SUBJECT: Establishing a moratorium and revised standards for certain toll projects

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 9 ayes — W. Smith, Naishtat, Bolton, Coleman, Farabee, Harless, Heflin, Leibowitz, T. Smith

0 nays

SENATE VOTE: On final passage, May 14 — 31-0

WITNESSES: No public hearing

BACKGROUND: In 2001, the 77th Legislature enacted SB 342 by Shapiro, allowing any county or set of counties to petition the Texas Transportation Commission (TTC) to form a regional mobility authority (RMA) to improve 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.

In November 2001, voters approved Proposition 15, amending the Constitution to create a Texas Mobility Fund (TMF) to issue bonds of up to 30 years for transportation projects, including toll roads. This modified the state's longstanding "pay-as-you-go" policy for transportation funding, allowing transportation officials to borrow money to construct new roads instead of waiting to build until funding was appropriated.

In 2002, Gov. Perry introduced a plan for the Trans-Texas Corridor, a 4,000-mile network designed to alleviate the state's traffic congestion and streamline freight delivery. Cars, trucks, freight, rail, and utilities would eventually travel through seven major routes across the state. The first project, which would mainly parallel Interstate 35, is in the planning stages.

In 2003, the 78th Legislature enacted HB 3588 by Krusee, allowing the Texas Department of Transportation (TxDOT) to authorize any governmental or private entity to build or operate any part of the corridor. It granted RMAs the authority to issue revenue bonds for transportation projects and the ability to set tolls and lease facilities to private entities.

In 2005, the 79th Legislature enacted HB 2702 by Krusee, which amended the Transportation Code to ease construction and financing of the corridor. The bill created comprehensive development agreements (CDAs) to accelerate completion of transportation projects. A CDA is a public-private partnership in which the private entity agrees to acquire, design, build, finance, operate, or maintain a toll road.

Transportation Code, ch. 284 creates county toll road authorities (CTRAs), which allow specified counties, acting through their commissioners courts, to construct, acquire, improve, operate, maintain, or pool a toll project in its county or adjacent counties and to levy bonds to pay for the construction, acquisition, or improvement of the project.

Transportation Code, ch. 366 establishes regional tollway authorities (RTAs). Acting through its board of directors, an authority may construct, acquire, improve, operate, maintain, or pool a turnpike project in its jurisdiction and may levy bonds and collect tolls to pay for the construction, acquisition, or improvement of the project.

A metropolitan planning organization (MPO) is a local decision-making body responsible for overseeing the metropolitan transportation planning process. An MPO is required by the federal government for each urban area with a population of more than 50,000 people.

In August 2006, the North Texas Tollway Authority (NTTA) and TxDOT established a regional protocol. The TxDOT/NTTA Regional Protocol allowed TxDOT and NTTA to each move forward on separate CDAs and provided for a revenue-sharing agreement between the two entities.

On May 7, HB 1892 by W. Smith was sent to the governor after final passage by the Legislature. The bill would create a two-year moratorium all statewide toll projects that involved a private entity operating or collecting revenue on a toll road and create additional powers for CTRAs. Gov. Perry has until May 18 to sign or veto the legislation or allow it to become law without his signature.

DIGEST:

SB 792 would create a two-year moratorium, with certain exceptions, on all statewide toll projects that involved a private entity operating or collecting revenue on a toll road. The bill would establish new requirements for CDAs, including shortening their maximum length, and would create new standards for the interaction between entities authorized

to build toll roads and TxDOT. It would authorize, for all toll projects, TTC and TxDOT to take any action necessary in their reasonable judgment to comply with federal requirements enabling the state to receive funding. SB 792 also would add reporting requirements and oversight for TxDOT and invalidate the TxDOT/NTTA Regional Protocol.

TTC could issue bonds secured by the State Highway Fund (Fund 6) up to $6 billion instead of $3 billion and could only issue bonds or other securities in an aggregate principal amount of up to $1.5 billion annually, $500 million higher than the current limitation. The aggregate principal amount required to be spent on projects that reduced accidents or improved hazardous situations would be doubled from its current requirement to $1.2 billion.

