

BILL ANALYSIS

Senate Research Center
78S10154 JTS-F

S.B. 21
By: Ogden
Infrastructure Development and Security
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DIGEST AND PURPOSE

As proposed, S.B. 21 clarifies legislation contained in H.B. 3184 and H.B. 3588, 78th Regular Session, in three areas:

First, S.B. 21 amends the funding provisions contained in H.B. 3588 to reflect legislative intentions that certain Department of Public Safety fees go to general revenue (GR) for the 2004-2005 biennium to stabilize the budget and go to the Texas Mobility Fund thereafter.

Second, S.B. 21 clarifies that specified portions of driver responsibility fines and additional court costs go to the Texas Mobility Fund for the 2004-2005 biennium and the GR thereafter.

Third, S.B. 21 amends Chapter 361 of the Transportation Code, referencing the Texas Turnpike Authority. The conference committee report for H.B. 3184 inadvertently used the House version of the bill rather than the agreed-upon Senate version. The Senate version was passed in H.B. 3588, resulting in two different versions of the bill in law. S.B. 21 removes any conflicts mistakenly added by H.B. 3184.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 20 (Section 361.306, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Reenacts Section 361.136, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.136. SEVERANCE OF REAL PROPERTY. (a) Requires the Texas Department of Transportation (TxDOT), if a turnpike project severs an owner's real property, to make certain payments.

(b) Authorizes TxDOT to negotiate for and purchase the severed real property or either part of the severed real property if TxDOT and the owner agree on terms for the purchase. Authorizes TxDOT, instead of a single fixed payment for the real property, to agree to a payment to the owner in the form of an intangible legal right to receive a percentage of identified revenue attributable to the applicable segment of the turnpike project or an exclusive or nonexclusive right to use or operate a segment or part of the turnpike project.

(c) Provides that a right to payment under Subsection (b)(1) is subject to any pledge of the revenue under the term of a trust agreement securing bonds issued for the project.

SECTION 2. Reenacts Section 361.137, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.137. DECLARATION OF TAKING. (a) Authorizes TxDOT to file a declaration of taking with the clerk of the court in which TxDOT files a condemnation petition under Chapter 21 (Eminent Domain), Property Code, or the clerk of the court to which the case is assigned.

(b) Authorizes TxDOT to file the declaration of taking concurrently with or subsequent to the petition but prohibits TxDOT from filing the declaration after the special commissioners have made an award in the condemnation proceeding.

(c) Prohibits TxDOT from filing a declaration of taking before the completion of: all environmental documentation, including a final environmental impact statement or a record of decision, that is required by federal or state law; all public hearings and meetings, including those held in connection with the environmental process and under Sections 201.604 and 203.021, that are required by federal or state law; and all notifications required by Section 203.022.

(d) Requires the declaration to include certain information.

(d-1) Provides that deposit to the registry of the court of an amount equal to the appraised value, as determined by TxDOT, of the property to be condemned must accompany the declaration of taking.

(e) Establishes that the date on which the declaration is filed is the date of taking for the purpose of assessing damages to which a property owner is entitled.

(f) Requires the case, after a declaration of taking is filed, to proceed as any other cases in eminent domain under Chapter 21, Property Code.

SECTION 3. Reenacts Section 361.138(b), Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, to prohibit TxDOT from taking possession sooner than the 91st day after the date of service under Subsection (a), if the condemned property is a homestead or a portion of the homestead as defined by Section 41.002 (Definition of Homestead), Property Code.

SECTION 4. Reenacts Section 361.171, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.171. TURNPIKE REVENUE BONDS. (a) Authorizes the Texas Transportation Commission (TTC) by order to authorize the issuance of turnpike revenue bonds to pay all or part of the cost of a turnpike project. Requires each project to be financed and built by a separate bond issue. Authorizes the proceeds of a bond issue may to used solely for the payment of the project for which the bonds were issued and prohibits it from being divided between or among two or more projects. Provides that each project is a separate undertaking, the cost of which is to be determined separately.

(b) Requires the bonds of each issue, as determined in the order authorizing the issuance, to be dated; bear interest at the rate or rates provided by the order and beginning on the dates provided by the order and as authorized by the law, or bear no interest; mature at the time or times provided by the order, not exceeding 40 years from their date or dates; and be made redeemable before maturity, at the price or prices and under the terms provided by the order.

