

AN ACT

relating to the authority of certain counties and other entities with respect to certain transportation projects and to comprehensive development agreements with regard to such projects; authorizing the issuance of bonds; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TERM OF CERTAIN TOLL OR FEE COLLECTION  
CONTRACTS WITH PRIVATE ENTITIES

SECTION 1.01. Section 223.203, Transportation Code, is amended by adding Subsection (f-1) to read as follows:

(f-1) A private entity responding to a request for detailed proposals issued under Subsection (f) may submit alternative proposals based on comprehensive development agreements having different terms, with the alternative terms in multiples of 10 years, ranging from 10 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity to 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity, not to exceed a total term of 52 years or any lesser term provided in a comprehensive development agreement.

SECTION 1.02. Subsection (h), Section 223.208, Transportation Code, is amended to read as follows:

(h) A [~~Except as provided by this section, a~~] comprehensive development agreement with a private participant that includes the

1 collection by the private participant of tolls for the use of a toll  
2 project may be for a term not longer than 50 years from the later of  
3 the date of final acceptance of the project or the start of revenue  
4 operations by the private participant, not to exceed a total term of  
5 52 years. The comprehensive development agreement must contain  
6 ~~[may be for a term not longer than 70 years if the agreement]~~

7 [~~(1) contains~~] an explicit mechanism for setting the  
8 price for the purchase by the department of the interest of the  
9 private participant in the comprehensive development agreement and  
10 related property, including any interest in a highway or other  
11 facility designed, developed, financed, constructed, operated, or  
12 maintained under the agreement [~~and~~

13 [~~(2) outlines the benefit the state will derive from~~  
14 ~~having a term longer than 50 years]~~.

15 SECTION 1.03. Subsection (f), Section 227.023,  
16 Transportation Code, is amended to read as follows:

17 (f) A contract with a private entity that includes the  
18 collection by the private entity of a fee for the use of a facility  
19 may not be for a term longer than 50 years from the later of the date  
20 of final acceptance of the project or the start of revenue  
21 operations by the private entity, not to exceed a total term of 52  
22 years. The contract must contain an explicit mechanism for setting  
23 the price for the purchase by the department of the interest of the  
24 private entity in the contract and related property, including any  
25 interest in a highway or other facility designed, developed,  
26 financed, constructed, operated, or maintained under the contract.

27 SECTION 1.04. Subsection (1), Section 370.302,

1 Transportation Code, is amended to read as follows:

2 (1) An agreement with a private entity that includes the  
3 collection by the private entity of tolls for the use of a  
4 transportation project may not be for a term longer than 50 years  
5 from the later of the date of final acceptance of the project or the  
6 start of revenue operations by the private entity, not to exceed a  
7 total term of 52 years. The agreement must contain an explicit  
8 mechanism for setting the price for the purchase by the authority of  
9 the interest of the private entity in the contract and related  
10 property, including any interest in a highway or other facility  
11 designed, developed, financed, constructed, operated, or  
12 maintained under the agreement.

13 SECTION 1.05. The changes in law made by this article apply  
14 only to a contract entered into on or after the effective date of  
15 this Act. A contract entered into before the effective date of this  
16 Act is governed by the law in effect when the contract was entered  
17 into, and the former law is continued in effect for that purpose.

18 ARTICLE 2. PAYMENTS TO UNSUCCESSFUL PROPOSERS FOR COMPREHENSIVE  
19 DEVELOPMENT AGREEMENTS

20 SECTION 2.01. Subsection (m), Section 223.203,  
21 Transportation Code, is amended to read as follows:

22 (m) The department may ~~shall~~ pay an unsuccessful private  
23 entity that submits a responsive proposal in response to a request  
24 for detailed proposals under Subsection (f) a stipulated amount in  
25 exchange for the work product contained in that proposal. A ~~The~~  
26 stipulated amount must be stated in the request for proposals and  
27 may not exceed the value of any work product contained in the

1 proposal that can, as determined by the department, be used by the  
2 department in the performance of its functions. The use by the  
3 department of any design element contained in an unsuccessful  
4 proposal is at the sole risk and discretion of the department and  
5 does not confer liability on the recipient of the stipulated amount  
6 under this section. After payment of the stipulated amount:

7 (1) the department owns with the unsuccessful proposer  
8 jointly the rights to, and may make use of any work product  
9 contained in, the proposal, including the technologies,  
10 techniques, methods, processes, ideas, and information contained  
11 in the project design; and

12 (2) the use by the unsuccessful proposer of any  
13 portion of the work product contained in the proposal is at the sole  
14 risk of the unsuccessful proposer and does not confer liability on  
15 the department.

16 SECTION 2.02. Subsection (m), Section 370.306,  
17 Transportation Code, is amended to read as follows:

18 (m) An authority may [~~shall~~] pay an unsuccessful private  
19 entity that submits a response to a request for detailed proposals  
20 under Subsection (f) a stipulated amount of the final contract  
21 price for any costs incurred in preparing that proposal. A [~~The~~]  
22 stipulated amount must be stated in the request for proposals and  
23 may not exceed the value of any work product contained in the  
24 proposal that can, as determined by the authority, be used by the  
25 authority in the performance of its functions. The use by the  
26 authority of any design element contained in an unsuccessful  
27 proposal is at the sole risk and discretion of the authority and

1 does not confer liability on the recipient of the stipulated amount  
2 under this subsection. After payment of the stipulated amount:

3 (1) the authority owns the exclusive rights to, and  
4 may make use of any work product contained in, the proposal,  
5 including the technologies, techniques, methods, processes, and  
6 information contained in the project design; and

7 (2) the work product contained in the proposal becomes  
8 the property of the authority.

