

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 21, 2011

TO: Honorable Larry Phillips, Chair, House Committee on Transportation

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: SB731 by Nichols (Relating to the attorney general's legal sufficiency review of a comprehensive development agreement.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Transportation Code to require a toll project entity to pay the attorney general a nonrefundable examination fee for each proposed comprehensive development agreement (CDA) for a toll project submitted to the attorney general for legal sufficiency review and to submit a complete transcript of the proceedings related to the review. Under current statute, the Office of the Attorney General (OAG) is required to perform a legal sufficiency review of all CDAs entered into by a toll project entity.

The attorney general would be required to provide a legal sufficiency determination not later than the 60th business day after the date the examination fee and transcript of the proceedings are received, or notify the toll project entity in writing of the reason for the delay which may then be extended for not more than 30 business days.

The bill would also require the attorney general to set a reasonable amount for the examination fee not to exceed reasonable attorney's fees charged for similar legal services in the private sector, and to adopt rules to implement the provision. According to the OAG, any additional work to implement the provisions of the bill could be absorbed within current resources and the agency would establish fees sufficient to cover the cost of reviewing each CDA. In addition, a toll project entity would be authorized to collect or seek reimbursement of the examination fee from the private participant.

Under current law, the authority for the Texas Department of Transportation (TxDOT) and regional mobility authorities (RMA) to enter into CDAs will expire on August 31, 2011. It is assumed TxDOT or an RMA would submit a proposed CDA to the OAG for legal sufficiency review and pay the proposed fee on or after September 1, 2011, only if the CDA authority is renewed by the Legislature and TxDOT or an RMA proposes to enter into a CDA. Based on the analysis of TxDOT, it is assumed any costs associated with the new fee could be absorbed within the agency's existing resources.

The bill would take effect immediately upon receiving a vote of two-thirds of all members elected to each house; otherwise the bill would take effect on September 1, 2011.

Local Government Impact

There could be a significant fiscal impact to a toll project entity depending on the amount of the costs incurred by the attorney general for reasonable attorney's fees, the number of proposed comprehensive development agreements, and the requirement to submit a complete transcript of the proceedings.

According to the Grayson County Regional Mobility Authority (GCRMA), the Alamo Regional Mobility Authority (Alamo RMA), and the North Texas Tollway Authority (NTTA), there could be a negative fiscal impact associated with the nonrefundable examination fee, but the cost could be offset if the RMA sought reimbursement from a private participant. The authorities also noted that if they did

not enter into a comprehensive development agreement, they would not be allowed to seek reimbursement from the private participant which would then result in a negative fiscal impact.

Source Agencies: 302 Office of the Attorney General, 601 Department of Transportation

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