(c) Authorizes TTC to sell the bonds at public or private sale in the manner and for the price it determines to be in the best interest of TxDOT.

(d) Requires the proceeds of each bond issue to be disbursed in the manner and under the restrictions, if any, TTC provides in the order authorizing the issuance of the bonds or in the trust agreement securing the bonds.

(e) Authorizes additional bonds to be issued in the same manner to pay the costs of a turnpike project, if the proceeds of a bond issue are less than the turnpike project cost. Establishes that unless otherwise provided in the order authorizing the issuance of the bonds or in the trust agreement securing the bonds, the additional bonds are on a parity with and are payable, without preference of priority, from the same fund as the bonds first issued. Authorizes TTC, in addition, to issue bonds for a turnpike project secured by a lien on the revenue of the turnpike project subordinate to the lien on the revenue securing other bonds issued for the turnpike project.

(f) Requires the surplus to be segregated from other TTC money and used only for the purposes specified in the order authorizing the issuance, if the proceeds of a bond issued exceed the cost of the turnpike project for which the bonds were issued.

(g) Authorizes the proceeds of a bond issue, in addition to other permitted uses, to be used to pay cost incurred before the issuance of the bonds, including costs of environmental review, design, planning, acquisition of property, relocation assistance, construction, and operations.

(h) Provides that bonds issued and delivered under this chapter and interest coupons on the bonds are a security under Chapter 8 (Investment Security), Business & Commerce Code.

(i) Provides that the bond issued under this chapter and income from the bonds, including any profits made on the sale or transfer of the bonds, are exempt from taxation in this state.

SECTION 5. Reenacts Section 361.172, Transportation Code, as amended by House Bills 3284 and 3588, Acts of the 78th Legislature, Regular Session, as follows

Sec. 361.172. **APPLICABILITY OF OTHER LAW; CONFLICTS.** Establishes that all laws affecting the issuance of bonds by governmental entities, including Chapters 1201, 1202, 1204, 1207, and 1371, Government Code, apply to bonds issued under this chapter. Provides that to the extent of a conflict between those laws and this chapter, the provisions of this chapter prevail.

SECTION 6. Reenacts Section 361.173(a), Transportation Code, as amended by House Bills 3184 and 3588 Acts of the 78th Legislature, Regular Session, 2003, to provide that the principal of, interest on, and any redemption premium on bonds issued by TTC under this chapter are payable solely from the revenue of the turnpike project for which the bonds were issued, including tolls pledged to pay the bonds and amounts received under a credit agreement relating to the turnpike project for which the bonds are issued.

SECTION 7. Reenacts Section 361.174, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.174. **SOURCES OF PAYMENT OF AND SECURITY FOR TURNPIKE PROJECT BONDS.** Establishes that notwithstanding any other provisions of this chapter, turnpike project bonds may be payable from and secured by payments made under an agreement with a local governmental entity as provided by Subchapter A, Chapter 362, and may state on their faces any pledge of revenue or taxes and any security for the bonds under the agreement.

SECTION 8. Reenacts Section 361.177, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.177. PROVISIONS PROTECTING AND ENFORCING RIGHTS AND REMEDIES OF BONDHOLDERS. Authorizes a trust agreement or order providing for the issuance of bonds to contain certain provisions to protect and enforce the rights and remedies of the bondholders.

SECTION 9. Reenacts Section 361.178, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

Sec. 361.178. FURNISHING OF INDEMNIFYING BONDS OR PLEDGE OF SECURITIES. Provides that a bank or trust company incorporated under the laws of this state and that acts as depository of the proceeds of bonds or of revenue may furnish indemnifying bonds or pledge securities that TxDOT requires.

SECTION 10. Reenacts Section 361.179(a), Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, to authorize TxDOT to take certain actions, including imposing tolls for the use of each turnpike project and the different segments or parts of each project.

SECTION 11. Amends Sections 361.181(a) and (b), Transportation Code, as follows:

(a) Authorizes the Texas Turnpike Authority (authority), rather than TxDOT, notwithstanding Section 361.179 or any other provision of this chapter to the contrary, to pay the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of turnpike revenue bonds for the construction of a proposed turnpike project by using certain methods, including using money received from TxDOT for feasibility studies undertaken at the request of TTC.

(b) Makes a conforming change.

