

- SUBJECT:** Continuing the Texas Department of Transportation
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 9 ayes — Phillips, Darby, Y. Davis, Fletcher, Harper-Brown, Martinez, McClendon, Pickett, Rodriguez
- 0 nays
- 2 absent — Bonnen, Lavender
- WITNESSES:** For — Steve Stagner, Texas Council of Engineering Companies (*Registered, but did not testify*: Girard Kinney, Scenic Texas; Dan Mays, Texas Recreational Vehicles Association and Texas Truck Dealers Coalition; Duane Gordy)
- Against — Mel Borel and Terri Hall, Texas TURF; Keith Elkins, Freedom of Information Foundation of Texas; Terri Hall, Texans for Accountable Government; Ken Whalen, Texas Daily Newspaper Association, Texas Press Association; Don Dixon; Pat Dossey; Russell Doyle; Celeste Morris; (*Registered, but did not testify*: Michael Schneider, Texas Association of Broadcasters; Tom Davis; Bradley Jensen)
- On — Perry Fowler, AGC of Texas Heavy Highway Chapter; Lawrence Olsen, Texas Good Roads Association; Amadeo Saenz, Texas Department of Transportation; William Howard Wolf
- BACKGROUND:** The Texas Department of Transportation (TxDOT) is charged with managing the state’s transportation network. The department’s major duties include:
- planning, building, maintaining, and supporting the state’s highways and bridges, railroads, airports, and other parts of the transportation system;
  - developing, operating, and coordinating the finance of toll roads;
  - issuing oversize and overweight vehicle permits (under Transportation Code, ch. 621, 622, and 623);
  - regulating outdoor advertising; and
  - promoting traffic safety on public roads.

TxDOT employs about 12,000 staff in Austin and in the department's 25 district offices statewide. The department had a budget of \$15.9 billion for fiscal 2010-11, the majority of which was dedicated to planning, building, and maintaining roads and bridges.

The Texas Transportation Commission is the policy-making body for TxDOT and is made up of five members appointed by the governor, with the advice and consent of the Senate. Members serve staggered, six-year terms. The Transportation Code requires that commission members be appointed to reflect the diverse geographic regions and population groups of the state, including one member who must reside in a rural area. The commission provides policy direction for TxDOT's major areas of operation, selects certain transportation projects to receive funding, and selects the department's executive director.

TxDOT is funded largely through federal funds and revenue from State Highway Fund 6, which collects most of highway-related revenue from state motor fuels taxes, motor vehicle registrations, concessions payments for the right to develop and operate toll roads, and various fees. The department also receives bond proceeds from Fund 6 revenue bonds and Texas Mobility Fund (TMF) revenue bonds. TxDOT expenditures totaled \$7.5 billion in fiscal 2010, 67 percent of which went to highway construction and maintenance. The 82nd Legislature is considering making an additional appropriation of proceeds from general obligation bonds authorized by voters in 2007 through Proposition 12 (SJR 64 by Carona).

The 81st Legislature in 2009 transferred from TxDOT to a new state agency, the Texas Department of Motor Vehicles (TxDMV), functions related to vehicle titles, registrations, the sale and lease of motor vehicles, salvage vehicle dealers, and motor carrier registration. These functions were formally transferred on November 1, 2009.

The 81st Legislature, in its first called session in 2009, enacted SB 2 by Hegar, which extended TxDOT until September 1, 2011. The department's Sunset bill, HB 300 by Isett, was not enacted during the regular session.

**DIGEST:**

CSHB 2675 would extend TxDOT's Sunset date by four years, to September 1, 2015. It would revise provisions governing TxDOT administration, transfer permitting for oversize and overweight vehicles

from TxDOT to the TxDMV, place into statute requirements for a statewide transportation plan and developmental program, add various reporting requirements, allow design-build contracts, add an inspector general to TxDOT, adopt standard Sunset recommendations, restrict lobbying of the Legislature, and make other changes to the department's operations.

**TxDOT administration.** The bill would require TxDOT to employ a chief financial officer (CFO) who reported to the director. The CFO would have to be a certified public accountant and would oversee TxDOT's financial activities. The CFO would ensure that the department's financial activities were conducted reliably and transparently.

