

SUBJECT: Revising contracting requirements for state highway logo sign program

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Krusee, Phillips, Hamric, Garza, Harper-Brown, Hill

0 nays

3 absent — Edwards, Laney, Mercer

WITNESSES: For — None

Against — None

On — Carlos Lopez, Texas Department of Transportation

BACKGROUND: Transportation Code, sec. 391.091 requires the Texas Department of Transportation (TxDOT) to contract for the erection and maintenance of specific information logo signs along highways outside urban areas that have populations of 50,000 or more. Sec. 391.0935 provides for, but does not require, guide signs along interstate highways located inside urban areas with populations of at least 200,000 that direct motorists to malls and other shopping venues within three miles of highway interchanges. Sec. 391.097 similarly provides for signs on rural highways outside city limits that direct motorists to farms, ranches, wineries, nurseries, greenhouses, and similar businesses that market agricultural products on site and that conduct public tours. TxDOT's executive director must approve variances from statutory sign requirements.

DIGEST: CSHB 2899 would add major shopping area guide signs and major agricultural interest signs to the list of signs for which TxDOT must contract. It would specify that TxDOT could enter into contracts through competitive bids, competitive sealed proposals and open-market contracts. TxDOT would have to award contracts in writing based on the best value for the state and could determine best value based on revenue provided by contractors, fees to be charged participants, quality of services, contractors' financial resources and performance ability, and any other relevant factor.

To the extent of any conflict, the bill's provisions would prevail over any other law relating to TxDOT's purchase of goods and services. Transportation Code, ch. 223, which requires low bids for state highway system improvement contracts, and Government Code, Title 10, Subtitle D, requiring acceptance of low bids, would not apply to TxDOT sign contracts.

The Texas Transportation Commission (TTC), TxDOT's governing body, could establish procedures by rule for informal resolution of claims arising out of sign contracts.

The bill would repeal existing provisions for contracting and fee assessment and remittance pertaining to major agricultural interest signs.

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, 2003.

**SUPPORTERS
SAY:**

Since 1991, motorists on Texas highways have benefitted from information logo signs directing them to nearby businesses that provide food, fuel, and lodging. Signs identifying nearby major shopping areas and agricultural businesses were added in 1997. Because the signs are located along highways on the state system, the contract required to install and maintain them is deemed to be a highway improvement contract under Transportation Code, ch. 223, and must be awarded to the lowest bidder.

Under its current \$2.6 million sign contract, TxDOT receives 5 percent (about \$130,000) of the revenue the contractor generates from charges assessed to businesses whose logos appear on the signs. Many other states receive higher rates of return, some as high as 40 percent. TxDOT needs at least a 10 percent return to break even on administrative costs, meaning that the state is losing money on this popular and beneficial program.

CSHB 524 would give TxDOT flexibility to negotiate a more lucrative sign contract. Merely accepting the lowest bid does not necessarily guarantee taxpayers the best deal. Allowing sealed proposals would approximate the request-for-proposal process, including guidelines and evaluative criteria. More informal open-market contracts readily lend themselves to the best-value approach.

Best value is becoming the new benchmark for state contracting. Government Code, sec. 2155.074-.075 allows state agencies to consider factors other than price alone that affect how much a contract benefits the state. TxDOT already uses this method to contract for scientific services, such as environmental and cultural assessments. Highway sign locations and adjacent traffic patterns vary widely across the state. TxDOT should be able to take advantage of these situations to earn more money for the State Highway Fund, but the current contract charges all participants the same amount (\$700 per year plus a registration fee).

CSHB 2899 would allow market forces to drive pricing without giving TxDOT responsibility for making and installing the signs. Charging a flat rate is not the best approach; allowing rates to fluctuate actually could lower participants' fees in some areas.

Shifting sign-making and marketing duties to TxDOT would be inappropriate and would require removing the contracting stipulation from state law.

**OPPONENTS
SAY:**

Texas' highway logo sign program was not intended to enhance state revenue but to aid motorists, mainly on rural highways, and bring economic benefits to communities with 20,000 or fewer residents. CSHB 2899 would seek to turn the program into a "cash cow" and turn TxDOT officials into advertising marketers. If the goal is to subsidize the State Highway Fund, the Legislature should consider ways to generate significant revenue for underfunded highway system needs, not to leverage programs designed to enhance driver safety and convenience.

Increasing TxDOT's share of sign-fee revenue could increase prices for participating businesses. That might reduce participation, which, in turn, could have a detrimental effect on what is now a successful program. Lowest-bid contracting for simple services of this type serves taxpayers well and should be continued.

**OTHER
OPPONENTS
SAY:**

Contractors' prior performance and dealings with state agencies are two of the most relevant factors pertaining to future performance. TxDOT should have to consider these criteria in evaluating sign contractors. Also, to reduce costs and increase revenue, TxDOT should make these signs in house, like other road signs, and should charge businesses market value for their use.

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NOTES:

The committee substitute would remove a requirement in the filed version of HB 2899 that TxDOT consider contractors' reputations and past relationships with TxDOT in determining best value. It would add the requirement that TxDOT award contracts in writing.

HB 3330 by Crownover, which would make controlled-access highways located in urban areas with populations of 50,000 or more eligible for placement of information logo signs, was reported favorably, as substituted, by the House Transportation Committee on April 22 and has been sent to the Local and Consent Calendars Committee.