Moratorium. TxDOT and local toll project entities — RTAs, RMAs, and CTRAs — would be prohibited from selling or entering into a contract to sell a toll project to a private entity for two years. If those entities entered into a CDA with a private party after May 1, 2007, any agreement reached prior to September 1, 2009, could not contain a provision allowing the party to operate or collect revenue from a toll project.

The moratorium specifically would include any toll project or managed lane facility project — high-occupancy vehicle (HOV) lanes, express lanes, tolled lanes, priced lanes, truck lanes, bypass lanes, dual use facilities — on any portion of U.S. Highway 281 located in a county with a population of more than 1 million in which more than 80 percent of the population lives in a single municipality (Bexar County). Exemptions would be granted to CDAs in connection with projects:

- located in a county with a population of at least 300,000 adjacent to an international border (Cameron, El Paso, and Hidalgo);
- associated with the Trinity Parkway in Dallas;
- including one or more managed-lane facilities added to an existing controlled-access highway, primarily located in a nonattainment or near-nonattainment air quality area for which TxDOT had issued a request for qualifications prior to May 1, 2007;
- any portion of the Loop 9 project in a nonattainment air quality area that includes two adjacent counties with populations exceeding 1 million (Tarrant and Dallas counties);
- any portion of the State Highway 99 project;

- the portion of the I-69 project south of the San Antonio River; and
- the State Highway 161 project in Dallas County.

A CDA in connection with State Highway 121 also would be exempt if:

- before TTC or TxDOT entered into a financing, construction, or operation contract with a private entity, an RTA was granted the ability to finance, construct, or operate, as applicable, the portion of the toll project within NTTA boundaries; and
- NTTA was given a 60-day period starting on March 26, 2007, to submit a commitment to the MPO that was equal or greater than any other commitment submitted prior to March 26, 2007.

If NTTA's financial commitment was of greater or equal value than any other commitment submitted prior to March 26, 2007, TTC would be required to authorize NTTA to develop the project.

The bill would provide for creation, composition, and practices of a legislative study committee that would explore the public policy implications of allowing a private party to operate and collect revenue from a toll project. It would submit its findings to the governor and legislative leaders by December 1, 2008.

Comprehensive development agreements. The authority for TxDOT and RMAs to enter into CDAs would expire on August 31, 2009, two years earlier than currently allowed. Exceptions to that provision would be made for any of the aforementioned exempted CDAs or one that did not grant a private entity a right to finance a toll project. The authority for entrance into a CDA for those projects would expire on August 31, 2011.

Any CDA entered into on or after the effective date could last in multiples of 10 years to 50 years, starting from the later of the date of final acceptance of the project or the start of revenue operations by the entity. The total length of the term could not exceed 52 years. A Trans-Texas Corridor or RMA contract would have to contain an explicit mechanism for setting the price at which TxDOT would purchase the interest of a private entity. TxDOT and an RMA could pay an unsuccessful bidder for work done in submitting the proposal but no longer would be required to do so.

TxDOT and TTC would have to use any revenue received under a CDA to finance construction, maintenance, or operation of a regional transportation or air quality project. Funds would be proportionally allocated based on TxDOT districts covering the CDA project area. Payments received by TxDOT under a CDA, surplus revenue from a toll project or system, and other specified income would be placed in a separate account in the State Highway Fund (Fund 6), which would be broken down into subaccounts for each project, system, or region. A subaccount also would receive any interest it accrued. The bill would detail requirements for expenditure of these funds. TxDOT and TTC would be prohibited from revising the formula or making any change that would result in the decrease of a district's allocation.

