

BILL ANALYSIS

C.S.S.B. 1294
By: Davis
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been noted that the Texas Department of Transportation (TxDOT) has a long history of outsourcing a wide variety of services and functions to the private sector, including construction, maintenance, and highway improvement services. Interested parties contend that TxDOT should give preference to certain private sector providers when that preference serves to create a positive economic impact on job growth and job retention in Texas. These parties are also concerned about private sector providers whose principal place of business is located in a bordering state that does not award such preferential treatment. C.S.S.B. 1294 seeks to require TxDOT, in awarding a contract for a transportation project, to give preference to a private sector provider if certain conditions are met.

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.S.B. 1294 amends the Transportation Code to require the Texas Department of Transportation (TxDOT), in awarding a contract for a transportation project to a private sector provider, to give preference to such a provider if the following conditions are met: the preference serves to create a positive economic impact on job growth and job retention in Texas; the transportation project for which the contract is being awarded is funded entirely from state funds, local funds, or a combination of state and local funds; and the amount of the bid or proposal of the provider does not exceed an amount equal to 105 percent of the lowest bid or proposal received by TxDOT for the transportation project. The bill authorizes TxDOT, in determining whether the preference serves to create a positive economic impact on job growth and job retention in Texas, to consider a private sector provider's employment presence and business establishments in Texas. The bill requires TxDOT to give equal preference to such a private sector provider and a private sector provider whose principal place of business is located in a state that borders Texas and does not award preferential treatment to private sector providers in a manner similar to the bill's provisions. The bill makes its provisions inapplicable to the procurement of professional services under the Professional Services Procurement Act.

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.S.B. 1294 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subchapter B, Chapter 223, Transportation Code, is amended by adding Section 223.050 to read as follows:

Sec. 223.050. PREFERENCE FOR CERTAIN PROVIDERS. (a) In awarding a contract to a private sector provider, the department shall give preference to a private sector provider if:

(1) the preference serves to create a positive economic impact on job growth and job retention in this state;

(2) the transportation project for which the contract is being awarded is funded entirely from:

(A) state funds;

(B) local funds; or

(C) a combination of state and local funds; and

(3) in procuring the contract, the amount of the bid or proposal of the provider does not exceed the amount equal to 105 percent of the lowest bid or proposal received by the department for the procurement.

(b) The department, in determining whether the preference under Subsection (a) serves to create a positive economic impact on job growth and job retention in this state, may consider a private sector provider's employment presence and business establishments in this state.

(c) This section does not apply to the procurement of professional services under Subchapter A, Chapter 2254, Government Code.

SECTION 2. 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.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter B, Chapter 223, Transportation Code, is amended by adding Section 223.050 to read as follows:

Sec. 223.050. PREFERENCE FOR CERTAIN PROVIDERS. (a) Except as provided by Subsection (d), in awarding a contract to a private sector provider, the department shall give preference to a private sector provider if:

(1) the preference serves to create a positive economic impact on job growth and job retention in this state;

(2) the transportation project for which the contract is being awarded is funded entirely from:

(A) state funds;

(B) local funds; or

(C) a combination of state and local funds; and

(3) the amount of the bid or proposal of the provider does not exceed an amount equal to 105 percent of the lowest bid or proposal received by the department for the transportation project.

(b) The department, in determining whether the preference under Subsection (a) serves to create a positive economic impact on job growth and job retention in this state, may consider a private sector provider's employment presence and business establishments in this state.

(c) This section does not apply to the procurement of professional services under Subchapter A, Chapter 2254, Government Code.

(d) The department must give equal preference to a private sector provider under Subsection (a) and a private sector provider whose principal place of business is located in a state that:

(1) borders this state; and

(2) does not award preferential treatment to private sector providers in a manner similar to this section.

SECTION 2. Same as engrossed version.