

## **BILL ANALYSIS**

C.S.H.B. 3391  
By: Phillips  
Transportation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recent legislation changed the structure of Texas transportation financing by authorizing the use of comprehensive development agreements to create public-private partnerships to build transportation projects. The Texas Department of Transportation (TxDOT) was given the authority to enter into such an agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand various types of transportation projects. Later legislation provided an expiration date, with certain exemptions, for TxDOT's authority to enter into these types of agreements. To further regional and statewide transportation goals, TxDOT and certain regional mobility authorities were authorized to enter into a comprehensive development agreement for all or a part of certain projects or for improvements to or construction of certain projects.

With the state's continued growth, interested parties contend that transportation infrastructure is increasingly vital to the success of the Texas economy. The parties note that comprehensive development agreements have proven to be a successful tool for governmental entities to implement and finish transportation projects. C.S.H.B. 3391 seeks to grant more flexibility to TxDOT and regional mobility authorities when entering into comprehensive development agreements.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3391 amends the Transportation Code to authorize the Texas Department of Transportation (TxDOT) to enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a nontolled state highway improvement project authorized by the legislature. The bill redefines "comprehensive development agreement" as an agreement that, in addition to providing for other elements of specified highway projects, provides for the reconstruction of such a project.

C.S.H.B. 3391 revises the provision authorizing TxDOT to enter into comprehensive development agreements for specified projects, changes specifications relating to existing projects, and includes additional highway projects subject to that authorization. The bill authorizes TxDOT to combine in a comprehensive development agreement two or more of those projects.

C.S.H.B. 3391 revises the expiration dates of TxDOT's authority to enter into a comprehensive development agreement for specified projects, revises certain deadlines by which TxDOT is required to obtain the appropriate environmental clearance for specified projects, and specifies that the deadlines also apply to obtaining the appropriate environmental clearance for the initial or base scope of the project if the project agreement provides for the phased construction of the

project. The bill provides an exemption from certain provisions relating to the expiration of authority, deadlines for environmental clearance, and certain financial plans for a specified project. The bill requires TxDOT, not later than December 1, 2014, to provide a report to the Texas Transportation Commission on the status of a project subject to a comprehensive development agreement.

C.S.H.B. 3391 revises the provision authorizing TxDOT or a regional mobility authority to enter into comprehensive development agreements relating to improvements to or construction of specified projects, specifies that those actions can be taken for all or part of such projects, changes specifications relating to existing projects, and includes additional highway projects subject to that authorization. The bill requires TxDOT or such an authority, as applicable and not later than December 1, 2014, to provide a report to the commission on the status of such a project. The bill postpones from August 31, 2015, to August 31, 2017, the expiration of TxDOT's authority or a regional mobility authority's authority, as applicable, to enter into a comprehensive development agreement for those specified projects.

C.S.H.B. 3391 revises the definition of "environmental clearance," for purposes of the provisions in regard to both the general authority and the limited authority for certain projects using comprehensive development agreements, to specify that it also means that a finding of no significant impact has been issued, as applicable, for the initial or base scope of the project and that it also means, for a project for which an environmental impact statement is prepared, that a record of decision has been issued, as applicable, for the initial or base scope of the project.

C.S.H.B. 3391 authorizes a regional mobility authority formed by a county with a population of more than 700,000 that borders the United Mexican States to enter into a comprehensive development agreement for the Hidalgo County Loop Project, the International Bridge Trade Corridor Project, and projects associated with commuter rail.

