

# Granting local entities priority and establishing moratorium for certain toll road projects and restricting comprehensive development agreements

HB 1892 by W. Smith (Williams)/HCR 230 by W. Smith

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## DIGEST:

HB 1892 would have established a two-year moratorium, with certain exceptions, on all statewide toll projects that involved a private entity operating or collecting revenue on a toll road. It would have created requirements for comprehensive development agreements (CDAs), including shortening their maximum duration, and new standards for interaction between the Texas Department of Transportation (TxDOT) and entities authorized to build toll roads. It also would have given county toll road authorities and regional mobility authorities (RMAs) the right of first refusal on any toll project the state proposed in their jurisdictions, allowing the entities free use of state property at any stage of development.

## GOVERNOR'S REASON FOR VETO:

“House Bill No. 1892 jeopardizes billions of dollars of infrastructure investment and invites a potentially significant reduction in federal transportation funding. Projects important to fast-growth communities would be placed on hold without alternative financing mechanisms to get them constructed. Even more egregiously, the bill serves to break up the state highway system by permitting local control over state assets.

“While I support greater local decision-making authority over transportation planning, I do not support turning over state assets to local entities. By allowing local entities to seize state right-of-way at any moment, H.B. No. 1892 prohibits the Texas Department of Transportation’s ability to issue any road-based debt instrument, such as toll revenue bonds, comprehensive development agreements, and pass through financing deals. As a state that grows by 1,200 people each and every day, we must consider every viable option that will allow Texas to build a strong transportation infrastructure to support present and future growth.

“I am grateful that legislators are working with me in subsequent legislation to address these concerns I have expressed about H.B. No. 1892 and look forward to receiving Senate Bill No. 792 without delay.”

## RESPONSE:

Rep. Wayne Smith, the bill’s author, said: “HB 1892 originated because the Harris County Toll Road Authority (HCTRA) could not go forward with much needed transportation projects due to the fact that TxDOT was re-creating the concession fee model they were using with private entities requiring upfront payments for rights-of-way and access to the state highway system. If the public entity did not pay these concession fees, TxDOT would enter into long term contracts with private entities to construct these projects. These concession fee payments would have greatly reduced the number of projects that HCTRA could have constructed. However, allowing local toll road entities across the state to have primacy insures that projects can continue with local guidance and control. By keeping the toll funds in the hands of a local public entity, the surplus toll revenue can be used in local non-toll projects rather than transferring this surplus to the investors of private entities. Local control will allow more roads to be built locally and is in the best interest of the citizens and taxpayers of the state.

“HB 1892, as amended by Rep. Kolkhorst on the House floor, also placed a two-year moratorium on CDAs that have proven to be very unpopular with the citizens of Texas. CDAs are unpopular especially because of the confidentiality of the contracts, because of their long term nature (more than 50 years in some cases), and because large tracts of land through rural Texas are subject to condemnation. Furthermore, provisions of these contracts could include penalties to be paid by the state due to both underperformance of roads or if the state built competing roads within a certain distance of these privately owned toll roads. HB 1892 provided for a study committee to be formed to review these private projects to determine whether they are in the best interest of the long term transportation needs of the state and whether they were the best use of the citizens’ public infrastructure resources.

“HB 1892 passed in the House on third reading with only one ‘no’ vote and also passed in the Senate with little opposition. Therefore, the bill ultimately passed both the House and the Senate with sufficient support and was delivered to the governor’s desk with ample time for a veto override to have occurred during the regular legislative session, if it had been necessary. Furthermore, HB 1892 reaching the Governor’s Office in time for a potential veto override to occur was vital to the success of SB 792 because it facilitated swift technical negotiations with most of the parties interested in the transportation policy of our state.

“SB 792 is similar to HB 1892, but it has two significant differences. First, for some projects throughout the state, a market valuation analysis will be required to determine applicable toll rate(s). This provision addresses concerns that toll rates set by locally elected officials might be kept artificially low, which would then reduce the amount of revenue generated that could fund non-toll projects in the area. Thus, setting toll rates through a market valuation analysis will insure adequate funding for additional non-toll projects in a given area. Secondly, SB 792 includes provisions setting a timeline for action by a local toll entity wherein if they do not timely exercise their right-of-first-refusal, TxDOT can enter into a CDA with a private entity. As these changes were acceptable to both the author and sponsor of the bill, SB 792 was ultimately passed in both the House and the Senate with strong support.

“In conclusion, HB 1892 and its companion, SB 792, improved the method of contracting for toll roads in metropolitan areas and put on hold the further condemnation of large tracts of land through rural Texas until the study group comprised of three House appointees, three Senate appointees, and three governor’s appointees report their findings regarding CDAs to the 81st Legislature.”

Sen. Tommy Williams, the Senate sponsor, said: “Though I was disappointed that HB 1892 was vetoed by Gov. Rick Perry, I am pleased that we were able to work out a compromise on these issues in the companion to this bill, SB 792.”

NOTES: HB 1892 was analyzed in Part One of the April 10 *Daily Floor Report*.

SB 792 by Williams, et al. was signed by the governor on June 11. Notable changes in SB 792, compared with HB 1892, include increasing the maximum duration of CDAs, adding exemptions to the moratorium, and allowing TxDOT and the Texas Transportation Commission to take any reasonable action to ensure eligibility for federal funds are not compromised. The HRO analysis of SB 792 appeared in Part One of the May 17 *Daily Floor Report*.

HCR 230 by W. Smith, which would have made technical changes to HB 1892, also was vetoed by the governor because the veto of HB 1892 made the adoption of HCR 230 moot.