



# 86<sup>th</sup> Legislature, Interim Charge 1, Request for Information

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House Committee on Transportation

September 18, 2020

### **Interim Charge 1.**

*Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following:*

- *Interim Charge 1A: HB 803 and SB 198, which relate to toll project financial reporting and use payments. Monitor the effectiveness of the tools available to Texas toll project entities for enforcing unpaid tolls while protecting customer rights.*
- *Interim Charge 1B: SB 282 and SB 962, which relate to the funding for the State Highway Fund. Study the current mix of user fee-based funding for the state highway system, including registration fees, tolls, and fuel tax, and determine if current funding generated is sufficient to maintain cost demands. Examine whether current legislative appropriations, including projections for Proposition 1 (severance tax) and Proposition 7 (sales tax) funds, are keeping pace with Texas' highway funding needs to accommodate population and economic development growth. Make recommendations for additional methods of funding or innovative tools that the state could utilize to deliver road infrastructure projects.*
- *Interim Charge 1C: SB 357, which relates to outdoor advertising signs. Monitor the Texas Department of Transportation's implementation of the new statutory requirements set forth in the legislation, including any related rulemaking.*

### **Interim Charge 1A. HB 803 and SB 198:**

#### **House Bill 803 - Relating to financial reporting requirements of a toll project entity.**

HB 803 adds Section 372.054, Transportation Code, to create additional reporting requirements for toll project entities. Section 372.001, Transportation Code, defines a toll project entity as an entity authorized by law to acquire, design, construct, finance, operate, and maintain a toll project, including:

- TxDOT under Chapter 228, Transportation Code;
- A regional tollway authority under Chapter 366, Transportation Code;
- A regional mobility authority under Chapter 370, Transportation Code; or
- A county under Chapter 284, Transportation Code.

No later than the 180th day after the last day of the toll project entity's fiscal year, the entity must prominently place on the entity's website a report on the entity's financial data, including:

1. The final maturity of all bonds issued by the entity for a toll project or system;
2. The previous fiscal year's toll revenue for each toll project;

3. An accounting of total revenue collected and expenses incurred by the entity for the previous fiscal year, such as debt service, maintenance and operation costs, any other miscellaneous expenses, and any surplus revenue; and
4. A capital improvement plan with proposed or expected capital expenditures over a period of time determined by the entity.

HB 803 does not require a toll project entity to include in a report information concerning a toll project that is the subject of a Comprehensive Development Agreement (CDA) entered into by the toll project entity except for the name and cost of the project and the termination date of the agreement. In addition to the required information, the toll project entity has the option to publish:

1. Any money deposited by the entity in a debt service reserve fund as required by bondholder agreements; and
2. Graphs or tables from the audited financial report or annual continuing disclosure report to comply with the required reporting requirements.

HB 803 also requires the toll project entity to publish the required financial information separately from the certified audited financial report.

In February 2020, TxDOT filed TxDOT's HB 803 report, posted it on TxDOT's homepage and on the "Reports Required by Statute" webpage, and notified select members of the Texas Legislature and appropriate staff. The report can be found here: <http://ftp.dot.state.tx.us/pub/txdot/gov/hb-803-report.pdf>.

#### **Senate Bill 198 - Relating to payment for the use of a highway toll project.**

SB 198 amended Chapter 372, Transportation Code (Provisions Applicable to More than One Type of Toll Project), to add the following five new sections:

1. Section 372.054, Transportation Code, requires an electronic toll tag customer using a transponder to activate and mount the transponder in accordance with the procedures provided by the toll project entity, provide to the toll project entity accurate license plate and customer contact information and update the information as necessary;
2. Section 372.055, Transportation Code, prohibits a toll project entity from sending an invoice or a notice of unpaid tolls to the registered owner of a vehicle soliciting payment of a toll or any related administrative fee unless the entity first determines, for a customer using a transponder, whether there is an active electronic toll collection customer account that corresponds with the transponder. The bill requires that if the customer has complied with Section 372.054 the toll project entity must satisfy an unpaid toll, at the standard electronic toll collection rate and without imposition of a fee, from an active electronic toll collection customer account if the account corresponds to a transponder issued by the entity and if the account contains sufficient funds. SB 198 authorizes the toll project entity to send an invoice or notice for payment to collect an unpaid toll and related costs if the account

has insufficient funds or the customer's failure to comply with Section 372.054 prevents satisfaction of the unpaid toll from the customer account. Furthermore, requires the toll project entity to send to the customer to whom the transponder was issued a notice stating that the transponder is not working correctly and must be replaced if a toll project entity discovers that a transponder issued by the entity did not work correctly more than 10 times in a 30-day period (A toll entity is not required to send additional notice to an electronic collection customer if the toll entity has sent notice to the customer and the customer does not replace the transponder);

