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AG Greg Abbott says TxDot is 'trying to get around the constitution'



Texas Attorney General Greg Abbott just told the *Star-Telegram* that the Texas Department of Transportation "is trying to get around the constitution" by refusing to change contract language for the North Tarrant Express project.

North Tarrant Express includes the expansion of Loop 820, Texas 121/183 and eventually Interstate 35W. But in a phone interview a few minutes ago, Abbott said the conduct of transportation department lawyers is "clearly putting the contract in danger."

The key problem is, the transportation department is refusing to insert language in a 52-year agreement with the private developer that makes it clear state funds are subject to appropriation every two years by the Legislature.

The developer is NTE Mobility Partners, a team led by the U.S. arm of Madrid-based



The Master Plan CDA will further define financial and development plans for Segments 1-4. NTE Mobility Partners' initial concepts show an aggressive outlook for these segments, but will be further defined by the end of 2010. The state will continue to move forward on the environmental clearance for I-35W and I-820 East Loop.

Cintra.

The same dispute between the AG and transportation department likely will come up when it comes time to review the LBJ Managed Lanes project in Dallas.

In Tarrant County, the North Tarrant Express is a whopping project totaling nearly \$2 billion. It represents freeway work that has been needed for two decades, but that the transportation department alone could not afford.

So, after a lengthy bidding process that ended in January, Cintra and the other members of NTE Mobility Partners agreed to put up \$300 million in equity and \$1.1 billion in debt (including federal and bank loans and private activity bonds), in return for the right to build the North Tarrant Express project and collect tolls on proposed new express lanes for 52 years.

In return, the transportation department would contribute \$570 million in public funds to the project.

But the Texas Constitution doesn't allow the transportation department to make that commitment, Abbott said. While some of those dollars are in hand, the bulk of that money would have to come in future years, based upon appropriations from future legislators, he said.

"We have told TxDot what they had to do in these contracts in order to get them to comply with the Texas Constitution," Abbott said. "For about a month now, TxDot lawyers have repeatedly come back to our office with angles and attempts to get around the constitution. At first we thought they didn't understand the constitution. Then we thought they were trying to play games. Now we can't understand what they're doing. Their conduct is clearly putting the contract in danger. Their conduct has been inappropriate."

The delays could lead to yet another postponement of the proposed expansion of Northeast Loop 820 in North Richland Hills and Haltom City, Texas 121/183 in Bedford and Hurst and eventually I-35W in north Fort Worth. Or, at the very least, it could lead to financial penalties that cost Tarrant County some of its highway funds. When the transportation department and developer reached a conditional agreement in late January, they predicted the attorney general's review would take 60 days.

Instead, nearly 150 days later, the two sides have had to extend the agreement to avoid having financial penalties kick in.

Transportation department officials declined to elaborate on the status of the agreement, except to say that they're making progress. Maribel Chavez, the department's Fort Worth district engineer, disputed the assertion that the project is being "held up."

"The Attorney General is required to do a thorough review and thorough analysis," she said. "It won't be concluded until we address whatever questions they have."

Business leaders along the I-35W corridor are flabbergasted that the long-awaited project is enduring yet another delay.

"Where has everybody been the last six years? For it to get all the way to the goal line, and the attorneys for all parties to not resolve this, is shocking," said Mike Berry, president of Hillwood Properties. The company is developing the Alliance Airport-area, and considers I-35W its backbone and main transportation connection to the outside world. "It's a fundamental premise of a business deal. They've been talking about it for six years, yet went ahead and awarded a concession and executed a contract and now they're saying they don't have language the parties can live with and the attorney general can bless?"

-- Gordon Dickson

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