

- SUBJECT:** Trans-Texas Corridor revisions and procedure for toll conversions
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 7 ayes — Krusee, Phillips, Callegari, Casteel, Deshotel, Hamric, West
0 nays
2 absent — Flores, Hill
- WITNESSES:** For — Gary Bushell, Gulf Coast Strategic Highway Coalition c/o DETCOG and The Alliance for I-69 Texas

Against — Warren Mayberry, Texas Farm Bureau; Ed Small, Texas and Southwestern Cattle Raisers Association

On — David Brown, Verizon Southwest; Jim Grover, Texas Telephone Association; Bob Jackson, Texas Department of Transportation; Robert Nichols, Texas Department of Transportation; Michael Vasquez, Texas Conference of Urban Counties
- BACKGROUND:** In 2001, Texas modified its longstanding “pay-as-you-go” policy for transportation funding. The 77th Legislature in 2001 enacted SB 342 by Shapiro, and voters subsequently approved a constitutional amendment allowing toll equity (unreimbursed spending on toll projects), authorizing regional mobility authorities (RMAs), and creating the Texas Mobility Fund (TMF), a revolving state bond fund.

In 2002, Gov. Rick Perry announced the plans for the Trans-Texas Corridor (TTC), which called for the Texas Department of Transportation (TxDOT) to build 4,000 miles of multimodal corridors connecting major metropolitan areas over the next two decades. Cost estimates range from \$145 billion to \$184 billion.

HB 3588. HB 3588 by Krusee, enacted by the 78th Legislature in 2003, authorized the creation of the TTC. This bill broadened the authority of TxDOT to finance the TTC. It authorized TxDOT to use toll equity, right-of-way leasing and the TMF to either fully fund or partially fund the TTC. In addition to appropriations, fees, and bonds, financing also may include

federal loans, grants and reimbursements, private investments and donations.

TxDOT received the authority to permit any other governmental or private entity to build or operate any part of the TTC. The bill also allowed TxDOT to grant franchise rights and access licenses to rail operators, public and private utilities, communications systems, common carriers, transportation systems, or other entities to use corridor facilities.

HB 3588 also gave landowners the option of entering into corridor participation agreements, receiving percentages of identified fees related to a corridor segment. The bill also authorized TxDOT to buy land and lease it back to the sellers, and buy land from willing sellers in advance of final project location. TxDOT also was authorized to use expedited condemnation to acquire land for the corridor.

DIGEST:

CSHB 2702 would make a number of changes to the Transportation Code related to the construction and financing of the Trans-Texas Corridor and associated issues.

Conversion. Conversions of non-toll roads into toll roads to by RMAs, regional transit authorities (RTAs), and county transit authorities (CTAs) would require the approval of the commissioners court of the county in which the road proposed for tolling was located. TxDOT conversions would require approval from the voters of the county in which the proposed toll road was located.

The following conversion projects would not be required to obtain approval from voters or commissioners courts:

- projects that were designated as toll projects by the Texas Transportation Commission (TTC) prior to the construction phase;
- projects that were designated as toll projects by a metropolitan planning organization (MPO) before May 1, 2005;
- projects that would not create more toll lanes than non-tolled lanes on a highway;
- projects that would not create more toll lanes than non-tolled lanes on a highway and access road combined; and
- projects to covert existing high-occupancy vehicle (HOV) lanes that were open before May 1, 2005.

Condemnation. CSHB 2702 would prohibit TxDOT from condemning property adjacent to the TTC's path for a business located along the corridor. TxDOT would be able to lease back property to the former owner for agricultural or recreational use until the property was needed for a transportation project. Occupants would be given at least 90 days to vacate property condemned for transportation purposes.

Rail. CSHB 2702 would allow TxDOT to enter into comprehensive development agreements for rail and highway projects in the construction of the TTC. Contracts for comprehensive development agreements for rail would be selected based on the best value method rather than the lowest bidder method. Privately owned rail facilities that have been leased out to be used for public transportation would be tax exempt.

CSHB 2702 would repeal the \$25 million cap on the construction of non-highway facilities on the TTC. The bill also would remove the \$12.5 million limit on TxDOT's annual spending on rail projects.

Compensation for acquisition of property. The bill would require TxDOT to pay damages caused by the division of property along the route of the TTC, including costs associated with the lack of reasonable access to property on both sides of the corridor.

CSHB 2702 would require TxDOT to offer to pay owners for segments of land that have been rendered useless by the TTC. Owners could opt to be compensated for the remainder of a severed tract with free use of a section of the toll road or the rights to a percentage of revenue gained from a section of the toll road. If an environmental study found evidence of hazardous materials on the property in question, TxDOT would not be required to offer compensation.