A toll project entity would be required to develop a formula for making termination payments to end a CDA under which a private party operated and collected revenue from a toll project. The bill would specify procedures for calculating the formula, which would have to estimate the amount of loss a private party would incur as a result of the termination but could not be based on any new estimate of future revenues. An entity that terminated a CDA that allowed a private party to operate and collect revenue from a toll project could:

- issue bonds, if authorized, to make termination payments or purchase the private party's interest; or
- provide for payment of obligations to a private party incurred under the CDA.

A CDA could not contain any provisions limiting or prohibiting work on transportation projects by any governmental entity or contracted private entity. A CDA could allow a toll entity to compensate a private party in the event of a loss of toll revenues due to the construction of certain nearby highway projects but not for:

- a highway project in the state transportation plan or an MPO transportation plan prior to effective date of the agreement;
- safety or maintenance improvements to a highway;
- HOV lanes or other highway work required by an environmental regulatory agency; or
- a project providing a mode of transportation not included in the CDA.

Toll project contracts. Toll projects in certain counties and in the territory of a local toll project entity, which for this section would include a project associated with State Highway 161 in Dallas County, would be subject to standards governing financing, construction, operation, and maintenance of those projects. County projects eligible under this section would include any undertaken by a CTRA acting under ch. 284 and eight other specified projects in Harris and Fort Bend counties.

Many standards for these projects and those in the jurisdiction of local toll project entities would be uniform, including:

- local entities would have the primary responsibility for financing, construction, and operation of a toll project, but that would not limit the authority of TxDOT or TTC to participate in those endeavors;
- TxDOT would be required to assist the local entities in financing, construction, and operation of a toll project by allowing them to use state highway right of way (ROW) it owned and access to the state highway system, and the agency would require the entities to pay for only the costs the state incurred to acquire the ROW;
- upon approval of the local entities, TTC could remove ROW used by the entities from the state highway system, but if the ROW remained part of the system, the local entities would have to comply with TxDOT design and construction standards;
- local entities would have the right of first refusal to develop toll projects in their jurisdictions;
- if local entities exercised their option but did not take certain steps within the prescribed time frame, TxDOT and TTC would have the opportunity to develop the project if it met the same prescribed steps in the same time frame;
- local entities would be required to enter into an agreement with TxDOT on the terms and conditions of the development, construction, and operation of the toll project; and
- an agreement between the local entities and TxDOT would not be considered a joint enterprise for liability purposes, and TTC and TxDOT would not be liable for any damages resulting from the local entities' use of ROW or access to the state highway system.

Projects in the jurisdiction of a local toll project entity would be governed by additional standards, including a provision that would require an agreement between TxDOT and the entity to include the initial toll rate and escalation methodology. The bill would provide procedures for bond

issuance, which both sides could use to pay any costs associated with a toll project. It would dictate that if the sides could not agree on the terms and conditions of an agreement, neither the entity nor the agency could develop the toll project. If an agreement had been reached between an entity and TxDOT:

- both sides would determine who would conduct a market valuation study as prescribed in the bill;
- the entity would have to exercise its first option under specific guidelines with six months;
- TxDOT could undertake the project if the entity failed to meet the established requirements in the prescribed time after exercising its first option and would be subject to the same guidelines and time limits; and
- both sides could meet again to revise agreement terms if neither side could meet guidelines under the time limits.

RMA projects would differ from the local toll project entities by requiring the respective MPO to decide whether the project should use terms under the market valuation in lieu of those set by TxDOT and the local tolling authority. Provisions for the State Highway 99 project would follow the same procedures as a local toll project entity except that terms and conditions for procurement and operation would be approved by the MPO in which the project was located.

The provisions governing local toll project entities would not apply to any project for which TxDOT had issued a request for qualifications or a request for competing proposals and qualifications before May 1, 2007, except for the State Highway 161 project in Dallas County. Four other projects in Dallas, Collin, Denton, and Tarrant counties also would be exempted from these provisions.

The section governing local toll project entities would expire on August 31, 2011. Provisions for the State Highway 99 project would expire August 31, 2009.

