development, or production of oil or gas. The bill specifies that the term includes the acquisition of equipment used for road maintenance.

C.S.S.B. 1747 requires matching funds to be provided in an amount equal to at least 10 percent of the amount of the grant as a condition of eligibility to receive a grant under the program, but only requires matching funds in an amount equal to at least five percent of the amount of the

grant for a county that TxDOT determines to be economically disadvantaged. The bill sets out requirements for a county that makes a second or subsequent application for a grant and authorizes TxDOT to use one-half of one percent of the amount deposited into the fund in the preceding fiscal year, not to exceed \$500,000 in a state fiscal biennium, to administer the bill's provisions relating to the fund.

C.S.S.B. 1747 requires a county to determine the amount of the tax increment for a county energy transportation reinvestment zone in the same manner the county would determine the tax increment for a county transportation reinvestment zone. The bill authorizes a county, after determining that an area is affected by oil and gas exploration and production activities and would benefit from funding under provisions relating to funds and taxes for county roads, by order or resolution of the commissioners court to designate a contiguous geographic area in the jurisdiction of the county to be a county energy transportation reinvestment zone to promote one or more transportation infrastructure projects located in the zone, and to jointly administer a county energy transportation reinvestment zone with a contiguous county energy transportation reinvestment zone formed by another county. The bill requires a commissioners court to dedicate or pledge all of the captured appraised value of real property located in the county energy transportation reinvestment zone to transportation infrastructure projects and comply with applicable laws regarding funding and federal aid. The bill provides for a required public hearing on the creation of a zone and notice of the hearing and the intent to create a zone.

C.S.S.B. 1747 sets out requirements for the order or resolution designating an area as a county energy transportation reinvestment zone, including the requirement that such an order or resolution establish a certain property tax increment account for the zone. The bill establishes that compliance with applicable requirements of the bill's provisions relating to county energy transportation reinvestment zones constitutes designation of an area as a county energy transportation reinvestment zone without further hearings or other procedural requirements. The bill authorizes the county from taxes collected on property in a zone to pay into a tax increment account for the zone or zones an amount equal to the tax increment produced by the county less any amounts allocated under previous agreements.

C.S.S.B. 1747 authorizes a county to use money in the tax increment account to provide matching funds and funding for one or more transportation infrastructure projects located in the zone; to apply for applicable transportation infrastructure project grants; to use five percent of such a grant distributed to the county for the administration of a county energy transportation reinvestment zone, not to exceed \$500,000; and to enter into an agreement to provide for the joint administration of county energy transportation reinvestment zones if the commissioners court of the county has designated a county energy transportation reinvestment zone for the same transportation infrastructure project or projects as another county commissioners court. The bill prohibits tax increment paid into a tax increment account from being pledged as security for bonded indebtedness.

C.S.S.B. 1747 establishes that a county energy transportation reinvestment zone terminates on December 31 of the 10th year after the year the zone was designated unless extended by an act of the county commissioners court that designated the zone and prohibits an extension from exceeding five years. The bill, on termination of the zone, requires any money remaining in the tax increment account to be transferred to the road and bridge fund for the county that deposited the money into the tax increment account. The bill requires the captured appraised value of real property located in a county energy transportation reinvestment zone to be treated as provided by certain applicable Tax Code provisions. The bill authorizes a county commissioners court to enter into an agreement with TxDOT to designate a county energy transportation reinvestment zone for a specified transportation project involving a state highway located in the proposed zone.

C.S.S.B. 1747 makes a county eligible to apply for a grant for a transportation infrastructure project if the county creates an advisory board to advise the county on the establishment,

administration, and expenditures of a county energy transportation reinvestment zone. The bill provides for the composition of the advisory board and establishes that county energy transportation reinvestment zones that are jointly administered are advised by a single joint advisory board for the zones. The bill prohibits an advisory board member from receiving compensation for service on the board or reimbursement for expenses incurred in performing services as a member.

C.S.S.B. 1747 specifies that "transportation reinvestment zone" includes a county energy transportation reinvestment zone for purposes of toll facilities provisions relating to a sales tax increment. The bill restricts disbursement of the sales and use taxes that are to be deposited into the tax increment account established by a county energy transportation reinvestment zone or zones to the provision of matching funds and funding for one or more transportation infrastructure projects located in a zone.

