

BILL ANALYSIS

S.B. 246
By: Shapiro
Transportation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, regional tollway authorities, like the North Texas Tollway Authority (NTTA), are required to collect tolls for all projects in their service area regardless of whether or not they built the project. Companies developing projects within the authority's service area request letters of credit (LOCs) as a way to guarantee revenue collected by the authority will be received by the private entity. With several managed lanes planned for future development, requiring NTTA to obtain a LOC on every project could encumber \$200-300 million on its balance sheet to secure LOCs, which would negatively impact the NTTA's bonding capacity.

S.B. 246 removes the requirement for a performance guarantee if it were to negatively impact the financial stability of the regional tollway authority.

S.B. 246 amends current law relating to financial security required of regional tollway authorities in connection with the provision of toll collection services.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Section 366.038, Transportation Code, as follows:

Sec. 366.038. New heading: TOLLING SERVICES. (a) Defines, in this section, "tolling services."

(b) Creates this subsection from existing text. Requires a regional tollway authority organized under this chapter (authority) to provide, for reasonable compensation, tolling services, rather than customer service and other toll collection and enforcement services, for a toll project in the boundaries of the authority, regardless of whether the toll project is developed, financed, constructed, and operated under an agreement, including a comprehensive development agreement, with the authority or another entity. Provides that this section does not restrict the authority from agreeing to provide additional tolling services in an agreement described in Subsection (d). Provides that additional tolling services provided under an agreement under that subsection are subject to the provisions that apply to tolling services under this section.

(c) Prohibits an authority from providing financial security, including a cash collateral account, for the performance of tolling services the authority provides under this section if:

- (1) the authority determines that providing security could restrict the amount, or increase the cost, of bonds or other debt obligations the authority may subsequently issue under this chapter; or
- (2) the authority is not reimbursed its cost of providing the security.

(d) Requires the authority, before providing tolling services for a toll project under this section, to enter into a written agreement that sets out the terms and conditions for the tolling services to be provided and the terms and conditions for those services.

(e) Provides that toll revenues are the property of the entity that is entitled to the revenues under a tolling services agreement for the toll project, regardless of who holds or collects the revenues. Provides that toll revenues that are held or collected by an authority under a tolling services agreement and are not the property of the authority are not subject to a claim adverse to the authority or a lien on or encumbrance against property of the authority. Provides that toll revenues that are the property of the authority are not subject to a claim adverse to any other entity of a lien or encumbrance against property of any other entity.

(f) Authorizes an authority to agree in a tolling services agreement that its right and obligation to provide tolling services for the applicable toll project under this section are subject to termination for default, and that after a termination for default this section does not apply to that toll project.

(g) Authorizes any public or private entity, including an authority or the Texas Department of Transportation (TxDOT), to agree to fund a cash collateral account for the purpose of providing money that may be withdrawn as provided in the tolling services agreement because of an authority's failure to make any payment as required by the tolling services agreement. Provides that an authority's written commitment to fully or partially fund a cash collateral account is conclusive evidence of the authority's determination that the commitment does not violate Subsection (c). Authorizes TxDOT to use money from any available source to fund a cash collateral account under this subsection.

SECTION 2. Provides that Section 366.038(c), Transportation Code, as added by this Act, does not apply to any project, or portion of any project, described in a tolling services agreement an authority enters into with TxDOT or a private participant in a comprehensive development agreement before the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2011.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2011.