SECTION 12. Amends Section 361.182, Transportation Code, by amending Subsections (a), (b), (d), (f), and (h) and adding Subsection (i), as follows:

(a) Requires the authority, rather than authorizes TxDOT, to maintain the authority feasibility study fund. Makes conforming changes.

(b) Makes a conforming change.

(d) Requires the authority, rather than TTC, to authorize the feasibility study, subject to prior approval of the commission. Deletes text authorizing TTC to delegate this authority to the director.

(f) Makes a conforming change.

(h) Requires the money transferred to TxDOT for the benefit of the authority under Section 8.02, Chapter 1171, Acts of the 75th Legislature, Regular Session, 1997, to remain in the state treasury and prohibits it from being transferred to a private banking institution. Provides that this money is exempt from the application of Section 403.095 (Use of Dedicated Fund), Government Code, and is not subject to reduction or elimination under any other provision of the Government Code.

(i) Authorizes TTC to request that the authority conduct a feasibility study for any proposed turnpike project. Requires the expenses of a study to be paid by TxDOT. Requires TxDOT,

if the turnpike project is constructed, to be reimbursed for money paid to the authority from the proceeds of turnpike revenue bonds issued for, or other proceeds that may be used for, the construction, improvement, extension, expansion, or operation of the project, rather than to be funded in accordance with Subchapter E, Chapter 222.

SECTION 13. Amends Sections 361.184(a), (b), and (c), Transportation Code, as follows,

(a) Makes conforming changes.

(b) Authorizes the authority board of directors (board), rather than TTC, to transfer or direct the authority, rather than TxDOT, to transfer, into the project revolving fund from any permissible force, including money from a surplus fund established for a turnpike project if the remainder of the surplus fund is not less than any minimum amount required by the trust agreement to be retained for that project; money received under Subchapter I or from a transfer of a turnpike project under Subchapter H; money received from the state highway fund; and contributions or assistance from the United States, another state, a political subdivision of this state, the United Mexican States, or a political subdivision of the United Mexican States.

(c) Makes conforming changes.

SECTION 14. Reenacts Section 361.185(a), Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, to provide that all money received under this chapter, whether as proceeds from the sale of bonds or as revenue, is a trust fund to be held and applied as provided by this chapter. Establishes that, notwithstanding any other law, including Section 9, Chapter 1123, Acts of the 75th Legislature, Regular Session, 1997, and without the prior approval of the comptroller, funds held under this chapter shall be held in trust by a banking institution chosen by TxDOT or, at the discretion of TxDOT, in trust in the state treasury outside the general revenue fund.

SECTION 15. Reenacts Section 361.189, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.189. USE OF SURPLUS REVENUE. Authorizes TTC by order to authorize the use of surplus revenue of a turnpike project to pay the costs of another turnpike project within the region. Provides that TTC may in the order prescribe terms for the use of the revenue, including the pledge of the revenue, but prohibits it from taking an action under this section that violates, impairs, or is inconsistent with a bond order, trust agreement, or indenture governing the use of the surplus revenue.

SECTION 16. Reenacts Section 361.302, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.302. COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Authorizes TxDOT, subject to Section 361.3021, to enter into a comprehensive development agreement with a private entity to construct, maintain, repair, operate, extend, or expand a turnpike project.

(b) Redefines “comprehensive development agreement.”

(c) Authorizes TxDOT to negotiate provisions relating to the professional and consulting services provided in connection with a comprehensive development agreement.

(d) Provides that money disbursed by TxDOT under a comprehensive development

agreement is not included in the amount: required to be spent in a state fiscal biennium for engineering and design contracts under Section 223.041; or appropriated in Strategy A.1.1. Plan/Design/Manage of the General Appropriations Act for that biennium for the purpose of making the computation under Section 223.041.

(e) Establishes that the authority to enter into comprehensive development agreements provided by this section expires on August 31, 2011.

SECTION 17. Reenacts Section 361.3021, Transportation Code, as added by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.3021. **LIMITATION ON DEPARTMENT FINANCIAL PARTICIPATION.** Prohibits the amount of money disbursed by TxDOT from the state highway fund and the Texas mobility fund during a federal fiscal year to pay the costs under comprehensive development agreements from exceeding 40 percent of the obligation authority under the federal-aid highway program that is distributed to this state for the fiscal year.

SECTION 18. Reenacts Section 361.303(a), Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, to provide that a turnpike project that is the subject of a comprehensive development agreement with a private entity, including the facilities acquired or constructed on the project, is public property and belongs to TxDOT.

