

Texas Department of Transportation

Staff Contact: Jennifer Jones

S.B. 1420 Hinojosa (Harper-Brown)

Summary

The Texas Department of Transportation (TxDOT) began in 1917 as the State Highway Department. Since that time, the Department has evolved from its original responsibilities of granting financial aid and directing county road construction programs, to a much broader mission of delivering a 21st century transportation system to address the State's growing transportation needs. To fulfill its mission of providing safe and efficient movement of people and goods, and enhancing economic viability and improving the quality of life for people that travel in Texas, TxDOT:

- plans, designs, constructs, and maintains the State's transportation system, including roads, bridges, public transportation, railroads, airports, the Gulf Intracoastal Waterway, and ferry systems;
- develops and operates a system of toll roads using public- and private-sector partners and financing options; and
- manages operations on the state highway system, including improving traffic safety, providing rest areas and travel information, and regulating outdoor advertising.

Senate Bill 1420 continues TxDOT for four years to keep the agency under closer legislative scrutiny and includes several changes to improve the transparency, accountability, and reliability of the Department. The Legislature adopted most of the Sunset Commission's recommendations and added several other statutory modifications to the bill. A discussion of the major provisions in S.B. 1420 follows.

Sunset Provisions

1. Maintain TxDOT's current Commission structure, but continue TxDOT for only four years to ensure needed changes have occurred.

The Legislature did not adopt the Sunset provision to replace the Transportation Commission with an appointed Commissioner, retaining the current five-member Commission, but defining the rural member as being a registered voter in a county with a population of less than 150,000. The bill also prohibits a member of the Commission from accepting a campaign contribution if running for an elected office, and considers a member to have resigned from the Commission if such a contribution is accepted.

The bill continues TxDOT for four years to provide increased oversight to ensure needed changes have occurred to re-establish the Legislature's and the public's trust and confidence in the Department. The Legislature added a provision to require TxDOT, in preparation for its Sunset review, to submit to the Sunset Commission a complete and detailed financial audit conducted by an independent certified public accountant.

Finally, the bill updates standard Sunset across-the-board requirements to make current eligibility provisions for the Commission members apply at the time of taking office instead of at the time of appointment, and applies the standard Sunset across-the-board requirement regarding alternative dispute resolution.

2. Improve TxDOT's internal controls to ensure transparency and accountability necessary to maintain public trust and confidence.

The Legislature modified the Sunset provision regarding the Chief Financial Officer to specify the Officer's duties include ensuring that the Department's financial activities are conducted in a transparent and reliable manner, and certifying each month that construction and maintenance contracts will not create a state liability that exceeds the Department's most recent cash flow forecast. The Legislature also added two provisions to further strengthen TxDOT's internal controls by requiring staff to deliver the Department's legislative appropriations request to the Commission at least 30 days before submitting it to the Legislative Budget Board, and requiring TxDOT's General Counsel to be licensed as an attorney in Texas.

Senate Bill 1420 also requires TxDOT to evaluate the performance of its staff to determine whether employees should retain their positions within the Department. The bill requires the annual performance evaluation to include an evaluation of an employee's professionalism, diligence, and responsiveness to directives and requests from the Commission and the Legislature. The Legislature modified the Sunset provision to require the Commission to consider terminating employees at or above the level of district engineer or division or office director whose performance is deemed unsatisfactory. The Department shall consider terminating employees below the level of district engineer. The bill also requires the Department to provide a report to the Commission regarding employees with unsatisfactory performance who were not terminated.

Senate Bill 1420 requires all TxDOT employees to annually affirm their adherence to the Department's ethics policy and requires the Department to establish and operate a telephone hotline for reporting, anonymously or not, alleged fraud, waste, or abuse or an alleged violation of the ethics policy. The Legislature modified this Sunset provision to require the Commission to establish a compliance program, including a compliance office to oversee the program and operation of the hotline. The bill specifies the responsibilities of the compliance office, including acting to prevent, detect, and investigate serious breaches of departmental policy; fraud, waste, and abuse of office; and criminal activity or allegations of wrongdoing within the Department.

3. Establish an integrated and understandable transportation planning and project development process within TxDOT.

Senate Bill 1420 makes several key statutory changes to better integrate and improve the coordination and transparency of the State's transportation planning processes, as described below.