C.S.H.B. 3391 removes provisions relating to requiring a toll project by rule or by official action, as applicable, 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. The bill instead requires a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project to contain a provision authorizing the toll project entity to terminate the agreement for convenience and to purchase, under terms agreed to by the parties, the interest of the private participant in the agreement and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

C.S.H.B. 3391 requires such an agreement to include a price breakdown stating a specific price for the purchase of the private participant's interest at specified intervals from the date the toll project opens, of not less than two years and not more than five years, over the term of the agreement. The bill requires the provision to authorize the toll project entity to terminate the comprehensive development agreement and to purchase the private participant's interest at any time during a specified interval at the lesser of the price stated for that interval or the greater of the following: the then fair market value of the private participant's interest, plus or minus any other amounts specified in the comprehensive development agreement; or an amount equal to the amount of outstanding debt specified in the comprehensive development agreement, plus or minus any other amounts specified in the comprehensive development agreement. The bill requires a toll project entity to include in a request for proposals for such a comprehensive development agreement a request for the proposed price breakdown and to assign points to and score each proposer's price breakdown in the evaluation of proposals.

C.S.H.B. 3391 requires a private participant, 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. The bill requires the toll project entity to notify the private participant as to whether it will

exercise the option to purchase not later than six months after the date it receives notice. The bill requires a toll project entity to notify the private participant of the toll project entity's intention to purchase the private participant's interest not less than six months before the date of the purchase. The bill exempts a project for which a request for proposals was issued before January 1, 2013, from these provisions, in regard to termination for convenience, relating to the price breakdown, a purchase during a specified interval, a request for proposals, and the notification requirements. The bill provides that the price for terminating the agreement, if a project requires expansion or reconstruction in a manner that differs from the manner provided in the original project scope or schedule, may be adjusted to reflect the changes in the agreement.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3391 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Sections 223.201(a), (b), (f), (i), (j), and (k), Transportation Code, are amended to read as follows:

(a) Subject to Section 223.202, the department may enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a:

(1) toll project;

(2) state highway improvement project that includes both tolled and nontolled lanes and may include nontolled appurtenant facilities;

(3) state highway improvement project in which the private entity has an interest in the project; ~~or~~

(4) state highway improvement project financed wholly or partly with the proceeds of private activity bonds, as defined by Section 141(a), Internal Revenue Code of 1986; or

(5) nontolled state highway improvement project authorized by the legislature.

(b) In this subchapter, "comprehensive development agreement" means an agreement that, at a minimum, provides for the design and construction, reconstruction, rehabilitation, expansion, or improvement of a project described in Subsection (a) and may also provide for

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 223.201, Transportation Code, is amended by amending Subsections (a), (b), (f), (g), (i), (j), (k), and (l) and adding Subsection (j-1) to read as follows:

(a) Subject to Section 223.202, the department may enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a:

(1) toll project;

(2) state highway improvement project that includes both tolled and nontolled lanes and may include nontolled appurtenant facilities;

(3) state highway improvement project in which the private entity has an interest in the project; ~~or~~

(4) state highway improvement project financed wholly or partly with the proceeds of private activity bonds, as defined by Section 141(a), Internal Revenue Code of 1986; or

(5) nontolled state highway improvement project authorized by the legislature.

(b) In this subchapter, "comprehensive development agreement" means an agreement that, at a minimum, provides for the design and construction, reconstruction, rehabilitation, expansion, or improvement of a project described in Subsection (a) and may also provide for the financing, acquisition, maintenance, or operation of a project

the financing, acquisition, maintenance, or operation of a project described in Subsection (a).

(f) The department may enter into not more than 10 comprehensive development agreements in each state fiscal biennium.

In addition, the [The] department may enter into a comprehensive development agreement [only] for all or part of:

(1) the State Highway 99 (Grand Parkway) project;

(2) the Interstate Highway 35E managed lanes project in Dallas and Denton Counties from Interstate Highway 635 to U.S. Highway 380;

(3) the North Tarrant Express project in Tarrant and Dallas Counties, including:

(A) on State Highway 183 from State Highway 121 to State Highway 161 (Segment 2E);

(B) on Interstate Highway 35W from Interstate Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C); and

(C) on Interstate Highway 820 from State Highway 183 North to south of Randol Mill Road (Segment 4);

(4) the State Highway 183 managed lanes project in Dallas County from State Highway 161 to Interstate Highway 35E;

(5) the State Highway 249 project in Harris and Montgomery Counties from Spring Cypress Road to Farm-to-Market Road 1774;

described in Subsection (a).

