

BILL ANALYSIS

Senate Research Center

S.B. 1730
By: Nichols
Transportation
3/29/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Legislation enacted in 2003 changed the structure of Texas transportation financing by authorizing the use of comprehensive development agreements (CDAs) to create public private partnerships to build transportation projects. The Texas Department of Transportation (TxDOT) was given authority to enter into a CDA with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand various types of transportation projects. The legislature later established an expiration date of August 31, 2011, for this authority. To further regional and statewide transportation goals, the 82nd Legislature authorized TxDOT and regional authorities to advance a limited amount of specific projects using a CDA.

S.B. 1730 provides TxDOT and certain regional mobility authorities with the authority to enter into a CDA for all or a part of certain projects or for improvements to or construction of certain projects. The authority to enter into CDAs for these specific projects expires in 2017. Additionally, S.B. 1730 establishes certain contract provisions that must be included in a CDA that are designed to protect the state from future liabilities.

As proposed, S.B. 1730 amends current law relating to comprehensive development agreements of the Texas Department of Transportation or a regional mobility authority.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to a toll project entity is rescinded in SECTION 3 (Section 371.101, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 223.201(a), (b), (f), (g), (i), (j), (k), and (l), Transportation Code, as follows:

(a) Authorizes the Texas Department of Transportation (TxDOT), subject to Section 223.202, to enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a:

(1)-(2) Makes no changes to these subdivisions;

(3)-(4) Makes nonsubstantive changes; or

(5) nontolled state highway improvement project authorized by the legislature.

(b) Redefines "comprehensive development agreement."

(f) Authorizes TxDOT to enter into a comprehensive development agreement only for all or part of:

(1)-(2) Makes no change to these subdivisions;

(3) the Interstate Highway 35W project in Tarrant County from Interstate Highway 30 to State Highway 114, rather than the North Tarrant Express project

in Tarrant and Dallas Counties, including on State Highway 183 from State Highway 121 to State Highway 161 (Segment 2E); on Interstate Highway 35W from Interstate Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C); and on Interstate Highway 820 from State Highway 183 North to south of Randol Mill Road (Segment 4);

(4) the State Highway 183 managed lanes project in Tarrant and Dallas Counties from State Highway 121 to Interstate Highway 35E, rather than the State Highway 183 managed lanes project in Dallas County from State Highway 161 to Interstate Highway 35E;

(5) the Interstate Highway 35/U.S. Highway 67 Southern Gateway project in Dallas County, including:

(A) Interstate Highway 35E from 8th Street to Interstate Highway 20; and

(B) U.S. Highway 67 from Interstate Highway 35E to Farm-to-Market Road 1382 (Belt Line Road), rather than the State Highway 249 project in Harris and Montgomery Counties from Spring Cypress Road to Farm-to-Market Road 1774;

(6) the State Highway 288 project from U.S. Highway 59 to south of State Highway 6 in Brazoria County and Harris County;

(7) the U.S. Highway 290, rather than U.S. Highway 290 Hempstead, managed lanes project in Harris County from Interstate Highway 610 to State Highway 99;

(8) the Interstate Highway 820 project from State Highway 183 to Randol Mill Road;

(9) the State Highway 114 project in Dallas County from State Highway 121 to State Highway 183;

(10) the Loop 12 project in Dallas County from State Highway 183 to Interstate Highway 35E;

(11) the Interstate Highway 35E project in Dallas County from State Highway 183 to the Dallas North Tollway;

(12) the Loop 9 project in Dallas and Ellis Counties from Interstate Highway 20 to U.S. Highway 67; and

(13) the U.S. Highway 181 Harbor Bridge project in Nueces County between U.S. Highway 181 at Beach Avenue and Interstate Highway 37.

Makes nonsubstantive changes.

(g) Authorizes TxDOT to combine in a comprehensive development agreement under this subchapter a toll project and a rail facility as defined by Section 91.001, or two or more projects described by Subsection (f).

(i) Provides that the authority to enter into a comprehensive development agreement expires August 31, 2017, for a project described by Subsection (f), other than the State Highway 99 (Grand Parkway) project and the State Highway 183 managed lanes project, and August 31, 2015, for the State Highway 183 managed lanes project, rather than providing that the authority to enter into a comprehensive development agreement expires August 31, 2015.