A member of the Texas Transportation Commission would be prohibited from taking a campaign contribution for an elected office. Accepting a donation would be tantamount to resigning, and the office would immediately become vacant.

**Oversize and overweight vehicles.** CSHB 2675 would transfer responsibilities for regulating oversize and overweight vehicles under Transportation Code, chs. 621, 622, and 623, to TxDMV from TxDOT no later than January 1, 2012. The agencies could adopt a memorandum of understanding to implement the transition. The bill would transfer all personnel and other functions associated with regulating oversize and overweight vehicles to TxDMV, which would determine routes for the vehicles based on information TxDOT provided. Any documents issued by TxDOT before the transfer would remain in effect.

Any unexpended balances remaining at TxDOT at the end of fiscal 2011 from oversize and overweight functions would be transferred to TxDMV.

**Transportation plan.** The bill would revise existing requirements governing the adoption of a statewide transportation plan. It would require TxDOT to develop a statewide plan extending at least 20 years. The plan would have to include the:

- statewide transportation improvement program, composed of projects selected by metropolitan planning organizations (MPOs);
- a 10-year developmental program to authorize construction of projects with a mid-term time horizon; and
- specific long-term goals for all modes of transportation.

The plan would have to include measurable targets for transportation goals, identify priority projects or areas, and include a participation plan for obtaining formal input from governmental entities and the public. TxDOT would have to provide an annual update to legislative leaders on the department's progress in meeting targets established in the plan. TxDOT have to would update the plan at least every four years. The department would have to coordinate with MPOs to develop mutually acceptable assumptions for long-range federal and state funding forecasts, which would guide the transportation plan.

**Project development and financing.** TxDOT's developmental program, as required by the statewide transportation plan, would have to identify target funding levels yearly and list all projects that TxDOT intended to develop or start building during the period. The commission would have to adopt rules specifying criteria for selecting the projects to be included in the program and defining program funding categories and each phase of a major transportation project. The department would have to publish the developmental program as part of the statewide transportation plan and would update the plan each year.

The commission would have to adopt rules to establish categories in the developmental program, assign each project to a category, and designate the priority ranking of each project within each category.

For each funding category, the commission would have to specify formulas for allocating funds to districts and MPOs for a variety of transportation project types specified in the bill. The commission would have to update formulas every four years. The bill would require funds that TxDOT received for highways, including toll roads, to be allocated by formula to MPOs and the department's districts. Funding allocations would be based on performance and would include consideration of centerline miles, level of congestion, percent of population below the federal poverty level, population, safety, and vehicle miles traveled.

Each TxDOT district would be required to develop a work program based on the developmental program that contained all projects the district proposed for a period of four years. The work program would have to contain information on the progress of major transportation projects and a summary on other district projects. TxDOT would use the work program to monitor the district's performance and evaluate district employees. TxDOT would have to make the work program available online.

The bill would replace statutory references to the existing “unified transportation” program with “developmental program.”

The commission by rule would establish criteria for designating a major transportation project, develop benchmarks for evaluating its progress, and determine which benchmarks had to be met before a major project could be implemented.

**Reporting requirements.** TxDOT would have to establish a project information reporting system on its website that provided easily accessible and searchable information on the department’s transportation plans and project development program. The online reporting system would contain information about:

- each TxDOT project, including its status, funding source, benchmarks for evaluation, timelines for completion, and other information;
- the number of open lanes and the location and duration of lane closures for each construction work zone for a project with a timeline of more than a month or that cost more than \$5 million;
- road maintenance projects, including criteria for designating a project and the condition of each road before the project; and
- the source of funds, including type of revenue, for transportation and toll projects, as well as spending by each TxDOT district and by developmental program funding category.

TxDOT regularly would have to update the online information.

The department would be required to develop and publish a yearly forecast of all funds it expected to receive and use that forecast to direct planning for the developmental program.

TxDOT would be required to develop a process for distinguishing between projects required to maintain and those required to improve transportation infrastructure. It would establish criteria for prioritizing transportation needs consistent with the statewide plan.

The agency also would have to establish a transportation expenditure reporting system, which would make available online searchable information on spending priorities for various projects. The system would

include a list of significant transportation problems in each TxDOT district, reports prepared evaluating the effectiveness of spending on particular projects, and information on pavement and bridge conditions, traffic conditions, and traffic accident statistics.