9 ARTICLE 3. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE  
10 DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS

11 SECTION 3.01. Subchapter E, Chapter 223, Transportation  
12 Code, is amended by adding Section 223.210 to read as follows:

13 Sec. 223.210. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE  
14 DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS. (a) In this  
15 section:

16 (1) "Toll project" means a toll project described by  
17 Section 201.001(b), regardless of whether the toll project:

18 (A) is a part of the state highway system; or

19 (B) is subject to the jurisdiction of the  
20 department.

21 (2) "Toll project entity" means a public entity  
22 authorized by law to acquire, design, construct, finance, operate,  
23 or maintain a toll project, including:

24 (A) the department;

25 (B) a regional tollway authority;

26 (C) a regional mobility authority; or

27 (D) a county.

1        (b) A comprehensive development agreement entered into with  
2 a private participant by a toll project entity on or after May 1,  
3 2007, for the acquisition, design, construction, financing,  
4 operation, or maintenance of a toll project may not contain a  
5 provision permitting the private participant to operate the toll  
6 project or collect revenue from the toll project, regardless of  
7 whether the private participant operates the toll project or  
8 collects the revenue itself or engages a subcontractor or other  
9 entity to operate the toll project or collect the revenue.

10       (c) Subsection (b) does not apply to a comprehensive  
11 development agreement in connection with:

12            (1) a project associated with the highway designated  
13 as the Trinity Parkway in the City of Dallas; or

14            (2) a project:

15                    (A) that includes one or more managed lane  
16 facilities to be added to an existing controlled-access highway;

17                    (B) the major portion of which is located in a  
18 nonattainment or near-nonattainment air quality area as designated  
19 by the United States Environmental Protection Agency; and

20                    (C) for which the department has issued a request  
21 for qualifications before May 1, 2007.

22       (d) Subsection (b) does not apply to a comprehensive  
23 development agreement in connection with a project associated with  
24 any portion of the Loop 9 project that is located in a nonattainment  
25 air quality area as designated by the United States Environmental  
26 Protection Agency that includes two adjacent counties that each  
27 have a population of one million or more.

1       (e) Subsection (b) does not apply to a comprehensive  
2 development agreement in connection with a project associated with  
3 any portion of the State Highway 99 project.

4       (f) Subsection (b) does not apply to a comprehensive  
5 development agreement in connection with a project:

6           (1) on the ISTEA High Priority Corridor identified in  
7 Sections 1105(c)(18) and (20) of the Intermodal Surface  
8 Transportation Efficiency Act of 1991 (Pub. L. No. 102-240), as  
9 amended by Section 1211 of the Transportation Equity Act for the  
10 21st Century (Pub. L. No. 105-178, as amended by Title IX, Pub. L.  
11 No. 105-206), including land adjacent to the project needed to  
12 widen the project for a transportation use, if the project remains  
13 in a highway corridor designated by those laws; and

14           (2) located south of Refugio County.

15       (g) Subsection (b) does not apply to a comprehensive  
16 development agreement in connection with the State Highway 161  
17 project in Dallas County.

18       (g-1) Subsection (b) does not apply to a comprehensive  
19 development agreement in connection with a project other than a  
20 Trans-Texas Corridor project if:

21           (1) the project is located in the territory of a  
22 regional mobility authority that:

23                   (A) was created before January 1, 2005; and

24                   (B) is composed of a single county having a  
25 population of less than 125,000; and

26           (2) the commissioners court of the county in which the  
27 project is located by official action approves the exemption from

1 Subsection (b).

2 (h) Notwithstanding the TxDOT/NTTA Regional Protocol  
3 entered into between the Texas Department of Transportation and the  
4 North Texas Tollway Authority and approved on August 10, 2006, by  
5 the authority and on August 24, 2006, by the department, Subsection  
6 (b) does not apply to a comprehensive development agreement entered  
7 into in connection with State Highway 121 if before the commission  
8 or the department enters into a contract for the financing,  
9 construction, or operation of the project with a private  
10 participant, an authority under Chapter 366 was granted the ability  
11 to finance, construct, or operate, as applicable, the portion of  
12 the toll project located within the boundaries of the North Texas  
13 Tollway Authority, and the authority was granted a period of 60 days  
14 from March 26, 2007, to submit a commitment to the metropolitan  
15 planning organization which is determined to be equal to or greater  
16 than any other commitment submitted prior to March 26, 2007. If the  
17 financial value of the commitment is determined to be equal to or  
18 greater value than any other commitment submitted prior to March  
19 26, 2007, the commission shall allow the North Texas Tollway  
20 Authority to develop the project.

21 (i) Notwithstanding Subsection (c), Subsection (b) applies  
22 to any toll project or managed lane facility project located on any  
23 portion of U.S. Highway 281 that is located in a county with a  
24 population of more than one million in which more than 80 percent of  
25 the population lives in a single municipality.

26 (j) For purposes of Subsection (c)(2), "managed lane  
27 facility" means a facility that increases the efficiency of a



1 controlled-access highway through various operational and design  
2 actions and that allows lane management operations to be adjusted  
3 at any time. The term includes high-occupancy vehicle lanes,  
4 single-occupant vehicle express lanes, tolled lanes, priced lanes,  
5 truck lanes, bypass lanes, dual use facilities, or any combination  
6 of those facilities.

7 (k) The department may not enter into a comprehensive  
8 development agreement in connection with a project described by  
9 Subsection (c)(2) unless the commissioners court of the county in  
10 which the majority of the project is located passes a resolution in  
11 support of the agreement that states that the commissioners court:

12 (1) acknowledges that the comprehensive development  
13 agreement may contain penalties for the construction of future  
14 competing transportation projects that are acquired or constructed  
15 during the term of the comprehensive development agreement; and

16 (2) knowing of those potential penalties, agrees that  
17 the department should execute the comprehensive development  
18 agreement.