Long-Range Planning in the Statewide Transportation Plan. The bill adds to existing statutory provisions relating to the Statewide Transportation Plan to integrate all of TxDOT's long-range planning efforts into this single, 24-year plan. The bill requires the Statewide Transportation Plan to contain specific, long-term transportation goals for the state and measurable targets for each goal, and to identify priority corridors, projects, or areas of the state that are of particular concern to the Department in meeting these goals. TxDOT must develop a participation plan for obtaining input from state and local entities and the public on the plan's goals and priorities, annually report on progress

towards meeting these goals, including making this information available on its website, and update the plan every four years or more frequently as necessary. The bill requires both TxDOT and Metropolitan Planning Organizations (MPOs) to work together to develop mutually acceptable funding assumptions to guide long-term transportation planning.

Mid-Range Project Programming in the Unified Transportation Program. Senate Bill 1420 establishes the Unified Transportation Program (UTP) covering a period of 10 years in statute to guide development and authorize construction of transportation projects. The program must list all projects TxDOT intends to develop or begin construction of during the program period. The Commission, by rule and in collaboration with local transportation entities, must establish criteria for selecting projects; definitions for program funding categories including safety, maintenance, and mobility; and definitions for each phase of a major transportation project. The Commission must establish criteria for designating major transportation projects and develop benchmarks for evaluating their progress and readiness to be implemented. The Commission, by rule, must also establish categories in the UTP, assign each project to a category, and designate the priority ranking of each project within each category, with the highest priority projects being major transportation projects. TxDOT must annually update the UTP, including a forecast of all funds the Department expects to receive to help guide planning. In addition, TxDOT must prepare and publish a 20-year cash flow forecast by September 1 of each year. Finally, the bill requires TxDOT to publish the entire UTP and summary documents in appropriate media and on the agency's website.

The Legislature modified the Sunset provision to include specific requirements for funding categories and funding allocation formulas within the UTP. Senate Bill 1420 requires the Commission, by rule, to specify formulas for allocating funds to TxDOT districts and MPOs for seven funding categories specified in statute, including preventive maintenance and rehabilitation, mobility, and congestion mitigation; and requires the Commission to update the formulas at least every four years. The bill requires the Commission to determine the allocation of funds for all other funding categories, subject to applicable state and federal law. The bill requires TxDOT to allocate funds to its districts based on these formulas and specifies the Department may not exceed the cash flow forecast.

Short-Range District Work Programs. The bill requires each TxDOT district to develop a consistently formatted work program based on the UTP, containing all of the projects the district proposes to implement during a four-year period. The work program must contain information regarding the progress of major transportation projects according to the benchmarks and timelines established in the UTP, and a summary of the progress on other district projects. The bill also requires TxDOT to publish the work programs in appropriate media and on its website, and to use the work programs to monitor and evaluate the performance of districts and district employees.

Online Reporting Systems. Senate Bill 1420 requires the Department to establish an online project information reporting system and a transportation expenditure reporting system. The Legislature modified the Sunset provision to require specific types of project, funding, and expenditure information through the online systems.

The information reporting system must contain information about all of the Department's transportation plans and programs, and each Department project, including the status, source of funding, and timelines for project completion. The bill requires this system to also contain information about the Department's funds, including the amount and general type of each expenditure as described in the Comptroller's statewide accounting system. In developing this system, TxDOT must collaborate with the Legislature, local transportation entities, and the public, and make statistical information

available on the Department's website. The transportation expenditure reporting system must contain information regarding the priorities of expenditures for identified transportation projects, including the effectiveness of the Department's expenditures on transportation projects, pavement and bridge conditions, travel congestion, and traffic fatalities. This information must be made available in a format that allows for electronic searches by specific county, highway, or type of road. The Legislature also added a provision requiring TxDOT to retain and archive appropriate documentation supporting the information provided in the reporting systems, according to records retention rules promulgated by the Texas State Library and Archives Commission.

Statewide Transportation Report. Senate Bill 1420 requires the Department to annually evaluate and publish a report regarding the status of each transportation goal for the State, including the progress of long-term goals identified by the Statewide Transportation Plan, the status of major priority projects, a summary of benchmarks completed, and information about the accuracy of previous Department financial forecasts. The bill requires the Department to disaggregate this information by TxDOT district and provide this information to each member of the Legislature and political subdivisions, and make the information available on its website. The bill also allows the Department to combine required reports to avoid duplication.

4. Improve TxDOT's public involvement efforts to better ensure consistent, unbiased, and meaningful public involvement.

Senate Bill 1420 requires TxDOT to develop and implement a policy that guides and encourages public involvement with the Department. The bill requires the policy to include specific elements, such as using techniques that target different groups and individuals, making efforts to clearly tie public involvement to the decisions the Department makes, and applying the policy to all public input with the Department. The bill also requires TxDOT to document the number of positive, negative, or neutral comments received regarding all environmental impact statements and provide this information to the Commission and the public. The Legislature added language to require a person who makes or submits a public comment to disclose in writing on a witness card whether the person does business with the Department, may benefit monetarily from a project, or is a TxDOT employee.

