HOUSE RESEARCH ORGANIZATION bill analysis | 5/10/2005 | HB 2139 Phillips (CSHB 2139 by Casteel)

SUBJECT: Local authority contracts with private entities on pass-through toll projects

COMMITTEE: Transportation — committee substitute recommended

VOTE: 5 ayes — Krusee, Phillips, Casteel, Hamric, Hill

0 nays

4 absent — Callegari, Deshotel, Flores, West

WITNESSES: For — Gerry Pate

Against — None

On — Amadeo Saenz, Texas Department of Transportation

BACKGROUND: HB 3588 by Krusee, enacted by the 78th Legislature, created pass-through toll agreements, which allow public or private entities to construct state highway projects and receive payment from TxDOT following completion of the project. Pass-through tolls, also known as "shadow tolls," are negotiated payments made incrementally to the constructing entities based on traffic volume on the new road. The payments are made as if tolls were being collected from motorists by the operators upon project completion.

Pass-through toll agreements can be used on both tolled and non-tolled roadways. In some instances, the arrangement works in reverse, as a local government entity pays the "tolls" in exchange for TxDOT's financing the road construction.

Regional mobility authorities (RMAs) were created by SB 342 by Shapiro during the 77th Legislature in 2001. Any county or set of counties may petition the Texas Transportation Commission (TTC) to form a RMA. RMAs construct and manage transportation projects with the goal of improving mobility in a region. RMAs have the power of eminent domain, may issue bonds, and may enter into contracts with private entities for transportation projects.

DIGEST: CSHB 2139 would require TxDOT, to the maximum extent allowed by law, to delegate to local authorities responsibility for design, bidding, construction, and inspection in pass-through toll agreements between the local authority and the department. A local authority – including a municipality, county, RMA, or regional tollway authority – could contract with a private entity to carry out a transportation project.

As an agent of the local authority, the private entity would be responsible for designing, financing, maintaining, and operating a toll or non-toll road, and would be in charge of the project's oversight and inspection.

CSHB 2139 would require such agreements to meet state design criteria, construction specifications, and contract administration procedures unless the department granted an exception.

Also, the bill would require a private entity in such an agreement to comply with the laws on procuring engineering services and construction bidding that would be applicable to the public entity.

The bill would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise it would take effect September 1, 2005.

SUPPORTERS SAY: CSHB 2139 would clarify that RMAs, regional transportation authorities, and local government entities could enter into private-public partnerships with toll road authorities. Some local entities are wary of entering into public-private partnerships to build roads due to concerns about the legality of contracting with a private entity to build a public road. Under CSHB 2139, local governments and transportation authorities could enter into pass-through toll agreements with TxDOT and partner with private entities on the implementation of transportation projects.

CSHB 2139 would allow local authorities to finance transportation projects through pass-through toll agreements. Pass-through tolls are innovative finance tools that allow parties with available cash to move forward with transportation projects knowing that the costs will be repaid over time, which could accelerate the financing of lower-priority transportation projects.

The bill would encourage the use of comprehensive development agreements (CDA), also an innovative tool that accelerates the completion of transportation projects. CDAs allow contractors to minimize delay in a project by allowing them to exercise flexibility in design. CDA contracts also include a provision where the contractor would provide maintenance of the road for an amount already bid in the contract. This cutting-edge aspect to the contract provides a quality control over the contractor because once the road is completed, the contractor can be held to a maintenance contract that is reasonable.

Citizens often complain about the time it takes to complete highway construction and maintenance projects, which this bill would help reduce. Providing incentives for local authorities to enter into toll project agreements would allow for faster completion of needed transportation projects around the state. TxDOT estimates that toll leveraging could cut project start times in half — from 12 years to six years — for a majority of planned urban congestion relief projects.

Toll roads are necessary as a strategy to relieve congestion, especially given the limited funds now available for transportation projects in Texas. Currently, TxDOT estimates that the state is able to finance only one-third of its transportation needs. Toll roads provide a viable alternative to the outdated pay-as-you go method of financing transportation projects.

By encouraging local government and local transportation authority participation in toll projects, CSHB 2139 would support toll roads as a better solution to the state's congestion problems than an increase in the motor fuel tax or other proposed alternatives. TxDOT estimates that the motor fuel tax, currently 20 cents per gallon, would need to be increased by $1 per gallon in order to meet the state's transportation needs. While increased use of mass transit, high-occupancy vehicle lanes, and other such measures could be a part of the solution, no method other than toll-related financing could fund the number of transportation projects the state must complete quickly.

OPPONENTS SAY:

CSHB 2139 would promote the state's use of tolls principally as a strategy to generate revenue while disregarding the potential consequences of setting up toll roads throughout the state. The bill would give incentives to local governments to build toll roads solely in anticipation of receiving a portion of future toll revenue. Transportation policy should be based on the viability and effectiveness of a particular strategy not just its revenue-generating capacity.

By supporting new toll projects, CSHB 2139 would promote an unstable method of highway finance. The ultimate success of any tolling project is directly linked to gasoline prices. Developers have projected that the long-term viability of the toll project currently under construction on U.S. Highway 183 in Central Texas is contingent upon the price of gas remaining under $3 a gallon for the next four years. If gas prices continue to soar at current rates, it is unlikely that toll roads would generate enough revenue to cover their costs.

CSHB 2139 would promote the further proliferation of toll roads around the state at the expense of motorists who essentially pay a double tax — once at the pump and again at the tollbooth — yet have experienced scant relief from traffic congestion. Toll roads are likely to worsen congestion problems in the state, in part because they can lead to increased congestion on free roads. Despite assurances that free roads always will exist as alternatives to toll roads, it is becoming clear that the state has little interest in exploring alternatives, such as raising the motor fuel tax, promoting mass transit, or dedicating other transportation-related taxes and fees. Indeed, the line between tolls as a source of financing and tolls as a source of revenue becomes more blurred with each toll-related proposal.

NOTES:

The committee substitute differs from the original bill in that it defines the role of a private entity in a partnership to be that of the public entity's agent.

The companion bill, SB 1630 by Wentworth, has been referred to the Transportation and Homeland Security Committee. HB 2704 and HB 2705, both by Krusee, are similar bills that would permit local governments to enter into pass-through toll agreements with TxDOT under new bond financing rules. HB 2704 passed the House on May 9, and HB 2705 has been postponed until May 11.