C.S.S.B. 1747 requires a road condition report made by a county that is operating under a system of administering county roads under applicable provisions or a special law, including a county commissioner's road report, to include the primary cause of any road, culvert, or bridge degradation if reasonably ascertained. The bill authorizes a commissioners court to accept donations of labor, money, or other property to aid in the building or maintaining of roads, culverts, or bridges in the county. The bill authorizes a county operating under the county road department system on September 1, 2013, to use such authority without holding a new election on the adoption of such a system. The bill requires a county that accepts such donations to execute a release of liability in favor of the entity donating the labor, money, or other property.

C.S.S.B. 1747 requires the annual report of the county auditor, or of the official having the duties of the county auditor, to the comptroller of public accounts under provisions relating to funds used for county roads to include, if the county designated a county energy transportation reinvestment zone, an account of how money paid into a tax increment account for the zone or from an applicable award was spent and a description of any new roads constructed in whole or in part with the money paid into such an account or from such an award.

C.S.S.B. 1747 requires TxDOT to adopt rules implementing the bill's provisions relating to the transportation infrastructure fund for county energy transportation reinvestment zones as soon as practicable after the bill's effective date.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 1747 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Chapter 256, Transportation Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. TRANSPORTATION INFRASTRUCTURE FUND FOR COUNTY ENERGY TRANSPORTATION REINVESTMENT ZONES

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 256, Transportation Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. TRANSPORTATION INFRASTRUCTURE FUND FOR COUNTY ENERGY TRANSPORTATION REINVESTMENT ZONES

Sec. 256.101. DEFINITIONS. In this subchapter:

(1) "Fund" means the transportation infrastructure fund established under this subchapter.

(2) "Transportation infrastructure project" means the planning for, administration of, construction of, reconstruction of, or maintenance of transportation infrastructure, including roads, bridges, and culverts, intended to alleviate degradation caused by the exploration, development, or production of oil or gas.

(3) "Weight tolerance permit" means a permit issued under Chapter 623 authorizing a vehicle to exceed maximum legal weight limitations.

(4) "Well completion" means the completion, reentry, or recompletion of an oil or gas well.

Sec. 256.102. TRANSPORTATION INFRASTRUCTURE FUND. (a) The transportation infrastructure fund is a dedicated fund in the state treasury outside the general revenue fund. The fund consists of:

(1) any federal funds received by the state, including funds received under the federal act, deposited to the credit of the fund;

(2) matching state funds in an amount required by the federal act;

(3) funds appropriated by the legislature to the credit of the fund;

(4) a gift or grant;

(5) fees paid to the bank; and

(6) investment earnings on the money on deposit in the fund.

(b) Money in the fund may be appropriated only to the department for the purposes of this subchapter.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the fund.

Sec. 256.103. GRANT PROGRAM. (a) The department shall administer a grant program under this subchapter to make grants for transportation infrastructure projects located in a county containing at least one county energy transportation reinvestment zone if the fund has a positive balance.

(b) Grants distributed during a fiscal year

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(1) "Fund" means the transportation infrastructure fund established under this subchapter.

(2) "Transportation infrastructure project" means the planning for, construction of, reconstruction of, or maintenance of transportation infrastructure, including roads, bridges, and culverts, intended to alleviate degradation caused by the exploration, development, or production of oil or gas. The term includes the acquisition of equipment used for road maintenance.

(3) "Weight tolerance permit" means a permit issued under Chapter 623 authorizing a vehicle to exceed maximum legal weight limitations.

(4) "Well completion" means the completion, reentry, or recompletion of an oil or gas well.

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Sec. 256.103. GRANT PROGRAM. (a) The department shall administer a grant program under this subchapter to make grants for transportation infrastructure projects located in a county containing at least one county energy transportation reinvestment zone if the fund has a positive balance.

(b) The department shall develop criteria

must be allocated among counties as follows:

(1) one-fifth according to weight tolerance permits, determined by the ratio of weight tolerance permits issued in the preceding fiscal year for the county that designated a county energy transportation reinvestment zone to the total number of weight tolerance permits issued in the state in that fiscal year, as determined by the Texas Department of Motor Vehicles;

(2) one-fifth according to oil and gas production taxes, determined by the ratio of oil and gas production taxes collected by the comptroller in the preceding fiscal year in the county that designated a county energy transportation reinvestment zone to the total amount of oil and gas production taxes collected in the state in that fiscal year, as determined by the comptroller; and

(3) three-fifths according to well completions, determined by the ratio of well completions in the preceding fiscal year in the county that designated a county energy transportation reinvestment zone to the total number of well completions in the state in that fiscal year, as determined by the Railroad Commission of Texas.