(f) The department may enter into a comprehensive development agreement only for all or part of:

(1) the State Highway 99 (Grand Parkway) project;

(2) the Interstate Highway 35E managed lanes project in Dallas and Denton Counties from Interstate Highway 635 to U.S. Highway 380;

(3) the Interstate Highway 35W project in Tarrant County from Interstate Highway 30 to State Highway 114

[North Tarrant Express project in Tarrant and Dallas Counties, including:

[(A) on State Highway 183 from State Highway 121 to State Highway 161 (Segment 2E);

[(B) on Interstate Highway 35W from Interstate Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C); and

[(C) on Interstate Highway 820 from State Highway 183 North to south of Randol Mill Road (Segment 4)];

(4) the State Highway 183 managed lanes project in Tarrant and Dallas Counties [County] from State Highway 121 [161] to Interstate Highway 35E;

(5) the Interstate Highway 35/U.S. Highway 67 Southern Gateway project in Dallas County, including:

(A) Interstate Highway 35E from 8th Street to Interstate Highway 20; and

(B) U.S. Highway 67 from Interstate Highway 35E to Farm-to-Market Road 1382 (Belt Line Road)

[State Highway 249 project in Harris and Montgomery Counties from Spring Cypress Road to Farm-to-Market Road 1774];

(6) the State Highway 288 project from U.S.

(6) the State Highway 288 project in Brazoria County and Harris County; ~~and~~

(7) the U.S. Highway 290 ~~[Hempstead]~~ managed lanes project in Harris County from Interstate Highway 610 to State Highway 99; and

(8) a project under Section 91.054.

No equivalent provision.

(i) The authority to enter into a comprehensive development agreement for a project described by Subsection (f), ~~other than the State Highway 99 (Grand Parkway) project and a project under Section 91.054,~~ expires August 31, ~~2017~~ [2015].

(j) Before the department may enter into a comprehensive development agreement

Highway 59 to south of State Highway 6 in Brazoria County and Harris County; ~~and~~

(7) the U.S. Highway 290 ~~[Hempstead]~~ managed lanes project in Harris County from Interstate Highway 610 to State Highway 99;

(8) the Interstate Highway 820 project from State Highway 183 to Randol Mill Road;

(9) the State Highway 114 project in Dallas County from State Highway 121 to State Highway 183;

(10) the Loop 12 project in Dallas County from State Highway 183 to Interstate Highway 35E;

(11) the Interstate Highway 35E project in Dallas County from State Highway 183 to the Dallas North Tollway;

(12) the Loop 9 project in Dallas and Ellis Counties from Interstate Highway 20 to U.S. Highway 67; and

(13) the U.S. Highway 181 Harbor Bridge project in Nueces County between U.S. Highway 181 at Beach Avenue and Interstate Highway 37.

(g) The department may combine in a comprehensive development agreement under this subchapter:

(1) a toll project and a rail facility as defined by Section 91.001; or

(2) two or more projects described by Subsection (f).

(i) The authority to enter into a comprehensive development agreement under [for a project described by] Subsection (f); ~~other than the State Highway 99 (Grand Parkway) project~~ expires:

(1) August 31, 2017; or

(2) August 31, 2015, for:

(A) the State Highway 183 managed lanes project;

(B) the State Highway 114 project; and

(C) the Loop 12 project.

(j) Before the department may enter into a comprehensive development agreement under Subsection (f), the department must:

under Subsection (f), the department must:  
(1) obtain, ~~not later than August 31, 2015~~ ~~[2013]~~, the appropriate environmental clearance for any project other than the State Highway 99 (Grand Parkway) project; and

(2) present to the commission a full financial plan for the project, including costing methodology and cost proposals.

~~No equivalent provision.~~

(k) Not later than December 1, ~~2014~~ ~~[2012]~~, the department shall provide ~~[present]~~ a report to the commission on the status of a project described by Subsection (f). The report must include:  
(1) the status of the project's environmental clearance;  
(2) an explanation of any project delays; and  
(3) if the procurement is not completed, the anticipated date for the completion of the procurement.

