

Amend CSHB 1892 (Senate committee printing) as follows:

(1) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS accordingly:

SECTION _____. Section 223.201(f), Transportation Code, is amended to read as follows:

(f) The authority to enter into comprehensive development agreements provided by this section expires on August 31, 2009 [~~2011~~].

SECTION _____. Section 370.305(d), Transportation Code, is amended to read as follows:

(d) This section expires on August 31, 2009 [~~2011~~].

SECTION _____. Subtitle G, Title 6, Transportation Code, is amended by adding Chapter 371 to read as follows:

CHAPTER 371. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR HIGHWAY

TOLL PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 371.001. DEFINITIONS. In this chapter:

(1) "Toll project" means a toll project described by Section 201.001(b), regardless of whether the toll project is:

(A) a part of the state highway system; or

(B) subject to the jurisdiction of the department.

(2) "Toll project entity" means an entity authorized by law to acquire, design, construct, operate, and maintain a toll project, including:

(A) the department, including under Chapter 227;

(B) a regional tollway authority under Chapter 366;

(C) a regional mobility authority under Chapter 370; or

(D) a county under Chapter 284.

[Sections 371.002-371.050 reserved for expansion]

SUBCHAPTER B. OVERSIGHT

Sec. 371.051. ATTORNEY GENERAL REVIEW. A toll project entity may not enter into a comprehensive development agreement unless the attorney general reviews the proposed agreement and determines that it is legally sufficient.

Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD AND STATE AUDITOR. (a) Not later than the 10th day after the date of qualifying or shortlisting private entities to submit detailed proposals for a toll project, a toll project entity shall provide the Legislative Budget Board with the names of qualifying or shortlisted proposers and their team members.

(b) At least 30 days before entering into a comprehensive development agreement, a toll project entity shall provide the Legislative Budget Board with:

(1) a copy of the version of the proposed comprehensive development agreement to be executed;

(2) a copy of the proposal submitted by the apparent best value proposer; and

(3) a financial forecast prepared by the toll project entity that includes:

(A) toll revenue the entity projects will be derived from the project during the planned term of the agreement;

(B) estimated construction costs and operating expenses; and

(C) the amount of income the entity projects the private participant in the agreement will realize during the planned term of the agreement.

(c) Before entering into a comprehensive development agreement, a toll project entity shall provide the state auditor with the traffic and revenue report prepared by the toll project entity or its consultant for the project. The entity may not enter into the comprehensive development agreement before the 30th day after the date that the state auditor receives the report so that the state auditor may review and comment on the report and the methodology used to develop the report.

(d) Before the comprehensive development agreement is entered into, financial forecasts and traffic and revenue reports prepared by or for a toll project entity for the project are confidential and are not subject to disclosure, inspection, or copying under Chapter 552, Government Code.

[Sections 371.053-371.100 reserved for expansion]

SUBCHAPTER C. CONTRACT PROVISIONS

Sec. 371.101. TERMINATION FOR CONVENIENCE. (a) A toll project entity having rulemaking authority by rule and a toll project entity without rulemaking authority by official action shall develop a formula for making termination payments to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project. A formula must calculate an estimated amount of loss to the private participant as a result of the termination for convenience that is based on investments, expenditures, and rate of return associated with the project.

(b) A formula under Subsection (a) may not include an estimate of future revenue from the project.

Sec. 371.102. TERMINATION OF CERTAIN COMPREHENSIVE DEVELOPMENT AGREEMENTS. If a toll project entity elects to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a project, the entity may:

(1) if authorized to issue bonds for that purpose, issue bonds to:

(A) make any applicable termination payments to the private participant; or

(B) purchase the interest of the private participant in the comprehensive development agreement or related property; or

(2) provide for the payment of obligations of the private participant incurred pursuant to the comprehensive development agreement.

Sec. 371.103. PROHIBITION AGAINST LIMITING OR PROHIBITING CONSTRUCTION OF TRANSPORTATION PROJECTS. (a) A comprehensive development agreement may not contain a provision that limits or prohibits the construction, reconstruction, expansion, rehabilitation, operation, or maintenance of a highway or other transportation project, as that term is defined by Section 370.003, by the toll project entity or other governmental entity, or by a private entity under a contract with the toll project entity or other governmental entity.

(b) Except as provided by Subsection (c), a comprehensive

development agreement may contain a provision authorizing the toll project entity to compensate the private participant in the agreement for the loss of toll revenues attributable to the construction by the entity of a limited access highway project located within an area that extends up to four miles from either side of the centerline of the project developed under the agreement, less the private participant's decreased operating and maintenance costs attributable to the highway project, if any.

(c) A comprehensive development agreement may not require the toll project entity to provide compensation for the construction of:

(1) a highway project contained in the state transportation plan or a transportation plan of a metropolitan planning organization in effect on the effective date of the agreement;

(2) work on or improvements to a highway project necessary for improved safety, or for maintenance or operational purposes;

(3) a high occupancy vehicle exclusive lane addition or other work on any highway project that is required by an environmental regulatory agency; or

(4) a transportation project that provides a mode of transportation that is not included in the project that is the subject of the comprehensive development agreement.