Sec. 256.104. GRANT APPLICATION PROCESS. (a) In applying for a grant under this subchapter, the county shall:

- (1) provide the road condition report described by Section 251.018 made by the county for the previous two years; and
- (2) submit to the department a plan that:

(A) provides a list of transportation infrastructure projects to be funded by the grant;

(B) describes the scope of the transportation infrastructure project or projects to be funded by the grant using best practices for prioritizing the projects;

(C) provides for matching funds as required by Section 256.105; and

(D) meets any other requirements imposed by the department.

for the awarding of grants for transportation infrastructure projects on county roads. The criteria must include consideration of:

(1) the amount of oil and gas production in the county, including required maintenance performed on wells, the refracturing of wells, well completions, and the drilling of disposal wells;

(2) safety needs and projects in the county;

(3) county traffic levels;

(4) pavement and bridge conditions in the county;

(5) weight tolerance permits issued for the county; and

(6) geographic distribution of grant funds throughout oil and gas regions of the state.

Sec. 256.104. GRANT APPLICATION PROCESS. (a) In applying for a grant under this subchapter, the county shall:

- (1) provide the road condition report described by Section 251.018 made by the county for the previous two years;
- (2) submit to the department:

(A) a copy of the order or resolution establishing a county energy transportation reinvestment zone in the county; and

(B) a plan that:

(i) provides a list of transportation infrastructure projects to be funded by the grant;

(ii) describes the scope of the transportation infrastructure project or projects to be funded by the grant using best practices for prioritizing the projects;

(iii) provides for matching funds as required by Section 256.105; and

(iv) meets any other requirements imposed by the department; and

(3) certify that the county has not reduced county funding for transportation infrastructure projects by more than 25 percent from the average of the amounts that

the county has spent for transportation infrastructure projects in the three years before the date of the certification.

(b) In reviewing grant applications under this subchapter, the department shall:

(1) seek other potential sources of funding to maximize resources available for the transportation infrastructure projects to be funded by grants under this subchapter; and
(2) consult related transportation planning documents to improve project efficiency and work effectively in partnership with counties.

(c) Except as otherwise provided by this subsection, the department shall review a grant application before the 31st day after the date the department receives the application. The department may act on an application not later than the 60th day after the date the department receives the application if the department provides notice of the extension to the county that submitted the application.

Sec. 256.105. MATCHING FUNDS.

Sec. 256.106. PROGRAM ADMINISTRATION. (a) A county that makes a second or subsequent application for a grant from the department under this subchapter must:

(1) provide the department with a copy of a report filed under Section 256.009;
(2) certify that all previous grants are being spent in accordance with the plan submitted under Section 256.104; and
(3) provide an accounting of how previous grants were spent, including any amounts spent on administrative costs.

(b) The department may use a portion of the money in the fund, not to exceed one percent of the amount deposited into the fund in the preceding fiscal year, to administer this subchapter.

SECTION 2. Subchapter E, Chapter 222, Transportation Code, is amended by adding Section 222.1071 to read as follows:

Sec. 222.1071. COUNTY ENERGY TRANSPORTATION REINVESTMENT ZONES. (a) A county shall determine the amount of the tax increment for a county energy transportation reinvestment zone in

(b) In reviewing grant applications under this subchapter, the department shall:

(1) seek other potential sources of funding to maximize resources available for the transportation infrastructure projects to be funded by grants under this subchapter; and
(2) consult related transportation planning documents to improve project efficiency and work effectively in partnership with counties.

(c) Except as otherwise provided by this subsection, the department shall review a grant application before the 31st day after the date the department receives the application. The department may act on an application not later than the 60th day after the date the department receives the application if the department provides notice of the extension to the county that submitted the application.

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Sec. 256.106. PROGRAM ADMINISTRATION. (a) A county that makes a second or subsequent application for a grant from the department under this subchapter must:

(1) provide the department with a copy of a report filed under Section 256.009;
(2) certify that all previous grants are being spent in accordance with the plan submitted under Section 256.104; and
(3) provide an accounting of how previous grants were spent, including any amounts spent on administrative costs.

(b) The department may use one-half of one percent of the amount deposited into the fund in the preceding fiscal year, not to exceed \$500,000 in a state fiscal biennium, to administer this subchapter.

SECTION 2. Subchapter E, Chapter 222, Transportation Code, is amended by adding Sections 222.1071 and 222.1072 to read as follows:

Sec. 222.1071. COUNTY ENERGY TRANSPORTATION REINVESTMENT ZONES. (a) A county shall determine the amount of the tax increment for a county energy transportation reinvestment zone in

the same manner the county would determine the tax increment as provided in Section 222.107(a) for a county transportation reinvestment zone.