19 (k-1) If the department incurs a monetary penalty for the  
20 construction of a competing transportation project under a  
21 provision in a comprehensive development agreement approved by a  
22 county under Subsection (k), payment of the penalty may be made only  
23 with money that would otherwise be allocated for projects in the  
24 department district in which the county is located.

25 (l) On or after the effective date of this section, a toll  
26 project entity may not sell or enter into a contract to sell a toll  
27 project of the entity to a private entity.

1        (m) A legislative study committee is created. The committee  
2 is composed of nine members, appointed as follows:

3                (1) three members appointed by the lieutenant  
4 governor;

5                (2) three members appointed by the speaker of the  
6 house of representatives; and

7                (3) three members appointed by the governor.

8        (n) The legislative study committee shall select a  
9 presiding officer from among its members and conduct public  
10 hearings and study the public policy implications of including in a  
11 comprehensive development agreement entered into by a toll project  
12 entity with a private participant in connection with a toll project  
13 a provision that permits the private participant to operate and  
14 collect revenue from the toll project. In addition, the committee  
15 shall examine the public policy implications of selling an existing  
16 and operating toll project to a private entity.

17        (o) Not later than December 1, 2008, the legislative study  
18 committee shall:

19                (1) prepare a written report summarizing:

20                        (A) any hearings conducted by the committee;

21                        (B) any legislation proposed by the committee;

22                        (C) the committee's recommendations for  
23 safeguards and protections of the public's interest when a contract  
24 for the sale of a toll project to a private entity is entered into;  
25 and

26                        (D) any other findings or recommendations of the  
27 committee; and

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1           (2) deliver a copy of the report to the governor, the  
2 lieutenant governor, and the speaker of the house of  
3 representatives.

4           (p) On December 31, 2008, the legislative study committee  
5 created under this section is abolished.

6           (q) This section expires September 1, 2009.

7           (r) Subsection (b) does not apply to a project that is  
8 located in a county with a population of 300,000 or more and  
9 adjacent to an international border, except that Subsection (b)  
10 does not apply to a project that is located in a county that has a  
11 population of 600,000 or more and is adjacent to an international  
12 border only if before May 1, 2007, the project has been adopted by  
13 the metropolitan planning organization for the county in the  
14 transportation improvement plan or metropolitan transportation  
15 plan.

16           ARTICLE 4. COMPREHENSIVE DEVELOPMENT AGREEMENT SUNSET DATE

17           SECTION 4.01. Section 223.201, Transportation Code, is  
18 amended by amending Subsection (f) and adding Subsections (h) and  
19 (i) to read as follows:

20           (f) Except as provided by Subsections (h) and (i), the [The]  
21 authority to enter into comprehensive development agreements  
22 provided by this section expires on August 31, 2009 [2011].

23           (h) Subsection (f) does not apply to a comprehensive  
24 development agreement that does not grant a private entity a right  
25 to finance a toll project or to a comprehensive development  
26 agreement in connection with a project:

27           (1) that includes one or more managed lane facilities

1 to be added to an existing controlled-access highway;

2 (2) the major portion of which is located in a  
3 nonattainment or near-nonattainment air quality area as designated  
4 by the United States Environmental Protection Agency; and

5 (3) for which the department has issued a request for  
6 qualifications before May 1, 2007.

7 (i) The authority to enter into a comprehensive development  
8 agreement for a project exempted from Subsection (f) or Section  
9 223.210(b) expires August 31, 2011.

10 SECTION 4.02. Section 370.305, Transportation Code, is  
11 amended by amending Subsection (d) and adding Subsections (e) and  
12 (f) to read as follows:

13 (d) Except as provided by Subsections (e) and (f), the  
14 authority to enter into comprehensive development agreements under  
15 this [This] section expires on August 31, 2009 [2011].

16 (e) Subsection (d) does not apply to a comprehensive  
17 development agreement that does not grant a private entity a right  
18 to finance a toll project or a comprehensive development agreement  
19 in connection with a project:

20 (1) that includes one or more managed lane facilities  
21 to be added to an existing controlled-access highway;

22 (2) the major portion of which is located in a  
23 nonattainment or near-nonattainment air quality area as designated  
24 by the United States Environmental Protection Agency; and

25 (3) for which the department has issued a request for  
26 qualifications before the effective date of this subsection.

27 (f) The authority to enter into a comprehensive development

1 agreement for a project exempted from Subsection (d) or Section  
2 223.210(b) expires August 31, 2011.

3 ARTICLE 5. PUBLIC ACCESS TO TRANS-TEXAS CORRIDOR INFORMATION

4 SECTION 5.01. Subchapter A, Chapter 227, Transportation  
5 Code, is amended by adding Sections 227.005 and 227.006 to read as  
6 follows:

7 Sec. 227.005. PUBLIC ACCESS TO INFORMATION. (a) The  
8 department shall:

9 (1) seek to achieve transparency in the department's  
10 functions related to the Trans-Texas Corridor by providing, to the  
11 greatest extent possible under the public information law (Chapter  
12 552, Government Code) and other statutes governing the access to  
13 records, public access to information collected, assembled, or  
14 maintained by the department relating to the Trans-Texas Corridor;

15 (2) make public in a timely manner all documents,  
16 plans, and contracts related to the Trans-Texas Corridor; and

17 (3) make public in a timely manner all updates to the  
18 master development plan for the Trans-Texas Corridor, including  
19 financial plans.

20 (b) The department shall send electronic versions of all  
21 updates to the master development plan for the Trans-Texas Corridor  
22 to the Governor's Office of Budget and Planning, the Senate Finance  
23 Committee, the House Appropriations Committee, the Legislative  
24 Budget Board, the state auditor's office, and the comptroller in a  
25 timely manner.

