

BILL ANALYSIS

S.B. 1580
By: Wentworth
Transportation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

According to TxDOT, under current law, contractors are required to post a performance bond in the total amount of the contract. Under this bill, a private maintenance contractor would be allowed, on certain contracts, to post a bond annually in an amount equal to the amount to be paid to the contractor divided by the number of years of the contract.

When asset management was introduced in the last decade, state transportation departments naturally tried to fit asset management projects into the normal procurement process. One area of “misfit” was bonding. State transportation departments are accustomed to requiring performance bonds on construction bonds that are for the term of the project and for the total amount of the project. This method makes sense for the following reasons: 1) most highway construction projects are complete in a finite, often short period of time and 2) projects are accumulative, that is, they involve building an asset to its completion. For highway construction projects, this method is reasonable and makes economic sense.

Asset management projects differ from construction projects in the two key areas stated above. First, asset management projects are best designed to be long-term projects, often five to ten years in length. This allows the state maximum savings as the contractor is able to apply life-cycle costing to the asset. The contractor can make long-term investments in maintenance improvements instead of just “patching” problems as they go along. Second, asset management projects are not accumulative, building toward a completion, but instead routine and repetitive, involving activities that take place again and again over the period of a contract. For example, if the contractor is going to mow a certain area of grass forty times over the life of a seven-year contract, it makes little sense to bond all fifty mowings. The mowings recur, the department is not at risk on all fifty mowings over the life of the contract.

State transportation departments who are successfully implementing asset management projects, such as Florida, have recognized these fundamental differences and developed an approach that protects the state in case of a contractor default, but does not place unreasonable costs and burdens on the contractor, which of course are passed on to the state. Texas can benefit from adopting a similar method, with additional considerations to protect the Department in the event of a contractor default. The proposed method is to require either a) an bond in the greatest annual amount to be paid out under the contract to remain effective for one year after resumption of work upon default of the contractor or b) be for a term of two years, renewable in two-year increments, in an amount equal to the amount to be paid to the contractor under the term of the bond. Since most of the work is repetitive in nature, this method provides more than adequate coverage in the event of the default of a contractor. In truth, the department’s actual risk exposure is probably more along the lines of six months’ worth of work. The term of the bond, which either remains in place one year after default or is renewed in advance, provides the Department with at least one year of notice at all times should a contractor be unable to renew the bond.

In summary, the proposed bond strategy for asset management contracts ensures that the state will have numerous companies capable of bonding and performing the work, while at the same time providing the state with more than adequate coverage for the risk involved.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

This bill would amend Section 223.042 of the Transportation Code to require a private sector contractor to post a performance bond for certain projects undertaken for the Texas Department of Transportation (TxDOT).

A private maintenance contractor would be allowed, on certain contracts, to post a bond annually in an amount equal to the amount to be paid to the contractor divided by the number of years of the contract.

The bill could require a maintenance contract entered into by TxDOT before September 1, 2003, under Section 223.042 to be governed for the remaining term of the contract by Section 223.042 as it existed before September 1, 2003, and the prior law would be continued for that effect.

This Senate Bill is identical to C.S.H.B. 2959 by Representative Krusee.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003.