Senate Bill 1420 requires TxDOT to develop policies and procedures to formally document and effectively manage the complaints it receives agencywide. The bill requires TxDOT to adopt rules that clearly define the agency's complaint process from receipt to disposition, for each of its divisions and districts. The bill requires TxDOT to develop a standard form for the public to make a complaint to the Department, make the form available on its website, and allow for electronic submission of complaints. The Department must compile detailed statistics and analyze complaint information trends, including the nature of complaints and their disposition, the number of similar complaints filed, and the length of time to resolve complaints. The Department must also report the information, statistics, and analysis monthly to administration and quarterly to the Commission. The bill also updates the standard Sunset across-the-board language requiring the Department to maintain information on all complaints and notify the parties about policies for and status of complaints.

Senate Bill 1420 prohibits Commission members and TxDOT employees from using money under the agency's control or engaging in activities to attempt to influence the passage or defeat of legislation, and specifies that such activity is grounds for dismissal of an employee. The Legislature modified this provision to prohibit TxDOT from spending appropriated funds for the purpose of selecting, hiring, or retaining a registered lobbyist, unless the expenditure is allowed under state law. The bill also

repeals the statutory provision for the Commission to report to the Legislature concerning potential statutory changes to improve the Department's operations. However, the Legislature modified the Sunset provision to allow the Commission and Department employees to provide public information responsive to a request, and to communicate with the federal government in pursuit of federal appropriations or programs.

5. Remove unnecessary restrictions on TxDOT's contracting practices.

Senate Bill 1420 continues the authority of TxDOT to enter into design-build contracts for tolled highway projects, and authorizes the use of design-build contracts for nontolled highway projects. The bill defines a design-build contract as an agreement with a private entity for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project. The Legislature modified the Sunset provision to specify the Department may only enter into a design-build contract for a highway project costing \$50 million or more, and may only enter into three design-build contracts each fiscal year until August 31, 2015, when the limitation on the number of projects expires. The bill also specifically prohibits a private entity from having a leasehold interest in the highway project or the right to operate or retain revenue from the operation of a transportation project. The Legislature added language to ensure the private entities can meet the requirements of the project and that they will not change their contract team except under certain circumstances. The Legislature further modified the provision by setting out the requirements and procedures TxDOT and a design-build contractor must follow in using the design-build method.

The bill removes a statutory provision requiring TxDOT to publish, in local newspapers, notice of the time and place at which bids on a construction and maintenance contract will be opened and awarded and instead requires the Commission, by rule, to determine the most effective method for providing this notice.

6. Improve regulation of oversize and overweight vehicles.

Instead of requiring TxDOT to review ways of improving the regulation of oversize and overweight vehicles, the Legislature modified the Sunset provision to transfer the regulation of oversize and overweight vehicles from TxDOT to the Department of Motor Vehicles (DMV) by January 1, 2012. Senate Bill 1420 provides for TxDOT to retain responsibility for certain oversize and overweight matters, including setting maximum vehicle and load weights; the certification of vertical clearance of structures such as bridges or underpasses for purposes of operating vehicles; erecting signs regarding weight and load limits; and conducting engineering and traffic studies related to setting maximum width of a vehicle.

7. Standardize the Department's regulation of outdoor advertising on federal-aid and rural roads.

Senate Bill 1420 requires an outdoor advertising license with standard enforcement provisions for operators on rural roads that matches the requirements to operate on federal-aid roads. The bill clarifies the Department's enforcement authority to deny a license renewal and subjects licenses for outdoor advertisers on rural roads to the same enforcement authority as currently governs the federal-aid road license. Additionally, the bill clarifies the existing administrative penalty authority as an enforcement tool for regulating outdoor advertising on rural roads and extends this authority to violations of

regulations on federal-aid roads. The bill also removes the standard for imposing an administrative penalty for an *intentional* violation on a rural road, and changes the standard for judicial review from de novo to substantial evidence.

The bill standardizes the appeals process by eliminating the Board of Variance for hearing appeals of rural road sign permit denials. TxDOT will use the same review process for rural road permit appeals as currently exists for federal-aid roads and the agency head will have authority to grant variances from the rural road sign standards.

Senate Bill 1420 requires TxDOT to deposit all outdoor advertising fees into the State Highway Fund. The fees collected for signs along federal-aid roads will be deposited into the State Highway Fund, the same as fees collected for signs along rural roads, instead of the Texas Highway Beautification Account in General Revenue.