County toll road authorities. A CTRA under ch. 284 could exercise the powers of an RMA, which would allow it to enter into a CDA with a private entity. In case of a conflict, CTRAs would supersede RMAs. Any project operated by a private entity as a result of a CDA would not be subject to taxation. If a CTRA requested or was requested to participate in

the development of a project that was part of the Trans-Texas Corridor, the county would be granted all the powers of TxDOT in developing that part of the project.

CTRAs would be required to submit a project plan to TxDOT biennially, but the plan would not be subject to the approval, supervision, or regulation of TxDOT or TTC except with regard to any use of state or federal funds and work on a part of the state highway system. Actions by these counties would not be subject to the approval, supervision, or regulation of their MPOs, except as provided by federal law. The project plan would have to include a timetable for the project and describe the use of project funds. It also could include information about the source of project funding.

A county commissioners court or a local government corporation, without state approval, supervision, or regulation, could authorize and use surplus toll project revenues for road work or planning in its jurisdiction. In so doing, the county could enter into agreements with TxDOT, TTC, a local government entity, or any political subdivision of the state, but the county could not take an action that violated or impaired a bond resolution, trust agreement, or indenture that governed the use of the revenue of a project. TxDOT would have to approve any work on the state highway system.

A third party would be prevented from paying off the bonds and bond interest of a CTRA toll project, causing it to become part of the state highway system, without the consent of the entity that initially issued the bonds. The bill also would allow a commissioners court of a CTRA to pool other existing projects into its tolling authority.

Regional transportation authorities. RTAs would be granted authority to enter into CDAs, and the bill would provide procedures for the bidding process, negotiations, confidentiality of information, bond issuance, and other financial terms that would be in accordance with other existing CDA standards revised under this bill. Provisions governing competitive bidding (ch. 223, subch. A; sec. 366.185; and Government Code, ch. 2254) would not apply to a CDA entered into by an RTA.

Under certain situations and after an agreement with a prescribed government entity, an RTA would be allowed to use surplus revenue for a turnpike project or certain other transportation projects. A member of the RTA board of directors also would be subject to new prohibitions on

solicitation or acceptance of certain gifts and benefits. A violation of these provisions would be considered a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) under this section or Penal Code, sec. 36.08, which governs gifts given to a public servant.

Oversight. TxDOT would be required to seek transparency in its role related to the Trans-Texas Corridor by providing, to the greatest extent possible under the Texas Public Information Act and other open-records statutes, any information the agency collected, assembled, or maintained on the project. TxDOT would be required to make public in a timely manner all corridor documents, plans, and contracts — including all updates to the project's master development plan and any other financial plans. The agency would submit electronic versions of master development plan updates to specified state and legislative offices and would have to post all costs incurred with the project on its web site, along with a copy of any contract entered into related to the corridor within 10 days of reaching the agreement.

A toll project entity would not be allowed to enter into a CDA until:

- the attorney general vetted the agreement and determined it was legally sufficient;
- it provided the Legislative Budget Board (LBB) with copies of the proposed agreement, proposal and a financial forecast detailing revenue the entity expected to derive from the project, estimated construction costs and operating expenses, and the amount of income the entity expected a private party to realize under the agreement; and
- it provided the state auditor a traffic and revenue report and allowed for a specified time during which the auditor would review and comment on the report and its methodology.

These projections would not be subject to open-records disclosure until the date a CDA was reached.

Before a toll entity could enter into a CDA, it would be required to publish certain information in an area news paper. At least 10 days after the first time the information was published and at least 10 days before an entity entered into a CDA, a public hearing would be held in the county seat of the county in which the project was proposed. The following information would have to be published in the newspaper:

- project financing;
- whether the project would continue to impose tolls after the debt had been repaid;
- the initial toll rates, the method for setting and increasing rates, and the project toll rates at the end of the life of the contract;
- any terms related to competing facilities, including any penalties associated with construction of a competing facility;
- any terms related to termination of the contract; and
- the projected total amount of concession payments.

