

SUBJECT: Allowing the Texas Turnpike Authority to use outside legal counsel

COMMITTEE: Judicial Affairs — favorable, without amendment

VOTE: 6 ayes — Thompson, Hartnett, Capelo, Garcia, Hinojosa, Uresti

0 nays

3 absent — Deshotel, Shields, Jim Solis

WITNESSES: For — None

Against — None

On — James W. Griffin and Phillip Russell, Texas Turnpike Authority

BACKGROUND: The Texas Turnpike Authority (TTA) is a division of the Texas Department of Transportation (TxDOT) with full authority to study, design, build, operate, expand, enlarge, or extend a turnpike project as part of the state highway system. Bond issues finance the construction and maintenance of these toll roads, and no state funds are expended.

Established in 1953, TTA became a division of TxDOT after the 1997 legislative session. Since the merger, confusion has arisen as to whether TTA, as a division of TxDOT, has the authority to use outside legal services. Government Code, sec. 402.0212 requires the attorney general to approve any contract between a state agency in the executive department, other than an agency established by the Texas Constitution, and an outside attorney. This provision applies to TxDOT, but sec. 402.0212(c) specifically exempts TTA from this provision.

DIGEST: HB 2647 would amend the Government Code and the Transportation Code to specify that the prohibition against the use of outside legal counsel does not apply to TTA as a division of TxDOT.

This bill would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS SAY:** HB 2647 would clear up confusion regarding statutory provisions on the use of outside counsel in the wake of TTA's merger with TxDOT. The bill would restore the express authority to procure outside legal services that TTA had until the time of the merger.

Toll road projects require rapid construction to put the roads in operation quickly so they can begin to generate the income needed to repay the bonds that finance them. As a result, quick access to legal resources is essential. Allowing TTA to use outside counsel would ensure that any legal issues that emerge could be addressed expeditiously. The Office of the Attorney General can provide legal counsel for longer-term issues, but for most turnpike work, the flexibility and timeliness of outside counsel is vital.

**OPPONENTS SAY:** The Texas Constitution specifies that the attorney general serves as the attorney for state agencies. By law, the attorney general must oversee and approve any contractual agreement made by any executive agency with a private party. HB 2647 would undercut this authority.

Rather than granting express authority for TTA to use outside counsel, greater effort should be made to establish a rapid-response legal team within the Attorney General's Office to address TTA's time-pressured legal needs. When well coordinated, existing state resources are more than sufficient to provide competent legal representation for TTA.

**NOTES:** The companion bill, SB 1009 by Brown, was reported favorably by the Senate State Affairs Committee on May 7 and recommended for the Senate Local and Uncontested Calendar.