

BILL ANALYSIS

C.S.H.B. 2255
By: Phillips
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Legislation enacted in 2003 changed the structure of Texas transportation financing by authorizing the use of comprehensive development agreements (CDAs) to create public-private partnerships to build transportation projects. The Texas Department of Transportation (TxDOT) was given the authority to enter into a CDA with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand various types of transportation projects. The 80th Legislature established an August 31, 2009, expiration date for TxDOT's CDA authority and exempted certain projects, establishing an August 31, 2011, expiration date for the authority to enter into a CDA for those projects.

To further regional and statewide transportation goals, C.S.H.B. 2255 provides TxDOT and certain regional mobility authorities with the authority to enter into a CDA for all or a part of certain projects or for improvements to or construction of certain projects. The bill provides that the authority to enter into a CDA with respect to most of these projects expires August 31, 2015.

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. 2255 amends the Transportation Code to authorize the Texas Department of Transportation (TxDOT) to enter into a comprehensive development agreement for all or part of the following projects:

- State Highway 99 (Grand Parkway) project;
- Interstate Highway 35E managed lanes project in Dallas and Denton Counties from Interstate Highway 635 to U.S. Highway 380;
- North Tarrant Express project in Tarrant and Dallas Counties, including:
 - on State Highway 183 from State Highway 121 to State Highway 161 (Segment 2E);
 - on Interstate Highway 35W from Interstate Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C); and
 - on Interstate Highway 820 from State Highway 183 North to south of Randol Mill Road (Segment 4);
- State Highway 183 managed lanes project in Dallas County from State Highway 161 to Interstate Highway 35E; and
- State Highway 249 project in Harris and Montgomery Counties from Spring Cypress Road to Farm-to-Market Road 1774.

The bill establishes an August 31, 2015, expiration date for TxDOT's authority to enter into a comprehensive development agreement for all of the projects described in the bill, except for the State Highway 99 (Grand Parkway) project or a project described by provisions of law relating to a comprehensive development agreement that provides for the financing, design, acquisition, construction, maintenance, or operation of a rail facility or system. The bill removes a provision setting an expiration date for TxDOT's authority to enter into a comprehensive development agreement for a project on the state highway system and repeals a provision exempting certain projects from the expiration date provision. The bill removes a provision setting an expiration date for the authority to enter into a comprehensive development agreement in relation to certain exempted projects.

C.S.H.B. 2255 requires TxDOT, before the department is authorized to enter into a comprehensive development agreement for any of the projects described in the bill, to obtain the appropriate environmental clearance not later than September 1, 2012, for any project other than the State Highway 99 (Grand Parkway) project; present to the Texas Transportation Commission a full financial plan for the project, including costing methodology and cost proposals; and pay the full cost of procuring the agreement.

C.S.H.B. 2255 authorizes a comprehensive development agreement for the North Tarrant Express project to be comprised of a combination of agreements with one or more private entities and to provide for negotiating and entering into facility agreements for future phases or segments of the project at the times that TxDOT considers advantageous to the department. The bill establishes that TxDOT is not required to use any further competitive procurement process to enter into one or more related facility agreements with the successful proposer or affiliates of the successful proposer for a comprehensive development agreement for the North Tarrant Express project. The bill authorizes TxDOT to include or negotiate any matter in a comprehensive development agreement for the North Tarrant Express project that TxDOT considers advantageous to the department. The bill authorizes a comprehensive development agreement for the North Tarrant Express project to provide the private participant with a right of first negotiation under which the private participant or its affiliates may elect to negotiate with TxDOT and enter into one or more related facility agreements for future phases or segments of the project without the need to participate in any further competitive procurement process. The bill establishes that TxDOT has exclusive judgment to determine the terms of a comprehensive development agreement for the North Tarrant Express project, including the matters to be negotiated following selection of the private participant and the timing of negotiations. The bill prohibits TxDOT from developing a project under provisions of law relating to a comprehensive development agreement for a project on the state highway system as a project under provisions of law relating to the Trans-Texas Corridor.

C.S.H.B. 2255 authorizes TxDOT or certain regional mobility authorities to enter into a comprehensive development agreement relating to improvements to, or construction of, the following projects:

- Loop 1 (MoPac Improvement) project from Farm-to-Market Road 734 to Cesar Chavez Street;
- a project consisting of the construction of:
 - Outer Parkway Project from U.S. Highway 77/83 to Farm-to-Market Road 1847; and
 - South Padre Island Second Access Causeway Project from State Highway 100 to Park Road 100; or
- a project identified as part of the Hidalgo County Loop System or the La Joya Bypass project.