TxDOT also would have to publish an annual report about the status of transportation goals. The report would include information about the progress of long-term transportation goals, the status of major projects, a summary of implementation benchmarks, and information about the accuracy of previous financial forecasts. The department would summarize the data by districts and would provide the report to various public entities.

TxDOT could combine reports to avoid duplication. It would have to make reports available in a central location on its website.

**Design-build contracts.** TxDOT could enter into a design-build contract for a nontolled highway project. The bill would define a design-build contract as an agreement with a private entity for the design and construction of a highway project but not for the financing or operation of the highway. TxDOT would use a best value competitive procurement process to award a design-build contract. The commission would adopt rules for when a design-build contract could be considered. The rules would address project size and complexity, time constraints for delivery, staff training, and other factors deemed important.

**Inspector general.** The commission could appoint an inspector general to report on various findings. The inspector general would:

- audit the department's financial condition and the efficiency of its business practices;
- evaluate the efficiency of the department's administrative practices and performance,
- identify the need and opportunities for reductions in staff and workforce improvement;
- study the implementation of a commitment-based budget or business plan based on outcomes;
- identify ways to streamline the environmental approval process;
- evaluate compliance with applicable laws and legislative intent; and
- assess the efficient use of available funding, personnel, equipment, and office space.

The inspector general would prepare a final report for each review containing a description of any findings. A review by the inspector general would not take precedence over a review by the State Auditor's Office, which would be entitled to access all information maintained by the inspector general.

**Outdoor advertising.** CSHB 2675 would revise statutes governing outdoor advertising. The bill would transfer highway beautification fees from the Highway Beautification Fund Account to State Highway Fund 6. Money from outdoor advertising on rural roads also would go to Fund 6.

The bill would allow the commission to impose an administrative penalty for a violation of an outdoor advertising provision in lieu of a suit to collect a civil penalty. Penalties collected from an administrative violation would be deposited into Fund 6. The commission would adopt rules for accepting and resolving written complaints related to outdoor advertising along rural roads.

The bill would create a process for licensing and bonding a person displaying outdoor advertising on rural roads. It would add provisions prohibiting an individual from erecting or maintaining an off-premise advertisement on a rural road without a license and would establish a misdemeanor punishable by a fine between \$500 and \$1,000 for this offense. The commission could not adopt a rule that restricted legitimate competitive bidding or advertising by a license holder.

The commission would adopt procedures for suspending or otherwise revoking a license for outdoor advertising and could deny renewing a license for failing to conform to permit requirements. Notice would have to be provided to a party who had a permit to display an outdoor advertisement revoked or denied. The bill would cap combined license and permit fees to \$10 for a sign established and maintained by a nonprofit if the sign promoted only a surrounding municipality or other concurrent governmental entity.

**Executive and employee conduct.** The bill would prohibit TxDOT from spending money to hire a person required to register as a lobbyist unless allowed to do so by another law. A commissioner or TxDOT employee could not use any department funds to engage in an activity to influence legislation, and doing so would be grounds for dismissal. A commissioner or employee could use state resources to provide public information or

communicate with federal employees in the pursuit of federal appropriations. TxDOT would have to establish a phone line to allow people to call in to report fraud, waste, abuse, or an alleged violation of the department's ethics policy.

The bill would amend current law regarding performance review of employees to require the commission or TxDOT, as appropriate, to consider whether an employee with unsatisfactory performance should be terminated. Evaluations of an employee at the level of district engineer or higher would have to include the extent to which the employee was professional, diligent, and responsive to directives and requests from the commission and the Legislature.

The bill would allow the executive director of TxDOT to opt out of the ERS system if certain conditions were met.

**Standard Sunset recommendations.** The bill includes standard sunset recommendations concerning filing and acting on complaints, conflicts of interest, developing a policy for public involvement, and negotiated rulemaking and alternative dispute resolution.

**General provisions.** The bill would delete a current requirement that notice of bids for a transportation project be published in a newspaper in the county in which the project is proposed. The commission would determine the most effective method for providing required notice on bids.

