

VIDEO & TRANSCRIPT OF HOUSE GOVERNMENT OPERATIONS COMMITTEE - HB0321

March 6, 2023 | 1:30 p.m.

Chairman Ragan ([00:01](#)):

Next on our agenda is house Bill. Pardon me? 3 21 Motion. We have a motion and a second. Chairman, Howell, you're recognized on house Bill 3 21. We have a traveling amendment on that. I'm showing, wait a minute, let's get the right one here. 44 41. Is that correct, sir?

Rep. Howell ([00:23](#)):

That's what I have, yes. Okay.

Chairman Ragan ([00:24](#)):

Thank you Mr. Chairman. Members, no action is required on that. You are cleared for an explanation, sir.

Rep. Howell ([00:30](#)):

Thank you Mr. Chairman Committee. This bill before you is the Administration's Transportation Modernization Act. It is a road funding bill which expands TDOT's ability to use different methods to build a project, pardon me while I put on my glasses so I can see what I'm saying. It also gives TDOT the authority to examine the ability to enter into public-private partnerships that would address the most congested and unsafe areas. The urban areas in Tennessee. Historically, these are the four major cities, Nashville, Chattanooga, Memphis and Knoxville. You'll find that detailed on pages 16 and 23 in this bill sections 18 and 19. The bill also expands from five to 28 the number of alternative build contracts that TDOT can enter into in a calendar year. Alternative builds can include cmgc, construction manager, general contractor design build, progressive design build. These type of alternative builds are traditionally used on projects with a very high level of technical complexity and risk management.

([01:49](#)):

An example of that might be I four 40, which was completed not too long ago here in Nashville. That was an alternative bill that was completed on budget and weeks ahead of schedule because of the particular alternative bill that was used. Tdot however, will continue to use traditional bill methods as it has for several decades. These traditionally are bills that do not require that high level of technical expertise and complexity and risk management. And Ms. Chairman, the reason this bill is in front of you in section two G, page four, the department it says may establish agency policy or the department may promulgate rules in accordance with the Uniform Administrative Procedures Act. So I'm here today to ask for a positive recommendation and answer any questions that the committee may have.

Chairman Ragan ([02:43](#)):

Thank you, chairman Clemens, you recognized.

Rep. Clemmons ([02:47](#)):

Thank you Mr. Chairman. And I have a few clarifying questions here, approximately about 12 to 15 of 'em and this might save us some time on the house floor if I'm allowed to ask them without getting out of bounds.

Chairman Ragan ([03:01](#)):

I'll recognize you for your first five, then we'll just go from there. How's that?

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Rep. Clemmons ([03:06](#)):

Okay. Well I think we need answers that haven't been answered thus far. And so I would ask permission to ask all these questions. They're not aggressive in nature. I will assure you, Ms. Chairman

Chairman Ragan ([03:21](#)):

Proceed.

Rep. Clemmons ([03:22](#)):

Okay, thank you. And Ms. Chairman, thank you. On section two on page three, there's a provision in there about the department awarding a stipulating fee a stipulated fee to a design build firm that submits a proposal for a project but is not actually awarded the design bill contract. Why would we pay a fee to someone who's not awarded the contract?

Chairman Ragan ([03:44](#)):

You recognize, sir?

Rep. Howell ([03:45](#)):

Thank you Mr. Chairman. Stipulating fee as I understand it and we have people in the room from TDOT that can probably answer that if we need to go out of session, Mr. Chairman, but as I understand it, there could be in a particular design bill that may be preliminary engineering word preliminary design work that may require an upfront fee and that is the reason this is in the bill.

Chairman Ragan ([04:11](#)):

Thank you Chairman Clemens would your questions be better answered by some of the experts as opposed to the sponsor?

Rep. Clemmons ([04:18](#)):

I will leave that to the discretion of the sponsor. I was assured an hour ago by the department that the sponsor was well versed in this legislation. So I defer to him as to whether or not he wants to answer these questions or not. They are kind of detail oriented, so

Rep. Howell ([04:34](#)):

If I get stuck, I'll ask for

Chairman Ragan ([04:37](#)):

Help. All right, sir do you need to repeat your question?

