

SUBJECT: Updating statutes applicable to the Texas Turnpike Authority Division

COMMITTEE: Transportation — favorable, without amendment

VOTE: 7 ayes — Krusee, Phillips, Hamric, Edwards, Garza, Harper-Brown, Mercer

0 nays

2 absent — Hill, Laney

WITNESSES: None

BACKGROUND: Transportation Code, ch. 361 governs the Texas Turnpike Authority Division (TTAD) of the Texas Department of Transportation (TxDOT). In 2001, the 77th Legislature enacted SB 342 by Shapiro, abolishing the Texas Turnpike Authority board and transferring its duties and powers to the Texas Transportation Commission (TTC).

DIGEST: HB 3184 would amend the TTC's and TxDOT's powers regarding finance, construction, improvement, maintenance, and operation of turnpike projects and would provide a few additional powers. It would incorporate language from several TxDOT statutes into TTAD's statutes and into other sections of the Transportation Code and the Government Code. It also would delete many obsolete terms and references and would make many nonsubstantive corrections to conform with provisions of SB 342. The bill would:

- authorize TxDOT to execute an unrestricted number of exclusive development (design-build) agreements (EDAs) with private entities for turnpike projects, including design, construction, and operation in any combination and paid for with any constitutionally permissible funding source;
- protect from public disclosure, discovery, or subpoena all EDA proposals and supplemental information submitted by contractors and information generated by TxDOT during proposal review;
- make the use of private funding discretionary for projects developed under EDAs;

- require private entities entering into EDAs to provide performance and payment bonds or alternative forms of security, including provisions on amounts and forms of security;
- allow TxDOT to reimburse private entities for costs of preparing unsuccessful proposals, with certain restrictions;
- replace the environmental review subsection with a provision applying to turnpike projects all other law governing TxDOT, the TTC, and the state highway system, unless in conflict;
- specify that TTAD may acquire and dispose of real property in the same manner as for highways;
- allow TxDOT to acquire property, property interests, or property rights to build or operate service stations and toll houses and plazas and to locate revenue-generating facilities, including gas stations, garages, stores, restaurants, and hotels in turnpike projects;
- specify that the TTC may condemn real property for turnpike projects, and repeal a requirement that supplemental facilities be built only on purchased land;
- remove the restriction on making payments for turnpike project bonds from revenues from other turnpike projects;
- allow contributions to be spent, along with toll and other revenue, on turnpike project costs;
- allow the TTC to authorize feasibility studies funded with toll equity provided by grants or loans;
- specify that turnpike projects are part of the state highway system and subject to all traffic regulation and control laws;
- apply turnpike project transfer provisions to regional mobility authorities;
- require that agreements to lease, sell, or convey turnpike projects must provide for reimbursement of TxDOT's project expenditures not reimbursed with bond proceeds, unless the TTC waives repayment because its benefits would equal or exceed the repayment amount;
- apply to turnpike improvement contracts the TTC's rulemaking authority establishing procedures for informal resolution of contract claims; and
- specify that audits of TTAD activities be conducted in accordance with any trust agreements securing TTAD bonds in effect at the time.

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HB 3184 would delete obsolete references to bond coupons, TTA's receipt of feasibility study money from TxDOT, and funds transferred to TxDOT in 1997, when TTAD was created. It also would repeal provisions dealing with TTC bond review, cost participation, and contracts between the TTC and the TTA.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

As TxDOT begins developing more turnpike projects and toll roads, its legal authority and statutory powers need clarification and amplification. Gov. Perry's Trans-Texas Corridor Plan and the proliferation of regional mobility authorities also depend, to some degree, on TTAD's ability to exercise its role fully within TxDOT, unhindered by outdated statutes.

HB 3184 would update the statute and related laws governing TTAD to reflect the division's functions and status within TxDOT. SB 342, enacted last session, did not alter references in existing law to the TTA board, nor did it make changes necessary to fully integrate TTAD into TxDOT. This bill would excise references to the TTA board and to TTA as an independent entity, as well as obsolete terms and provisions that duplicate the substance of other TxDOT statutes.

Allowing TxDOT to acquire property to locate commercial businesses along turnpikes would benefit motorists, who would not have to exit tollways and then pay more tolls upon return. The revenue to the state also would help defray construction and operation costs.

Current law limits TxDOT to four EDAs, the authority for which expires March 1, 2004. TxDOT needs this and other innovative tools to develop more toll projects. Also, as more toll roads are built and used, it is important to eliminate any ambiguity about the enforcement of traffic laws to protect Texas motorists.

**OPPONENTS
SAY:**

EDAs are relatively new arrangements whose value and efficacy have yet to be proven in Texas. TxDOT has little experience with EDAs to date, having entered into only one for a project still under way, and plans to enter into only

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one more before its authority expires. The bill should retain restrictions on EDAs so that the Legislature can evaluate their cost-effectiveness and benefit to the state.

NOTES: The companion bill, SB 1677 by Barrientos, was considered in a public hearing by the Senate Infrastructure Development and Security Committee on April 23 and left pending.