

By: Darby

H.B. No. 1134

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 surety 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) contractors, subcontractors, and suppliers

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

(b) Except as provided by Subsection (c), the [A] performance and payment bond or alternative form of security shall

1 be in an amount equal to the cost of constructing [~~or maintaining~~]
2 the project.

3 (c) If the contract price exceeds \$250 million in
4 construction costs, and the department determines that it is
5 impracticable for a private entity to provide security in the
6 amount described by Subsection (b), the department shall set the
7 amount of [~~the bonds or the alternative forms of~~] security at not
8 less than \$250 million.

9 (c-1) The department may require an additional amount of
10 security or other form of guaranty acceptable to the department in
11 addition to the amount set by the department under Subsection (c) if
12 the department determines that additional security or guaranty is
13 required to achieve the objectives of Subsection (a).

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

19 (e) The amount of the payment security is separate from and
20 in addition to the performance security and must not be less than
21 the amount of the performance security.

22 (f) In addition to or instead of a performance and payment
23 bond issued by a corporate surety authorized to issue surety bonds
24 in this state, the department may require one or more of the
25 following alternative forms of security:

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

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

2 (3) an irrevocable bank letter of credit from a
3 financial institution acceptable to the department that has an
4 office in this state at which the letter of credit may be presented
5 for payment [~~or~~

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

8 (g) The department by rule shall prescribe requirements for
9 an alternative form of security provided under this section.

10 (h) If the department authorizes payment security to be
11 provided by a means other than a payment bond issued by a corporate
12 surety authorized to issue surety bonds in this state, the
13 comprehensive development agreement must include provisions
14 specifying how a claimant may submit a claim and how the claim
15 process will be administered. The department shall post the claims
16 procedures for the project on its website.

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

19 Sec. 366.404. PERFORMANCE AND PAYMENT SECURITY.

20 (a) Notwithstanding the requirements of Subchapter B, Chapter
21 2253, Government Code, an authority shall require a private entity
22 entering into a comprehensive development agreement under this
23 subchapter to provide a performance and payment bond issued by a
24 corporate surety authorized to issue surety bonds in this state or
25 an alternative form of security in an amount sufficient to:

26 (1) ensure the proper performance of the agreement;

27 and

1 (2) protect:

2 (A) the authority; and

3 (B) contractors, subcontractors, and suppliers
4 ~~[payment bond beneficiaries]~~ who have a direct contractual
5 relationship with the private entity or with a subcontractor of the
6 private entity to supply labor or material for the project.

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

11 (c) If the contract price exceeds \$250 million in
12 construction costs, and the ~~[an]~~ authority determines that it is
13 impracticable for a private entity to provide security in the
14 amount described by Subsection (b), the authority shall set the
15 amount of ~~[the bonds or the alternative forms of]~~ security at not
16 less than \$250 million.

17 (c-1) The authority may require an additional amount of
18 security or other form of guaranty acceptable to the authority in
19 addition to the amount set by the authority under Subsection (c) if
20 the authority determines that additional security or guaranty is
21 required to achieve the objectives of Subsection (a).

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

27 (e) The amount of the payment security is separate from and

1 in addition to the performance security and must not be less than
2 the amount of the performance security.

3 (f) In addition to, or instead of, performance and payment
4 bonds issued by a corporate surety authorized to issue surety bonds
5 in this state, an authority may require the following alternative
6 forms of security:

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

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

10 (3) an irrevocable bank letter of credit from a
11 financial institution acceptable to the authority that has an
12 office in this state at which the letter of credit may be presented
13 for payment [~~or~~

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

16 (g) An authority by rule shall prescribe requirements for
17 alternative forms of security provided under this section.

18 (h) If the authority authorizes payment security to be
19 provided by a means other than a payment bond issued by a corporate
20 surety authorized to issue surety bonds in this state, the
21 comprehensive development agreement must include provisions
22 specifying how a claimant may submit a claim and how the claim
23 process will be administered. The authority shall post the claims
24 procedures for the project on its website.

25 SECTION 3. Section 370.308, Transportation Code, is amended
26 to read as follows:

27 Sec. 370.308. PERFORMANCE AND PAYMENT SECURITY.

1 (a) Notwithstanding Section 223.006 and the requirements of
2 Subchapter B, Chapter 2253, Government Code, an authority shall
3 require a private entity entering into a comprehensive development
4 agreement under Section 370.305 to provide a performance and
5 payment bond issued by a corporate surety authorized to issue
6 surety bonds in this state or an alternative form of security in an
7 amount sufficient to:

8 (1) ensure the proper performance of the agreement;
9 and

10 (2) protect:

11 (A) the authority; and

12 (B) contractors, subcontractors, and suppliers
13 ~~[payment bond beneficiaries]~~ who have a direct contractual
14 relationship with the private entity or with a subcontractor of the
15 private entity to supply labor or material for the project.

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

20 (c) If the contract price exceeds \$250 million in
21 construction costs, and the [an] authority determines that it is
22 impracticable for a private entity to provide security in the
23 amount described by Subsection (b), the authority shall set the
24 amount of ~~[the bonds or the alternative forms of]~~ security at not
25 less than \$250 million.

26 (c-1) The authority may require an additional amount of
27 security or other form of guaranty acceptable to the authority in

1 addition to the amount set by the authority under Subsection (c) if
2 the authority determines that additional security or guaranty is
3 required to achieve the objectives of Subsection (a).

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

9 (e) The amount of the payment security is separate from and
10 in addition to the performance security and must not be less than
11 the amount of the performance security.

12 (f) In addition to performance and payment bonds issued by a
13 corporate surety authorized to issue surety bonds in this state, an
14 authority may require the following alternative forms of security:

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

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

18 (3) an irrevocable bank letter of credit from a
19 financial institution acceptable to the authority that has an
20 office in this state at which the letter of credit may be presented
21 for payment [~~, or~~

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

24 (g) An authority by rule shall prescribe requirements for
25 alternative forms of security provided under this section.

26 (h) If the authority authorizes payment security to be
27 provided by a means other than a payment bond issued by a corporate

1 surety authorized to issue surety bonds in this state, the
2 comprehensive development agreement must include provisions
3 specifying how a claimant may submit a claim and how the claim
4 process will be administered. The authority shall post the claims
5 procedures for the project on its website.

6 SECTION 4. The changes in law made by this Act apply only to
7 a comprehensive development agreement for which a best value
8 proposer is selected on or after the effective date of this Act. A
9 comprehensive development agreement for which a best value proposer
10 was selected before that date is governed by the law as it existed
11 at the time the best value proposer was selected, and the former law
12 is continued in effect for that purpose.

13 SECTION 5. This Act takes effect September 1, 2013.