Rep. Clemmons ([04:40](#)):

I haven't asked my second question. Go for it. Thank you. On in section 10 on page seven of the amendment, the Mexico bill, why are we reducing the selection committee from eight people to five when we're adding three members of the department to make these decisions who'll the two non department members, why are we reducing that selection committee

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Rep. Howell ([05:00](#)):

Selection committee

Chairman Ragan ([05:01](#)):

You recognize sir?

Rep. Howell ([05:03](#)):

Thank you Mr. Chairman. The selection committee is something that has been in place for a long, long time. It just streamlines the process and is something that I believe the committee itself was put in place with the advice and consent and not consent, but input from the road builders. And I've always heard it all my life that a camel was a horse put together by a committee. Sometimes you can streamline a committee and get a better result and there was, I personally agree with reducing the committee. It's an odd number which is good. So you don't have a tie vote and I think the selection committee, reducing that number is a good thing

Chairman Ragan ([05:50](#)):

You recognize for follow up.

Rep. Clemmons ([05:52](#)):

Thank you Mr. Chairman. And I don't necessarily disagree with you on point, I just, there's a lot of provisions in here that give you unilateral authority and discretion to the department or the commissioner himself. And so that's the reason I ask that question. Now with section 15 on page 12 we begin to discuss the transportation modernization fund and that is distributed evenly across four regions of Tennessee. Why is that money not allocated on a pro rata basis or according to the actual populations in traffic on the roadways across all four regions you recognize, sir?

Rep. Howell ([06:26](#)):

Thank you Mr. Chairman. I would say to you that is a baseline. It does say in the bill that it would be divided equally, but that is a baseline. And I can assure you that the major areas such as Nashville and Davidson County, which I believe you represent part of that would receive much more than the 750 million because that's where the congestion is. And I believe I can say with a great amount of confidence that when this bill is passed and the act is implemented, that probably the very first section they would look at would be I 24 between Murfreesboro and Nashville and then from there from Nashville up to Clarksville because these are highly congested, very unsafe areas. And I believe that those projects, because of the 700 and or 300 billion that is in the transportation equity fund, will be able to leverage some of those funds to build about a one or 2 billion project for a very little maybe 20% input on the state's part.

([07:36](#)):

So we end up with a one to 2 billion project built by investment rather than the taxpayers of Tennessee. So I think I can say with a great amount of certainty that each one of these districts, each one of these regions will see the baseline and probably much, much more than that. By the time all of the construction that's needed is done, we have about 26 billion worth of infrastructure that needs to be addressed according to the taser study. So again, I say this is a baseline, but I believe you'll find it's much, much more than that one. It's implemented.

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Rep. Clemmons ([08:15](#)):

You recognize for follow up. Thank you Mr. Chairman, I appreciate it. And there in the next section of b2, it gives the commissioner unilateral authority to distribute 300 additional million dollars at his discretion. What are the criteria for the commissioner with that authority of \$300 million? You're recognized chairman.

Rep. Howell ([08:36](#)):

Thank you Mr. Chairman. The 300 million is going into a fund that we've had for many, many years. That's the state aid fund, which every county gets state aid. There are many rural counties. That's the only funding they get is state aid. They're communities are so small and such a small tax base that without the state aid they would not get any money. Traditionally, I believe if you look at the previous funding, state aid is funded about 29 million per year. It goes into the state aid fund and that 29 million is divided among 95 counties. So they get very little funds.

Chairman Ragan ([09:22](#)):

You

Rep. Howell ([09:22](#)):

Recognize what this,

Chairman Ragan ([09:24](#)):

Sorry,

Rep. Howell ([09:24](#)):

I'm sorry. What this 300 million amounts to is about 15 years of state aid funds put in the state is put into the state aid fund in one lump sum. And I can tell you the county road superintendents are very excited about this.

Chairman Ragan ([09:44](#)):

Chairman Clemens.

Rep. Clemmons ([09:46](#)):

Thank you Mr. Chairman. And again, on page 13 and subsection E there we talk about the fund may they'll use for the following purposes and E one says to be fund strategic transportation initiatives and including but not limited to what all can strategic transportation initiatives mean. I'm a little confused about the vagueness of that term.

