

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 25, 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; providing penalties.), **Committee Report 2nd House, Substituted**

The fiscal implications to the State cannot be determined.

The bill would amend the Transportation Code 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 (RTA), a regional mobility authority (RMA), or a county. The bill 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 bill would provide certain exemptions and conditions under which such CDA's are authorized. The bill would create a legislative study committee to study the public policy implications of such agreements with private participants and submit a written report of the committee's findings to the Governor, Lieutenant Governor, and the Speaker of the House of Representatives. The committee would be abolished on December 31, 2008. The moratorium on the applicable CDAs would expire on September 1, 2009.

The bill would require the Texas Transportation Commission (TTC) and TxDOT to allow an RMA or a county toll road authority (CTRA) to use TxDOT-owned highway right of way and to access the state highway system for certain projects. The bill would specify that TxDOT or the Commission 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. The bill would require TTC or TxDOT to provide a CTRA and RMA 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. The bill would grant a county or RTA all powers of TxDOT related to the development of a Trans-Texas Corridor project if a county requests or a county or RTA is requested by TxDOT to participate in the project. The bill would authorize a county or RTA to enter into CDAs with private entities to design, develop, finance, construct, maintain, repair, operate, extend, or expand a turnpike project.

TxDOT indicates that the bill would delay the development and procurement of several proposed CDA projects totaling \$2.5 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.

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.

The bill would take effect immediately upon receiving a vote of two-thirds of all members elected to each house or otherwise on September 1, 2007.

Local Government Impact

It is assumed that a county or a regional tollway authority would enter into a contract to finance, construct, and operate a toll project only if sufficient funds were available. These entities could see savings for these projects from not having to pay TxDOT or TTC 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 and the size of the project.

It is assumed that a local tolling authority would use a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend or expand a turnpike project only if sufficient funding were available.

Source Agencies: 601 Department of Transportation

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