SECTION 19. Reenacts Section 361.305, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, and amends it, as follows:

Sec. 361.305. **TERMS OF PRIVATE PARTICIPATION.** (a) Requires TxDOT to negotiate the terms of private participation in a turnpike project, including methods to determine the applicable cost, profit, and project distribution between the private equity investors and TxDOT; reasonable methods to determine and classify toll rates; acceptable safety and policing standards; and other applicable professional, consulting, construction, operation, and maintenance standards, expenses, and costs.

(b) Requires a comprehensive development agreement entered into under Section 361.302 to include a provision authorizing TxDOT to purchase, under terms and conditions agreed to by the parties, the interest of a private equity investor in a turnpike agreement.

(c) Authorizes TxDOT to enter into a comprehensive development agreement under Section 361.302 with a private equity investor only if the project is identified in TxDOT's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan.

SECTION 20. Reenacts Section 361.306, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.306. **RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATING PROCESS.** (a) Requires TTC to adopt rules, procedures, and guidelines governing selection and negotiations to promote fairness, obtain private participants in turnpike projects, and promote confidence among those participants. Requires the rules to contain criteria relating to the qualifications of the participants and the award of the contracts.

(b) Requires TxDOT to have up-to-date procedures for participation in negotiations on turnpike projects.

(c) Provides that TxDOT has exclusive judgment to determine the terms of an agreement.

(d) Requires TxDOT to include the attorney general or the attorney general's designated representative in a negotiation with a private participant.

SECTION 21. Reenacts Section 361.307, Transportation Code, as amended by House Bills 3184 and 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 361.307. AGREEMENTS WITH PRIVATE ENTITIES AND OTHER GOVERNMENTAL AGENCIES. (a) Authorizes TxDOT and a private entity jointly to enter into an agreement with another governmental agency or entity, including a federal agency, an agency of this or another state, including the United Mexican States or a state of the United Mexican States, or a political subdivision, to independently or jointly provide services, to study the feasibility of a turnpike project, or to finance, construct, operate, and maintain a turnpike project.

(b) Prohibits TxDOT from entering into an agreement with the United Mexican States or a state of the United Mexican States without the approval of the governor.

SECTION 22. Repealer: Section 361.3025, Transportation Code.

SECTION 23. Amends Section 20.02, H.B. 3588, Acts of the 78th Legislature, Regular Session, 2003, as follows:

(a) Establishes that, notwithstanding Sections 780.002(b) and (c), rather than 780.002(a) and (b), Health and Safety Code, as added by this Act, of the money allocated to the undedicated portion of the general revenue fund by Section 780.002(b), Health and Safety Code, rather than 780.002(a), Health and Safety Code, as added by this Act, other than money that may only be appropriated to the Department of Public Safety, in fiscal years 2004 and 2005 the comptroller shall deposit that money to the credit of the Texas mobility fund instead of to the credit of the general revenue fund, rather than debt service account, which is subject to the provisions of Subsection (d). Deletes text requiring the comptroller to establish the Texas mobility fund debt service account as a dedicated account within the general revenue fund.

(b) Redesignated from Subsection (c). Provides that notwithstanding Section 542.4031(g)(1), Transportation Code, as added by this Act, of the money allocated to the undedicated portion of the general revenue fund in Section 542.4031(g)(1), Transportation Code, in fiscal years 2004 and 2005 the comptroller shall deposit that money to the credit of the Texas mobility fund instead of to the credit of the general revenue fund, rather than the Texas mobility fund debt service account, which is subject to the provisions of Subsection (d).

(c) Deletes Subsection (d). Redesignates Subsection (e) as (c). Provides that, notwithstanding Sections 521.058, 521.313(c), 521.3466(e), 521.427, 522.029(i), 524.051(c), 548.508, 644.153(i), and 724.046(c), Transportation Code, as added by this Act, to the extent that those sections allocate funds to the Texas mobility fund, in fiscal years 2004 and 2005, rather than solely fiscal year 2004, the comptroller shall deposit those funds to the credit of the general revenue fund instead of to the credit of the Texas mobility fund.

SECTION 24. Repealer: Section 521.427(c), Transportation Code, as added by Section 11.04, H.B. 3588, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 25. Effective date: upon passage or on the 91st day after the adjournment.