Chairman Ragan ([10:15](#)):

You recognize? Sir,

Rep. Howell ([10:18](#)):

Could I ask you again sir? What page?

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Rep. Clemmons ([10:19](#)):

Your Honor? Oh, I'm sorry. This is on page 13 and I believe it's still in section 15.

Rep. Howell ([10:28](#)):

Section 15

Rep. Clemmons ([10:32](#)):

Right there in subsection E

Rep. Howell ([10:46](#)):

Fund may be used for following or the fund strategic transportation initiative. One of those initiatives of course would be the choice lanes.

Rep. Clemmons ([10:53](#)):

Right? Okay.

Chairman Ragan ([10:56](#)):

Hang on just a minute sir. As the reason I recognize you for five is to see if there are any other committee members that have questions. Do we have any other questions from committee members? Representative Johnson, you recognized?

Rep. Gloria Johnson ([11:12](#)):

Thank you Mr. Chairman. And I have a couple of questions from constituents and I haven't been in transportation committee, so I'm unfamiliar with part of this, but what will be the basis for charging the users of the toll lanes? Would it be per unit time? Per mile Per trip.

Chairman Ragan ([11:29](#)):

You're you're recognized, sir,

Rep. Howell ([11:31](#)):

Could you repeat that question? Representative,

Chairman Ragan ([11:33](#)):

You're recognized,

Rep. Gloria Johnson ([11:34](#)):

What's the basis for charging the users? Is it are you charging per unit time per mile or per trip?

Rep. Howell ([11:42](#)):

I believe these are called what's called managed lanes. And the reason for the fee is so that we can manage and guarantee a certain speed. For example, we were on a choice lane in Texas, if I may, Mr. Chairman, give us an example. We were in Dallas and we were on a choice lane and we went 15 miles with a guaranteed speed. I believe it was 55 miles an hour as I recall. But I remember we were going 65

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miles an hour for 15 miles from outside Dallas to the heart of Dallas, never slowed down. And it was a great example of how a choice lane works. And as the congestion gets higher I understand certain parts of the day the way that they do theirs, I would assume we would follow something similar, then the fee would rise slightly to try to mitigate the traffic flow and what they found, the data shows that people choose to use the choice lanes and they get over into the choice lanes. It frees up lanes and the general purpose lanes and all the traffic moves at a faster speed. So it's a way of managing the traffic flow.

Chairman Ragan ([12:56](#)):

Follow up, representative Johnson.

Rep. Gloria Johnson ([12:57](#)):

Thank you Mr. Chair. I guess my question is more to is how are they basing the fee? Is it based on how long they're on, I mean, or is it by the mile by unit of time or per trip

Chairman Ragan ([13:10](#)):

You recognize? Sir?

Rep. Howell ([13:11](#)):

I believe that would be over in under the purview of the transportation modernization board they have. They would have oversight of the fee structure and ultimately the legislature would have the ultimate authority over that. But the board itself has oversight of the fee structure.

Chairman Ragan ([13:32](#)):

One follow up please. Representative Johnson?

Rep. Gloria Johnson ([13:34](#)):

Yes. Thank you, Mr. Chair. So you said something about at the time change, the fee might go up. Are you locked into a fee or while you're using that fee it's likely to go up?

Chairman Ragan ([13:49](#)):

No, sir.

Rep. Howell ([13:50](#)):

The fees are posted. Once you enter the choice lane, the fees are posted.

Rep. Gloria Johnson ([13:53](#)):

Okay. Thank you.

Chairman Ragan ([13:55](#)):

Chairman Clemens, you recognize, sir?

Rep. Clemmons ([13:58](#)):

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Thank you, Mr. Chairman, I appreciate you coming back to me with regards to these toll lanes and toll ways. These appear according on page 15 and subsection D of SEC section 17, that these toll lanes could go in cities, suburbs, and rural areas. Is that correct?

Chairman Ragan ([14:15](#)):

You recognize?

