

SUBJECT: Allowing the attorney general to seek compensation for reviewing a CDA

COMMITTEE: Transportation — committee substitute recommended

VOTE: 8 ayes — Phillips, Darby, Bonnen, Y. Davis, Fletcher, Harper-Brown,
Lavender, Rodriguez

0 nays

3 absent — Martinez, McClendon, Pickett

SENATE VOTE: On final passage, March 31 — 31-0

WITNESSES: None

BACKGROUND: Transportation Code, sec. 371.051 prohibits a toll project entity from entering in to a comprehensive development agreement (CDA), which are contracts with private entities to finance, construct, maintain, operate, or expand a tolled highway project, unless the attorney general reviews the proposed agreement and determines that it is legally sufficient.

DIGEST: CSSB 731 would require a toll project entity to pay a nonrefundable examination fee to the attorney general upon submitting each proposed CDA for review. The attorney general would have to provide a legal sufficiency determination within 60 days of receiving the examination fee and transcript of the proceedings associated with the agreement. The attorney general could extend the review period by 30 days by notifying the toll project of the reason for the delay. Toll project entities could seek reimbursement for the fee from the private party to the CDA.

After the attorney general issued a determination, a toll project entity could amend the CDA or add to the transcript of proceedings to prompt a second review of legal sufficiency.

The attorney general would have to set the examination fee by rule in an amount that could not exceed reasonable attorney's fees charged for similar services in the private sector. The fee could not be set based on a percentage of the cost of a toll project.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011. The bill only would apply to a CDA submitted to the attorney general on or after its effective date.

**SUPPORTERS
SAY:**

CSSB 731 appropriately would allow the attorney general to charge a fee for the time-consuming review of CDA contracts. The attorney general already is required to review these complex multibillion-dollar toll road CDAs to make sure that they meet state law and constitutional requirements. The Attorney General's Office started reviewing CDAs in 2008 and has reviewed a few each year in 2009 and 2010.

The House committee substitute addressed a problem in the original version of the bill and similar language in other bills that was too vague in allowing the attorney general to set the fees and potentially could have allowed the fees to be set based on the percentage of the cost of the toll project. CSSB 731 would expressly address this by prohibiting this practice. The bill also would make clear that the fee could not exceed reasonable attorney's fees charged for similar legal services in the private sector, thereby ensuring that the fees would not be disproportionate.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The companion bill, HB 1280 by Kolkhorst, was considered in a public hearing by the House Transportation Committee on April 11 and left pending.

The House committee substitute for the Senate-passed version of the bill removed a provision that would have relieved toll project entities from having to pay an examination fee for a redetermination review. It also changed the maximum fee that could be set to reasonable attorney's fees charged in the private sector rather than the usual actual costs incurred by the attorney general.