

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 18, 2007**

**TO:** Honorable David Dewhurst, Lieutenant Governor, Senate

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

**IN RE: SB792** by Williams (Relating to the authority of certain counties and other entities with respect to certain transportation projects and to comprehensive development agreements with regard to such projects; authorizing the issuance of bonds; providing penalties.), **As Passed 2nd House**

**The fiscal implications to the State cannot be determined.**

**Estimated costs to the State Highway Fund for increased bonding authority are reflected in the table below.**

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain from <i>STATE HIGHWAY FUND</i> 6	Probable (Cost) from <i>STATE HIGHWAY FUND</i> 6
2008	\$1,500,000	(\$1,630,160,000)
2009	\$1,500,000	(\$1,760,320,400)
2010	\$0	(\$263,319,600)
2011	\$0	(\$260,317,400)
2012	\$0	(\$260,316,300)

**Fiscal Analysis**

Article 1 of the bill would amend the Transportation Code to limit comprehensive development agreements (CDA) to a maximum term of 50 years from the later of the date the final acceptance of the project or the start of revenue operations by the private participant, not to exceed a total term of 52 years.

Article 3 of the bill would establish a moratorium on CDA contracts that allow a private participant to operate a toll project or collect revenue from a toll project. The bill would provide specific exemptions

and conditions under which a toll project entity, including the Texas Department of Transportation (TxDOT), Regional Mobility Authority (RMA), Regional Toll Authority (RTA), or a County Toll Road Authority (CTRA) could enter in to such CDAs. The bill would prohibit a toll project entity from selling or entering into a contract to sell a toll project to a private entity. The bill would create a legislative study committee to study the public policy implications of certain CDA contract provisions and selling toll projects to a private entity. The moratorium and prohibition on selling toll projects to private entities would expire on September 1, 2009.

Article 4 of the bill would change the expiration date on the authority for TXDOT and an RMA to enter into CDA's to August 31, 2009, from August 31, 2011, with exemptions for CDA projects meeting criteria specified by the bill.

Article 5 of the bill would require TxDOT to provide public access to certain financial and planning documents relating to the Trans-Texas Corridor.

Article 6 of the bill would require all revenue received by the Texas Transportation Commission (TTC) or TxDOT under a CDA to be used to finance transportation or air quality projects in the region where the applicable CDA projects are located.

Article 7 of the bill would establish provisions for an RMA, RTA, or CTRA (local toll project entities) regarding the development, construction, and operation of certain transportation projects under certain conditions specified by the bill. The bill would specify that a local toll project entity has primary responsibility and the first option to finance, construct, and operate a toll project located within the local toll project entity's jurisdiction. The bill would require TxDOT to assist a local toll project entity with the construction of a toll project by allowing the county to use state right-of-way without requiring payment for that use, except to reimburse the TxDOT for the state's actual acquisition costs or as otherwise provided by the bill. The bill would require the payment to be deposited to the State Highway Fund to be used in the department district in which the project is located. The bill would allow TTC or TxDOT to take any action necessary to comply with federal requirements to enable the state to receive federal-aid highway funds. The bill would establish terms and timelines under which the local toll project entity may exercise the option to undertake the development of a toll project or defer the project to TxDOT. The bill would authorize TxDOT or a local toll project entity to issue bonds to pay any costs associated with a project under the provisions of Article 7 of the bill, subject to approval by the attorney general. The bill would require TxDOT to create a separate account and subaccounts in the State Highway Fund to hold payments received by the department under a CDA, surplus toll project revenue, and other payments specified by the bill. The bill would require TxDOT to submit to the Legislative Budget Board a report on cash balances in and expenditures from the subaccounts.

Article 8 of the bill would allow CTRAs to use CDAs for projects and to use surplus toll project revenue for other projects. The bill would specify that the use of state or federal funds and any work on the state highway system by a CTRA is subject to the approval and supervision of TxDOT.

Article 9 of the bill would establish the authority and terms under which an RTA may enter into a CDA with a private entity related to a turnpike project and the allowable use of surplus project revenue by an RTA. The bill would void the protocol between TxDOT and the North Texas Tollway Authority.

Article 10 of the bill would clarify that the actions taken by an RMA under Chapter 370 of the Transportation Code must comply with the applicable federal requirements and would authorize TTC or TxDOT to take any actions necessary to comply with federal requirements to enable the state to receive federal-aid highway funds.

Article 11 of the bill would establish general provisions regarding CDAs for highway toll projects that are applicable to toll project entities, including TxDOT, RTAs, RMAs, and CTRAs. 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.

Article 12 of the bill would amend the Transportation Code to increase the aggregate principal amount of State Highway Fund bonds or other public securities issued by the Texas Transportation Commission from \$3 billion to \$6 billion and increase the amount that may be issued by the commission each year from \$1 billion to \$1.5 billion. The bill would also increase from \$600 million to \$1.2 billion the portion of the aggregate principal amount of the State Highway Fund bonds required to fund projects that reduce accidents or correct or improve hazardous locations on the state highway system.

The bill would apply certain provisions under current law, relating to the notice of cancellation of public use and the resale to the previous owner of property acquired through eminent domain, to certain real property acquired by TxDOT for right-of-way purposes through eminent domain. 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.

### **Methodology**

It is assumed that the fiscal impact to the state associated with the moratorium on CDAs under the provisions of the bill would depend on the number of projects that could be initiated under current law, but would be delayed or prohibited after the effective date of the bill pursuant to the requirements of the bill, and therefore cannot be determined.

Based on the analysis of the Bond Review Board, this estimate assumes \$1.5 billion in State Highway Fund bonds would be issued in 2008 and 2009 for a total issuance of \$3 billion in the 2008-09 biennium; bond debt service would be supported by available revenues in the State Highway Fund; the bonds would have a 20-year maturity at a fixed interest rate of 6 percent; the bonds would be issued on September 1, 2007, and September 1, 2008, with principal payments every August 1st and semiannual interest payments every February 1st and August 1st, beginning in February 1, 2008; the cost of issuance and bond insurance fees are excluded; approximately level debt service payments over the life of the bonds; and bond proceeds would be expended by the Texas Department of Transportation in the year received.

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.

### **Local Government Impact**

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 or exercise the first option to finance and construct a transportation project within its jurisdiction only if sufficient funding were available.

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

**LBB Staff:** JOB, DB, MW, TG