~~No equivalent provision.~~

SECTION 2. Sections 223.2011(a), (c), and (f), Transportation Code, are amended to read as follows:

(a) Notwithstanding Sections 223.201(f) and 370.305(c), an authority under Section 370.003 may enter into not more than two comprehensive development agreements in each state fiscal biennium. In addition, the department or an authority ~~[under Section 370.003]~~ may enter into a comprehensive development agreement relating to improvements to, or construction of:

(1) obtain~~[, not later than August 31, 2013,]~~ the appropriate environmental clearance for the project or for the initial or base scope of the project if the project agreement provides for the phased construction of the project:

(A) not later than August 31, 2017; or  
(B) not later than January 31, 2014, for a project described by Subsection (i)(2) [for any project other than the State Highway 99 (Grand Parkway) project]; and

(2) present to the commission a full financial plan for the project, including costing methodology and cost proposals.

(j-1) Subsections (i) and (j) do not apply to the State Highway 99 (Grand Parkway) project.

(k) Not later than December 1, ~~2014~~ ~~[2012]~~, the department shall provide ~~[present]~~ a report to the commission on the status of a project described by Subsection (f). The report must include:

(1) the status of the project's environmental clearance;  
(2) an explanation of any project delays; and

(3) if the procurement is not completed, the anticipated date for the completion of the procurement.

(l) In this section, "environmental clearance" means:

(1) a finding of no significant impact has been issued for the project or, as applicable, for the initial or base scope of the project; or  
(2) for a project for which an environmental impact statement is prepared, a record of decision has been issued for that project or, as applicable, for the initial or base scope of the project.

SECTION 2. Sections 223.2011(a), (c), (e), and (f), Transportation Code, are amended to read as follows:

(a) Notwithstanding Sections 223.201(f) and 370.305(c), the department or an authority under Section 370.003 may enter into a comprehensive development agreement relating to improvements to, or construction of all or part of:

- (1) the Loop 1 (MoPac Improvement) project from Farm-to-Market Road 734 to Cesar Chavez Street;
- (2) the U.S. 183 (Bergstrom Expressway) project from Springdale Road to Patton Avenue; or
- (3) a project consisting of the construction of:
  - (A) the Outer Parkway Project from U.S. Highway ~~77~~83 to Farm-to-Market Road 1847; and
  - (B) the South Padre Island Second Access Causeway Project from State Highway 100 to Park Road 100.

- (1) the Loop 1 (MoPac Improvement) project from Farm-to-Market Road 734 to Cesar Chavez Street;
- (2) the U.S. 183 (Bergstrom Expressway) project from Springdale Road to Patton Avenue; ~~[or]~~
- (3) a project consisting of the construction of:
  - (A) the Outer Parkway Project in Cameron County from U.S. Highway ~~77~~77/83 to Farm-to-Market Road 1847; and
  - (B) the South Padre Island Second Access Causeway Project from State Highway 100 to Park Road 100;

(4) the Loop 1604 project in Bexar County;

(5) the Loop 49 project from Interstate 20 to U.S. Highway 69 (Lindale Relief Route) and from State Highway 110 to U.S. Highway 259 (Segments 6 and 7);

(6) the Loop 375 Border Highway West project in El Paso County from Race Track Drive to U.S. Highway 54; and

(7) the Northeast Parkway project in El Paso County from Loop 375 east of the Railroad Drive overpass to the Texas-New Mexico border.

- (c) Not later than December 1, 2014 ~~[2012]~~, the department or the authority, as applicable, shall present a report to the commission on the status of a project described by Subsection (a). The report must include:
- (1) the status of the project's environmental clearance;
  - (2) an explanation of any project delays; and
  - (3) if the procurement is not completed, the anticipated date for the completion of the procurement.

- (c) Not later than December 1, 2014 ~~[2012]~~, the department or the authority, as applicable, shall provide ~~[present]~~ a report to the commission on the status of a project described by Subsection (a). The report must include:

- (1) the status of the project's environmental clearance;
- (2) an explanation of any project delays; and

- (3) if the procurement is not completed, the anticipated date for the completion of the procurement.