26 Sec. 227.006. POSTING INFORMATION RELATING TO TRANS-TEXAS  
27 CORRIDOR ON DEPARTMENT'S WEBSITE. (a) The department shall post

1 on the department's Internet website, in a timely manner, the costs  
2 incurred by the department in connection with the financing,  
3 design, construction, maintenance, or operation of the Trans-Texas  
4 Corridor.

5 (b) Not later than the 10th day after the date the  
6 department enters into a contract relating to the Trans-Texas  
7 Corridor, the department shall post a copy of the contract on the  
8 department's Internet website.

9 ARTICLE 6. USE OF CERTAIN CONTRACT PAYMENTS AND OTHER REVENUE

10 SECTION 6.01. Section 228.0055, Transportation Code, is  
11 amended to read as follows:

12 Sec. 228.0055. USE OF CONTRACT PAYMENTS AND OTHER REVENUE.

13 (a) Payments, project savings, refinancing dividends, and any  
14 other revenue received by the commission or the department under a  
15 comprehensive development agreement shall ~~may~~ be used by the  
16 commission or the department to finance the construction,  
17 maintenance, or operation of ~~a~~ transportation projects ~~project~~  
18 or air quality projects ~~project~~ in the region.

19 (b) The department shall allocate the distribution of funds  
20 to department districts in the region that are located in the  
21 boundaries of the metropolitan planning organization in which the  
22 project that is the subject of the comprehensive development  
23 agreement is located based on the percentage of toll revenue from  
24 users from each department district of the project. To assist the  
25 department in determining the allocation, each entity responsible  
26 for collecting tolls for a project shall calculate on an annual  
27 basis the percentage of toll revenue from users of the project from

1 each department district based on the number of recorded electronic  
2 toll collections.

3 (c) The commission or the department may not:

4 (1) revise the formula as provided in the department's  
5 unified transportation program, or its successor document, in a  
6 manner that results in a decrease of a department district's  
7 allocation because of a payment under Subsection (a); or

8 (2) take any other action that would reduce funding  
9 allocated to a department district because of payments received  
10 under a comprehensive development agreement.

11 (d) A metropolitan planning organization may not take any  
12 action that would reduce distribution of funds or other resources  
13 to a department district because of the use of a payment or other  
14 revenue under Subsection (a).

15 ARTICLE 7. TOLL PROJECTS IN TERRITORY OF LOCAL OR REGIONAL TOLL  
16 PROJECT ENTITY

17 SECTION 7.01. Subchapter A, Chapter 228, Transportation  
18 Code, is amended by adding Sections 228.011, 228.0111, and 228.012  
19 to read as follows:

20 Sec. 228.011. TOLL PROJECTS IN CERTAIN COUNTIES. (a) This  
21 section applies only to a county acting under Chapter 284 and the  
22 development, construction, and operation of all or a portion of any  
23 of the following toll projects, a component of that project, or the  
24 functional equivalent of that project:

25 (1) Beltway 8 Tollway East, between US 59 North and US  
26 90 East;

27 (2) Hardy Downtown Connector, consisting of the

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1 proposed direct connection from the Hardy Toll Road southern  
2 terminus at Loop 610 to downtown Houston;

3 (3) State Highway 288, between US 59 and Grand Parkway  
4 South (State Highway 99);

5 (4) US 290 Toll Lanes, between IH 610 West and the  
6 Grand Parkway Northwest (State Highway 99);

7 (5) Fairmont Parkway East, between Beltway 8 East and  
8 Grand Parkway East (State Highway 99);

9 (6) South Post Oak Road Extension, between IH 610  
10 South and near the intersection of Beltway 8 and Hillcroft in the  
11 vicinity of the Fort Bend Parkway Tollway;

12 (7) Westpark Toll Road Phase II, between Grand Parkway  
13 (State Highway 99) and FM 1463;

14 (8) Fort Bend Parkway, between State Highway 6 and the  
15 Brazos River; and

16 (9) Montgomery County Parkway, between State Highway  
17 242 and the Grand Parkway (State Highway 99), and if the Grand  
18 Parkway project has not begun construction, a nontolled extension  
19 of the Montgomery County Parkway to allow a connection to  
20 Interstate Highway 45.

21 (b) The county is the entity with the primary responsibility  
22 for the financing, construction, and operation of a toll project  
23 located in the county. A county may develop, construct, and operate  
24 a project described in Subsection (a) at any time, regardless of  
25 whether it receives a first option notice from the commission or the  
26 department under Subsection (e).

27 (b-1) Consistent with federal law, the department shall



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1 assist the county in the financing, construction, and operation of  
 2 a toll project in the county by allowing the county to use state  
 3 highway right-of-way owned by the department and to access the  
 4 state highway system. The commission or the department may not  
 5 require the county to pay for the use of the right-of-way or access,  
 6 except to reimburse the department as provided by this subsection.  
 7 The county shall pay an amount to reimburse the department for the  
 8 department's actual costs to acquire the right-of-way. If the  
 9 department cannot determine that amount, the amount shall be  
 10 determined based on the average historical right-of-way  
 11 acquisition values for right-of-way located in proximity to the  
 12 project on the date of original acquisition of the right-of-way.  
 13 Money received by the department under this subsection shall be  
 14 deposited in the state highway fund and used in the department  
 15 district in which the project is located.

16 (c) The department and the county must enter into an  
 17 agreement that includes reasonable terms to accommodate the use of  
 18 the right-of-way by the county and to protect the interests of the  
 19 commission and the department in the use of the right-of-way for  
 20 operations of the department, including public safety and  
 21 congestion mitigation on the right-of-way.

22 (d) Subsection (b) does not limit the authority of the  
 23 commission or the department to participate in the cost of  
 24 acquiring, constructing, maintaining, or operating a project of the  
 25 county under Chapter 284.

