

BILL ANALYSIS

C.S.H.B. 2137
By: Phillips
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Department of Transportation (TxDOT) has always treated its buildings as part of the state highway system pursuant to a 1953 Attorney General Opinion (based on a 1928 Attorney General Opinion), which allowed the department to construct Camp Hubbard (Op. Tex. Att'y Gen. No. S-105). In that Opinion, the Attorney General stated that TxDOT could build its own buildings "for the furtherance of public road construction and the establishment of a system of State highways" because the buildings are required to accomplish the purpose of TxDOT. This is why the Texas Building and Procurement Commission (TBPC) does not construct TxDOT buildings, although it constructs most other agencies' buildings.

Historically, a claim concerning a building has gone through the administrative remedies the same as a highway claim pursuant to Section 201.112, Transportation Code, which states that TxDOT may require claims under Chapter 223, Transportation Code (concerning bids and contracts for highway projects), go to the Contract Claim Committee, and then to the State Office of Administrative Hearings. It is well-settled that a plaintiff must exhaust administrative remedies before filing a lawsuit.

In a recent case brought by a surety, TxDOT claimed that the surety had not exhausted its administrative remedies. The trial court held that a "building" is not a "necessary structure related to a public road," within the meaning of the definition of highway in Section 221.001, Transportation Code (general provisions for the state highway system). The trial court held that TxDOT has the authority to construct buildings, but that Section 201.112, Transportation Code, does not apply because it does not explicitly name the section and chapter containing the word "buildings." The case is on appeal.

This ruling has more far-reaching ramifications than a claim being heard by the Contract Claim Committee and the State Office of Administrative Hearings. If a building is not considered a necessary structure and part of the definition of highway, then someone could challenge the way TxDOT bids, constructs, and maintains its buildings.

Currently, although TxDOT bids and constructs its own buildings under its own law, it is required to follow TBPC's uniform general conditions (UGC). Since TBPC's statutes are different and it has no experience with TxDOT's statutes and procedures, the UGC are not easily integrated into TxDOT's bidding policies and procedures.

House Bill 7, 78th Legislature, Third Called Session, 2003, authorized TxDOT to enter into an agreement with a private entity that offered the best value to the state that includes both the design and construction of a district office headquarters facility located in a county with a population of 3.3 million or more, and that includes a lease of TxDOT owned real property to the private entity and a provision under which TxDOT agrees to enter into an agreement to lease with an option or options to purchase a building constructed on property leased to the entity. The ability to enter into such agreements for the development, design, and construction of other TxDOT buildings and related facilities would enable the expeditious construction of buildings and related facilities that support TxDOT operations.

C.S.H.B. 2137 provides that TxDOT buildings are a part of the state highway system, fully incorporates their construction into TxDOT's policies and procedures, and authorizes TxDOT to enter into an agreement with a private entity that offers the best value to the state that provides for the development, design, and construction of TxDOT buildings and related facilities that support TxDOT operations.

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

SECTION 1. Amends Section 201.1055, Transportation Code, to provide that notwithstanding any other law, TxDOT and a private entity that offers the best value to the state may enter into an agreement that includes:

(a) site development and the design and construction of buildings and related facilities that support TxDOT operations, either on TxDOT owned real property or on property owned by the private entity;

(b) a lease of TxDOT owned real property to the private entity;

(c) a provision authorizing the private entity to construct and retain ownership of a building or related facilities on property owned by the private entity or leased to the private entity;

(d) a provision under which TxDOT agrees to enter into an agreement to acquire or lease with an option or options to purchase property described in paragraph (a) above that is owned by the private entity and buildings and related facilities constructed on that property or on property leased to the entity; and

(e) a provision under which TxDOT agrees to enter into an agreement to exchange TxDOT owned real property as full or partial consideration for property and facilities described in paragraph (a) above.

Authorizes the Texas Transportation Commission, notwithstanding Section 202.024, Transportation Code, to authorize the executive director of TxDOT to execute a deed exchanging department-owned real property as full or partial consideration for property described in paragraph (a) above.

SECTION 2. Amends Sections 221.001(1), Transportation Code, to include buildings in the definition of "highway."

SECTION 3. Amends Section 2166.302(a) and adds (c), Government Code to exclude projects constructed by and for TxDOT from having to follow TBPC's uniform general conditions.

SECTION 4. Provides that the changes made by this bill apply only to contacts for which TxDOT first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of the bill.

SECTION 5. Provides for immediate effect.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from the original by adding new SECTION 1 that authorizes TxDOT to enter into an agreement with a private entity that offers the best value to the state that provides for the development, design, and construction of TxDOT buildings and related facilities that support TxDOT operations.

