

## **BILL ANALYSIS**

H.B. 3650  
By: Harper-Brown  
Transportation  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Texas has an ever-growing population, and this growth has resulted in increased highway congestion. This increase in highway traffic combined with significant freight movement has accelerated the expected wear and tear on Texas highways. As a result, Texas has some major transportation infrastructure needs, and interested parties assert that the use of availability payments to fund transportation projects would help Texas meet these needs. H.B. 3650 seeks to grant the Texas Department of Transportation (TxDOT) more flexibility in addressing state highway system needs and provide another tool for TxDOT in delivering transportation projects.

### **RULEMAKING AUTHORITY**

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

### **ANALYSIS**

H.B. 3650 amends the Transportation Code to authorize the Texas Department of Transportation (TxDOT) to enter into an agreement with a private entity for the design, development, financing, construction, maintenance, or operation of a toll or nontoll facility on the state highway system under which the private entity is compensated through milestone or periodic payments based on the private entity's compliance with performance requirements defined in the agreement. The bill exempts such an agreement from statutory provisions relating to competitive bids regarding bids and contracts for highway projects and from statutory provisions relating to professional and consulting services.

H.B. 3650 authorizes performance requirements in an agreement entered into under statutory provisions relating to bids and contracts for highway projects to include requirements relating to the availability of lanes for use by the traveling public.

H.B. 3650 authorizes TxDOT to use any available funds for the purpose of making a payment under such an availability payment agreement entered into under the bill's provisions, including money in the state highway fund that is required to be used for public roadways by the Texas Constitution or federal law. The bill limits the total amount of compensation paid out of the state highway fund to amounts that do not exceed the amounts eligible to be paid from those funds under the Texas Constitution and incurred or reasonably anticipated to be incurred by the private entity during the term of the agreement. The bill establishes that TxDOT's obligation to make a payment is subject to the availability of funds appropriated by the legislature that may be used for that purpose or other funds that may be used for that purpose. The bill authorizes TxDOT to hold money that is to be used to satisfy payment obligations of TxDOT under such an agreement, including money from the state highway fund that is to be used for the payments, in a reserve fund or trust account created under an agreement with a commercial bank, depository trust company, or other entity.

H.B. 3650 authorizes TxDOT to pay an unsuccessful proposer that submits a responsive

proposal to a request for proposals for an availability payment agreement a stipulated amount for the work product contained in the proposal and sets out provisions relating to the joint ownership of the rights to the work product contained in the unsuccessful proposal after payment of the stipulated amount, TxDOT's authorized use of that work product, and other provisions relating to the use of any portion of the work product contained in an unsuccessful proposal by TxDOT or the proposer.

H.B. 3650 requires TxDOT to require a private entity entering into an availability payment agreement with TxDOT to provide a performance and payment bond or an alternative form of security authorized under applicable provisions and sets out provisions relating to the amount of such a bond or security and the required actions of TxDOT on determining that it is impracticable for a private entity to provide security in that amount. The bill authorizes an availability payment agreement to include any provision TxDOT considers appropriate and describes such provisions that may be included.

H.B. 3650 provides that, to encourage private entities to submit proposals under the bill's provisions, specified information relating to such a proposal is confidential and the bill exempts that information from disclosure, inspection, or copying under the state public information law and from disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project is entered. The bill establishes that the final rankings of each proposal under each of the published criteria are not confidential after TxDOT completes its final ranking of submitted proposals.

H.B. 3650 establishes that a state highway or another facility that is the subject of an availability payment agreement is public property and is owned by TxDOT. The bill authorizes TxDOT to enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a project, including supplemental facilities. The bill establishes that, at the termination of the agreement, the highway or other facilities are to be in a state of proper maintenance as determined by TxDOT and returned to TxDOT in satisfactory condition at no further cost.

H.B. 3650 authorizes the Texas Transportation Commission to adopt rules necessary to implement the bill's provisions and authorizes the rules to include criteria for determining the most qualified entities to submit proposals and for the award of an agreement to the private entity determined to provide the best value for TxDOT.

#### **EFFECTIVE DATE**

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