26 (e) Before the department may enter into a contract for the  
 27 financing, construction, or operation of a proposed or existing

1 toll project any part of which is located in the county, the  
2 commission or department shall provide the county the first option  
3 to finance, construct, or operate, as applicable, the portion of  
4 the toll project located in the county:

5 (1) on terms agreeable to the county; and

6 (2) in a manner determined by the county to be  
7 consistent with the practices and procedures by which the county  
8 finances, constructs, or operates a project.

9 (f) A county's right to exercise the first option under  
10 Subsection (e) is effective for six months after the date of the  
11 receipt by the county of written notice from the commission or the  
12 department meeting the requirements of Subsection (e) and  
13 describing in reasonable detail the location of the toll project, a  
14 projected cost estimate, sources and uses of funds, and a  
15 construction schedule. If a county exercises the first option with  
16 respect to a toll project, the county must enter into one or more  
17 contracts for the financing, construction, or operation of the toll  
18 project within two years after the date on which all environmental  
19 requirements necessary for the development of the project are  
20 secured and all legal challenges to development are concluded. A  
21 contract may include agreements for design of the project,  
22 acquisition of right-of-way, and utility relocation. If the county  
23 does not enter into a contract during the two-year period, the  
24 commission or the department may enter into a contract for the  
25 financing, construction, or operation of the toll project with a  
26 different entity.

27 (g) An agreement entered into by the county and the

1 department in connection with a project under Chapter 284 that is  
2 financed, constructed, or operated by the county and that is on or  
3 directly connected to a highway in the state highway system does not  
4 create a joint enterprise for liability purposes.

5 (h) If the county approves, the commission may remove any  
6 right-of-way to be used by a county under this section from the  
7 state highway system. If the right-of-way used by a county under  
8 this section remains part of the state highway system, the county  
9 must comply with department design and construction standards.

10 (i) Notwithstanding an action of a county taken under this  
11 section, the commission or department may take any action that is  
12 necessary in its reasonable judgment to comply with any federal  
13 requirement to enable this state to receive federal-aid highway  
14 funds.

15 (j) Notwithstanding any other law, the commission and the  
16 department are not liable for any damages that result from a  
17 county's use of state highway right-of-way or access to the state  
18 highway system under this section, regardless of the legal theory,  
19 statute, or cause of action under which liability is asserted.

20 Sec. 228.0111. TOLL PROJECTS OF LOCAL TOLL PROJECT  
21 ENTITIES. (a) In this section:

22 (1) "Local toll project entity" means:

23 (A) a regional tollway authority under Chapter  
24 366;

25 (B) a regional mobility authority under Chapter  
26 370; or

27 (C) a county acting under Chapter 284.

1           (2) "Market valuation" means the valuation of a toll  
2 project that:

3                   (A) is based on the terms and conditions  
4 established mutually by a local toll project entity and the  
5 department for the development, construction, and operation of a  
6 toll project, including the initial toll rate and the toll rate  
7 escalation methodology; and

8                   (B) takes into account a traffic and revenue  
9 study of the toll project using agreed-upon assumptions, an agreed  
10 project scope, market research, the estimated cost to finance,  
11 construct, maintain, and operate the project, and other information  
12 determined appropriate by the local toll project entity and the  
13 department.

14           (3) "Region" has the meaning assigned by Section  
15 228.001, except that the region of a county acting under Chapter 284  
16 is composed of that county and the counties that are contiguous to  
17 that county.

18           (4) "Toll project subaccount" means a subaccount  
19 created under Section 228.012.

20           (b) This section does not apply to a toll project described  
21 in Section 228.011(a).

22           (c) A local toll project entity is the entity with primary  
23 responsibility for the financing, construction, and operation of a  
24 toll project located within its boundaries.

25           (d) Subsection (c) does not limit the authority of the  
26 commission or the department to participate in the cost of  
27 acquiring, constructing, maintaining, or operating a toll project

1 of a local toll project entity.

2 (e) Except as provided in this subsection, if a local toll  
3 project entity or the department determines that a toll project  
4 located within the boundaries of the local toll project entity  
5 should be developed, constructed, and operated as a toll project,  
6 the local toll project entity and the department mutually shall  
7 agree on the terms and conditions for the development,  
8 construction, and operation of the toll project, including the  
9 initial toll rate and the toll rate escalation methodology. The  
10 terms and conditions for the procurement and operation of the State  
11 Highway 99 project shall be approved by the metropolitan planning  
12 organization in which the project is located.

13 (e-1) If the local toll project entity and the department  
14 are unable to mutually agree on the terms and conditions for the  
15 development, construction, and operation of the toll project as  
16 required by Subsection (e), neither the local toll project entity  
17 nor the department may develop the project as a toll project.

18 (f) After agreeing on the terms and conditions for a toll  
19 project under Subsection (e), or after metropolitan planning  
20 organization approval of the terms and conditions for the State  
21 Highway 99 project, the local toll project entity and the  
22 department mutually shall determine which entity, including a third  
23 party under contract with the local toll project entity or the  
24 department, will develop a market valuation of the toll project  
25 that is based on the terms and conditions established under  
26 Subsection (e). The department and the local toll project entity  
27 have 90 days after the date of the receipt of a final draft version

1 of the market valuation designated as "complete; subject to  
2 approval by the Texas Department of Transportation and (name of  
3 local toll project entity)" to mutually approve the market  
4 valuation included in the draft version or, in the alternative,  
5 negotiate and agree on a different market valuation. If the  
6 department and the local toll project entity are unable to agree on  
7 a market valuation within the 90-day period, the market valuation  
8 in the draft version is considered to be final for purposes of this  
9 section and mutually approved on the last day of that period.

10 (f-1) The department and a local toll project entity may  
11 agree to waive the requirement to develop a market valuation under  
12 this section.

13 (f-2) If the department and the local toll project entity  
14 are unable to mutually determine which entity will develop the  
15 market valuation of the toll project under Subsection (f), neither  
16 the department nor the local toll project entity may develop,  
17 construct, or operate the project as a toll project.