Rep. Howell ([14:16](#)):

Well, it depends on the traffic mitigation that's needed. Some of most needed areas are the four major cities in Tennessee. I don't think we would ever see a choice lane by the way. We removed a toll lane from the code. Let's see, toll roads are deleted from T C A. That's on page 23. These are choice lanes, not toll roads.

Chairman Ragan ([14:52](#)):

Follow up, representative Cummins.

Rep. Clemmons ([14:54](#)):

Thank you Mr. Chairman. Yeah, I see that page 23 and as well as on page 14 at section 17, the word is simply changed from state tollway fund and toll revenues and tollway and tolls to user fee revenues and user projects, user fee projects, not the definition, just the word has changed. So I want to make sure we're being honest here with the people of Tennessee. Also, with regards to the setting of rates, it says in here, one of my other concerns on page 22 of section 17 is that it says the department may set user fees or establish the methods for setting variable user fees, again, which are toll fees. Private entities may be allowed to lease a lane or Elaine to third party. The commissioner may set user fees or tool fees. Does this mean, it seems to me the use of May, the department may set user fees or toll fees. The commissioner may set user fees or toll fees should be shall. Why are we allowing these private entities to set their rates? Are we authorizing them and giving them the ability to set rates under this legislation?

Chairman Ragan ([16:06](#)):

You recognize, sir?

Rep. Howell ([16:07](#)):

I don't believe so. The way I read the bill, the Transportation Modernization Board has oversight of the fee structure and the commissioner of course is involved in that. He's a member of that board, but we are not allowing anybody else to oversee or have control of our roadways. There's still control with the state of Tennessee tdot, the board and the legislature.

Chairman Ragan ([16:35](#)):

You recognize, sir?

Rep. Clemmons ([16:36](#)):

Thank you Mr. Chairman. Two final questions and well with regards to control. As I said on page 25, subsection B of section 22 says private entities may be allowed to lease a lane or lanes to third parties. But two fast questions with in section 31 on page 35 there's a 28 project cap to which you referenced

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earlier. Yes referred earlier on the alternative delivery method, but that 28 project cap expressly does not include the 3 billion Transportation Modernization Fund, correct?

Chairman Ragan ([17:13](#)):

You recognize, sir?

Rep. Clemmons ([17:18](#)):

That's section 31 on page 35.

Rep. Howell ([17:21](#)):

Oh, I'm looking on the one

Rep. Clemmons ([17:24](#)):

And if I may, Mr. Chairman,

Chairman Ragan ([17:26](#)):

You, are you going to sharpen

Rep. Clemmons ([17:28](#)):

Your question? I can clarify. I can clarify for

Chairman Ragan ([17:29](#)):

Me. All right. You're recognized

Rep. Clemmons ([17:30](#)):

To sharp. So down there in 54 1 6 0 2, it says the department shall not procure more than 28 alternative delivery contracts per year. And the next section says that subsection to which I just read only applies to projects funded by the State highway fund and is not apply to projects funded by the transportation Modernization fund, discretionary funds or federal grant programs. Now that means that 3 billion plus, which is 20 i four 40 projects about are not capped. Is that accurate?

Chairman Ragan ([18:01](#)):

You're correct, sir. The, I'm sorry. You're recognized sir <laugh>.

Rep. Howell ([18:05](#)):

Thanks. The Transportation Modernization Fund and the highway fund are two separate funds, correct? The Transportation Modernization Fund is the fund that's created with 3 billion in this bill. The transportation fund is TDOT's budget, which is about 1.2 billion per year. And they're two separate funds,

Rep. Clemmons ([18:29](#)):

Correct. But so that 28 cap only

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Chairman Ragan ([18:31](#)):

Is, wait just a second, sir. Thank you. Now, before I recognize you once again, do we have any other members with questions?

Rep. Clemmons ([18:38](#)):

I have one

Chairman Ragan ([18:38](#)):

Final question. All right. You're recognized for your question if

Rep. Howell ([18:40](#)):

I may.

Chairman Ragan ([18:41](#)):

Oh, I'm sorry. Go ahead. If Chairman Clem, if you don't mind, I'll recognize the sponsor.

