

BILL ANALYSIS

Senate Research Center
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S.B. 1144
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The goal of S.B. 1144 is to allow the Texas Department of Transportation (TxDOT) to be able to enter into public private partnerships for a segment of Interstate Highway 35 East (I-35E). This project is a segment of 28 plus miles that lies between Interstate Highway 635 and United States Highway 380 with portions located in Dallas and Denton counties. Allowing TxDOT to enter in a public private partnership for this portion of I-35E will help get the project completed as soon as possible. This project will help relieve some of the congestion in the Dallas-Fort Worth Metroplex.

S.B. 1144 establishes several provisions which must be included in any future private toll road contract. These protections will ensure the state and taxpayers are not exposed to bad and costly contracts with private entities.

Specifically, S.B. 1144 narrows non-compete zones to exempt projects in a metropolitan planning organization's 30-year transportation plan and any expansion to an interstate. Additionally, non-compete contract provisions may only last 30 years. The state can build anything in their 30-year plan, expand an interstate, and continue to build in 30 to 50 years without paying a penalty to a private entity.

S.B. 1144 states that any agreement must include a competitively bid purchase price in five-year increments. S.B. 1144 prohibits the state from paying more than the stated purchase price. This will protect the state from being on the hook for billions of dollars if the state ever needs to buy a road back from the private entity early.

As proposed, S.B. 1144 amends current law relating to comprehensive development agreements.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter E, Chapter 223, Transportation Code, by adding Section 223.2011, as follows:

Sec. 223.2011. LIMITED AUTHORITY FOR CERTAIN PROJECTS USING COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Authorizes the Texas Department of Transportation, notwithstanding Sections 223.201(f) (relating to the expiration date of the authority to enter into comprehensive development agreements) and (i) (relating to the expiration date of authority to enter into a comprehensive development agreement for an exempted project) to enter into a comprehensive development agreement relating to managed lane improvements to Interstate Highway 35E between Interstate Highway 635 and United States Highway 380.

(b) Provides that this section expires August 31, 2013.

SECTION 2. Amends Section 371.101, Transportation Code, as follows:

Sec. 371.101. New heading: TERMINATION BY PURCHASE. (a) Requires a comprehensive development agreement to contain a provision authorizing the toll project entity to purchase, under terms agreed to by the parties:

(1) the interest of a private participant in the toll project that is the subject of the agreement; and

(2) related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

(b) Requires that the provision include a schedule stating a specific price for the purchase of the toll project at certain intervals from the date the project opens, not less than one year and not to exceed five years, over the term of the agreement.

(c) Requires that the provision authorize the toll project entity to purchase the private entity's interest at a stated interval in an amount not to exceed the lesser of:

(1) the price stated for that interval; or

(2) the greater of:

(A) the then fair market value of the private entity's interest; or

(B) an amount equal to the amount of outstanding debt at that time, as specified in the comprehensive development agreement.

(d) Prohibits a toll project entity from, under any circumstance, purchasing the private entity's interest for an amount higher than the stated interval amount.

(e) Requires that a contract to purchase the private entity's interest at the then fair market value as described by Subsection (c)(2)(A) contain a provision, mutually agreed on by the toll project entity and the private participant, detailing the calculation used to determine that value.

(f) Requires the toll project entity to request a proposed termination-by-purchase schedule in each request for detailed proposals and to consider and score each schedule in each evaluation of proposals.

(g) Requires a private entity, not later than 12 months before the date that a new price interval takes effect, to 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 that a formula calculate an estimated amount of loss to the private participant as a result of the termination for convenience.

Deletes existing Subsection (b) requiring that the formula 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 Subsection (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 3. Amends Sections 371.103(b) and (c), Transportation Code, as follows:

(b) Authorizes that a provision under this subsection be effective only for a period of 30 years or less from the effective date of the agreement.

(c) Prohibits a comprehensive development agreement from requiring the toll project entity to provide compensation for the construction of certain projects, including a highway designated an interstate highway.

SECTION 4. Makes application of Sections 371.101 and 371.103, Transportation Code, as amended by this Act, prospective.

SECTION 5. Effective date: upon passage of September 1, 2011.