(d) The private participant has the burden of proving any loss of toll revenue resulting from the construction of a highway project described by Subsection (b).

(e) A comprehensive development agreement that contains a provision described by Subsection (b) must require the private participant to provide compensation to the toll project entity in the amount of any increase in toll revenues received by the private participant that is attributable to the construction of a highway project described by Subsection (b), less the private participant's increased operation and maintenance costs attributable to the highway project, if any.

[Sections 371.104-371.150 reserved for expansion]

SUBCHAPTER D. DISCLOSURE OF INFORMATION

Sec. 371.151. DISCLOSURE OF FINANCIAL INFORMATION. (a)

Before a toll project entity enters into a contract for the construction of a toll project, the entity shall publish in the manner provided by Section 371.152 information regarding:

(1) project financing, including:

(A) the total amount of debt that has been and will be assumed to acquire, design, construct, operate, and maintain the toll project;

(B) a description of how the debt will be repaid, including a projected timeline for repaying the debt; and

(C) the projected amount of interest that will be paid on the debt;

(2) whether the toll project will continue to be tolled after the debt has been repaid;

(3) a description of the method that will be used to set toll rates;

(4) a description of any terms in the contract relating to competing facilities, including any penalties associated with the construction of a competing facility;

(5) a description of any terms in the contract relating to a termination for convenience provision, including any information regarding how the value of the project will be calculated for the purposes of making termination payments;

(6) the initial toll rates, the methodology for increasing toll rates, and the projected toll rates at the end of the term of the contract; and

(7) the projected total amount of concession payments.

(b) A toll project entity may not enter into a contract for the construction of a toll project before the 30th day after the date the information is first published under Section 371.152.

Sec. 371.152. DISCLOSURE BY PUBLICATION. (a) Information under Section 371.151 must be published in a newspaper published in the county in which the toll project is to be constructed once a week for at least two weeks before the time set for entering into the contract and in two other newspapers that the toll project entity may designate.

(b) Instead of the notice required by Subsection (a), if the

toll project entity estimates that the contract involves an amount less than \$300,000, the information may be published in two successive issues of a newspaper published in the county in which the project is to be constructed.

(c) If a newspaper is not published in the county in which the toll project is to be constructed, notice shall be published in a newspaper published in the county:

(1) nearest the county seat of the county in which the improvement is to be made; and

(2) in which a newspaper is published.

Sec. 371.153. HEARING. (a) A toll project entity shall hold a public hearing on the information published under Section 371.152 not later than the 10th day after the date the information is first published and not less than 10 days before the entity enters into the contract.

(b) A hearing under this section must be held in the county seat of the county in which the toll project is located.

(c) A hearing under this section must include a formal presentation and a mechanism for responding to comments and questions.

SECTION _____. (a) Section 223.203, Transportation Code, is amended by adding Subsection (f-1) to read as follows:

(f-1) A private entity responding to a request for detailed proposals issued under Subsection (f) may submit alternative proposals based on comprehensive development agreements having different terms, with the alternative terms in multiples of 10 years, ranging from 10 years to 40 years or any lesser term provided in a comprehensive development agreement.

(b) Section 223.208(h), Transportation Code, is amended to read as follows:

(h) A [~~Except as provided by this section, a~~] comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project may be for a term not longer than 40 [~~50~~] years. The comprehensive development agreement must contain [~~may be for a term not longer than 70 years if the agreement:~~

~~[(1) contains]~~ an explicit mechanism for setting the

price for the purchase by the department of the interest of the private participant in the comprehensive development agreement and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement [~~and~~

~~[(2) outlines the benefit the state will derive from having a term longer than 50 years].~~

(c) Section 227.023(f), Transportation Code, is amended to read as follows:

(f) A contract with a private entity that includes the collection by the private entity of a fee for the use of a facility may not be for a term longer than 40 [~~50~~] years. The contract must contain an explicit mechanism for setting the price for the purchase by the department of the interest of the private participant in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the contract.

(d) Section 370.302(i), Transportation Code, is amended to read as follows:

(i) An agreement with a private entity that includes the collection by the private entity of tolls for the use of a transportation project may not be for a term longer than 40 [~~50~~] years. The agreement must contain an explicit mechanism for setting the price for the purchase by the authority of the interest of the private participant in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

(e) The changes in law made by this section apply only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

SECTION _____. Subchapter A, Chapter 227, Transportation Code, is amended by adding Sections 227.005, 227.006, 227.007, and 227.008 to read as follows:

Sec. 227.005. PUBLIC ACCESS TO INFORMATION. (a) The

department shall:

(1) seek to achieve transparency in the department's functions related to the Trans-Texas Corridor by providing, to the greatest extent possible under the public information law (Chapter 552, Government Code) and other statutes governing the access to records, public access to information collected, assembled, or maintained by the department relating to the Trans-Texas Corridor;

(2) make public in a timely manner all documents, plans, and contracts related to the Trans-Texas Corridor; and

(3) make public in a timely manner all updates to the master development plan for the Trans-Texas Corridor, including financial plans.