3. Section 372.056, Transportation Code, provides that an invoice or notice of unpaid tolls must clearly state that the document is a "bill" and that the recipient is expected to pay the amount indicated;
4. Section 372.057, Transportation Code, authorizes a toll project entity to provide an invoice or notice to a person by email if the person has provided an email address to the entity and has elected to receive notice electronically or by first class mail. The section also excuses a toll entity from sending an invoice or notice by first class mail or email if the entity does not have access to the contact information provided in the electronic toll collection customer account; and
5. Section 372.058, Transportation Code, authorizes the sharing of confidential customer information between toll entities for purposes of customer service, toll collection, enforcement, or reporting requirements. The section also requires that a contract between toll entities for the collection of tolls must specify who will be responsible for making determinations of the customer account under Section 372.055, sending all notices, and taking other actions and include terms to ensure that customers do not receive invoices from more than one entity for the same transaction.

SB 198 also amended Chapter 228, Transportation Code (State Highway Toll Projects), to add the following new section:

1. Section 228.057, Transportation Code, requires TxDOT to provide electronic toll collection customers the option of authorizing automatic payment of tolls through the withdrawal of funds from the customer's bank account.

TxDOT is in the final stages of implementing a new back office toll operation system that will include updating the operational and customer service requirements of SB 198. TxDOT has also procured a new payment processing vendor and is currently testing to integrate into the new TxDOT toll operations (back office) system.

This new toll operations system will also allow TxDOT toll customers the option of authorizing automatic payment of tolls through the withdrawal of funds from their bank account as another viable customer payment method. TxDOT is in development with the new back office vendor on operating procedures for informing customers when their transponder(s) have failed to read 10 consecutive times in a 30-day period. Notifications will be sent to affected customers when the new back office system goes live later this year. TxDOT has updated customer's statements to include the required language indicating that the statement is a "bill" and clarifying that payment is expected.

## **Interim Charge 1B. SB 282 and SB 962:**

### **Senate Bill 282 - Relating to the allocation of money associated with delays of transportation projects.**

SB 282 adds new Section 222.007, Transportation Code, to require TxDOT to annually track the dollar value of liquidated damages (LDs) and road user costs (RUCs) assessed for each of TxDOT's 25 geographical districts and allocate those dollars to the respective TxDOT district in which the damages were assessed for transportation projects in that district. If a transportation project that was subject to liquidated damages is located in more than one TxDOT district, TxDOT may reasonably allocate the amount of the liquidated damages from that project among the TxDOT districts in which the project is located.

TxDOT assesses liquidated damages if a contractor fails to complete a highway improvement project within the number of days specified in the contract. TxDOT derives liquidated damage amounts from TxDOT's cost to oversee the project (cost of providing inspection and project management) for the extra time used by the contractor. The purpose of liquidated damages is to withhold payment from the contractor to compensate TxDOT for the extra incurred costs. TxDOT includes a liquidated damages rate in each project contract and uses that rate to assess the liquidated damages, if any, for the project.

TxDOT may also assess road user costs on certain projects, as provided in the contract, if the contractor is not meeting the project schedule and milestones. Road user costs are an estimate of the average differential cost of the extra travel time resulting from delay. TxDOT bases the value on the Consumer Price Index for the previous year. Fiscal Year 2019 road user costs are \$30.12 per passenger car hour and \$41.33 per commercial truck hour. TxDOT assesses road user costs on highway projects, primarily those located in the metropolitan areas of the state or large projects on heavily traveled roadways, where travel delays have a significant impact on the public.

Under previous TxDOT procedures, once TxDOT finalized a project, TxDOT performed a reconciliation on the overall cost of the project. If a project has a cost overrun, TxDOT deducted the amount of the cost overrun from the current year's overall funding allocation for that TxDOT district. If a project had a cost underrun, including the assessment of liquidated damages and road user costs that TxDOT withheld from payments to the contractor, TxDOT added the amount of the underrun to the current year's overall funding allocation for that TxDOT district or returns the underrun amount to the statewide program(s), depending on the project's fund source(s).

Now, as TxDOT completes projects, SB 282 requires TxDOT to confirm that it is crediting any cost savings from the assessment of liquidated damages and/or road user costs appropriately to the corresponding TxDOT district. This will be achieved annually, at the end of each fiscal year, with a variance report.

The variance report will identify and apply expenditures that have occurred since the letting of construction projects. In October of each year, projects that have been finalized and closed within the previous fiscal year will be compiled along with expenditures that include final construction cost, safety contingencies, change orders, liquidated damages, road user costs and previous year variances. After an analysis to compare final cost versus original Low Bid amounts, and confirming with the TxDOT districts which category of funding to

credit or debit, cumulative totals will be applied to the Letting Allocations in the Category Analyses for each TxDOT District.