The bill would require TxDOT to manage a system of changeable message signs to provide current information to the traveling public, including information about traffic incidents, weather conditions, road constructions, and alternative routes.

The commission would waive payment for a right-of-way it transferred to a governmental entity that assumed control of the right-of-way for a public road. The transfer would have to include an agreement that it would revert to the state if it ceased to be used for a public road.

As part of Sunset review, TxDOT would have to submit a financial audit performed by an independent CPA.

The bill would take effect September 1, 2011.



SUPPORTERS  
SAY:

CSHB 2675, the TxDOT Sunset bill, would implement recommendations to promote transparency, accountability, and efficiency of operations. It would establish protections against the misuse of public funds and revise requirements for transportation planning, development, and financing. The bill also would avoid implementing some Sunset recommendations that could have unintended consequences. It would extend the agency four years, until 2015, so that the Sunset Advisory Commission had another chance in the near future to review how adopted changes were being implemented and to make further recommendations as appropriate.

**Texas Transportation Commission.** The bill would retain the current structure of the Texas Transportation Commission. Making major structural modifications to the commission would not address core issues with transportation management in the state — the need to make organizational, leadership, and cultural changes within TxDOT. Attempting to resolve issues with the agency by extensive restructuring would be ineffective and could have unanticipated consequences.

While some restructuring proposals may have merit, many have associated weaknesses that eclipse their promise. A single appointed transportation commissioner or single elected commissioner, for instance, might be more directly accountable, but also could leave large areas of the state with no representation on the commission. Further, adding elected officials to the commission could politicize the selection of transportation projects in the state and result in decisions made for political expediency and not the state's best interests.

In other respects, a single commissioner could reduce accountability and transparency by eliminating a need and opportunity for a thorough vetting of transportation projects at commission meetings. One commissioner could act unilaterally without the need to justify decisions or the reasoning behind them to fellow commissioners.

**TxDOT administration.** The bill would require TxDOT to hire a CFO to report to the executive director and that the CFO be a CPA. Restricting the CFO position only to a CPA would help ensure that the lead financial officer at an agency the size of TxDOT, which spent \$7.5 billion in fiscal 2010, was equipped to deal with the highly complex financial matters endemic to the position. A CPA distinction is common among individuals seeking high-level financial positions, and as such, the added requirement would not appreciably thin the qualified pool of applicants.

**Bids and contracts.** The bill would implement a Sunset Advisory Commission recommendation to authorize design-build contracts for nontolled transportation projects. Because they allow for the integration of engineering and construction aspects of a contract, design-build contracts can be highly efficient in select circumstances. The bill would require the commission to determine the specific circumstances under which a design-build contract was advantageous. Establishing a narrow universe of potential design-build contracts would minimize potential error and misuse, while allowing TxDOT to tap into the efficiency and savings these contracts can offer.

The bill also would allow the commission to adopt rules enabling TxDOT to post notice of a bid on its website. Posting notice online rather than in a newspaper, would allow the department to increase circulation of the bid notice with less expense. Online notices can be more easily updated and provide greater access to information about a transportation project. Online notices are equally accessible to anyone in the state, whereas newspaper coverage is less consistent in rural areas.

**Oversize and overweight vehicles.** CSHB 2675 would improve efficiency by consolidating the permitting of oversize and overweight vehicles within TxDMV. That department, which was established in 2009 to oversee vehicle titling and registration and other functions related to the regulation of motor vehicles, has been structured as an effective customer service agency. The focus on customer service, as opposed to transportation system design, construction, and maintenance, has allowed TxDMV to increase efficiency in the regulation of motor vehicles. Moving oversize and overweight permitting functions to that agency would allow it to apply the same efficiencies to those functions that it has applied to others.

**Inspector general.** The bill would authorize the transportation commission to appoint an inspector general to monitor and evaluate TxDOT functions. The inspector general would go beyond the roles commonly assigned to such positions to identify ways to streamline the environmental review process, evaluate the efficient use of available funding, and review a large catalogue of administrative performance and practices. The inspector, endowed with a wide array of duties and authority, could go far beyond conventional auditing duties to identify inefficiencies in TxDOT functions and make recommendations as appropriate.

OPPONENTS  
SAY:

CSHB 2675 would miss an important opportunity to restructure TxDOT in ways that promoted the long-term interests of the state.

