

## **BILL ANALYSIS**

Senate Research Center  
82R9198 JTS-D

S.B. 1145  
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3/21/2011  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1145 allows the Texas Department of Transportation (TxDOT) to be able to enter into public private partnerships for a segment of State Highway 183. This project is a segment of nine plus miles that lies between State Highway 161 and Interstate Highway 35 East in Dallas County. Allowing TxDOT to enter into a public private partnership for this portion of State Highway 183 will help get the project completed as soon as possible. This project will help relieve some of the congestion in the Dallas area.

S.B. 1145 establishes several provisions which must be included in any future private toll road contract. These protections will ensure the state and taxpayers are not exposed to bad and costly contracts with private entities.

Specifically, S.B. 1145 narrows non-compete zones to exempt projects in metropolitan planning organization's 30-year transportation plan and any expansion to an interstate. Additionally non-compete contract provisions may last only 30 years. In other words the state can build anything in their 30-year plan, expand an interstate, and continue to build in years 30 to 50 without paying a penalty to a private entity.

S.B. 1145 requires that an agreement include a competitively bid purchase price in five year increments and prohibits the state from paying more than the stated purchase price. This will protect the state from being on the hook for billions of dollars if the state ever needs to buy a road back from the private entity early.

As proposed, S.B. 1145 amends current law relating to comprehensive development agreements.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter E, Chapter 223, Transportation Code, by adding Section 223.2011, as follows:

Sec. 223.2011. LIMITED AUTHORITY FOR CERTAIN PROJECTS USING COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Authorizes the Texas Department of Transportation (TxDOT), notwithstanding Sections 223.201(f) (relating to the expiration date for an authority to enter into a comprehensive development agreement) and (i) (relating to the expiration date for an authority to enter into a comprehensive development agreement for a project exempted from Subsection (f) or Section 223.210(b)), to enter into a comprehensive development agreement relating to managed lane improvements to State Highway 183 between State Highway 161 and Interstate Highway 35E.

(b) Provides that this section expires August 31, 2013.

SECTION 2. Amends Section 371.101, Transportation Code, as follows:

Sec. 371.101. New heading: TERMINATION BY PURCHASE. (a) Requires that a comprehensive development agreement contain a provision authorizing the toll project entity to purchase, under terms agreed to by the parties:

(1) the interest of a private participant in the toll project that is the subject of the agreement; and

(2) related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

(b) Requires that the provision include a schedule stating a specific price for the purchase of the toll project at certain intervals from the date the project opens, not less than one year and not to exceed five years, over the term of the agreement.

(c) Requires that the provision authorize the toll project entity to purchase the private entity's interest at a stated interval in an amount not to exceed the lesser of:

(1) the price stated for that interval; or

(2) the greater of:

(A) the then fair market value of the private entity's interest; or

(B) an amount equal to the amount of outstanding debt at that time, as specified in the comprehensive development agreement.

(d) Prohibits a toll project entity, under any circumstance, from purchasing the private entity's interest for an amount higher than the stated interval amount.

(e) Requires that a contract to purchase the private entity's interest at the then fair market value as described by Subsection (c)(2)(A) contain a provision, mutually agreed on by the toll project entity and the private participant, detailing the calculation used to determine that value.

(f) Requires the toll project entity to request a proposed termination-by-purchase schedule in each request for detailed proposals and to consider and score each schedule in each evaluation of proposals.

(g) Requires a private entity, not later than 12 months before the date that a new price interval takes effect, to notify the toll project entity of the beginning of the price interval. Requires the toll project entity to notify the private entity as to whether it will exercise the option to purchase under this section not later than six months after the date it receives notice under this subsection.

(h) Requires a toll project entity to notify the private entity of the toll project entity's intention to purchase the private entity's interest under this section not less than six months before the date of the purchase. Deletes existing text requiring that a toll project entity having rulemaking authority by rule and a toll project entity without rulemaking authority by official action to develop a formula for making termination payments to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project. Deletes existing text requiring that a formula calculate an estimated amount of loss to the private participant as a result of the termination for convenience.

Deletes existing Subsection (b) requiring that the formula be based on investments, expenditures, and the internal rate of return on equity under the

agreed base case financial model as projected over the original term of the agreement, plus an agreed percentage markup on that amount.

Deletes existing Subsection (c) prohibiting a formula under Subsection (b) from including any estimate of future revenue from the project, if not included in an agreed base case financial model under Subsection (b) and prohibiting compensation to the private participant upon termination for convenience from exceeding the amount determined using the formula under Subsection (b).

SECTION 3. Amends Sections 371.103(b) and (c), Transportation Code, as follows:

(b) Authorizes a provision under this subsection to be effective only for a period of 30 years or less from the effective date of the agreement. Makes a nonsubstantive change.

(c) Prohibits a comprehensive development agreement from requiring the toll project entity to provide compensation for the construction of certain projects, including a transportation project that provides a mode of transportation that is not included in the project that is the subject of the comprehensive development agreement; or a highway designated an interstate highway.

SECTION 4. Makes application of Sections 371.101 and 371.103, Transportation Code, as amended by this Act, prospective.

SECTION 5. Effective date: upon passage or September 1, 2011.