

By: Darby

H.B. No. 2032

A BILL TO BE ENTITLED

AN ACT

relating to performance and payment security for certain comprehensive development agreements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 223.205, Transportation Code, is amended to read as follows:

Sec. 223.205. PERFORMANCE AND PAYMENT SECURITY.

(a) Notwithstanding Section 223.006 and the requirements of Subchapter B, Chapter 2253, Government Code, the department shall require a private entity entering into a comprehensive development agreement under this subchapter to provide a performance and payment bond issued by a corporate surety authorized to issue bonds in this state or an alternative form of security in an amount sufficient to:

(1) ensure the proper performance of the agreement;

and

(2) protect:

(A) the department; and

(B) security [~~payment bond~~] beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

(b) Except as provided by Subsection (c), the [~~A performance and payment bond or alternative form of~~] security shall be in an amount equal to the cost of constructing or maintaining the

1 project.

2 (c) If the contract amount exceeds \$500 million in  
3 construction costs, and the department determines that it is  
4 impracticable for a private entity to provide security in the  
5 amount described by Subsection (b), the department may [~~shall~~] set  
6 the amount of the [~~bonds or the alternative forms of~~] security at or  
7 above \$500 million, as determined by the department to be in the  
8 best interest of this state.

9 (d) The [~~A payment or performance bond or alternative form~~  
10 ~~of~~] security is not required for and may not cover the portion of an  
11 agreement that includes only design or planning services, the  
12 performance of preliminary studies, or the acquisition of real  
13 property.

14 (e) The amount of the payment security must not be less than  
15 the amount of the performance security.

16 (f) In addition to or instead of a performance and payment  
17 bond, the department may require one or more of the following  
18 alternative forms of security:

19 (1) a cashier's check drawn on a financial entity  
20 specified by the department;

21 (2) a United States bond or note; or

22 (3) an irrevocable bank letter of credit from a United  
23 States domiciled bank acceptable to the department [~~, or~~

24 [~~(4) any other form of security determined suitable by~~  
25 ~~the department]~~.

26 [~~(g) The department by rule shall prescribe requirements~~  
27 ~~for an alternative form of security provided under this section.]~~

1 SECTION 2. Section 366.404, Transportation Code, is amended  
2 to read as follows:

3 Sec. 366.404. PERFORMANCE AND PAYMENT SECURITY.

4 (a) Notwithstanding the requirements of Subchapter B, Chapter  
5 2253, Government Code, an authority shall require a private entity  
6 entering into a comprehensive development agreement under this  
7 subchapter to provide a performance and payment bond issued by a  
8 corporate surety authorized to issue bonds in this state or an  
9 alternative form of security in an amount sufficient to:

10 (1) ensure the proper performance of the agreement;  
11 and

12 (2) protect:

13 (A) the authority; and

14 (B) security [~~payment bond~~] beneficiaries who  
15 have a direct contractual relationship with the private entity or a  
16 subcontractor of the private entity to supply labor or material.

17 (b) Except as provided by Subsection (c), the [~~A performance~~  
18 ~~and payment bond or alternative form of~~] security shall be in an  
19 amount equal to the cost of constructing or maintaining the  
20 project.

21 (c) If the contract amount exceeds \$500 million in  
22 construction costs, and the [~~an~~] authority determines that it is  
23 impracticable for a private entity to provide security in the  
24 amount described by Subsection (b), the authority may [~~shall~~] set  
25 the amount of the [~~bonds or the alternative forms of~~] security at or  
26 above \$500 million, as determined by the authority to be in the  
27 authority's best interest.

1           (d) The [~~A payment or performance bond or alternative form~~  
2 ~~of~~] security is not required for and may not cover the portion of an  
3 agreement that includes only design or planning services, the  
4 performance of preliminary studies, or the acquisition of real  
5 property.

6           (e) The amount of the payment security must not be less than  
7 the amount of the performance security.

8           (f) In addition to, or instead of, performance and payment  
9 bonds, an authority may require the following alternative forms of  
10 security:

11                 (1) a cashier's check drawn on a financial entity  
12 specified by the authority;

13                 (2) a United States bond or note; or

14                 (3) an irrevocable bank letter of credit from a United  
15 States domiciled bank acceptable to the authority [~~or~~

16                         ~~(4) any other form of security determined suitable by~~  
17 ~~the authority].~~

18           ~~[(g) An authority by rule shall prescribe requirements for~~  
19 ~~alternative forms of security provided under this section.]~~

20           SECTION 3. Section 370.308, Transportation Code, is amended  
21 to read as follows:

22           Sec. 370.308. PERFORMANCE AND PAYMENT SECURITY.

23           (a) Notwithstanding Section 223.006 and the requirements of  
24 Subchapter B, Chapter 2253, Government Code, an authority shall  
25 require a private entity entering into a comprehensive development  
26 agreement under Section 370.305 to provide a performance and  
27 payment bond issued by a corporate surety authorized to issue bonds

1 in this state or an alternative form of security in an amount  
2 sufficient to:

3 (1) ensure the proper performance of the agreement;  
4 and

5 (2) protect:

6 (A) the authority; and

7 (B) security [~~payment bond~~] beneficiaries who  
8 have a direct contractual relationship with the private entity or a  
9 subcontractor of the private entity to supply labor or material.

10 (b) Except as provided by Subsection (c), the [~~A performance~~  
11 ~~and payment bond or alternative form of~~] security shall be in an  
12 amount equal to the cost of constructing or maintaining the  
13 project.

14 (c) If the contract amount exceeds \$500 million in  
15 construction costs, and the [~~an~~] authority determines that it is  
16 impracticable for a private entity to provide security in the  
17 amount described by Subsection (b), the authority may [~~shall~~] set  
18 the amount of the [~~bonds or the alternative forms of~~] security at or  
19 above \$500 million, as determined by the authority to be in the  
20 authority's best interest.

21 (d) The [~~A payment or performance bond or alternative form~~  
22 ~~of~~] security is not required for and may not cover the portion of an  
23 agreement that includes only design or planning services, the  
24 performance of preliminary studies, or the acquisition of real  
25 property.

26 (e) The amount of the payment security must not be less than  
27 the amount of the performance security.

1 (f) In addition to performance and payment bonds, an  
2 authority may require the following alternative forms of security:

3 (1) a cashier's check drawn on a financial entity  
4 specified by the authority;

5 (2) a United States bond or note; or

6 (3) an irrevocable bank letter of credit from a United  
7 States domiciled bank acceptable to the authority [~~or~~

8 [~~(4) any other form of security determined suitable by~~  
9 ~~the authority]~~.

10 [~~(g) An authority by rule shall prescribe requirements for~~  
11 ~~alternative forms of security provided under this section.]~~

12 SECTION 4. The changes in law made by this Act apply only to  
13 a comprehensive development agreement entered into on or after the  
14 effective date of this Act. A comprehensive development agreement  
15 entered into before that date is governed by the law as it existed  
16 at the time the agreement was entered into, and the former law is  
17 continued in effect for that purpose.

18 SECTION 5. This Act takes effect September 1, 2011.