18 (f-3) A third party that develops a market valuation under  
19 Subsection (f) may not:

20 (1) invest money in a private entity that participates  
21 in the financing, development, construction, or operation of that  
22 toll project, either directly or indirectly through investment in  
23 the entity's equities or obligations, provided that fees for  
24 services are not considered direct or indirect investment; or

25 (2) directly or indirectly through one or more  
26 intermediaries, control, be controlled by, or be under common  
27 control with a private entity that participates in the financing,

1 development, construction, or operation of that toll project, as  
2 the term "control" is described by Section 21.605, Business  
3 Organizations Code.

4 (g) A local toll project entity has the first option to  
5 develop, finance, construct, and operate a toll project under the  
6 terms and conditions established under Subsection (e). A local  
7 toll project entity, other than a regional mobility authority under  
8 Chapter 370, has six months after the date that the market valuation  
9 is mutually approved under Subsection (f) to decide whether to  
10 exercise the option. For a project proposed to be located within  
11 the boundaries of a regional mobility authority under Chapter 370,  
12 after the market valuation is final under Subsection (f), the  
13 metropolitan planning organization for the region in which the  
14 project is located shall determine whether the toll project should  
15 be developed using the business terms incorporated in the market  
16 valuation. If the metropolitan planning organization determines  
17 that the toll project should be developed using the business terms  
18 in the market valuation, the regional mobility authority has six  
19 months after the date the metropolitan planning organization  
20 decides whether to exercise the option to develop the project. If a  
21 local toll project entity exercises the option with respect to a  
22 toll project under this subsection, the local toll project entity,  
23 after exercising the option and within two years after the date on  
24 which all environmental requirements necessary for the development  
25 of the toll project are secured and all legal challenges to  
26 development are concluded, must:

27 (1) enter into a contract for the construction of the

1 toll project; and

2 (2) either:

3 (A) commit to make a payment into a toll project  
4 subaccount in an amount equal to the value of the toll project as  
5 determined by the market valuation, to be used by the department to  
6 finance the construction of additional transportation projects in  
7 the region in which the toll project is located;

8 (B) commit to construct, within the period agreed  
9 to by the local toll project entity and the department, additional  
10 transportation projects in the region in which the toll project is  
11 located with estimated construction costs equal to the market  
12 valuation of the toll project; or

13 (C) for a regional mobility authority under  
14 Chapter 370, commit to using, for a period to be agreed upon by the  
15 department and the authority, all surplus revenue from the toll  
16 project for the purposes authorized by Section 370.174(b) in an  
17 amount equal to the valuation of the project.

18 (h) If a local toll project entity exercises the option with  
19 respect to a toll project under Subsection (g) and has not begun the  
20 environmental review of the project, the local toll project entity  
21 shall begin the environmental review within six months of  
22 exercising the option.

23 (i) If a local toll project entity does not exercise the  
24 option to develop, finance, construct, and operate a toll project  
25 under Subsection (g), or does not enter into a contract for the  
26 construction of the project and make a commitment described in  
27 Subsection (g)(2) within the two-year period prescribed in



1 Subsection (g), the department has the option to develop, finance,  
2 construct, and operate the toll project under the terms and  
3 conditions agreed to under Subsection (e). The department has two  
4 months after the date the local toll project entity fails to  
5 exercise its option or enter into a construction contract and make a  
6 commitment described in Subsection (g)(2) to decide whether to  
7 exercise its option. If the department exercises its option with  
8 respect to a toll project under this subsection, the department,  
9 after exercising the option and within two years after the date on  
10 which all environmental requirements necessary for the development  
11 of the project are secured and all legal challenges to such  
12 development are concluded, must:

13 (1) enter into a contract for the construction of the  
14 toll project; and

15 (2) either:

16 (A) commit to make a payment into the toll  
17 project subaccount in an amount equal to the value of the toll  
18 project as determined by the market valuation, to be used by the  
19 department to finance the construction of additional  
20 transportation projects in the region in which the toll project is  
21 located; or

22 (B) commit to construct, within the period agreed  
23 to by the local toll project entity and the department, additional  
24 transportation projects in the region in which the toll project is  
25 located with estimated construction costs equal to the market  
26 valuation of the toll project.

27 (j) If the department does not exercise the option to

1 develop, finance, construct, and operate a toll project under  
2 Subsection (1), or does not enter into a contract for the  
3 construction of the project and make a commitment described in  
4 Subsection (1)(2) within the two-year period prescribed in  
5 Subsection (1), the local toll project entity and the department  
6 may meet again for the purpose of agreeing on revised terms and  
7 conditions for the development, construction, and operation of the  
8 toll project, and the local toll project entity and the department  
9 shall follow the process prescribed in Subsections (f)-(1).

10 (k) Consistent with federal law, the commission and the  
11 department shall assist a local toll project entity in the  
12 development, financing, construction, and operation of a toll  
13 project for which the local toll project entity has exercised its  
14 option to develop, finance, construct, and operate the project  
15 under Subsection (g) by allowing the local toll project entity to  
16 use state highway right-of-way and to access the state highway  
17 system as necessary to construct and operate the toll project.  
18 Notwithstanding any other law, the toll project entity and the  
19 commission may agree to remove the project from the state highway  
20 system and transfer ownership to the local toll project entity. The  
21 commission or the department may not require a local toll project  
22 entity to pay for the use of the right-of-way or access, except to  
23 reimburse the department for actual costs incurred or to be  
24 incurred by the department that are owed to a third party, including  
25 the federal government, as a result of that use by the local toll  
26 project entity. If a local toll project entity exercises its option  
27 to develop, construct, and operate a toll project under this

1 section, the following shall be deducted from the amount of the toll  
2 project entity commitment under Subsection (g)(2):

3 (1) an amount equal to the amount reimbursed under  
4 this subsection, if any; and

5 (2) with respect to a county operating under Chapter  
6 284, an amount equal to the costs of any road, street, or highway  
7 project undertaken by the county under Section 284.0031 before the  
8 acceptance of the market valuation, if the county requests a  
9 deduction and specifies in reasonable detail a description and cost  
10 of the project and the department agrees that any such road, street,  
11 or highway project constitutes an additional transportation  
12 project under Subsection (g)(2)(B).

