

SUBJECT: Priority of local highway access policies over state rules in Harris County

COMMITTEE: Transportation — favorable, without amendment

VOTE: 7 ayes — Krusee, Phillips, Hamric, Casteel, Deshotel, Hill, West

0 nays

2 absent — Callegari, Flores

SENATE VOTE: On final passage, April 7 — 31-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion bill, HB 1720:)*

For — James C. Box, Greater Houston Builders & Houston Real Estate Council

Against — None

BACKGROUND: Transportation Code, sec. 203.031 authorizes the Texas Transportation Commission (TTC) to deny access between controlled-access highways and public and private real property and intersecting ways as well as to designate the location, type, and extent of access to such highways. Sec. 203.032 gives precedence to TTC orders controlling access to highways on the state highway system over conflicting rules or ordinances of other state agencies or subdivisions, counties, and municipalities (including home-rule cities).

In 2003, the 78th Legislature enacted SB 361 by Shapiro, which added sec. 203.032(b) to specify that an order of the TTC does not supersede a conflicting rule of a municipality, including a home-rule city, unless the Federal Highway Administration notifies the Texas Department of Transportation (TxDOT) that enforcement of the municipal rule or ordinance would impair the ability of the state or TxDOT to receive federal funds.

DIGEST: SB 637 would specify that an order of the TTC did not supersede a conflicting ordinance, resolution or order of Harris County or any adjacent county, unless the Federal Highway Administration notified TxDOT that

enforcement of the rule, ordinance, resolution, or order would impair the ability of the state or TXDOT to receive federal funds.

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, 2005.

**SUPPORTERS
SAY:**

SB 637 would maintain local control over access management in Harris County and surrounding counties. It would prevent TxDOT from superseding county access policies — primarily on locating driveways and curb cuts — along state roadways within cities' ETJs and unincorporated county areas. Such decisions should be made by those in the best position to understand local traffic patterns and community needs and those who stand to gain or lose the most from the impact of those decisions. The bill would give Harris and surrounding counties the same authority that the 78th Legislature granted to municipalities in 2003.

Harris County and its surrounding counties and municipalities need to be exempted specifically from TTC's access control authority because they constitute a unique urban region, much of which is in the city of Houston's extraterritorial jurisdiction (ETJ) or unincorporated county areas. Unlike other parts of the state, Harris County and adjacent counties typically make transportation policy decisions affecting the ETJs of Houston and other area cities. Most of the Dallas-Fort Worth metroplex, by contrast, is under the direct jurisdiction of one city or another and so would not have to adhere to TxDOT's access policy.

**OPPONENTS
SAY:**

Enacting this preemptive legislation is unnecessary because TTC fully intends to continue cooperating with local entities in Harris County and surrounding counties and not to supersede local access policies.

NOTES:

The companion bill, HB 1720 by Hamric, was considered in public hearing before the House Transportation Committee on April 5 and left pending.

A similar bill, SB 1782 by Lindsay, was vetoed by the governor in 2003 because, according to the governor, a drafting error would have given a local government the authority to override a TTC order designating a road as a controlled access highway, which would have prohibited TxDOT from building a freeway in these counties.