

BILL ANALYSIS

H.B. 3989
By: Raney
Transportation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, the Texas Department of Transportation (TxDOT) does not have a comprehensive written policy upon which it relies when determining that a design professional should be precluded from a project or contract. Each TxDOT district exercises independent judgment on a case-by-case basis and often provides only a vague explanation of a perceived conflict of interest. This practice results in inconsistency and confusion throughout all districts and across all projects. Texas law contains conflict-of-interest provisions applicable to contracts with state agencies. TxDOT predominantly cites this law as the basis for its preclusion determinations. However, there is often no nexus between the statutory conflicts of interest and the reasons given for a particular preclusion. Because of this inconsistency throughout the TxDOT districts an increase in inefficiencies, contractual uncertainty, and project delays can and do exist. H.B. 3989 seeks to require TxDOT to establish a written preclusion policy, distribute or publicize the written policy, and provide an opportunity for precluded consultants to appeal TxDOT's decisions.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

H.B. 3989 amends the Government Code to require the Texas Department of Transportation (TxDOT) to adopt a written preclusion policy before it may make a determination that a private design professional is precluded from performing a contract for architectural or engineering services or from participating in a procurement for those services. The bill defines "private design professional" by reference as a registered architect or licensed engineer. The bill requires the policy to do the following:

- be published or distributed in a manner that ensures that private design professionals in Texas are aware of the policy;
- provide that the private design professional be notified in writing at the time TxDOT determines that a potential basis for preclusion exists; and
- provide for an appeals process by which the private design professional is given a reasonable amount of time to establish that no basis for preclusion under the policy exists.

H.B. 3989 applies only to a contract entered into on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.