

BILL ANALYSIS

C.S.H.B. 2139
By: Phillips
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Department of Transportation (TxDOT) has encouraged the use of private-public partnerships in the construction of public transportation projects. TxDOT has legislative authority to enter into various financing methods, including a “pass-through” toll agreement with a public or private entity. Many local governmental entities are interested in entering into contracts with a private entity to build roads and other transportation projects for them, seeking a “turn-key” project. While some local governmental entities are already entering into these contracts, others have been reluctant to do so because they do not have specific statutory authorization.

CSHB 2139 would clarify the local governments’ authority to enter into a contract with a private entity for the design and construction of a transportation project. The private entity would have to comply with all laws relating to the procurement and bidding of construction that apply the local governments, as well as all state design criteria and construction specifications, unless TxDOT granted exemptions under the current procedures.

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 222.104 of the Transportation Code to provide that TxDOT is to delegate full responsibility for design, bidding and construction to a municipality, county, regional mobility authority or a regional tollway authority to design and construct a transportation project. The local government that receives such delegation is required to meet state design criteria, construction specifications, and contract administration procedures unless TxDOT grants an exception.

SECTION 2. Adds Section, 222.1045, Transportation Code, authorizing a municipality, county, regional mobility authority or a regional tollway authority to enter into a contract with a private entity to act as their agent in financing, maintaining, operating, and constructing a toll or nontoll facility or to maintain a state highway or portion of a state highway converted to a toll facility. The bill requires the public entity to select the private entity on the basis of qualifications and experience, and to enter into a project development agreement with the private entity.

As the public entity’s agent, the private entity is required to comply with all laws regarding procurement of engineering and construction. Pass-through tolls may be assigned from the public entity to the private entity.

SECTION 3. Provides for immediate effective date.

EFFECTIVE DATE

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

C.S.H.B. 2139 79(R)

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute clarifies in Section 2 of the bill that a private entity may also act as a public entity's agent in financing a toll.