(b) A county, after determining that an area is affected by oil and gas exploration and production activities and would benefit from funding under Chapter 256, by order or resolution of the commissioners court:

(1) may designate a contiguous geographic area in the jurisdiction of the county to be a county energy transportation reinvestment zone to promote one or more transportation infrastructure projects, as that term is defined by Section 256.101, located in the zone; and

(2) may jointly administer a county energy transportation reinvestment zone with a contiguous county energy transportation reinvestment zone formed by another county.

(c) A commissioners court must comply with all applicable laws in the application of this chapter.

(d) Not later than the 30th day before the date a commissioners court proposes to designate an area as a county energy transportation reinvestment zone under this section, the commissioners court must hold a public hearing on the creation of the zone and its benefits to the county and to property in the proposed zone. At the hearing an interested person may speak for or against the designation of the zone, its boundaries, the joint administration of a zone in another county, or the use of tax increment paid into the tax increment account.

(e) Not later than the seventh day before the date of the hearing, notice of the hearing and the intent to create a zone must be published in a newspaper having general circulation in the county.

(f) The order or resolution designating an area as a county energy transportation reinvestment zone must:

(1) describe the boundaries of the zone with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the zone;

(2) provide that the zone takes effect

the same manner the county would determine the tax increment as provided in Section 222.107(a) for a county transportation reinvestment zone.

(b) A county, after determining that an area is affected by oil and gas exploration and production activities and would benefit from funding under Chapter 256, by order or resolution of the commissioners court:

(1) may designate a contiguous geographic area in the jurisdiction of the county to be a county energy transportation reinvestment zone to promote one or more transportation infrastructure projects, as that term is defined by Section 256.101, located in the zone; and

(2) may jointly administer a county energy transportation reinvestment zone with a contiguous county energy transportation reinvestment zone formed by another county.

(c) A commissioners court must:

(1) dedicate or pledge all of the captured appraised value of real property located in the county energy transportation reinvestment zone to transportation infrastructure projects; and

(2) comply with all applicable laws in the application of this chapter.

(d) Not later than the 30th day before the date a commissioners court proposes to designate an area as a county energy transportation reinvestment zone under this section, the commissioners court must hold a public hearing on the creation of the zone and its benefits to the county and to property in the proposed zone. At the hearing an interested person may speak for or against the designation of the zone, its boundaries, the joint administration of a zone in another county, or the use of tax increment paid into the tax increment account.

(e) Not later than the seventh day before the date of the hearing, notice of the hearing and the intent to create a zone must be published in a newspaper having general circulation in the county.

(f) The order or resolution designating an area as a county energy transportation reinvestment zone must:

(1) describe the boundaries of the zone with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the zone;

(2) provide that the zone takes effect

immediately on adoption of the order or resolution designating an area and that the base year shall be the year of passage of the order or resolution designating an area or some year in the future;

(3) designate the base year for purposes of establishing the tax increment base of the county;

(4) establish an ad valorem tax increment account for the zone or provide for the establishment of a joint ad valorem tax increment account, if applicable;

(5) designate not less than 90 percent of the tax increment to be used for planning for, construction of, reconstruction of, or maintenance of transportation infrastructure projects; and

(6) if two or more counties are designating a zone for the same transportation infrastructure project or projects, include a finding that:

(A) the project or projects will benefit the property and residents located in the zone;

(B) the creation of the zone will serve a public purpose of the local government; and

(C) details the transportation infrastructure projects for which each county is responsible.

(g) Compliance with the requirements of this section constitutes designation of an area as a county energy transportation reinvestment zone without further hearings or other procedural requirements.

(h) The county may, from taxes collected on property in a zone, pay into a tax increment account for the zone or zones an amount equal to the tax increment produced by the county less any amounts allocated under previous agreements, including agreements under Section 381.004, Local Government Code, or Chapter 312, Tax Code.

(i) The county may:

(1) use money in the tax increment account to provide:

(A) matching funds under Section 256.105; and

(B) funding for one or more transportation infrastructure projects located in the zone;

(2) apply for grants under Subchapter C, Chapter 256;

(3) establish an advisory board to advise the county on the establishment and administration of the county energy

immediately on adoption of the order or resolution designating an area and that the base year shall be the year of passage of the order or resolution designating an area or some year in the future;

(3) establish an ad valorem tax increment account for the zone or provide for the establishment of a joint ad valorem tax increment account, if applicable; and

(4) if two or more counties are designating a zone for the same transportation infrastructure project or projects, include a finding that:

(A) the project or projects will benefit the property and residents located in the zone;

(B) the creation of the zone will serve a public purpose of the county; and

(C) details the transportation infrastructure projects for which each county is responsible.