Rep. Howell ([18:45](#)):

I believe you'll find in another section we talked about earlier that the 3 billion can be used to mitigate congestion. Had several things listed there that you mentioned earlier. So I'll give you an example. Let's say that they decided to build a choice lane between Clarksville and Murfreesboro. Let's say it's a 2 billion project and the investors decide they'll do an 80, 80 20 match. We could use our 20% from the 3 billion as I understand it, to use as our match to build that 2 billion road. So we get a 2 billion road for 400 million. I think that's a good deal for the taxpayers personally. And that frees up TDOT's funds, the 1.2 billion to focus on other needed items such as widening, widening our interstates across the state of Tennessee and many other rural projects and modernizing our bridges, which many of them are coming to end of life cycle on their timeline. So I hope that answers your question, but they are two different funds.

Chairman Ragan ([20:00](#)):

Chairman Clemens Bless recognized.

Rep. Clemmons ([20:02](#)):

Thank you Mr. Chairman. And so also I agree that we have a lot of work to do on transportation infrastructure and I agree that we need to be invested in infrastructure and making sure the safety is taken care of for all Tennesseans and improving their quality of life by reducing travel times. I represent the I 24 corridor. I know to which you referred and that was not by coincidence we're four 40, I assume so I appreciate that. And we have a real problems. My people are sitting in traffic too long, as are your people and people in MER Borough and Clarksville and every other county in this greater Nashville area. But the last thing I have to ask is I can't help but notice in here the argument had been made early on by the governor. And I think by that creating these, increasing these fees for electric vehicles was necessary to create some equitable payment of fees or taxes by Tennessee drivers because they're not paying gas or diesel taxes. So they needed to pay something equivalent to that. But I noticed in here that these electric vehicle fees are indexed gas and de diesel taxes are not indexed. In fact, this body a couple years ago really fought against indexing those gas and diesel taxes and the Improve Act.

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How come we're indexing the electric vehicle taxes or fees if we're looking to create an equitable playing ground? There

Chairman Ragan ([21:26](#)):

You, sir.

Rep. Howell ([21:27](#)):

We do get to equity and it starts, it's quite a jump. It's a hundred percent jump. Right now we are at \$100 on registration. So in order to not damage a new industry, five of which build electric vehicles in the state of Tennessee, we're the largest auto manufacturer in the country, I believe. But in order to ease the pain a little bit, I guess for the consumer and for the electric vehicle manufacturers, it is phased in \$200 per year. Beginning not at the point of sale, but on the first renewal after January 1st of 24, it remains at \$200 for the first three years. In the fourth year, it would reach parity with drivers who pay the gas tax, which according to the research is \$274 per year. But then it's against, there are now currently, I believe about 16,000 EVs in the state of Tennessee. So indexing it at that rate we believe is a good thing and it helps the consumer

Rep. Clemmons ([22:44](#)):

Doc. Well, my follow up question, Mr. Chairman, if I may

Chairman Ragan ([22:49](#)):

You recognize, sir,

Rep. Clemmons ([22:50](#)):

Are we going to index gas and diesel taxes over after 2027 to increase those fees also? Or are we just going to do it on the electric vehicles and why? So

Chairman Ragan ([23:01](#)):

You're recognize, sir,

Rep. Howell ([23:02](#)):

I can't speak for a future legislative session. If the future legislative sessions decides to do that, that would be something they would have to devote on, but it's not in this bill.

Rep. Clemmons ([23:16](#)):

Thank you, Mr. Sponsor and thank you chairman for the long leash there.

Chairman Ragan ([23:20](#)):

Members, you've heard questions and explanation by the sponsor, the chair will entertain a motion. Motion. We have a motion to pause the recommendation and a second. Second. Thank you. Members, we are voting to send house bill 3 21 to finance ways and means. All in favor indicate by saying aye. Aye. All opposed, by the way, I'm sorry. The bill is 0 3 21. All opposed say nay.

Rep. Clemmons ([23:44](#)):

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No.

Chairman Ragan ([23:46](#)):

If you wish to be recorded as no See the clerk bill passes out with a positive recommendation.

Rep. Howell ([23:50](#)):

Thank you, Ms. Chairman. Committee.