

Restricting TxDOT from advertising and marketing toll roads

HB 2142 by McClendon (Carona)

[Return to
Table of
Contents](#)

DIGEST: HB 2142 would have deleted provisions allowing TxDOT to promote the development and use of toll projects and would have stated that marketing, advertising, and other activities aimed at influencing public opinion about toll roads would not be authorized. The bill would have allowed TxDOT to engage in activities to provide information on the status of pending or ongoing toll projects.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 2142 limits the Texas Department of Transportation’s ability to market or advertise the use of toll roads or tolling as a method of paying for highway projects, preventing the state from advertising resources such as toll tags. Marketing toll roads as a user-fee-based alternative to congested highways is important to relieving congestion on other state roads and keeping Texas moving.”

RESPONSE:

Rep. Ruth Jones McClendon, the bill’s author, said: “Current law authorizes the Texas Department of Transportation to engage in marketing, advertising, and other activities to promote the development and use of toll projects. However, Texas law prohibits a state agency from using appropriated money to attempt to influence the passage or defeat of a legislative measure (Government Code, sec. 556.006). HB 2142 passed in both the House and Senate, and would have continued to allow TxDOT to engage in marketing, advertising, and other informational activities regarding pending or ongoing toll projects; however, HB 2142 amended sec. 228.004 of the Transportation Code to bring it into alignment with the Government Code, which would have made it clear that the law does not authorize TxDOT to engage in promotion of toll projects, that being a legislative policy decision, not an administrative one.

“According to information obtained from records maintained by the office of the State Comptroller, over 550 vendor payments were made on behalf of TxDOT for advertising services under account #7281, as follows: \$23,690,725.63 in 2008, and \$12,382,702.48 thus far in 2009.

“However, there is a lack of departmental transparency in regard to how the appropriations for advertising services are authorized in the TxDOT’s base budget or in exceptional items of SB 1. Figures for 2010-2011 expenditures for advertising services are not yet available, but the appropriations bill does not indicate where these funds are authorized in regard to a goal, line item, or strategy, or under a numbered rider.

“The Sunset Advisory Commission Decision Report of January 2009 called attention to the multiple millions of dollars expended by TxDOT on selected advertising

campaigns, including five advertising campaigns that cost an estimated \$16 million: ‘Click It or Ticket’ (traffic operations), ‘Don’t Mess With Texas’ (travel), ‘Drive Clean Across Texas’ (environmental affairs), Put Texas in Your Corner (vehicle titles and registration), and ‘You Hold the Key’ (automobile burglary and theft prevention). See, *Sunset Advisory Commission Decision Report*, January 2009, at pages 38-40 [available online at http://www.sunset.state.tx.us/81streports/txdot/txdot_dec.pdf].

“In addition, TxDOT spent another \$1.6 million for the ‘Keep Texas Moving’ campaign in fiscal 2007 to promote toll roads and the Trans-Texas Corridor. Activities to promote the development and use of toll projects have been challenged as the functional equivalent of influencing the passage or defeat of legislation relating to toll roads and toll projects. The Commission’s Decision Report cautioned that publicity measures should be used to inform but not to persuade the public about legislative issues. The Report cited the implementation and design of TxDOT’s ‘Keep Texas Moving’ campaign as a ‘tolling and Trans-Texas Corridor outreach campaign,’ including a website, a newsletter, and radio, television, print, billboard, and Internet advertising. *Id.*, at page 14.

“HB 2142 would have restricted TxDOT’s expenditures for public relations activities about toll projects to providing information regarding the status of pending or ongoing toll projects, and would have allowed TxDOT to enter into outside service provider contracts or agreements necessary to procure marketing, advertising, or informational (but not promotional) services. It specified that TxDOT would not be authorized to engage in marketing, advertising, or other activities for the purpose of influencing public opinion about the use of toll roads or the use of tolls as a financial mechanism. Specifically in regard to toll projects, HB 2142 would have brought the Transportation Code into alignment with Section 556.006 of the Government Code, which prohibits a state agency from legislative lobbying through use of ‘appropriated money to attempt to influence the passage or defeat of a legislative measure.’

“The public testimony offered at open hearings before the Sunset Advisory Commission and Commission’s Decision Report raised a broader issue about expenditures of state revenues by TxDOT for outside advertising services, that being a lack of coordination and budgeting strategy for these expenses. Presently, TxDOT does not have a division that is dedicated to the optimization of its outside advertising expenditures as authorized by law. As stated in the Sunset Advisory Commission Decision Report,

TxDOT’s central office should provide statewide coordination for all major marketing campaigns. ... TxDOT’s divisions and district offices carry out various marketing campaigns. The Department’s Traffic Operations, Travel,

Vehicle Titles and Registration, Environmental Affairs, Government and Public Affairs, and other divisions conduct independent marketing campaigns costing several million dollars each. Under this recommendation, the Department should establish guidelines defining major marketing campaigns and establish a procedure for coordinating activities such as purchasing advertising space, entering into consultant contracts, and timing press releases between divisions and districts. *See, Sunset Advisory Commission Decision Report*, January 2009, at pages 38 – 42-i [available on line at http://www.sunset.state.tx.us/81streports/txdot/txdot_dec.pdf].

“Considering the \$17.6 million expenditures identified on the six advertising campaigns cited in that decision report, and the lack of overall departmental focus and transparency concerning expenditures of state revenues for outside advertising services, the commission adopted Recommendation Number 3.4, ‘TxDOT should provide central coordination of the Department’s major marketing campaigns.’ *Id.*, at page 42-i. The commission also adopted a proposal to strengthen the state’s general legislative lobbying prohibitions for TxDOT under Chapter 556 of the Government Code, by statutorily prohibiting TxDOT employees and the commissioner of transportation from using any money under the agency’s control or engaging in activities to attempt to influence the passage or defeat of a legislative measure. *Id.*, at page 42-i.

“HB 2142 would have brought forward a much-needed and legislatively approved corrective measure to save taxpayer dollars and resolve the toll project promotion issue cited by the Sunset Advisory Commission, in regard to curtailing outside advertising expenditures by TxDOT to influence public opinion to promote toll projects.

“It is extremely disappointing that the veto of HB 2142 will allow the continued expenditure of state funds for the cost of these advertising services to promote toll projects, contrary to the will of the Legislature, which approved the passage of HB 2142 in the House by a vote of 132-1, and in the Senate by a 31-0 vote.”

Sen. John Carona, the Senate sponsor, had no comment on the bill.

NOTES:

The HRO analysis of HB 2142 appeared in Part Five of the May 8 *Daily Floor Report*.