

BILL ANALYSIS

Senate Research Center
82R22309 JTS-F

H.B. 2032
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Transportation & Homeland Security
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2032 amends current law relating to performance and payment security for certain comprehensive development agreements.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Department of Transportation is rescinded in SECTION 1 (Section 223.205, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 223.205, Transportation Code, as follows:

Sec. 223.205. PERFORMANCE AND PAYMENT SECURITY. (a) Requires the Texas Department of Transportation (TxDOT), notwithstanding Section 223.006 (Contractor's Bond) and the requirements of Subchapter B (General Requirements; Liability), Chapter 2253 (Public Work Performance and Payment Bonds), Government Code, to require a private entity entering into a comprehensive development agreement under this subchapter to provide a performance and payment bond issued by a corporate surety authorized to issue bonds in this state or an alternative form of security in an amount sufficient to:

(1) ensure the proper performance of the agreement; and

(2) protect TxDOT; and security beneficiaries, rather than payment bond beneficiaries, who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

(b) Requires the security, except as provided by Subsection (c) to be in an amount equal to the cost of constructing or maintaining the project, rather than requiring a performance and payment bond or alternative form of security to be in an amount equal to the cost of constructing or maintaining the project.

(c) Authorizes rather than requires, TxDOT if the contract amount exceeds \$250 million in construction costs, and TxDOT determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b) to set the amount of the security, rather than to set the amount of the bonds or alternative forms of security, at a rate or above \$250 million, as determined by TxDOT to be in the best interest of this state.

(d) Provides that the security, rather than provides that a payment or performance bond or alternative form of security, is not required for and is prohibited from covering the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(e) Makes no changes to this subdivision.

(f) Authorizes TxDOT, in addition to or instead of a performance and payment bond, to require one or more of the following alternative forms of security:

(1)-(2) Makes no changes to these subdivisions; or

(3) an irrevocably bank letter of credit from a United States domiciled bank acceptable to TxDOT.

Deletes existing text authorizing TxDOT, in addition to or instead of performance and payment bonds, to require any other form of security determined suitable by TxDOT.

Deletes existing Subdivision (g) requiring TxDOT by rule to prescribe requirements for an alternative form of security provided under this section.

SECTION 2. Amends Section 366.404, Transportation Code, as follows:

Sec. 366.404. PERFORMANCE AND PAYMENT SECURITY. (a) Requires a regional tollway authority (tollway authority), notwithstanding the requirements of Subchapter B, Chapter 2253, Government Code, to require a private entity entering into a comprehensive development agreement under this subchapter to provide a performance and payment bond issued by a corporate surety authorized to issue bonds in this state or an alternative form of security in an amount sufficient to:

(1) Makes no changes to this subdivision; and

(2) to protect the authority, and security beneficiaries, rather than payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

(b) Requires the security, except as provided by Subsection (c) to be in an amount equal to the cost of constructing or maintaining the project, rather than requiring a performance and payment bond or alternative form of security to be in an amount equal to the cost of constructing or maintaining the project.

(c) Authorizes, rather than requires, a tollway authority if the contract amount exceeds \$250 million in construction costs, and the tollway authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b) to set the amount of the security, rather than to set the amount of the bonds or the alternative forms of security, or above \$250 million, as determined by the tollway authority to be in the tollway authority's best interest.

(d) Provides that the security, rather than provides that a payment or performance bond or alternative form of security, is not required for and is prohibited from covering the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(e) Makes no changes to this subdivision.

(f) Authorizes a tollway authority in addition to or instead of a performance and payment bond, to require the following alternative forms of security:

(1)-(2) Makes no changes to these subdivisions; or

(3) an irrevocable bank letter of credit from a United States domiciled bank acceptable to the tollway authority.

Deletes existing text authorizing a tollway authority in addition to, or instead of, performance and payment bond, to require any other form of security determined suitable by the tollway authority. Makes a nonsubstantive change.

Deletes existing Subdivision (g) requiring the tollway authority by rule to prescribe requirements for alternative forms of security provided under this section.

SECTION 3. Amends Section 370.308, Transportation Code, as follows:

Sec. 370.308. PERFORMANCE AND PAYMENT SECURITY. (a) Requires a regional mobility authority (authority), notwithstanding Section 223.006 and the requirements of Subchapter B, Chapter 2253, Government Code, to require a private entity entering into a comprehensive development agreement under this subchapter to provide a performance and payment bond issued by a corporate surety authorized to issue bonds in this state or an alternative form of security in an amount sufficient to:

(1) ensure the proper performance of the agreement; and

(2) protect the authority, and security beneficiaries, rather than payment bond beneficiaries, who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

(b) Requires that the security, except as provided by Subsection (c) to be in an amount equal to the cost of constructing or maintaining the project, rather than requiring a performance and payment bond or alternative form of security to be in an amount equal to the cost of constructing or maintaining the project.

(c) Authorizes, rather than requires, the authority if the contract amount exceeds \$250 million in construction costs and the authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b) to set the amount of the security, rather than to set the amount of the bonds or the alternative forms of security, at or above \$250 million, as determined by the authority to be in the best interest of this state. Makes a nonsubstantive change.

(d) Provides that the security, rather than provides that a payment or performance bond or alternative form of security, is not required for and is prohibited from covering the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(e) Makes no changes to this subdivision.

(f) Authorizes the authority in addition to performance and payment bonds, to require the following alternative forms of security:

(1)-(2) Makes no changes to these subdivisions; or

(3) an irrevocably bank letter of credit from a United States domiciled bank acceptable to the authority.

Deletes existing text authorizing the authority, in addition to or instead of a performance and payment bonds, to require any other form of security determined suitable by the authority.

Deletes existing Subdivision (g) requiring an authority by rule to prescribe requirements for an alternative forms of security provided under this section.

SECTION 4. Provides that the changes in law made by this Act apply only to a comprehensive development agreement for which a best value proposer is selected on or after the effective date of this Act. Provides that a comprehensive development agreement for which a best value proposer was selected before that date is governed by the law as it existed at the time the best value proposer was selected, and the former law is continued in effect for that purpose.

SECTION 5. Effective date: September 1, 2011.