

BILL ANALYSIS

S.B. 1267
By: Nichols
Transportation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current law, the Texas Department of Transportation and other mobility authorities are authorized to enter into a comprehensive development agreement (CDA) with a private entity, and to allow that private entity to construct and operate a toll project. However, the public policy implications of the private entity's involvement in a toll project are not fully known. A study into these implications may be prudent before allowing more private toll projects.

SB 1267 provides a 24-month moratorium on private entity toll projects and creates a legislative study committee to analyze potential outcomes of these projects during the moratorium.

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 Subchapter E, Chapter 223, Transportation Code, by adding Section 223.210, as follows:

Sec. 223.210. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS. (a) Defines "toll project" and "toll project entity."

(b) Prohibits a comprehensive development agreement (CDA), entered into with a private participant by a toll project entity on or after the effective date of this subsection for certain activities related to a toll project, from containing a provision permitting the private participant to operate and collect revenue from the toll project.

(c) Provides that Subsection (b) does not apply to a CDA in connection with a project that includes one or more managed lane facilities to be added to an existing controlled-access highway, a project of which a major portion is located in a nonattainment or near nonattainment air quality area as designated by the United States Environmental Protection Agency, and a project for which Texas Department of Transportation (TxDOT) has issued a request for qualifications before the effective date of this section.

(c-1) Provides that Subsection (b) does not apply to a CDA in connection with a project associated with the Trinity Parkway in the city of Dallas or 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.

(c-2) Provides that notwithstanding the TxDOT/NTTA Regional Protocol entered into between the department and the North Texas Tollway Authority (the authority) and approved on August 10, 2006, by the tollway authority and on August 24, 2006, by the department, subsection (b) does not apply to a comprehensive development agreement:

Entered into in connection with State Highway 121 if, before the commission or the department enters into a contract for the financing, construction, or operation of the project with a private participant, an authority under Chapter 366 was granted the ability to finance, construct, or operate, as applicable, the portion of the toll project located within the boundaries of the authority, and the authority was granted a period of 60 days from March 26, 2007, to submit a commitment to the metropolitan planning organization which is determined to be equal to or greater than any other commitment submitted prior to March 26, 2007; if the financial value of the commitment is determined to be equal to or greater value than any other commitment submitted prior to March 26, 2007, then the commission shall allow the authority to develop the project, or

Entered into in connection with State Highway 161 if, before the commission or the department enters into a contract with a private participant for the financing, construction, or operation, an authority under Chapter 366 was granted the ability to finance, construct, or operate, as applicable, the portion of the toll project located within the boundaries of the authority, and the authority was granted a period of 90 days to submit a commitment to the metropolitan planning organization; if the authority makes a commitment to proceed, then the department shall allow the authority to proceed and the authority must enter into contracts to finance, construct or operate the project within 180 days.

(d) Provides that Subsection (c) does not apply to any toll project or managed lane 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.

(e) Defines "managed lane facility" for purposes of Subsection (c).

(f) Prohibits TxDOT from entering into a CDA in connection with a project described by Subsection (c) unless the commissioners court of the county in which the majority of the project is located passes a resolution in support of the CDA stating that the commissioners court acknowledges that the CDA may contain penalties for the construction of future competing transportation projects that are acquired or constructed during the term of the CDA and agrees that TxDOT should execute the CDA knowing these potential penalties.

(g) Prohibits a toll project entity from selling or entering into a contract to sell the entity's toll project to a private entity on or after the effective date of this subsection.

(h) Creates a legislative study committee (committee). Sets forth the committee membership as appointed by certain government officials.

(i) Requires the committee to select a presiding officer from among its members, conduct public hearings, and study the public policy implications of including a provision that permits the private participant in connection with a toll project to operate and collect revenue from that project in CDA entered into by a toll project entity with the private participant.

(j) Requires the committee to prepare a written report summarizing conducted hearings, proposed legislation, recommendations relating to the sale of a toll project to a private entity in protection of the public's interest, and any other findings or recommendations of the committee, not later than December 1, 2008. Requires the committee to deliver a copy of this report to certain government officials.

(k) Provides that the committee is abolished on December 31, 2008.

(l) Provides that this section expires September 1, 2009.

(m) Provides that Subsections (b), (c), (e), and (f) do not apply to a project that is located in a county with a population of 575,000 or more and is adjacent to an international border.

SECTION 2. Effective date: upon passage or September 1, 2007.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.