

BILL ANALYSIS

Senate Research Center

S.B. 731
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Transportation & Homeland Security
8/16/2011
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 80th Texas Legislature passed S.B. 792, which authorized counties and other entities to enter into comprehensive development agreements (CDA) for the development of highway toll projects. As a condition imposed on the use of these CDAs, the legislature included a provision requiring toll project entities to obtain a "legal sufficiency review" from the Office of the Attorney General (OAG) prior to entering into a CDA for a new toll project.

OAG received no additional appropriation to cover the fiscal costs associated with the passage of S.B. 792. These agreements typically comprise several volumes of contractual terms and detailed material relating to the proposed toll project agreement and OAG has needed to dedicate some of its most senior attorneys to thoroughly review these agreements before issuing a determination that they are "legally sufficient."

Authorizing OAG to charge an examination fee for the legal sufficiency review of CDAs is similar to the examination fee OAG currently charges to review and approve debt obligations, credit agreements, and related public financing contracts under Chapter 1371 (Obligations for Certain Public Improvements), Government Code.

S.B. 731 would authorize OAG to assess a nonrefundable examination fee from toll project entities for its legal sufficiency review of proposed CDAs. The fee would be due upon submission of a proposed CDA for review. If multiple CDAs are submitted for review, then an examination fee would be required for each separate agreement. The bill would also authorize local toll project entities to collect or recover the examination fee from the private participant in the CDA, thereby allowing local entities to place the financial costs of these reviews on the private participants with which they contract, and authorize OAG to adopt rules setting the amount of the fee and establishing any other necessary procedures for the ongoing review of CDAs.

S.B. 731 amends current law relating to the attorney general's legal sufficiency review of a comprehensive development agreement.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Office of the Attorney General in SECTION 1 (Section 371.051, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 371.051, Transportation Code, as follows:

Sec. 371.051. New heading: ATTORNEY GENERAL REVIEW AND EXAMINATION FEE. (a) Creates this subsection from existing text. Makes no further changes.

(b) Requires a toll project entity to pay a nonrefundable examination fee to the attorney general (OAG) on submitting a proposed comprehensive development agreement for review. Requires the toll project entity, at the time the examination fee is paid, to also submit for review a complete transcript of proceedings related to the comprehensive development agreement.

(c) Requires the toll project entity to pay the examination fee under Subsection (b) for each proposed comprehensive development agreement if the entity submits multiple proposed comprehensive development agreements relating to the same toll project for review.

(d) Requires OAG to provide a legal sufficiency determination not later than the 60th business day after the date the examination fee and transcript of the proceedings required under Subsection (b) are received. Requires OAG, if OAG cannot provide a legal sufficiency determination within the 60-business-day period, to notify the toll project entity in writing of the reason for the delay and authorizes OAG to extend the review period for not more than 30 business days.

(e) Authorizes a toll project entity, after OAG issues a legal sufficiency determination, to supplement the transcript of proceedings or amend the comprehensive development agreement to facilitate a redetermination by OAG of the prior legal sufficiency determination issued under this section.

(f) Authorizes the toll project entity to collect or seek reimbursement of the examination fee under Subsection (b) from the private participant.

(g) Requires OAG by rule to set the examination fee required under Subsection (b) in a reasonable amount and authorizes OAG to adopt other rules as necessary to implement this section. Prohibits the fee from being set in an amount that is determined by a percentage of the cost of the toll project. Prohibits the amount of the fee from exceeding reasonable attorney's fees charged for similar legal services in the private sector.

SECTION 2. Makes application of this Act prospective.

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