# LEGISLATIVE BUDGET BOARD
## Austin, Texas

## FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

**April 17, 2007**

**TO:** Honorable John Carona, Chair, Senate Committee on Transportation & Homeland Security

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** **HB1892** by Smith, Wayne (Relating to the authority of certain counties and other entities with respect to certain transportation projects.), **As Engrossed**

**The fiscal implications to the state cannot be determined.**

The bill would make various changes to the Transportation Code. This analysis discusses only those SECTIONS of the bill and issues within the SECTIONS that would have a fiscal impact.

SECTION 1 of the bill would add Section 223.210 to impose a two-year moratorium on certain provisions in contracts between a private entity and a toll project entity, including the Texas Department of Transportation (TxDOT), a regional tollway authority, a regional mobility authority, or a county. The new section would specify that a toll project entity could not enter into a comprehensive development agreement (CDA) containing a provision permitting a private participant to operate and collect revenue from a toll project or enter into a contract to sell a toll project to a private entity. The provisions of SECTION 1 would expire on September 1, 2009.

SECTION 3 would add Section 228.011 to require the Texas Transportation Commission (TTC) or TxDOT to provide a county the first option to finance, construct, or operate a portion of a toll project in the county before TTC or TxDOT could enter into a contract for those purposes. Except as otherwise provided by statute, an agreement entered into by the county and the TTC or TxDOT may not require payment by a county to the TTC or TxDOT for a project that is financed, constructed, or operated by the county and that is on or directly connected to the state highway system.

SECTION 4 would add Section 228.012 to require the Texas Transportation Commission (TTC) or TxDOT to provide a regional tollway authority (RTA) the first option to finance, construct, or operate a portion of a toll project in the boundaries of the RTA before TTC or TxDOT could enter into a contract for those purposes. Except as otherwise provided by statute, an agreement entered into by the RTA and the TTC or TxDOT may not require payment by a RTA to the TTC or TxDOT for a project that is financed, constructed, or operated by the RTA and that is on or directly connected to the state highway system.

SECTION 6 would amend Section 284.002 to change the population and geographical brackets to authorize counties with a population of 10,000 or more to form a County Toll Road Authority under Chapter 284 Transportation Code.

SECTION 7 would amend Section 284.003 to authorize a county to exercise the powers of a regional mobility authority in connection with certain projects and would give a county the same authority granted to TxDOT to enter into a comprehensive development agreement. The bill would authorize a county's plans for certain transportation projects to provide for and permit the use of state and federal funds and specifies that a plan is not subject to approval, supervision, or regulation by TTC or TxDOT.

SECTION 8 would amend Subchapter A, Chapter 284, to grant a county all powers of TxDOT related to the development of a Trans-Texas Corridor project if a county requests or is requested by TxDOT to participate in the project. The bill would authorize a county to use state highway right-of-way or acces to the state highway system regardless of when or how the right-of-way or access was acquired. The bill would specify that TxDOT or the TTC may not require payment for the right-of-way or access, except to reimburse TxDOT or TTC for costs incurred or to be incurred by a third-party, including the federal government, as a result of the use by the county.

SECTION 12 would amend Section 284.065 to allow a county toll road authority (CTRA) to pool financing for projects.

SECTION 13 would add Chapter 371 to allow any hybrid vehicle displaying a "hybrid vehicle" insignia to use a high occupany vehicle lane on a toll road without passenger restrictions unless the use would impair the receipt of federal transit funds.

SECTION 14 would add Section 502.1861 to require the state to issue a specially designed hybrid vehicle insignia to hybrid owners who apply without the payment of any additional fee.

TxDOT indicates that the bill would delay the development and procurement of several proposed CDA projects totaling $7.97 billion and delay the receipt of any associated concession fees to the state until fiscal year 2010 or later. Based on the information provided by TxDOT, it is assumed any fiscal implications to the state would depend on the number of potential CDA projects and concession agreements that could be implemented under current law but would be delayed or prohibited as a result of the enactment of the bill and, therefore, cannot be determined.

In addition, TxDOT indicates that the state's federal highway funding could be jeopardized under certain provisions of the bill, and it is assumed federal penalties could accrue depending on the number and scope of projects in violation of federal requirements. Currently, TxDOT is the state administrative entity granted authority by the federal government to oversee or conduct environmental and design and build reviews for any major roadway receiving federal aid or intersecting a federal-aid highway or a transit system subsidized by the federal government.

In addition, TxDOT assumes that since any county over 10,000 would have the ability to form a CTRA through a simple act of the county commissioner's court, and could therefore begin to seize state right-of-way/transportation projects at any stage of development, the provisions of the bill could be taken into consideration in a risk analysis related to the issuance of bonds. TxDOT assumes that bond holders would require higher interest rates on all bonds issued to finance state toll projects in order to account for the risk that a project could be taken over at any time.

Based on the analysis of TxDOT, it is assumed any costs associated with implementing a system to register hybrid vehicles could be absorbed within existing resources. TxDOT indicates that the implementation of the bill would result in a loss of toll revenue depending on the number of state toll projects in operation and the number of registered hybrid vehicles using toll projects in each fiscal year. However, it is assumed the bill would not result in a significant impact to state revenue.

## Local Government Impact

It is assumed that a county or local government corporation would participate in the acquisition, creation, administration, financing, construction, improvement, maintenance, and/or operation of a toll project only if sufficient funds were available. Counties would see savings for these projects from not having to pay TxDOT for use of state highway right-of-way or access to the state highway system, but the savings, if any, would depend on the size of the local body, the size and type of projects constructed, and the nature of the any agreements entered into with TxDOT.

A regional tollway authority, regional mobility authority, or a county that implements the provisions of the bill may have additional costs to construct a toll project if the ability to contract with private participants is restricted. However, these costs would depend on the size of the constructing entity and the size and type of the projects that are constructed.

**Source Agencies:**

**LBB Staff:** JOB, KJG, MW, TG, DB