(g) Compliance with the requirements of this section constitutes designation of an area as a county energy transportation reinvestment zone without further hearings or other procedural requirements.

(h) The county may, from taxes collected on property in a zone, pay into a tax increment account for the zone or zones an amount equal to the tax increment produced by the county less any amounts allocated under previous agreements, including agreements under Section 381.004, Local Government Code, or Chapter 312, Tax Code.

(i) The county may:

(1) use money in the tax increment account to provide:

(A) matching funds under Section 256.105; and

(B) funding for one or more transportation infrastructure projects located in the zone;

(2) apply for grants under Subchapter C, Chapter 256, subject to Section 222.1072;

(See Section 222.1072, Transportation Code, below.)

transportation reinvestment zone;

(4) use not more than one percent of any grant distributed to the county under Subchapter C, Chapter 256, for the administration of a county energy transportation reinvestment zone;

(5) use not more than 10 percent of the tax increment in a tax increment account for the administration of a county energy transportation reinvestment zone; and

(6) enter into an agreement to provide for the joint administration of county energy transportation reinvestment zones if the commissioners court of the county has designated a county energy transportation reinvestment zone under this section for the same transportation infrastructure project or projects as another county commissioners court.

(j) Tax increment paid into a tax increment account may not be pledged as security for bonded indebtedness.

(k) A county energy transportation reinvestment zone terminates on December 31 of the 10th year after the year the zone was designated unless extended by an act of the county commissioners court that designated the zone. The extension may not exceed five years.

(l) The captured appraised value of real property located in a county energy transportation reinvestment zone shall be treated as provided by Section 26.03, Tax Code.

No equivalent provision, but see Section 222.1071(i)(3), Transportation Code, above.

(3) use five percent of any grant distributed to the county under Subchapter C, Chapter 256, for the administration of a county energy transportation reinvestment zone, not to exceed \$500,000; and

(4) enter into an agreement to provide for the joint administration of county energy transportation reinvestment zones if the commissioners court of the county has designated a county energy transportation reinvestment zone under this section for the same transportation infrastructure project or projects as another county commissioners court.

(j) Tax increment paid into a tax increment account may not be pledged as security for bonded indebtedness.

(k) A county energy transportation reinvestment zone terminates on December 31 of the 10th year after the year the zone was designated unless extended by an act of the county commissioners court that designated the zone. The extension may not exceed five years. On termination of the zone, any money remaining in the tax increment account must be transferred to the road and bridge fund described by Chapter 256 for the county that deposited the money into the tax increment account.

(l) The captured appraised value of real property located in a county energy transportation reinvestment zone shall be treated as provided by Section 26.03, Tax Code.

(m) The commissioners court of a county may enter into an agreement with the department to designate a county energy transportation reinvestment zone under this section for a specified transportation project involving a state highway located in the proposed zone.

Sec. 222.1072. ADVISORY BOARD OF COUNTY ENERGY TRANSPORTATION REINVESTMENT ZONE. (a) A county is eligible to apply for a grant under Subchapter C, Chapter 256, if the county creates an advisory board to advise the county on the establishment, administration,

and expenditures of a county energy transportation reinvestment zone.

(b) Except as provided by Subsection (c), the advisory board of a county energy transportation reinvestment zone consists of the following members appointed by the county judge and approved by the county commissioners court:

(1) three oil and gas company representatives who perform company activities in the county and are local taxpayers; and

(2) two public members.

(c) County energy transportation reinvestment zones that are jointly administered are advised by a single joint advisory board for the zones. A joint advisory board under this subsection consists of members appointed under Subsection (b) for each zone to be jointly administered.

(d) An advisory board member may not receive compensation for service on the board or reimbursement for expenses incurred in performing services as a member.

SECTION 3. Section 222.110, Transportation Code, is amended.

SECTION 3. Same as engrossed version.

SECTION 4. Subchapter A, Chapter 251, Transportation Code, is amended.

SECTION 4. Same as engrossed version.

SECTION 5. Subsection (a), Section 256.009, Transportation Code, is amended.

SECTION 5. Same as engrossed version.

SECTION 6. The Texas Department of Transportation shall adopt rules implementing Subchapter C, Chapter 256, Transportation Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 6. Same as engrossed version.

SECTION 7. This Act takes effect September 1, 2013.

SECTION 7. Same as engrossed version.