Access. Public access to the TTC could not be limited in order to promote the interests of businesses located along the corridor, and commercial interests along the corridor would not be tax exempt.

TxDOT would ensure direct accessibility to state and interstate highways at intersection points with the TTC. The bill would require TxDOT to make reasonable efforts to connect the TTC with major farm-to market and major ranch-to-market roads and major arteries of cities and counties.

Water. TxDOT would be required to provide notice to local water authorities in a county before agreeing to extract groundwater for transport along TTC utility lines. Groundwater could not be extracted along the TTC's right-of-way for the purposes of providing water to a public utility. Wells along the TTC's right-of-way would be subject to the rules of the groundwater district in which it was located.

Toll rates. The rates of toll fees collected by private companies and the methodology used to increase toll fees along the TTC would require prior approval by TxDOT

Advance acquisition agreements. Advance acquisition or "quick-take" agreements between TxDOT and willing property owners would expire in 10 years. "Quick-take" agreements could be renewed for an additional 10 years following the initial and subsequent expirations.

Mitigation of environmental impact. TxDOT could opt to pay a fee or transfer property in exchange for the mitigation of adverse environmental impacts caused by the TTC. Before buying or condemning land for mitigation purposes, TxDOT would be required to offer to purchase a conservation easement from the owner.

Revenue. The bill would require toll revenue received by TxDOT to be deposited in the state highway fund. TxDOT would be required to spend payments obtained through comprehensive development agreements on transportation or air quality projects in the area in which the toll revenue was generated.

County input. Counties would have to approve the leasing of property or the granting of a franchise to a private entity for commercial, agricultural, or industrial purposes. The leasing of property or granting of a franchise to a private entity under a comprehensive development agreement would not require a county's approval.

Toll enforcement. The bill would authorize the private or public operator of a toll road to hire peace officers on a contractual basis to enforce payment of tolls and regulate traffic flows .

The bill would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS
SAY:

Property rights. CSHB 2702 would allow the state to acquire only land that was necessary for the TTC and its operation. The condemnation of property in the interest of private entities would be prohibited. The state could only acquire land to use to build traffic lanes, rail lines, utility corridors and areas necessary to store equipment to keep the TTC operable.

CSHB 2702 would prevent the state from taking land and holding it indefinitely without putting it to the assigned use. If condemned property were not used for the TTC within 10 years, it automatically would revert to the landowner from whom the property was taken, who then would decide whether to renew the old agreement. Also, landowners would be able to lease condemned land for agricultural and recreational purposes until needed for construction by TxDOT.

Economy. The TTC would boost the state's economy by providing jobs and improving transportation infrastructure. There is a direct relationship between transportation and the economy. Williamson County lost 10,000 jobs in the technology industry as result of the inadequacy of the state's infrastructure to accommodate the increase in truck traffic necessary to carry out the industry's shipping and receiving activities.

The TTC would provide a long-term solution for congestion relief to Interstate 35 and along the proposed Interstate 69 corridor. Both corridors connect to the state's busiest international bridges and play a vital role in the movement of commercial truck traffic through Texas. The TTC would help increase connectivity to the Port of Houston, a vital element of Texas' economy.

Water rights. The bill would amend plans for the TTC in the interest of protecting water rights in rural areas. Following the enactment of HB 3588 last session, concerns were raised about pumping water out of wells in rural areas to be transported along the TTC to urban utilities. CSHB 2702 would relieve fears that rural water wells would be pumped dry in the interest of providing water for big cities by prohibiting the transfer of water from wells along TTC rights-of-way to public utilities.

Environmental impact. CSHB 2702 would reduce the environmental impact of the TTC by allowing TxDOT to maximize the impact of its mitigation projects. In some instances, the required mitigation would be

small and have a minimal impact. CSHB 2702 would allow TxDOT to pay another entity, such as the Nature Conservancy, for its mitigation. The entity then could combine the mitigation payments from several TxDOT projects to buy land for a project that would have a significant environmental benefit. Larger mitigation projects are more effective, have a more significant environmental impact, and are more efficient to run than smaller projects.

CDAs. CSHB 2702 would allow for the use of comprehensive development agreements (CDAs) rather than the design-build method, in the construction of the TTC. A CDA is an innovative transportation tool that accelerates the completion of transportation projects. CDAs allow contractors to minimize delay in a project by providing them the ability to exercise flexibility in design. CDA contracts also include a provision where the contractor would provide maintenance to the road for an amount already bid in the contract. This cutting-edge aspect to the contract provides a quality control over the contractor since once the road is completed, the contractor can be held to a maintenance contract that is very reasonable.