**Texas Transportation Commission.** CSHB 2675 would not change the structure of the Texas Transportation Commission. The Sunset Advisory Commission found a pervasive atmosphere of distrust surrounding TxDOT and recommended decisive action. The Sunset Commission argued that a single commissioner would help restore accountability, trust, and responsiveness to the department. Retaining the five-member commission would not adequately reflect current discontent with TxDOT operations. The state needs significant change in how transportation projects are planned and implemented in the state that the bill would not realize.

The commission should be significantly restructured to include a single appointed or elected transportation commissioner or multiple, elected commissioners. A change of this magnitude would send a strong message to TxDOT and fundamentally alter the commission to make its policymaking functions responsive to the public and its representatives.

The bill also would not clarify current law requiring that one commissioner reside in a rural area. The bill should be amended to restrict the provision only to rural areas in a county under a set population limit.

**TxDOT administration.** Creating a requirement that the CFO at TxDOT be qualified as a CPA could have unintended consequences. Many top-tier CPAs may not be willing to accept the pay range TxDOT is authorized to offer for the CFO position. This could limit the field of qualified candidates to less qualified CPAs. In addition, the CFO typically is responsible for higher-level budgetary activities, which do not necessarily require the very specific accounting procedures that a CPA performs. This very narrow qualification could eliminate otherwise ideal candidates with degrees in accounting, finance, economics, and business management.

**Bids and contracts.** The bill would apply a very specific method of project delivery for transportation contracts, design-build contracts, to standard contracts that should be procured with standard processes. Expanding the use of design-build contracting would not make sense because only a fraction of highway projects are suited for procurement through specialized forms of contract. This expansion would have few

benefits and could present a number of risks based on how these contracts were structured.

The bill should not eliminate the current requirement that notices of bids be posted in a newspaper. Newspapers remain the best means of circulating information about bids for minimal expense. While it could be advantageous to expand circulation by including online notices, there is no reason to jettison established, consistent, and proven methods offered by newspaper classifieds. Newspaper postings provide a reliable, predictable forum that may be absent online.

Further, the bill would grant the commission total discretion in determining the most effective method for providing notice without setting minimal standards for sufficient notice. It should be amended to provide specific minimum standards for posting bid notices, such as requiring TxDOT to provide ample notice online.

**Oversize and overweight vehicles.** Moving permitting of oversize and overweight vehicles to TxDMV from TxDOT could reduce the efficiency of permit processing. Under the bill, TxDOT still would be responsible for determining routes for oversize and overweight vehicles, which is a necessary part of the permitting process. Moving these functions could forfeit an economy of location by requiring TxDMV to transfer a request for a highway route for specialized vehicles to TxDOT and then await a response from that department in order to process the permit. This added degree of separation in communication could potentially negate any added efficiency of processing that would be gained by transferring the functions to TxDMV.

**Inspector general.** While the bill would make a positive change by adding an inspector general to the agency, it simultaneously would negate much of the real benefit of this by requiring that the inspector report to the transportation commission. An inspector could not effectively perform key duties while being required to report to the very institution the inspector was tasked to monitor. The bill should be amended to create a framework for the inspector general that guarantees independence in monitoring duties.

**NOTES:**

The introduced version of HB 2675 would have restructured the Texas Transportation Commission by providing for a single commissioner appointed by the governor, which the committee substitute did not retain.

The committee substitute added provisions establishing an inspector general in TxDOT, prohibiting TxDOT from spending money to hire a lobbyist, and transferring oversize and overweight vehicle permitting to TxDMV.

The substitute also includes provisions from related bills:

- HB 1195 by McClendon would require TxDOT to hire a CFO to oversee financial affairs, among other things;
- HB 2448 by Harper-Brown would create positions of inspectors general at TxDOT and other agencies; and
- HB 1363 by McClendon would transfer permitting for oversize and overweight vehicles to TxDMV from TxDOT.

The companion bill, SB 1420 by Hinojosa, passed the Senate by 31-0 on April 18 and was reported favorably, as substituted, by the House Transportation Committee on April 27, making it eligible to be considered in lieu of HB 2675. The committee substitute for SB 1420 is identical to CSHB 2675.