

BILL ANALYSIS

C.S.S.B. 731
By: Nichols
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recently, counties and other entities were authorized to enter into comprehensive development agreements for the development of highway toll projects. Under this authorization, the toll project entity is required to obtain a legal sufficiency review from the attorney general prior to entering into an agreement for a new toll project. However, the attorney general did not receive an additional appropriation to cover the fiscal costs associated with this requirement. These agreements typically comprise several volumes of contractual terms and detailed material relating to the proposed toll project agreement and the review has required the attorney general's office to dedicate some of its most senior attorneys to thoroughly review these agreements before issuing a legally sufficient determination.

The attorney general currently charges an examination fee to review and approve debt obligations, credit agreements, and related public financing contracts. Taking this into consideration, C.S.S.B. 731 seeks to require a toll project entity to pay a nonrefundable examination fee to the attorney general for a legal sufficiency review of a proposed comprehensive development agreement.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the attorney general in SECTION 1 of this bill.

ANALYSIS

C.S.S.B. 731 amends the Transportation Code to require a toll project entity to pay a nonrefundable examination fee to the attorney general on submitting a proposed comprehensive development agreement to the attorney general for the required legal sufficiency review. The bill requires such a 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. The bill requires the toll project entity, if the entity submits multiple agreements for review, to pay the examination fee for each proposed agreement and authorizes the entity to collect or seek reimbursement of the fee from the private participant.

C.S.S.B. 731 requires the attorney general to provide a legal sufficiency determination not later than the 60th business day after the date the examination fee and transcript of the required proceedings are received. The bill requires the attorney general, if the attorney general 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 the attorney general to extend the review period for not more than 30 business days. The bill authorizes a toll project entity, after the attorney general issues a legal sufficiency determination, to supplement the transcript of proceedings or amend the comprehensive development agreement to facilitate a redetermination by the attorney general of the prior legal sufficiency determination. The bill requires the attorney general to set, by rule, the examination fee in a reasonable amount and authorizes the attorney general to adopt other rules as necessary to implement the provisions of the bill. The bill

prohibits the fee from being set in an amount that is determined by a percentage of the cost of the toll project and from exceeding reasonable attorney's fees charged for similar legal services in the private sector.

EFFECTIVE DATE

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

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 731 differs from the original by specifying that the period by which the attorney general is required to provide a legal sufficiency determination of a proposed comprehensive development agreement submitted for review is determined by a specified number of business days after the date the examination fee and transcript of proceedings are received, whereas the original determines the period according to a specified number of days after the date the examination fee and transcript of the required proceedings are received.

C.S.S.B. 731 omits a provision included in the original specifying that a toll project entity is not required to pay an examination fee for a redetermination review.

C.S.S.B. 731 differs from the original by prohibiting the amount of an examination fee from exceeding reasonable attorney's fees charged for similar legal services in the private sector, whereas the original requires the fee to be in an amount to cover only the usual actual costs incurred by the attorney general for conducting the legal sufficiency review.