

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

Revision 1

May 1, 2007

TO: Honorable Tom Craddick, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1892 by Smith, Wayne (Relating to the authority of certain counties and other entities with respect to certain transportation projects; providing penalties.), **As Passed 2nd House**

The fiscal implications to the State cannot be determined.

The bill would amend the Transportation Code to impose a two-year moratorium on certain provisions in contracts between a private entity and a toll project entity, including the Texas Department of Transportation (TxDOT), a regional tollway authority (RTA), a regional mobility authority (RMA), or a county. The bill would specify that a toll project entity could not enter into a comprehensive development agreement (CDA) containing a provision permitting a private participant to operate and collect revenue from a toll project or enter into a contract to sell a toll project to a private entity. The bill would provide certain exemptions and conditions under which such CDA's are authorized. The bill would create a legislative study committee to study the public policy implications of such agreements with private participants and submit a written report of the committee's findings to the Governor, Lieutenant Governor, and the Speaker of the House of Representatives. The committee would be abolished on December 31, 2008. The moratorium on the applicable CDAs would expire on September 1, 2009.

The bill would limit the length of certain contracts for the collection tolls or fees by a private entity to a term no longer than 40 years and would provide exemptions under which such a contract may be for a term of up to 50 years.

The bill would require the Texas Transportation Commission (TTC) and TxDOT to allow an RMA or a county toll road authority (CTRA) to use TxDOT-owned highway right of way and to access the state highway system for certain projects. The bill would specify that TxDOT or the Commission may not require payment for the right-of-way or access, except to reimburse TxDOT or TTC for costs incurred or to be incurred by a third-party, including the federal government, as a result of the use by the county. The bill would require TTC or TxDOT to provide a CTRA and RMA the first option to finance, construct, or operate a portion of a toll project in the county before TTC or TxDOT could enter into a contract for those purposes. The bill would grant a county or RTA all powers of TxDOT related to the development of a Trans-Texas Corridor project if a county requests or a county or RTA is requested by TxDOT to participate in the project. The bill would authorize a county or RTA to enter into CDAs with private entities to design, develop, finance, construct, maintain, repair, operate, extend, or expand a turnpike project. The bill would require actions taken by an RMA, RTA, or CTRA under the authority of the Transportation Code to comply with the requirements of applicable federal law and would authorize TxDOT and TTC to take any action necessary to ensure that the state remains eligible to receive federal funds.

The bill would establish general provisions regarding CDAs for highway toll projects that are applicable to toll project entities, including TxDOT, RTAs, RMAs, and county toll road authorities (CTRA). The bill would prohibit a toll project entity from entering into a CDA unless the Attorney General reviews the proposed agreement and determines that it is legally sufficient. The bill would require toll project entities to submit to the Legislative Budget Board and the State Auditor certain information regarding proposed CDAs before entering into a CDA contract. The bill would require a

toll project entity to provide the State Auditor with the traffic and revenue report for a project and would prohibit the toll project entity from entering into a CDA before the 30th day after the date the State Auditor receives the report for review and comment. The bill would establish guidelines for CDA contract provisions relating to the termination of certain CDAs and prohibitions against contract provisions that would limit or prohibit the construction of transportation projects by a toll project entity or other governmental entity.

TxDOT indicates that the bill would delay the development and procurement of several proposed CDA projects and delay the receipt of any associated concession fees to the state until fiscal year 2010 or later. Based on the information provided by TxDOT, it is assumed any fiscal implications to the state would depend on the number of potential CDA projects and concession agreements that could be implemented under current law but would be delayed or prohibited as a result of the enactment of the bill and, therefore, cannot be determined.

Based on the analysis of the State Auditor's Office (SAO), it is assumed the costs to review and comment traffic and revenue reports for proposed CDAs would be approximately \$45,000 per year. It is assumed the costs could be absorbed within the SAO's existing budget and would be reimbursed by TxDOT or by private sector developers.

Based on the analysis of the Office of the Attorney General (OAG), it is assumed the CDA contract reviews would require three additional staff positions and approximately \$350,000 for salaries, employee benefits, and general operating expenses. It is assumed the costs could be absorbed within the agency's existing resources.

The bill would take effect immediately upon receiving a vote of two-thirds of all members elected to each house or otherwise on September 1, 2007.

Local Government Impact

It is assumed that a county or a regional tollway authority would enter into a contract to finance, construct, and operate a toll project only if sufficient funds were available. These entities could see savings for these projects from not having to pay TxDOT or TTC for use of state highway right-of-way or access to the state highway system, but the savings, if any, would depend on the size of the local body and the size of the project.

It is assumed that a local tolling authority would use a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend or expand a turnpike project only if sufficient funding were available.

Source Agencies: 302 Office of the Attorney General, 308 State Auditor's Office, 601 Department of Transportation

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