Effective date. 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, 2007.

SUPPORTERS SAY:

SB 792 would recognize the will of the people by placing a two-year moratorium on most toll projects that involve private entities running or building state roads. The bill would ensure that the state moved cautiously before leasing what could be valuable property to private industry for up to 70 years, while providing local tolling authorities additional tools needed to build and finance toll and non-toll projects to meet growing demands for new roads. The bill also would create protections and more financial options for state transportation authorities by allowing them to ensure that procedures used by local entities did not risk the state's federal funding and by increasing the state's bonding authority limits. It would remove oversights and provisions in HB 1892 to which the governor objects.

Moratorium. The bill would allow the state to take a step back before leasing more land for highway projects to private entities. Public concern surrounding the proliferation of toll projects was evident last summer when hearings on the first planned leg of the Trans-Texas Corridor brought out 13,600 people at 55 statewide meetings, the majority of whom were opposed to the corridor project and the role of private entities financing and building toll roads.

The moratorium would not stop all projects underway because most that are far enough along in the planning stages would be exempted under the bill, other than U.S. Highway 181, which has faced significant opposition in Bexar County. It also would not prevent construction of toll roads — state and local tolling authorities could still build them independently. Planning on toll roads also could continue. SB 972 would, however, have

a significant effect on up to 25 projects on which TxDOT could put out a bidding request in the near future. These projects are not as far along as those that have been exempted. It is more than appropriate to take a two-year pause to explore the types of contracts created under CDAs and what type of legacy they would leave for taxpayers in 50 years.

SB 792 would respond to the legitimate reservations many Texans have about allowing private enterprise to run a vital piece of infrastructure and perform a role that should be a government function. Government is more beholden to the will of the people and would be less likely to raise rates to the degree a private company would. It also is more accountable than a private entity, which, due to demands for higher profits, could take shortcuts in materials used to build these roads that might not be apparent until after the contract had expired. The fact that private companies are itching to bid on these projects demonstrates their value, and instead of allowing private industry to make money off the state, Texas instead should be exploring ways to finance these projects itself. Toll revenue should not be used to enrich a few private investors but instead should be used to benefit the people who pay the tolls. The bill would require a legislative study of outsourcing toll roads, allowing serious contemplation about the ramifications of such an endeavor.

Comprehensive development agreements. SB 792 would ensure a CDA lasted no longer than 52 years. The agreement would be longer than the 40 years provided under HB 1892, a key change that would encourage private entities to bid on projects because of how long it typically takes for them to recoup their costs. It also would fix a mistake in that bill by directing money from the concession payments for State Highway 121 to the Fort Worth area as well as the Dallas area. This section also would align the Sunset date for most CDAs with TxDOT's Sunset date in 2009, allowing both to be reexamined at the same time.

SB 792 would keep money generated by toll roads in one region from being spent in another region. Originally, toll roads were permitted in the state as a method of accelerating construction of a specific project through bond financing. In this scenario, tolls simply were collected to pay back the bonds, operate and maintain the roads, and pay for tollway feeder roads. Recently, toll revenues have been seen as a method for securing financing for additional non-tolled project construction, and tolling authorities specifically have been given the authority to use surplus revenue in this manner.

Toll project contracts/local role. SB 792 would allow locally elected officials to exercise more control over toll road projects in their counties. If a state agency wants to build a toll project in a county, it would give local authorities the right of refusal and would give areas with local tolling authorities the ability to prevent the project altogether. Local decision makers know what is best for their areas. Historically, local jurisdictions have been able to build toll roads without the approval, supervision, or regulation of a state agency such as TxDOT and have been able to build these roads more quickly than the state because of bond financing. Now the state is making agreements with private companies to build local toll roads, which has raised concerns about the potential ramifications of non-compete clauses.