The bill requires TxDOT or an authority, as applicable and before TxDOT or the authority is authorized to enter into such a comprehensive development agreement, to obtain the appropriate environmental clearance not later than September 1, 2012; present to the commission a full

financial plan for the project, including costing methodology and cost proposals; and pay the full cost of procuring the agreement. The bill establishes an August 31, 2015, expiration date for TxDOT or an authority's authority to enter into a comprehensive development agreement for the improvements or construction projects described in the bill.

C.S.H.B. 2255 establishes that a governmental act taken or a decision made by TxDOT and the commission under provisions of law relating to comprehensive development agreements for a project on the state highway system before the effective date of the bill to negotiate, execute, or otherwise enter into a comprehensive development agreement or facility agreement relating to the North Tarrant Express project is conclusively presumed, as of the date the act or decision occurred, to be valid and to have occurred in accordance with all applicable law. The bill establishes that its provisions do not validate any governmental act or decision that was void at the time the act or decision occurred, violates the terms of federal law or a federal waiver, or was a misdemeanor or a felony under a Texas statute or a United States statute at the time the act or decision occurred. The bill makes its provisions inapplicable to any matter that, on the effective date of the bill, is involved in litigation if the litigation ultimately results in the matter being held invalid by a final court judgment or has been held invalid by a final court judgment.

C.S.H.B. 2255 repeals Section 223.201(h), Transportation Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2255 omits provisions included in the original authorizing the Texas Department of Transportation (TxDOT) to enter into a comprehensive development agreement for all or part of the following projects:

- Grayson County Tollway project, an extension of the Dallas North Tollway in Grayson County from Farm-to-Market Road 121 to U.S. Highway 75 near Denison;
- State Highway 288 project in Harris and Brazoria Counties from U.S. Highway 59 to State Highway 99;
- U.S. Highway 290 Hempstead managed lanes project in Harris County from Interstate Highway 610 to State Highway 99; and
- Interstate Highway 10 managed lanes project in Harris and Fort Bend Counties from State Highway 6 to Farm-to-Market Road 1463.

C.S.H.B. 2255 differs from the original by specifying that the comprehensive development agreement authorized for the North Tarrant Express project in Tarrant and Dallas Counties includes on State Highway 183 from State Highway 121 to State Highway 161 (Segment 2E); on Interstate Highway 35W from Interstate Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C); and on Interstate Highway 820 from State Highway 183 North to south of Randol Mill Road (Segment 4), whereas the original specifies that project includes Interstate Highway 820 and State Highway 121/State Highway 183 from Interstate Highway 35W to State Highway 161; Interstate Highway 820 east from State Highway 121/State Highway 183 to Randol Mill Road; and Interstate Highway 35W from Interstate Highway 30 to State Highway 170.

C.S.H.B. 2255 differs from the original by applying an August 31, 2015, expiration date for TxDOT's authority to enter into a comprehensive development agreement for a project described by provisions of law relating to a comprehensive development agreement that provides for the financing, design, acquisition, construction, maintenance, or operation of a rail facility or system, whereas the original does not reference such a project.

C.S.H.B. 2255 contains a provision not included in the original requiring TxDOT, before entering into certain comprehensive development agreements, to obtain appropriate environmental clearance, present a full financial plan for applicable projects, and pay the full cost of procuring the agreements.

C.S.H.B. 2255 contains provisions not included in the original relating to the terms and scope of a comprehensive development agreement for the North Tarrant Express project and TxDOT's duties and authority relating to such an agreement. The substitute contains a provision not included in the original prohibiting TxDOT from developing a project under provisions of law relating to a comprehensive development agreement for a project on the state highway system as a project under provisions of law relating to the Trans-Texas Corridor.

C.S.H.B. 2255 contains provisions not included in the original authorizing TxDOT or certain regional mobility authorities to enter into a comprehensive development agreement relating to improvements to or construction of certain projects, requiring TxDOT or an authority to comply with certain requirements before entering into the agreement, and establishing an August 31, 2015, expiration date for TxDOT or an authority's authority to enter into such an agreement.

C.S.H.B. 2255 contains a provision not included in the original establishing the validity of an act taken or decision made by TxDOT or the Texas Transportation Commission to negotiate, execute, or otherwise enter into a comprehensive development agreement or facility agreement relating to the North Tarrant Express project. The substitute contains a provision not included in the original establishing that the bill does not validate certain governmental acts or decisions. The substitute contains a provision not included in the original making the bill's provisions inapplicable to any matter that on the effective date of the bill is involved in litigation if the litigation ultimately results in the matter being held invalid by a final court judgment or has been held invalid by a final court judgment.