



Expiring Revenue Enhancements: A Highway Funding Solution

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Expiring Revenue Enhancements

The Expiring Revenue Enhancement (ERE) is an alternative financing mechanism designed to responsibly and effectively develop large-scale transportation projects. The ERE marks a profound shift in the transportation policy of the state and is a new financing and development model. The ERE tool is for financing design-build projects that meet several development standards.

ERE will allow for TxDOT to develop, own, operate, finance, and leverage state funds for design-build contracts. Upon finding no other funding source for a project, TxDOT can elect to develop the project using an ERE.

Purpose

EREs will allow for the Texas Department of Transportation (TxDOT) to develop, own, operate, finance, and leverage state funds for design-build contracts. Upon finding no other funding source for a project, TxDOT can elect to develop the project using an ERE.

As proposed to the 84th Legislature, enabling legislation creates a provision within the design-build statutes (not the Comprehensive Development Agreement statutes) that allows for TxDOT to use an ERE to develop and finance a project.

How it works

A revenue enhancement is, as defined by the enabling legislation, other funding sources outside of traditional TxDOT revenue and the Texas Mobility Fund. The bill specifically mentions the use of toll revenue bonds and agreements with other entities including the public and private sector. The bill also includes the ability to create state sales tax increment zones around transportation projects for funding.

The state sales tax zone will capture the incremental increase in state sales tax on a mile on either side of the center line of the project (total zone cannot be more than two miles wide). One hundred percent of the incremental increase in state sales tax will be applied to fund the project including retire debts and obligations. Instead of using city sales tax (1%) or property tax in a TRZ, State Sales Tax Zones taxes the incremental increase of state sales tax (6.25%) over a baseline year to fund the project.

Any and all revenue generated from a project developed through an ERE is dedicated and the funds are restricted (by being owned by TxDOT) to the following uses:

- The cost of the development and construction of the project (engineering, environmental, right-of-way, municipal utility relocation, and construction costs)
- Payments on any debt for the project that financed the development and construction of said project
- Operation of toll collections for the project

ERE has a provision that would cause the authority to use a revenue enhancement (i.e., tolls, user fees, or other revenue mechanisms) to expire the sooner of:

- The date that all debts and obligations for the project are retired
- The 35th anniversary of the date the project opens for revenue service (i.e. begins collecting tolls)
- This provision is the first within the state and is a historic shift in the direction of transportation policy since the inception of public-private partnerships (PPP).

TxDOT may only use this tool if:

- The project includes additional main lane capacity (from eight lanes to ten lanes of free, non-tolled main lanes)
- The project includes a minimum of two frontage roads on each side of the project
- The department assumes the responsibility for collecting the tolls on the project (a cost savings for the project, reducing the need for revenue enhancements)
- The department assumes the costs of acquiring the right-of-way and municipal utility relocation
- The department may not refinance debts and obligations to extend the term

ERE also contains a provision that would necessitate that all agreements for a project developed through an ERE must have early payback provisions for debts and obligations. If the Legislature decided to retire the debts and obligations through appropriating funds to an ERE project, this provision would insure a possible transition.

Facts

Points of Interest:

- ERE will allow the IH-635 East project to be developed faster and address the substantial needs of the corridor.
- By the year 2035, there will be nearly 300,000 vehicles a day using IH-635 East; recent demographic projections for the year 2040 demonstrate that the DFW Metroplex's population will far exceed that of previous projects – growing to a population of 14 million
- Given the climate of the 84th Legislature, a change in the policy for the development of large congestion mitigation projects has come – and the ERE is a mechanism to have these projects developed.
- The ERE will mark a shift in the State's policy on toll roads, managed lanes, and transportation financing by no longer encouraging system financing and a perpetual revenue stream
- The project would be TxDOT owned – no private concessionaire; any and all revenues generated are owned by TxDOT and are used to fund and finance the project and its debts and obligations.
- The ERE language includes the necessity for TxDOT to add additional free capacity (a lane in each direction) in order to add managed lanes to the corridor

An ERE is a new funding methodology that ...

- is for design-build projects.
- is owned, operated, and developed by TxDOT.
- uses both traditional (gas tax, TMF) and non-traditional revenue sources (managed lanes, state sales tax increment financing, etc.) to develop the project.
- is used as a last resort, if the traditional revenue streams are not sufficient to develop the project.

- can use toll revenue bonds (with a mandatory early pay-back provision) that cannot be refinanced or the term extended.
- can only use non-traditional revenue enhancements to leverage the project up to fifty (50) percent.
- will create additional capacity to the main, non-tolled lanes
- will create continuous frontage roads throughout the corridor (a minimum of two in each direction)

An ERE is not...

- a Comprehensive Development Agreement.
- a means to create a public-private partnership with an international concessionaire (i.e., Cintra).
- a tool to further the North Texas Region's managed lane system.
- a perpetual revenue-generating managed lane.
- a revenue maximization alternative (as was LBJ Express).

Legislation

ERE needs enabling legislation to be authorized for a project. In the 84th Texas Legislative Session, Sen. Bob Hall and Rep. Cindy Burkett both authored bills that would have enabled ERE for the I-635 East project. However, both bills stalled in committee and were never brought to a full vote of the legislature due to concerns regarding appropriations.¹

¹ HB 3556 (84R) Burkett; SB 1045 (84R) Hall