Regardless of the financing method chosen, local tolling authorities should be the partner of first resort, rather than last. To that end, should a CDA be considered the best funding option for a toll project, the bill would grant CTRAs and RTAs the authority to enter into such an agreement. This would be a vital power that could be used as a companion with the new right of first refusal because some of the projects cannot be built without those powers. Most new toll projects would be subject to a valuation of how much money they might be worth on the private market. If a local government toll agency could not generate that market value, certain projects could be put up for bid on the private market.

The bill would ensure that county toll road authorities continued to have access to state-owned rights-of-way. Gaining access to state-owned rights-of-way is essential to the construction of toll projects in local jurisdictions. These rights-of-way belong to state taxpayers, not any specific state agency, so charging local governments for this property is akin to double taxation. SB 792 would provide for reasonable terms by requiring reimbursement of the state for the cost of acquiring the land.

The bill would allow surplus toll revenues to be spent on free non-tolled projects in the same district, such as roads, highways, transit systems, and bicycle and pedestrian projects. It would not shift policy but instead would require what was a permissive procedure, preventing TxDOT from using toll money — essentially local tax dollars — for projects in other parts of the state. This would be one of two new ways the bill would identify revenue aimed at addressing any potential shortfalls under a moratorium. A pilot project, currently affecting only State Highway 161 in Dallas and State Highway 99 in and around Harris County, would allow a tolling

authority and TxDOT to enter into a market valuation study under which the local entity would pay costs equal to the estimated project value into Fund 6.

Gift ban provisions for RTAs would ensure that members of these entities, which are not exclusively composed of public officials already subjected to other ethics laws, have the same requirements.

Oversight. SB 792 would continue the Legislature's efforts to press TxDOT into being more forthcoming with the public about toll projects. The House-passed version of HB 1 by Chisum — the fiscal 2008-09 general appropriations act — would add reporting requirements for the agency in response to a February 2007 audit the State Auditor's Office performed on the agency's activities related to the Trans-Texas Corridor between fiscal 2002 and fiscal 2006. It showed that TxDOT has not been fairly representing expected costs and revenues related to the corridor and that the agency has been anything but transparent in its planning process. The audit found, among other things, that public funds could be used to develop the first stretch of the corridor despite claims from the agency that state highway fund costs would be minimal.

Additionally, it took TxDOT 18 months, after a ruling from the attorney general that the agency was violating the Texas Public Information Act and a lawsuit filed by Cintra-Zachry and TxDOT to keep portions of the agreement confidential, before the department posted the comprehensive development agreement for the project on its web site.

Although some of these provisions might duplicate those in the budget bill, SB 792 would add these requirements to statute instead of through an appropriations rider.

OPPONENTS SAY:

SB 792 represents an overreaction to the unpopularity of toll roads in certain segments of the state that only would serve to exacerbate Texas' already-backlogged highway construction process. If the concept of the bill is to slow down or scale back programs the Legislature created without fully vetting them four years ago, passage of a "fix" bill that has had very little public examination while being rushed through both chambers would show the state has not learned its lesson. Many of these provisions would serve to scare off potential investors both by showing that any long-terms agreement could be subject to significant change and by reducing other incentives aimed at encouraging investment.

Moratorium. The Legislature saw fit four years ago to create an expansive, long-range solution for the state's transportation needs and revised those plans just last session. Putting a stop to that program now, without fully seeing exactly what the program would do, would be short-sighted. Coupled with a lack of any real alternative to build new roads for a rapidly growing population, this decision would have severe repercussions for Texas roads. While TxDOT's lack of transparency and other actions have not necessarily instilled confidence in members of the Legislature and the public, any attempt to punish the agency in this scenario ultimately would hurt Texas motorists.

