

1-1 By: Krusee (Senate Sponsor - Lindsay) H.B. No. 2659
1-2 (In the Senate - Received from the House April 18, 2005;
1-3 April 19, 2005, read first time and referred to Committee on
1-4 Transportation and Homeland Security; May 11, 2005, reported
1-5 favorably by the following vote: Yeas 7, Nays 0; May 11, 2005, sent
1-6 to printer.)

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to bond requirements for privatized maintenance
1-10 contracts.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 223.042, Transportation Code, as amended
1-13 by Chapters 28 and 274, Acts of the 78th Legislature, Regular
1-14 Session, 2003, is reenacted and amended to read as follows:

1-15 Sec. 223.042. PRIVATIZATION OF MAINTENANCE CONTRACTS. (a)
1-16 Of the amount spent in a fiscal year by the department for
1-17 maintenance projects, the department shall spend not less than 50
1-18 percent through contracts awarded by competitive bids.

1-19 (b) Money spent for maintenance projects to which this
1-20 section does not apply ~~is~~ ~~[are]~~ included when computing the amount
1-21 of expenditures for maintenance projects in a fiscal year.

1-22 (c) The department may award a contract under this section
1-23 as a purchase of service under Subtitle D, Title 10, Government
1-24 Code, if the department:

1-25 (1) estimates that the contract will involve an amount
1-26 less than \$15,000; and

1-27 (2) determines that the competitive bidding procedure
1-28 in this chapter is not practical.

1-29 (d) The department shall consider all of its direct and
1-30 indirect costs in determining the cost of providing the services.
1-31 The department shall use the cost accounting procedures and
1-32 instructions developed by the State Council on Competitive
1-33 Government under Section 2162.102(c)(2), Government Code, in
1-34 determining its cost. On request, the State Council on Competitive
1-35 Government shall provide technical assistance to the department
1-36 about the cost accounting procedures and instructions.

1-37 (e) Subsection (a) does not apply unless the department
1-38 determines that a function of comparable quality and quantity can
1-39 be purchased or performed at a savings by using private sector
1-40 contracts.

1-41 (f) The department shall file a report with the Legislative
1-42 Budget Board on September 1 of each fiscal year detailing the
1-43 contracts awarded by the department under this section during the
1-44 previous fiscal year.

1-45 (g) The commission shall adopt rules to administer this
1-46 section.

1-47 (h) In this section, "maintenance project" means any
1-48 routine or preventive maintenance activity. The term includes
1-49 mowing, concrete removal and replacement, illumination
1-50 maintenance, guardrail repair, fence repair, litter pick-up,
1-51 herbicide spraying, pothole repair, silt and erosion control or
1-52 repair, sign installation, highway overlaying, paint and bead
1-53 striping, rest area maintenance, and installation of raised
1-54 pavement markings.

1-55 (i) This section does not apply to the purchase of
1-56 materials for maintenance projects.

1-57 (j) ~~[(i)]~~ As an alternative to the requirements of Sections
1-58 2253.021(b) and (c) ~~[Section 2253.021]~~, Government Code, the
1-59 department may require that a performance or payment bond ~~[securing~~
1-60 ~~a contractor's performance]~~ under a contract awarded under this
1-61 section for a ~~[routine]~~ maintenance project ~~[activity]~~:

1-62 (1) be in an amount equal to the greatest annual
1-63 amount to be paid the contractor under the contract and remain in
1-64 effect for one year from the day work is resumed after any default

by the contractor; or

(2) be in an amount equal to the amount to be paid the contractor during the term of the bond and be for a term of two years, renewable annually in two-year increments.

(k) ~~[(j)]~~ A claim against a performance or payment bond issued under this section must be filed against the bond in effect on the date the basis for the claim arose ~~[bond posted under Subsection (i) must:~~

~~[(1) be solely for the protection of the department, and~~

~~[(2) be conditioned on the faithful performance of the maintenance work in accordance with the contract requirements].~~

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

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