Toll financing. CSHB 2702 would establish procedures for conversion of existing non-toll roads into a toll facility by requiring county commissioners court approval of any proposed conversion by a local entity and local voter approval if TxDOT proposed such a conversion. Toll roads are a superior method of financing projects to address the state's congestion problems than are steep increases in the motor fuel tax or other proposed alternatives. TxDOT estimates that the motor fuel tax, currently 20 cents per gallon, would need to be increased by \$1 per gallon in order to meet the state's transportation needs. While increased use of mass transit, high-occupancy vehicle lanes, and other such measures could be a part of the solution, no method other than toll-related financing could fund the number of transportation projects the state must complete quickly.

Rail. The bill would repeal the existing caps on TxDOT expenditures on rail projects. These caps are counterproductive to the implementation of a multimodal transportation project like the TTC. Also, these caps severely limit TxDOT's ability to utilize rail facilities to reduce freight movements on the state highway system. Rail is a capital intensive industry. TxDOT has estimated that actual present needs for state-owned rail facilities far exceed \$45 million.

Public input. Plans for the TTC have always been open for public input, and TxDOT already has conducted three rounds of public meetings. At the most recent meetings, the public was provided with maps and advised of several proposed alternative routes to be advanced for study in the environmental process and presented to the public at the next round of public meetings. Many of the revisions to the TTC included in CSHB 2702 were brought about as a result of public input.

State resources. The TTC would solve many of the state's transportation problems without burdening the state financially. The contract for the TTC ensures that the state would not be held responsible if the developer went bankrupt. The participation of private investment in the development of the TTC in return for future tolls would free up state money to relieve congestion in Texas' urban areas.

OPPONENTS
SAY:

Property rights. Landowners whose property was condemned by the corridor should be able to establish business along the corridor's right-of-way. The bill would allow the state to lease condemned land to private business interests. This provision would prevent landowners from negotiating with private interests for development purposes along or near the corridor. This provision of the bill conflicts with the requirement of the Texas Constitution that any land taken through eminent domain be utilized for a "public purpose."

Although the bill would require the compensation of costs associated with bisecting property, the TTC still would severely limit the accessibility of property to owners whose property was bisected by the corridor. A property owner would be required to drive 30 miles or more in order to get to the other side of his property on a section of the corridor without an overpass or underpass.

Rural issues. CSHB 2702 would increase the tax burden on local taxpayers that will have to pay higher taxes in order to compensate for property removed from the tax base. The TTC would harm the economies of small towns located along the TTC's proposed routes. The proposed route for the second leg of the corridor (I-69/TTC) would bypass many small cities that depend on business from traffic traveling through them.

Environmental impact. The TTC is not an environmentally sensitive solution for the state's congestion crisis. Its construction negatively would impact wildlife and hunting in many areas of the state in which hunting

has become a major part of farm and ranch income. In addition, the TTC would increase air pollution by encouraging motor vehicles as the state's principal method of transportation.

Economy. The plans for the TTC are too massive and would encompass too much acreage. As proposed, the TTC would create a 4,000 mile network of multimodal corridors for transporting commodities and people by car, truck, rail, and utility line. Each corridor would have six lanes for cars, four additional lanes for 18-wheeler trucks, half a dozen rail lines, and a utility zone for moving oil, water, gas and electricity — even broadband data. This gigantic superhighway spanning more than half a million acres dramatically would reduce output in Texas' agricultural industry as a result of the amount of land taken out of production.

Public input. The citizens of Texas should be more involved in the planning process for the TTC. The Texas Transportation Commission entered into 50-year exclusive contract with a foreign company without legislative approval that allowed for the condemnation of right-of-way for the exclusive use of the developer. More public oversight is needed to ensure that future such deals are not struck.

OTHER
OPPONENTS
SAY:

New rights of way should be located adjacent to existing rights-of-way rather than in rural areas. The main transportation problem is urban congestion, not traffic between cities.

NOTES:

The committee substitute differs from the original bill in that it would eliminate the provision authorizing TxDOT to enter into reverse pass-through toll projects, where TxDOT would be the recipient of pass-through toll payments in exchange for financing a transportation project.

Related bills, HB 1273 by Kolkhorst, which would reduce the TTC's proposed footprint on land impacted by the corridor, and HB 3363, by Coleman, which would place a two-year moratorium on the construction plans for the TTC, have been referred to the Transportation Committee.

SB 1706 by Staples, which would revise plans for the TTC, was reported favorably, as substituted, by the Senate Transportation and Homeland Security Committee on May 9.