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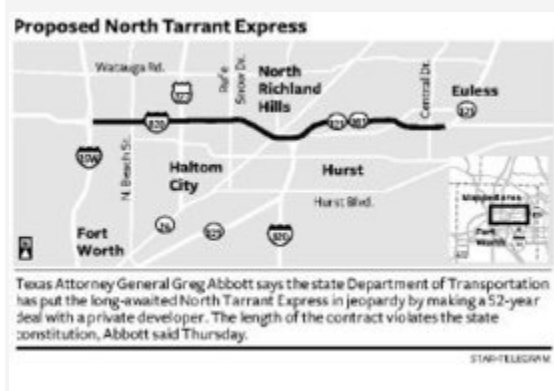
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Legal dispute could delay North Tarrant Express yet again

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The Texas Department of Transportation "is trying to get around the constitution" by committing to a 52-year deal with a private developer to expand Tarrant County roads, Texas Attorney General Greg Abbott said.

The dispute between the department and the state's top lawyer could lead to yet another delay for the decades-overdue North Tarrant Express project, which includes expansion of Northeast Loop 820, Texas 121/183 and eventually Interstate 35W north of downtown Fort Worth.

"Their conduct is clearly putting the contract in danger," Abbott said in a phone interview, referring to transportation officials and their attorneys negotiating with a private developer on the project. "Their conduct has been inappropriate."

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

At issue is language in a contract between the Transportation Department and NTE Mobility Partners, a team of private developers led by the U.S. branch of Spain-based Cintra. In January the group was conditionally awarded the \$2 billion hybrid freeway/toll lane project, pending a legal review that was expected to take 60 days.

But more than 120 days later, the attorney general's office said the agreement runs afoul of the Texas Constitution because the department wants to obligate appropriations beyond the current two-year budget cycle.

The Texas Legislature meets every two years and sets spending limits for state agencies.

Contract language

The attorney general's office wants to insert language making it clear that the department's financial commitment of \$570 million is subject to biennial appropriations by the Legislature, but that language isn't acceptable to the department, Abbott said.

And it could be a deal breaker with the developer, which has tentatively committed to spending nearly \$1.6 billion on the project.

"For about a month now, TxDot lawyers have repeatedly come back to our office with angles and attempts to get around the constitution," Abbott said. "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."

Transportation Department officials declined to elaborate on the agreement's status, but 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."

Tarrant County Judge Glen Whitley expressed frustration during a Regional Transportation Council meeting Thursday: "How long have they been 'thoroughly analyzing' this?"

A Cintra spokesman, Robert Hinkle of Fort Worth, said all sides in the negotiations expected the unique arrangement to take time.

More delays

In Tarrant County, the North Tarrant Express project totals nearly \$2 billion. It represents freeway work that has been planned for two decades but that the Transportation Department alone could not afford.

So, after a long bidding process ending 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 in return for the right to build the North Tarrant Express 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.

The delays could lead to yet another postponement of the 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.

The Transportation Department and developer agreed to extend deadlines to avoid financial penalties.

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 main transportation connection.

"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?" Berry said.

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