13 (1) A local toll project entity shall enter into an  
14 agreement with the department for any project for which the entity  
15 has exercised its option to develop, finance, construct, and  
16 operate the project under Subsection (g) and for which the entity  
17 intends to use state highway right-of-way. An agreement entered  
18 into under this subsection must contain provisions necessary to  
19 ensure that the local toll project entity's construction,  
20 maintenance, and operation of the project complies with the  
21 requirements of applicable federal and state law.

22 (m) Notwithstanding any other law, the commission and the  
23 department are not liable for any damages that result from a local  
24 toll project entity's use of state highway right-of-way or access  
25 to the state highway system under this section, regardless of the  
26 legal theory, statute, or cause of action under which liability is  
27 asserted.

1       (n) An agreement entered into by a local toll project entity  
2 and the department in connection with a toll project that is  
3 financed, constructed, or operated by the local toll project entity  
4 and that is on or directly connected to a highway in the state  
5 highway system does not create a joint enterprise for liability  
6 purposes.

7       (o) Notwithstanding an action of a local toll project entity  
8 taken under this section, the commission or department may take any  
9 action that in its reasonable judgment is necessary to comply with  
10 any federal requirement to enable this state to receive federal-aid  
11 highway funds.

12       (p) A local toll project entity and the department may issue  
13 bonds, including revenue bonds and refunding bonds, or other  
14 obligations, and enter into credit agreements, to pay any costs  
15 associated with a project under this section, including the  
16 payments deposited to the applicable toll project subaccount, and  
17 the costs to construct, maintain, and operate additional  
18 transportation projects that the local toll project entity or the  
19 department commits to undertake in accordance with this section, as  
20 follows:

21           (1) the bonds or other obligations and the proceedings  
22 authorizing the bonds or other obligations must be submitted to the  
23 attorney general for review and approval as required by Chapter  
24 1202, Government Code;

25           (2) the bonds or other obligations may be payable from  
26 and secured by revenue of one or more projects of the local toll  
27 project entity or the department, including toll road system

1 revenues, or such other legally available revenue or funding  
2 sources as the local toll project entity or department shall  
3 determine;

4 (3) the bonds or other obligations may mature serially  
5 or otherwise not more than 30 years from their date of issuance;

6 (4) the bonds or other obligations are not a debt of  
7 and do not create a claim for payment against the revenue or  
8 property of the local toll project entity or the department, other  
9 than the revenue sources pledged for which the bonds or other  
10 obligations are issued; and

11 (5) the local toll project entity and the department  
12 may issue obligations and enter into credit agreements under  
13 Chapter 1371, Government Code, and for purposes of that chapter, a  
14 local toll project entity and the department shall be considered a  
15 public utility and any cost authorized to be financed in accordance  
16 with this subsection is an eligible project.

17 (q) The provisions of this section requiring metropolitan  
18 planning organization approval of the terms and conditions for the  
19 State Highway 99 project expire August 31, 2009.

20 (r) This section expires August 31, 2011.

21 (s) This section does not apply to:

22 (1) any project for which the department has issued a  
23 request for qualifications or request for competing proposals and  
24 qualifications before May 1, 2007, except for the State Highway 161  
25 project in Dallas County;

26 (2) the eastern extension of the President George Bush  
27 Turnpike from State Highway 78 to IH 30 in Dallas County;

1           (3) the Phase 3 and 4 extensions of the Dallas North  
2 Tollway in Collin and Denton Counties from State Highway 121 to the  
3 Grayson County line, and the planned future extension into Grayson  
4 County, regardless of which local toll project entity develops the  
5 extension into Grayson County;

6           (4) the Lewisville Lake Bridge (and portions of FM 720  
7 widening projects) in Denton County; or

8           (5) the Southwest Parkway (State Highway 121) in  
9 Tarrant County from Dirks Road/Altamesa Boulevard to IH 30.

10           Sec. 228.012. PROJECT SUBACCOUNTS. (a) The department  
11 shall create a separate account in the state highway fund to hold  
12 payments received by the department under a comprehensive  
13 development agreement, the surplus revenue of a toll project or  
14 system, and payments received under Sections 228.0111(g)(2) and  
15 (1)(2). The department shall create subaccounts in the account for  
16 each project, system, or region. Interest earned on money in a  
17 subaccount shall be deposited to the credit of that subaccount.

18           (b) The department shall hold money in a subaccount in trust  
19 for the benefit of the region in which a project or system is  
20 located and may assign the responsibility for allocating money in a  
21 subaccount to a metropolitan planning organization in which the  
22 region is located. Except as provided by Subsection (c), money  
23 shall be allocated to projects authorized by Section 228.0055 or  
24 Section 228.006, as applicable.

25           (c) Money in a subaccount received from a county or the  
26 department under Section 228.0111 in connection with a project for  
27 which a county acting under Chapter 284 has the first option shall

1 be allocated to transportation projects located in the county and  
2 the counties contiguous to that county.

3 (d) Not later than January 1 of each odd-numbered year, the  
4 department shall submit to the Legislative Budget Board, in the  
5 format prescribed by the Legislative Budget Board, a report on cash  
6 balances in the subaccounts created under this section and  
7 expenditures made with money in those subaccounts.

