

## **BILL ANALYSIS**

C.S.H.B. 2032  
By: Darby  
Transportation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Bonds are a traditional way to provide performance and payment security for a public construction contract in Texas. A performance bond ensures that the work will be performed, and a payment bond ensures that the persons supplying labor and materials will be paid. A performance and payment bond or alternative form of security is required of a private entity that enters into a comprehensive development agreement with the Texas Department of Transportation (TxDOT), a regional tollway authority, or a regional mobility authority. The law allows an entity to require any alternative form of security that the entity determines to be suitable. Concerns have been expressed that the vagueness of the law could cause the entities to unknowingly under secure a project, putting the state and taxpayers at risk if the project were to fail. C.S.H.B. 2032 seeks to remedy this situation by eliminating vague and ambiguous language relating to performance and payment security for comprehensive development agreements with TxDOT, a regional tollway authority, or a regional mobility authority.

### **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**

C.S.H.B. 2032 amends the Transportation Code to specify that the performance and payment bond required to be provided by a private entity entering into a comprehensive development agreement with the Texas Department of Transportation (TxDOT), a regional tollway authority, or regional mobility authority, as applicable, is to be issued by a corporate surety authorized to issue bonds in the state. The bill, in provisions establishing an exception to the requirement that the bond or other form of security be in an amount equal to the cost of constructing or maintaining the project, authorizes TxDOT, a regional tollway authority, or regional mobility authority, if the contract amount exceeds \$250 million in construction costs, to set the amount at or above \$250 million, as determined by the entities to be in the best interest of the state, if the entities determine that it is impracticable for the private entity to provide security in the required amount. The bill removes a provision requiring the entities to set the amount of the bonds or alternative forms of security if the entities determine that the required amount is impracticable.

C.S.H.B. 2032 prohibits the security from covering the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property. The bill specifies that an irrevocable bank letter of credit provided as an alternative form of security is to be from an acceptable United States domiciled bank. The bill removes from the list of alternative forms of security that may be required by the applicable entity any form of security determined suitable by that entity and removes the authorization for each entity by rule to prescribe requirements for alternative forms of security. The bill makes nonsubstantive and conforming changes.

**EFFECTIVE DATE**

September 1, 2011.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2032 differs from the original, in provisions establishing an exception to the requirement that a required bond or other form of security be in an amount equal to the cost of constructing or maintaining the project, by authorizing TxDOT, a regional tollway authority, or regional mobility authority, if the contract amount exceeds \$250 million in construction costs, to set the amount at or above \$250 million under certain conditions, whereas the original authorizes that action for a contract amount that exceeds \$500 million.

C.S.H.B. 2032 differs from the original by establishing, in a saving provision, that the changes in law made by the bill apply only to a comprehensive development agreement for which a best value proposer is selected on or after the effective date of this bill, whereas the original establishes that the changes in law made by the bill apply only to a comprehensive development agreement entered into on or after the bill's effective date.