The bill also requires the Department, by rule, to establish a process and procedures for tracking and reporting outdoor advertising complaints, and providing information to the public about how to file a complaint. The Legislature modified the Sunset provision requiring the Department to provide a simple form for filing complaints, by removing the requirement that the form be adopted in rule.

8. Direct TxDOT to actively manage Dynamic Message Signs to ease traffic flows.

Senate Bill 1420 requires the Department, in cooperation with local governments, to actively manage Dynamic Message Signs on highways to help mitigate traffic congestion by providing current information including traffic incidents, weather conditions, road construction, and alternative routes when applicable.

Provisions Added by the Legislature

9. Authorize comprehensive development agreements for select transportation projects.

The bill authorizes TxDOT to enter into comprehensive development agreements (CDAs) only for all or part of the following projects, with this authority expiring on August 31, 2015 for all of the projects except the State Highway 99 (Grand Parkway) project:

- the State Highway 99 (Grand Parkway) project;
- the Interstate Highway 35E managed lanes project in Dallas and Denton Counties from Interstate Highway 635 to U.S. Highway 380;
- the North Tarrant Express project in Tarrant and Dallas Counties, including on State Highway 183 from State Highway 121 to State Highway 161 (Segment 2E); on Interstate Highway 35W from Interstate Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C); and on Interstate Highway 820 from State Highway 183 North to south of Randol Mill Road (Segment 4);

- the State Highway 183 managed lanes project in Dallas County from State Highway 161 to Interstate Highway 35E;
- the State Highway 249 project in Harris and Montgomery Counties from Spring Cypress Road to Farm-to-Market Road 1774;
- the State Highway 288 project in Brazoria County and Harris County; and
- the U.S. Highway 290 Hempstead managed lanes project in Harris County from Interstate Highway 610 to State Highway 99.

The bill also authorizes TxDOT or certain Regional Mobility Authorities (RMAs) to enter into a CDA relating to improvements to or construction of the following projects, with this authority expiring on August 31, 2015:

- the Loop 1 (MoPac Improvement) project from Farm-to-Market Road 734 to Cesar Chavez Street;
- the U.S. 183 (Bergstrom Expressway) project from Springdale Road to Patton Avenue; or
- a project consisting of the construction of the Outer Parkway Project from U.S. Highway 77/83 to Farm-to-Market Road 1847; and the South Padre Island Second Access Causeway Project from State Highway 100 to Park Road 100.

Before entering into a CDA for these projects, the Department or RMA as applicable must obtain the appropriate environmental clearance by August 31, 2013 for any project other than the State Highway 99 (Grand Parkway) project, and present a full financial plan for the project, including costing methodology and cost proposals, to the Commission. The bill also requires the Department or RMA to present a report to the Commission on the status of each CDA project, including status of environmental clearance, explanation of any project delays, and anticipated procurement completion date, by December 1, 2012.

The bill specifies that the CDA for the North Tarrant Express project entered into on June 23, 2009, may provide for negotiating and entering into facility agreements for future phases or segments of the project, and provides the current developer with a right of first negotiation. The bill authorizes TxDOT to forgo the use of any further competitive procurement process for any subsequent facility agreements related to the North Tarrant Express project. Finally, the bill specifies these facility agreements must terminate on or before June 22, 2061, and may not be extended or renewed.

10. Authorize Regional Mobility Authorities to enter into certain design-build contracts.

The bill continues the authority of RMAs to enter into design-build contracts, but authorizes the use of these contracts to include the financing of a transportation project. The bill limits an RMA to entering into no more than two design-build contracts in any fiscal year and sets out the requirements and procedures an RMA and design-build contractor must follow in using the design-build method. The bill also specifically prohibits a private entity from having a leasehold interest in the highway project or the right to operate or retain revenue from the operation of the transportation project.

11. Establish procedures to expedite the environmental review process for certain highway projects.

Senate Bill 1420 authorizes a procedure and requirements for expediting the environmental review process for certain transportation projects. The bill allows the Department or a local government sponsor defined as a city, county, regional tollway authority, regional mobility authority, local government corporation, or transportation corporation to prepare an environmental review document for highway projects in TxDOT's approved transportation programs or identified by the Commission as being eligible. Local governments can prepare an environmental review document for a highway project not meeting the above criteria by notifying the Department and submitting a fee set by the Commission to cover the cost of review. The bill also requires the Commission to establish standards for these environmental reviews, including issues to be included, content of documents, procedures, and review deadlines. The bill allows the standards to include a process and criteria for prioritizing environmental review documents if the Department lacks adequate resources to timely process all documents it receives.