TxDOT has set up all internal reporting processes and procedures to create the variance reports, calculate all liquidated damages, road user costs, or both damages and costs and credit any cost savings from the assessment of liquidated damages, road user costs, or both damages and costs appropriately to the corresponding TxDOT District. Fiscal Year 2020 ended on August 31, 2020. TxDOT anticipates completing the annual process for fiscal year 2020 (the first fiscal year since the passage of SB 282) by November 15, 2020. At which time, TxDOT can provide the committee a copy of the associated reports.

**Senate Bill 962 - Relating to the determination of the sufficient balance of the economic stabilization fund for the purpose of allocating general revenue to that fund and the state highway fund.**

In November 2014, 80 percent of voters approved Proposition 1, which amended the Texas Constitution and authorized a portion of oil and natural gas production taxes (also known as severance taxes) to be divided evenly between the Economic Stabilization Fund and the State Highway Fund for transportation funding. The statutory transfer provision of Proposition 1 funds to the State Highway Fund were set to expire December 31, 2024, unless the legislature extended the expiration date.

SB 962 extends the expiration date of Proposition 1 fund transfers to the State Highway Fund from December 31, 2024, to December 31, 2034. Therefore, the State Highway Fund will continue to receive Proposition 1 deposits, which may be used for the development and delivery of additional non-tolled roadway projects, through the first quarter of state fiscal year 2035.

The exact fiscal impact of continuing Proposition 1 payments from fiscal year 2026 to fiscal year 2035 has not yet been determined. However, it is possible that another 10 years of this funding could approach \$10 billion. Although severance taxes are volatile and unpredictable, SB 962 will provide TxDOT with greater financial security, which is required for the long-term planning of non-tolled, roadway projects.

Additionally, Senate Bill 69 extends the expiration date of Proposition 1 fund transfers to the State Highway Fund in the same way SB 962 amends the expiration. Further, SB 69 establishes a new procedure for the transfer of Proposition 1 revenues to the Economic Stabilization Fund and the State Highway fund. SB 69 amends Subchapter H of Chapter 316, Government Code, to eliminate the joint legislative committee that was required to determine the sufficient balance of the Economic Stabilization Fund that must be attained before the Texas Comptroller of Public Accounts (comptroller) may make a transfer of Proposition 1 revenues to the State Highway Fund. SB 69 requires the comptroller to determine and adopt for a state fiscal biennium a “threshold” balance of the Economic Stabilization Fund in an amount equal to seven percent of the certified general revenue-related appropriations made for that state fiscal biennium.

Before making any allocations to the Economic Stabilization Fund and State Highway Fund under Section 49-g, Article III, Texas Constitution, the comptroller must determine if the sum of the balance of the Economic Stabilization Fund on the preceding August 31, any projected transfer to the fund under Section 49-g(b), and any projected transfer to the fund under Section 49-g(c) in accordance with the allocations for the transfer as

provided by Section 49-g(c-1) is less than an amount equal to seven percent of the certified general revenue-related appropriations made for that state fiscal biennium. If the amount in the Economic Stabilization Fund is less than the amount described above, the comptroller must reduce the allocation to the State Highway Fund and increase the allocation to the Economic Stabilization Fund, in an equal amount, until the balance in the Economic Stabilization Fund reaches the required amount. The provisions of the SB 69 relating to the calculation of the new “threshold” balance of the Economic Stabilization Fund, and any required adjustment of the allocations to the Economic Stabilization Fund and State Highway Fund, take effect beginning with the state fiscal year beginning September 1, 2021. SB 69 amends Section 404.0241, Government Code, relating to the investment of the assets in the Economic Stabilization Fund.

### **Transportation Funding:**

*Study the current mix of user fee-based funding for the state highway system, including registration fees, tolls, and fuel tax, and determine if current funding generated is sufficient to maintain cost demands. Examine whether current legislative appropriations, including projections for Proposition 1 (severance tax) and Proposition 7 (sales tax) funds, are keeping pace with Texas' highway funding needs to accommodate population and economic development growth. Make recommendations for additional methods of funding or innovative tools that the state could utilize to deliver road infrastructure projects.*

TxDOT's [Texas Transportation Funding Brochure for Fiscal Years 2020-2021](http://ftp.dot.state.tx.us/pub/txdot-info/fin/funding-brochure2020.pdf) includes detailed information about various user fee-based, traditional funding sources, including registration fees, tolls, and motor fuel taxes as well as non-traditional funding sources such as Proposition 1 and Proposition 7.<sup>1</sup>

While this interim charge was developed before COVID-19 and its subsequent negative impacts on the state budget, the effects of the pandemic underscore the need for TxDOT's budget development and operational processes to remain agile and responsive to unpredictable external factors over both the short and long term. Short-term budget challenges usually involve the biennial time frame and, barring an extreme event resulting in multiple billions of dollars in losses, TxDOT possesses the resources to ensure the payment of outstanding bills and contract invoices. With longer-term budget uncertainty, TxDOT must be able to meet its obligations to make progress payments on projects that might cover the span of two or three legislative biennia. Additionally, many large highway projects are planned at least a decade before they go under contract. The state, therefore, benefits from a steady source of predictable revenue to ensure the smooth development and delivery of road projects beyond a two-year budget cycle.