Only six years ago, voters approved a constitutional amendment that moved Texas beyond the "pay-as-you-go" financing method, recognizing that the state's needs were exponentially greater than its ability to fund road projects. This was seen as an innovative way to address transportation concerns, and it still is. The state has other ways to fund projects, but none have the same long-term sustainability as toll projects. Pass-through financing, for example, has been wildly successful and popular — and likely would increase in popularity upon establishing a moratorium — yet TxDOT quickly is running out of money to continue to fund annual payments needed to reimburse local entities that put money down up front. It would reject an actual plan in favor of no plan at all. Instead of studying the ramifications of a program that already is in place, the Legislature should allow the program to continue and modify it or explore other changes as necessary.

The political incentives for placing a moratorium on this program are the exact reasons why the private sector is best equipped to manage toll roads. Governments concerned about the backlash of raising rates, even at the risk of losing revenue, would not necessarily operate the roads in the same manner a business would. Although a private entity could raise rates, it has to answer to the people in its own way. Drivers who found the costs excessive would speak with their cars and stop using toll roads, and if such an action were widespread, the market eventually would force the entity to respond by lowering rates. Private firms also can experiment with ideas, such as peak pricing, because they would have more flexibility to try a market-based approach to solve congestion problems. Governments and taxpayers also benefit under such a scenario because the up-front payments required in most CDAs allow local entities and the state not only to use that money on other roads and urgent needs but also any money that would have come out of their own coffers for the road project.

Comprehensive development agreements. Coupled with the moratorium, the changes SB 792 would impose on CDAs would send an anti-business message to private entities interested in participating in Texas toll road projects. Amending non-compete clauses could result in lower, fewer — or, in some cases — no bids from private entities that might not find a toll project as enticing if another highway could be built to serve the same market of drivers at which the toll road was aimed.

SB 792 would jeopardize the state's ability to leverage CDAs. None of the CDAs with the state contain non-compete clauses that would have a negative impact on local governments. Instead, existing non-compete clauses have been designed to ensure the state does not use proceeds from the agreement to build a free roadway that reduces traffic on that private partner's tolled road. These agreements do not prevent a toll authority from building roadways that might compete with those toll roads in the district. Further, it does not prevent the state from repairing or improving existing thoroughfares. Rather, because state agencies may enter into CDAs, state rights-of-way have real market value that can be put to good use supporting transportation projects across the state.

Granting a local entity first right of refusal on any project would increase inefficiencies and expense for any toll projects by eliminating any competition. The advantage of the current system is the role of the market in driving costs down, which compounds the advantages of issuing bonds to pay back these lower costs over time. Large, up front concession payments from private entities have been used for other transportation projects, and by removing these companies from the initial phase and potentially from more toll projects in the state, other construction projects likely would not be built.

Adding a buy-back provision also would have serious implications for the types and levels of bids for toll projects and could eliminate up-front payments altogether. The state essentially would be allowing private entities to finance and build a project based on the long-term revenue potential, but before the companies could actually recoup those costs, it could take the project back at a price that would not allow the companies that took the risk to realize the full reward.

Toll project contracts/local role. This bill would prevent TxDOT from overseeing tolling authorities within its jurisdiction. While MPOs must approve transportation improvement projects, they are operated by locally

elected officials whose duties and responsibilities are to their regions first. TxDOT is responsible for planning, designing, building, operating, and maintaining the state's transportation system and is the state's point of contact with the federal government. This global perspective includes interpreting federal policy on issues such as air quality, environmental impacts, safety, and international trade corridors on behalf of local jurisdictions.

This bill could jeopardize the state's ability to build intrastate roadways. When constructing a statewide toll project, not every segment of a roadway is going to be profitable. Commuters may want to travel through rural areas to get to other metropolitan areas, but most of the toll revenues will be generated in the cities. In order to fund the construction of an entire statewide turnpike system, individual segments of the toll road would be pooled so that surplus revenues generated in an urban area would enable the state to construct a segment in a rural area. If a state agency were to build a toll road segment in a city and then that city could seize that right-of-way for free, all funds generated from tolls in that district would have to stay in that district and would prevent the state from being able to build any other segment of the project.