(j) Requires TxDOT, before TxDOT is authorized to enter into a comprehensive development agreement under Subsection (f), to:

(1) for a project other than the State Highway 99 (Grand Parkway) project, obtain, not later than August 31, 2017, rather than not later than August 31, 2013, the appropriate environmental clearance:

(A) for the project; or

(B) for the initial or base scope of the project if the project agreement provides for the phased construction of the project, rather than for any project other than the State Highway 99 (Grand Parkway) project; and

(2) Makes no change to this subdivision.

(k) Requires TxDOT, not later than December 1, 2014, rather than 2012, to provide a report to the Texas Transportation Commission (TTC) on the status of a project described by Subsection (f).

(l) Redefines "environmental clearance" in this section.

SECTION 2. Amends Sections 223.2011(a), (c), (e), and (f), Transportation Code, as follows:

(a) Authorizes TxDOT or an authority under Section 370.003, notwithstanding Sections 223.201(f) and 370.305(c) (relating to an authority's authority, except as provided by this chapter, to enter into a comprehensive development agreement expires on August 31, 2011), to enter into a comprehensive development agreement relating to improvements to, or construction of all or part of:

(1) Makes no change to this subdivision;

(2) Makes nonsubstantive changes;

(3) a project consisting of the construction of:

(A) the Outer Parkway Project in Cameron County from U.S. Highway 77/83 to Farm-to-Market Road 1847; and

(B) Makes no change to this paragraph;

(4) the Loop 49 project from Interstate 20 to U.S. Highway 69 (Lindale Relief Route) and from State Highway 110 to U.S. Highway 259 (Segments 6 and 7).

(c) Requires TxDOT or the authority, as applicable, not later than December 1, 2014, rather than December 1, 2012, to provide, rather than present, a report to TTC on the status of a project described by Subsection (a).

(e) Redefines "environmental clearance" in this section.

(f) Provides that the authority to enter into a comprehensive development agreement under this section expires August 31, 2017, rather than expires August 31, 2015.

SECTION 3. Amends Section 371.101, Transportation Code, as follows:

Sec. 371.101. TERMINATION FOR CONVENIENCE. (a) Requires a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project to contain a provision authorizing the toll project entity to terminate the agreement for convenience and to purchase, under terms agreed to by the parties the interest of the private participant in the comprehensive development agreement, and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

(b) Requires a comprehensive development agreement described by Subsection (a) to include a price breakdown stating a specific price for the purchase of the private participant's interest at specified intervals from the date the toll project opens, of not less than two years and not more than five years, over the term of the agreement.

(c) Requires the provision to authorize the toll project entity to terminate the comprehensive development agreement and to purchase the private participant's interest at any time during a specified interval at the lesser of the price stated for that interval, or the greater of the then fair market value of the private participant's interest, plus or minus any other amounts specified in the comprehensive development agreement, or an amount equal to the amount of outstanding debt specified in the comprehensive development agreement, plus or minus any other amounts specified in the comprehensive development agreement.

(d) Requires a toll project entity to include in a request for proposals for an agreement described by Subsection (a) a request for the proposed price breakdown described by Subsection (b) and requires the entity to assign points and score each proposer's price breakdown in the evaluation of proposals.

(e) Authorizes the price for terminating the comprehensive development agreement, if project requires expansion or reconstruction in a manner that differs from the manner provided in the original project scope or schedule, to be adjusted to reflect the changes in the agreement.

(f) Provides that Subsections (b), (c), and (d) do not apply to a project for which a request for proposals was issued before January 1, 2013.

(g) Requires a private entity to, not later than 12 months before the date that a new price interval takes effect, notify the toll project entity of the beginning of the price interval. Requires the toll project entity to notify the private entity as to whether it will exercise the option to purchase under this section not later than six months after the date it receives notice under this subsection.

(h) Requires a toll project entity to notify the private entity of the toll project entity's intention to purchase the private entity's interest under this section not less than six months before the date of the purchase. Deletes existing text requiring a toll project entity having rulemaking authority by rule and a toll project entity without rulemaking authority by official action to develop a formula for making termination payments to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project. Deletes existing text requiring a formula to calculate an estimated amount of loss to the private participant as a result of the termination for convenience.

Deletes existing Subdivision (b) requiring the formula to be based on investments, expenditures, and the internal rate of return on equity under the agreed base case financial model as projected over the original term of the agreement, plus an agreed percentage markup on that amount.

Deletes existing Subdivision (c) prohibiting a formula under Subsection (b) from including any estimate of future revenue from the project, if not included in an agreed base case financial model under Subsection (b). Deletes existing text prohibiting compensation to the private participant upon termination for convenience from exceeding the amount determined using the formula under Subsection (b).

SECTION 4. Effective date: upon passage, or September 1, 2013.