Under normal circumstances, TxDOT typically revises and adjusts its budget requests a few times throughout the biennial budget process to align its estimated revenue and budget with the Texas Comptroller of Public Accounts' estimates and legislative requirements. Therefore, budget adjustments are not uncommon during budget development. This year however, has been an atypical year and budgetary adjustments will be more pronounced due to expected significant decreases in some of the State Highway Fund's major sources of revenue such as the taxes on motor fuels, oil and gas production, and general and motor vehicle sales tax.

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<sup>1</sup> <http://ftp.dot.state.tx.us/pub/txdot-info/fin/funding-brochure2020.pdf>



In light of these projected impacts to the State Highway Fund, TxDOT continues its commitment to identify cost savings to ensure all possible funds are applied to Texas roadways.

TxDOT committed approximately:

- 1) 76 percent of its Fiscal Year (FY) 2020-21 budget to the direct development and delivery of roadway projects;
- 2) 11 percent on contracted and routine maintenance and ferry operations;
- 3) 8 percent for specific purposes (debt service and regional toll subaccounts);
- 4) 2 percent on other modes of transportation; and
- 5) 2 percent on administrative costs.

When TxDOT has been tasked with implementing significant agency-wide budget cuts, project development and delivery by necessity becomes a major contributor because this is where TxDOT spends most of its funds. Due to TxDOT's efforts to effectively manage projects and maximize funding, TxDOT does not foresee a disruption to existing construction projects, however, new project starts could possibly be pushed to outer years. During the 86<sup>th</sup> Legislature (2019), TxDOT was granted greater flexibility to adjust funding within its project development and delivery budget strategies. This will allow TxDOT to react to unexpected budget constraints more quickly than in past biennia. TxDOT remains confident that it will be able to maintain its continued role in bolstering the state economy by creating jobs, facilitating trade, and supporting Texas businesses.

TxDOT recognizes that this biennium will be fiscally constrained. However, should the legislature ever decide to create additional methods of funding to deliver more road infrastructure projects, the best methods will be steady, reliable, and therefore predictable funding streams.

#### **Interim Charge 1C. SB 357:**

##### **Senate Bill 357 - Relating to outdoor advertising signs regulated by the Texas Department of Transportation.**

SB 357 amends Section 391.038, Transportation Code, to provide a maximum height of 60 feet for new or amended permitted commercial signs. SB 357 clarifies that a person who holds a permit for a sign existing on March 1, 2017, may rebuild the sign at the same location where the sign existed on that date, only by obtaining a new or amended permit, at a height that does not exceed the height of the sign on March 1, 2017, or 85 feet, whichever is less. The amended permit requirement does not apply to the rebuilding of a sign if the permit holder rebuilds the sign due to damage caused by:

- wind or a natural disaster;
- a motor vehicle accident; or
- an act of God.



SB 357 states that a sign may not be higher than 60 feet, excluding a cutout that extends above the rectangular border of the sign, measured:

1. from the grade level of the centerline of the main-traveled way, not including a frontage road of a controlled access highway closest to the sign at a point perpendicular to the sign location; or
2. if the main-traveled way is below grade, from the base of the sign structure.

SB 357 includes an exemption from the maximum sign height for a sign within the boundaries of a political subdivision that is authorized by TxDOT under rules adopted by the Texas Transportation Commission to exercise control over the signs within their jurisdiction (a certified city).

SB 357 states that if a sign owner who has 100 or more permitted signs, and has a sign that violates the maximum sign height, the Texas Transportation Commission, after notice and an opportunity for a hearing before the Texas Transportation Commission, may deny that owner an application for a new sign permit, or renewals for existing signs.

TxDOT is currently in the rule drafting process to reflect the statutory changes pertaining to sign height requirements and denial of new sign permits, or renewals for existing signs as required by SB 357. While the rules are not currently up to date in the Texas Administrative Code, as required by law, TxDOT is currently enforcing the 60-foot height limitation as enacted by SB 357 for new permit locations. This information can be found on TxDOT's public-facing Commercial Signs Regulatory Program website.<sup>2</sup>

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<sup>2</sup> <https://www.txdot.gov/inside-txdot/division/right-of-way/outdoor-signs.html>