SB 792 would go too far by allowing local tolling authorities to seize any state-owned tolled or non-tolled project in their regions. State law now allows RMAs to keep all surplus toll revenue generated from projects they construct and to use these proceeds to support other transportation projects in their regions. Likewise, this bill also would allow local tolling authorities to retain surplus revenues generated in this manner. Yet, the state would be prevented from enjoying the same privileges the local tolling authorities have in reallocating surplus toll revenues from projects it constructs by making all of its rights-of-way available to local tolling authorities. State agencies certainly would continue to provide right-of-way access for county toll road authority projects, but the state should not simply cede all of its transportation projects to a local authority.

Oversight. TxDOT contends that it has publicized as much information as it could as quickly as it could with regard to CDAs, and some of these provisions would have a similar effect as others in this bill in scaring off businesses from investing in the state. The agency contends that it backed Cintra-Zachry in its legal fight to ensure the integrity of the competitive process by not releasing proprietary information before the contract was finalized and that it put the document on its web site once that occurred.

Protecting the public interest is important, but if the state is to entice businesses to invest in its road projects, it must ensure that competitors cannot access key strategic information.

OTHER OPPONENTS SAY:

The Legislature cannot simply halt all toll projects for the next two years without providing an alternative for new road construction. Texas' road construction needs are immense, as is its project backlog, and other existing resources for road construction are not enough to reduce traffic congestion and improve air quality in the most trafficked areas. Any moratorium should be coupled with imposition of new state fuel taxes that would provide a funding source for the most urgent problems over at least the next fiscal biennium.

Funding options. The state must consider other options, and increasing the gas tax would be the best place to start. The 20-cents-per-gallon tax has not been increased since 1991 and should be boosted substantially in order to fund urgently needed projects. Other options would include reducing or eliminating diversions of any money out of Fund 6.

Exemptions. This bill should be amended to remove the exemptions granted to several toll projects. If the premise of SB 792 is to say that toll roads, especially those financed or built by private enterprise, are not the responsible option, the act of exempting so many projects seriously would undermine that rationale. If this is bad public policy for some, it should be bad pubic policy for all.

Toll roads. This bill would not go far enough in banning toll projects and should place a moratorium on all new toll roads. Tolls are an unfair double tax on drivers who already have paid for road projects through fuel taxes. They are regressive taxes that impose the same fee on all classes yet represent a greater hardship on low-income and middle-class drivers.

Local role. TxDOT should be required to gain approval of local governments before starting any toll project, regardless of whether or not there was a local toll authority. Additionally, the local involvement should be expanded to include voters, who should be allowed to vote on a new project in the same way they can for bond issues.

NOTES:

The LBB cannot anticipate the fiscal implications of SB 792 to the state but estimates the increased bonding authority from $3 billion to $6 billion

would cost $3.4 billion to Fund 6 in fiscal 2008-09, with a $3 million revenue gain during that same period.

CSHB 1892 by W. Smith was finally passed, as amended, by the House by 139-1 on May 2 and by the Senate by 27-4 on April 30. SB 792 incorporates much of the same language as HB 1892. Major changes proposed in SB 792 include:

- allowing TxDOT and TTC to take any reasonable action to ensure eligibility for federal funds would not be compromised;
- limiting CDAs to no more than 52 years instead of 40 years;
- adding exemptions for three projects;
- changing the expiration date for CDAs without private financing and those exempt from the moratorium to 2011 from 2009;
- granting a county primary responsibility for building toll roads within its boundaries;
- providing that a local authority would reimburse the state for land acquisition costs if it used ROW;
- providing that an agreement between a local authority and TxDOT for a toll project would not create a joint enterprise;
- adding provisions granting development procedures given CTRAs to all toll project entities;
- adding requirements for TxDOT to create a Fund 6 account for money generated through CDAs;
- requiring TTC to approve any use of state or federal highway funds or work on any state highway system for certain CTRA projects;
- voiding the NTTA/TxDOT Regional Protocol; and
- establishing that every toll project entity establish a buyback formula in any CDA it entered.