

## **BILL ANALYSIS**

Senate Research Center

H.B. 2137  
By: Phillips (Staples)  
Transportation & Homeland Security  
5/17/2005  
Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Although there is no specific legislative authority for the Texas Transportation Commission (commission) to erect buildings to house its personnel and equipment, there is implied authority to do so in order to carry out the specific powers granted to the commission for furtherance of public road construction and the establishment of a state highway system.

H.B. 2137 clarifies the commission's authority and reduces redundancies and costly inefficiencies. The fiscal impact of bidding "building" projects would include safety rest areas, travel information centers, aviation and border safety inspection facilities, and capital improvement programs projects over \$100,000. The Texas Department of Transportation (department) would have to pay another agency to "administer" the contracts now being managed by the department, and therefore it is assumed the department would be charged administrative fees. Project Manager costs could run as high as 10%-15% of the capital budget, or about \$10-15 million per fiscal year.

The department's buildings have always been interpreted as part of the state highway system as per a 1953 Attorney General's opinion, "The Highway Department has the authority to construct a building on the land owned by it at Camp Hubbard to house its Motor Vehicle Registration Division and personnel from other divisions if such construction is a necessary incident to the furtherance of a public road construction and the establishment of a system of state highways." This is also why the Texas Building and Procurement Commission does not construct department buildings, as it does most agencies. The department is excluded from Texas Building and Procurement Commission oversight in Section 2166.003, Government Code.

### **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 Section 201.1055, Transportation Code, as follows:

Sec. 201.1055. AGREEMENTS WITH PRIVATE ENTITIES. (a) Creates this subsection from existing text. Authorizes the Texas Department of Transportation (department) and a private entity that offers the best value to the state, notwithstanding any other law, including certain statutes, to enter into an agreement that includes certain provisions.

(b) Authorizes the Texas Transportation Commission (commission), notwithstanding Section 202.024 (Exchange of Real Property), to authorize the executive director of the commission to execute a deed exchanging department-owned real property under Subsection (a)(5).

(c) Requires the commission, prior to signing an agreement under this section to lease with an option or options to purchase, to determine whether bond financing or lease with an option or options to purchase is the most cost-effective alternative for the acquisition of the building or related facility.

(d) Requires a lease agreement under this section to provide for the lease payments to apply to the purchase price of the building or related facility and to contain the agreed price to purchase the building or related facility.

(e) Requires the commission, prior to signing an agreement under this section to exchange department-owned property with a private entity for a building or related facility described in Subsection (a)(1), to determine whether the value of the building or related facility owned by the private entity is equal to or greater than the value of the department-owned property.

SECTION 2. Amends Section 222.001(1), Transportation Code, to redefine "highway."

SECTION 3. Amends Section 2166.302, Government Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires the commission, except as provided by Subsections (b) and (c), to adopt uniform general conditions to be incorporated into all building construction contracts made by the state, including a contract for project excluded from this chapter by Section 2166.003 (Exceptions), but not including a contract for a project excluded from this chapter by Section 2166.004 (Additional Exceptions).

(c) Provides that Subsection (a) does not apply to a project constructed by and for the department.

SECTION 4. Makes application of Section 2166.302, Government Code, as amended by this Act, prospective.

SECTION 5. Effective date: upon passage or September 1, 2005.