(e) In this section, "environmental clearance" means:

- (1) a finding of no significant impact has been issued for the project or, as applicable, for the initial or base scope of the project; or
- (2) for a project for which an environmental impact statement is prepared, a record of decision has been issued for that project or, as applicable, for the initial or base scope of the project.

No equivalent provision.

(f) The authority to enter into a comprehensive development agreement under this section expires August 31, 2017 [2015].

(f) The authority to enter into a comprehensive development agreement under this section expires August 31, 2017 [2015].

SECTION 3. Section 223.201(m), Transportation Code, is repealed.

No equivalent provision.

No equivalent provision.

SECTION 3. Subchapter G, Chapter 370, Transportation Code, is amended by adding Section 370.3051 to read as follows:

Sec. 370.3051. LIMITED AUTHORITY FOR CERTAIN PROJECTS USING COMPREHENSIVE DEVELOPMENT AGREEMENTS. Notwithstanding Section 370.305(c), an authority formed by a county with a population of more than 700,000 that borders the United Mexican States may enter into a comprehensive development agreement for:

- (1) the Hidalgo County Loop Project;
- (2) the International Bridge Trade Corridor Project; and
- (3) projects associated with commuter rail.

No equivalent provision.

SECTION 4. Section 371.101, Transportation Code, is amended to read as follows:

Sec. 371.101. TERMINATION FOR CONVENIENCE.

(a) A comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project must contain a provision authorizing the toll project entity to terminate the agreement for convenience and to purchase, under terms agreed to by the parties:

- (1) the interest of the private participant in the comprehensive development agreement; and
- (2) related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

No equivalent provision.

(b) A comprehensive development agreement described by Subsection (a) must include a price breakdown stating a specific price for the purchase of the private participant's interest at specified intervals from the date the toll project opens, of not less than two

No equivalent provision.



years and not more than five years, over the term of the agreement.

No equivalent provision.

(c) The provision must authorize the toll project entity to terminate the comprehensive development agreement and to purchase the private participant's interest at any time during a specified interval at the lesser of:

(1) the price stated for that interval; or

(2) the greater of:

(A) the then fair market value of the private participant's interest, plus or minus any other amounts specified in the comprehensive development agreement; or

(B) an amount equal to the amount of outstanding debt specified in the comprehensive development agreement, plus or minus any other amounts specified in the comprehensive development agreement.

No equivalent provision.

(d) A toll project entity shall include in a request for proposals for an agreement described by Subsection (a) a request for the proposed price breakdown described by Subsection (b) and shall assign points to and score each proposer's price breakdown in the evaluation of proposals.

No equivalent provision.

(e) A private participant shall, not later than 12 months before the date that a new price interval takes effect, notify the toll project entity of the beginning of the price interval. The toll project entity must notify the private participant 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.

No equivalent provision.

(f) A toll project entity must notify the private participant of the toll project entity's intention to purchase the private participant's interest under this section not less than six months before the date of the purchase.

No equivalent provision.

(g) Subsections (b), (c), (d), (e), and (f) do not apply to a project for which a request for proposals was issued before January 1, 2013.

No equivalent provision.

(h) If a project requires expansion or reconstruction in a manner that differs from the manner provided in the original project scope or schedule, the price for terminating the comprehensive development agreement may be adjusted to reflect the changes in the agreement. ~~[A toll project entity having~~

~~rulemaking authority by rule and a toll project entity without rulemaking authority by official action shall 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. A formula must calculate an estimated amount of loss to the private participant as a result of the termination for convenience.~~

~~[(b) The formula shall 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.~~

~~[(c) A formula under Subsection (b) may not include any estimate of future revenue from the project, if not included in an agreed base case financial model under Subsection (b). Compensation to the private participant upon termination for convenience may not exceed the amount determined using the formula under Subsection (b).]~~

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 5. Same as introduced version.