The bill also authorizes the Department and a local government sponsor to enter into an agreement that defines the relative roles and responsibilities of the parties in the preparation and review of environmental review documents for a specific project, and authorizes the Federal Highway Administration to be a party to such an agreement in specified instances. The bill also requires the Department to submit to the Commission and Legislature and post on its website reports regarding the status of projects undergoing expedited environmental review procedures.

The bill allows the Department or a county, regional tollway authority, or RMA to enter into an agreement to provide funds to a state or federal agency to expedite the agency's environmental review process. The bill provides that the agreement may specify transportation projects considered priorities for review, must require the agency to complete the review in less time than is customary, and must be available on the website of the entity entering into the agreement. The bill specifies an agreement does not diminish or modify the rights of the public regarding review and comment on transportation projects. The bill also requires the Department, by rule, to establish a process to certify Department district environmental specialists to work on all documents related to state and federal environmental review processes.

12. Clarify funds in regional subaccounts may only be allocated for Department-approved projects.

Senate Bill 1420 specifies the money TxDOT currently holds in a subaccount for the benefit of the region in which a toll project or system is located can only be allocated for projects approved by the Department and specifies the money must not only be allocated, but also distributed at the time the project is approved by the Department.

13. Establish a committee to help determine financial aspects of certain toll projects.

The bill adds a provision determining financial terms for toll projects in which a private entity has a financial interest, and for which certain local dedicated funds and revenues will be used and right of way provided. For such projects, the distribution of financial risk, method of financing, and tolling structure and methodology must be determined by a committee consisting of a representative

of TxDOT; any local toll project entity in the area in which the project is located; the applicable Metropolitan Planning Organization; and each municipality or county that has provided revenue or right-of-way for the project.

14. Allow transfers of real property to governmental entities for public road purposes.

Senate Bill 1420 adds a provision to TxDOT's existing authority to transfer property to a governmental entity to allow the Department to waive payment for highway right-of-way no longer needed for a state highway purpose that is transferred to a governmental entity if the entity assumes or has assumed jurisdiction, control, and maintenance of the right-of-way for public road purposes. The bill specifies if the transferred property ceases to be used for public road purposes, it immediately and automatically reverts back to the State.

15. Clarify municipal and county use of transportation reinvestment zone revenues.

Senate Bill 1420 authorizes a county to establish an ad valorem tax increment account for a transportation reinvestment zone, funded through taxes collected on property in the zone. The county may abate all or a portion of the county's property taxes imposed in the zone. The bill also authorizes a municipality or county to issue bonds to pay all or part of the cost of a transportation project within a transportation reinvestment zone, and to use funds in the zone's tax increment account to secure the bonds. For municipalities, any remaining money in the account may be used for other purposes as determined by the municipality.

16. Designate the Edmund P. Kuempel Rest Areas in Guadalupe County.

Senate Bill 1420 designates the eastbound and westbound rest areas on Interstate Highway 10 in Guadalupe County as the Edmund P. Kuempel Rest Areas. TxDOT is not required to design, construct, and erect necessary markers unless a grant or donation of private funds covers the cost.

17. Authorize TxDOT to designate wildfire emergency evacuation routes.

The bill authorizes TxDOT to designate an emergency evacuation route for use in a wildfire emergency in a county with a population of less than 75,000 and with a verifiable history of wildfire. The bill allows TxDOT to establish criteria to determine which areas of a county are subject to a potential wildfire emergency, and requires the criteria to provide for the evacuation of commercial establishments such as motels, hotels, and other businesses with overnight accommodations. The bill also authorizes TxDOT to assist in the improvement of a designated wildfire emergency evacuation route and allows a designated route to include federal or state highways or county roads.

Fiscal Implication Summary

Senate Bill 1420 will not have a significant fiscal impact to the State. However, eliminating the requirement that TxDOT publish notice of bid openings in local newspapers will result in an estimated annual savings of \$1 million to the State Highway Fund. Any savings realized will be reallocated by TxDOT for other transportation planning purposes and to implement other provisions in the bill. In addition, transferring TxDOT's oversize and overweight vehicle programs to DMV will result in the transfer of an estimated 116 employees and approximately \$8 million in funding each year from TxDOT to DMV. Any unobligated and unexpended TxDOT appropriations from the 2010–11 biennium relating to the transferred programs will be re-appropriated to DMV to cover any additional transition costs, and any further costs associated with the transfer will be absorbed within existing resources.