(b) The department shall send electronic versions of all updates to the master development plan for the Trans-Texas Corridor to the Governor's Office of Budget and Planning, the Senate Finance Committee, the House Appropriations Committee, the Legislative Budget Board, the state auditor's office, and the comptroller in a timely manner.

Sec. 227.006. POSTING INFORMATION RELATING TO TRANS-TEXAS CORRIDOR ON DEPARTMENT'S WEBSITE. (a) The department shall post on the department's Internet website, in a timely manner, the costs incurred by the department in connection with the financing, design, construction, maintenance, or operation of the Trans-Texas Corridor.

(b) Not later than the 10th day after the date the department enters into a contract relating to the Trans-Texas Corridor, the department shall post a copy of the contract on the department's Internet website.

SECTION ____ . Section 223.203(m), Transportation Code, is amended to read as follows:

(m) The department may ~~shall~~ pay an unsuccessful private entity that submits a responsive proposal in response to a request for detailed proposals under Subsection (f) a stipulated amount in exchange for the work product contained in that proposal. A ~~The~~ stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the

department in the performance of its functions. The use by the department of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the department and does not confer liability on the recipient of the stipulated amount under this section. After payment of the stipulated amount:

(1) the department owns with the unsuccessful proposer jointly the rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the project design; and

(2) the use by the unsuccessful proposer of any portion of the work product contained in the proposal is at the sole risk of the unsuccessful proposer and does not confer liability on the department.

SECTION ____ . Section 370.306(m), Transportation Code, is amended to read as follows:

(m) An authority may [~~shall~~] pay an unsuccessful private entity that submits a response to a request for detailed proposals under Subsection (f) a stipulated amount of the final contract price for any costs incurred in preparing that proposal. A [~~The~~] stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the authority, be used by the authority in the performance of its functions. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipulated amount under this subsection. After payment of the stipulated amount:

(1) the authority owns the exclusive rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, and information contained in the project design; and

(2) the work product contained in the proposal becomes the property of the authority.

(2) In SECTION 1 of the bill, in proposed Section 223.210, Transportation Code (page 1, between lines 53 and 54), insert the following:

(c-1) Subsection (b) does not apply to a comprehensive development agreement in connection with a project associated with any portion of the Loop 9 project that is located in a nonattainment air quality area as designated by the United States Environmental Protection Agency that includes two adjacent counties that each have a population of one million or more.

(3) In SECTION 1 of the bill, in proposed Section 223.210, Transportation Code (page 2, between lines 22 and 23), insert the following:

(c-3) Subsection (c) does not apply to any toll project or managed lane facility project located on any portion of U.S. Highway 281 that is located in a county with a population of more than one million in which more than 80 percent of the population lives in a single municipality.

(4) In SECTION 12 of the bill, in the introductory language (page 12, line 56), strike "366.037 and 366.038" and substitute "366.037, 366.038, and 366.039".

(5) In SECTION 12 of the bill, at the end of proposed Section 366.038, Transportation Code (page 14, between lines 13 and 14), insert the following:

(h) A local toll project entity that exercises the option under Subsection (b) must begin the environmental phase of the project within 18 months of the action taken by the entity under Subsection (b).

Sec. 366.039. USE OF STATE HIGHWAY ALIGNMENT, RIGHT-OF-WAY, AND ACCESS. (a) Notwithstanding any other law, an authority may use any authority property, state highway right-of-way, or access to the state highway system, regardless of when or how the property, right-of-way, or access is acquired. The department or the commission may require the authority to comply with any covenant, condition, restriction, or limitation that affects state highway right-of-way, but may not:

(1) adopt rules or establish policies that have the effect of denying the authority the use of the right-of-way or access that the authority has determined to be necessary or convenient for the construction, acquisition, improvement, operation, maintenance, or pooling of a project under this chapter;

or

(2) require the authority to pay for the use of the right-of-way or access, except to reimburse the commission or department for actual costs incurred or to be incurred by a third party, including the federal government, as a result of that use by the authority.

(b) If a project of an authority under this chapter includes the proposed use of improved state highway right-of-way, the authority and the commission or the department must enter into an agreement that includes reasonable terms to accommodate that use of the right-of-way by the authority and to protect the interests of the commission and the department in the use of the right-of-way for operations of the department, including public safety and congestion mitigation on the improved right-of-way.

(c) Notwithstanding any other law, the commission and the department are not liable for any damages that result from an authority's use of state highway right-of-way or access to the state highway system under this chapter, regardless of the legal theory, statute, or cause of action under which liability is asserted.