8 (e) The commission or the department may not:

9 (1) revise the formula as provided in the department's  
10 unified transportation program or a successor document in a manner  
11 that results in a decrease of a department district's allocation  
12 because of the deposit of a payment into a project subaccount or a  
13 commitment to undertake an additional transportation project under  
14 Section 228.0111; or

15 (2) take any other action that would reduce funding  
16 allocated to a department district because of the deposit of a  
17 payment received from the department or local toll project entity  
18 into a project subaccount or a commitment to undertake an  
19 additional transportation project under Section 228.0111.

20 SECTION 7.02. Section 228.0111, Transportation Code, as  
21 added by this article, applies to a project associated with State  
22 Highway 161 in Dallas County.

23 ARTICLE 8. COUNTY AUTHORITY IN CONNECTION WITH CERTAIN TOLL  
24 PROJECTS

25 SECTION 8.01. Subdivision (3), Section 284.001,  
26 Transportation Code, is amended to read as follows:

27 (3) "Project" means:

1           (A) a causeway, bridge, tunnel, turnpike,  
2 highway, ferry, or any combination of those facilities, including:

3                   (1) [~~A~~] a necessary overpass, underpass,  
4 interchange, entrance plaza, toll house, service station,  
5 approach, fixture, and accessory and necessary equipment that has  
6 been designated as part of the project by order of a county;

7                   (11) [~~B~~] necessary administration,  
8 storage, and other buildings that have been designated as part of  
9 the project by order of a county; and

10                   (111) [~~C~~] all property rights,  
11 easements, and related interests acquired; or

12                   (B) a turnpike project or system, as those terms  
13 are defined by Section 370.003.

14           SECTION 8.02. Section 284.003, Transportation Code, is  
15 amended to read as follows:

16           Sec. 284.003. PROJECT AUTHORIZED; CONSTRUCTION, OPERATION,  
17 AND COST. (a) A county, acting through the commissioners court of  
18 the county, or a local government corporation, without state  
19 approval, supervision, or regulation, may:

20                   (1) construct, acquire, improve, operate, maintain,  
21 or pool a project located:

22                           (A) exclusively in the county;

23                           (B) in the county and outside the county; or

24                           (C) in one or more counties adjacent to the  
25 county;

26                   (2) issue tax bonds, revenue bonds, or combination tax  
27 and revenue bonds to pay the cost of the construction, acquisition,



1 or improvement of a project;

2 (3) impose tolls or charges as otherwise authorized by  
3 this chapter;

4 (4) construct a bridge over a deepwater [~~deep-water~~]  
5 navigation channel, if the bridge does not hinder maritime  
6 transportation; [~~or~~]

7 (5) construct, acquire, or operate a ferry across a  
8 deepwater navigation channel;

9 (6) in connection with a project, on adoption of an  
10 order exercise the powers of a regional mobility authority  
11 operating under Chapter 370; or

12 (7) enter into a comprehensive development agreement  
13 with a private entity to design, develop, finance, construct,  
14 maintain, repair, operate, extend, or expand a proposed or existing  
15 project in the county to the extent and in the manner applicable to  
16 the department under Chapter 223 or to a regional tollway authority  
17 under Chapter 366.

18 (b) The county or a local government corporation may  
19 exercise a power provided by Subsection (a)(6) only in a manner  
20 consistent with the other powers provided by this chapter. To the  
21 extent of a conflict between this chapter and Chapter 370, this  
22 chapter prevails.

23 (c) A project or any portion of a project that is owned by  
24 the county and licensed or leased to a private entity or operated by  
25 a private entity under this chapter to provide transportation  
26 services to the general public is public property used for a public  
27 purpose and exempt from taxation by this state or a political

1 subdivision of this state.

2 (d) If the county constructs, acquires, improves, operates,  
3 maintains, or pools a project under this chapter, before December  
4 31 of each even-numbered year the county shall submit to the  
5 department a plan for the project that includes the time schedule  
6 for the project and describes the use of project funds. The plan  
7 may provide for and permit the use of project funds and other money,  
8 including state or federal funds, available to the county for  
9 roads, streets, highways, and other related facilities in the  
10 county that are not part of a project under this chapter. A plan is  
11 not subject to approval, supervision, or regulation by the  
12 commission or the department, except that:

13 (1) any use of state or federal highway funds must be  
14 approved by the commission;

15 (2) any work on a highway in the state highway system  
16 must be approved by the department; and

17 (3) the department shall supervise and regulate work  
18 on a highway in the state highway system.

19 (e) Except as provided by federal law, an action of a county  
20 taken under this chapter is not subject to approval, supervision,  
21 or regulation by a metropolitan planning organization.

22 (f) The county may enter into a protocol or other agreement  
23 with the commission or the department to implement this section  
24 through the cooperation of the parties to the agreement.

25 (g) An action of a county taken under this chapter must  
26 comply with the requirements of applicable federal law. The  
27 foregoing compliance requirement shall apply to the role of

1 metropolitan planning organizations under federal law, including  
 2 the approval of projects for conformity to the state implementation  
 3 plan relating to air quality, the use of toll revenue, and the use  
 4 of the right-of-way of and access to federal-aid highways.  
 5 Notwithstanding an action of a county taken under this chapter, the  
 6 commission or department may take any action that is necessary in  
 7 its reasonable judgment to comply with any federal requirement to  
 8 enable the state to receive federal-aid highway funds.

9 SECTION 8.03. Subchapter A, Chapter 284, Transportation  
 10 Code, is amended by adding Sections 284.0031 and 284.0032 and  
 11 amending Section 284.004 to read as follows:

12 Sec. 284.0031. OTHER ROAD, STREET, OR HIGHWAY PROJECTS.

13 (a) The commissioners court of a county or a local government  
 14 corporation, without state approval, supervision, or regulation  
 15 may:

16 (1) authorize the use or pledge of surplus revenue to  
 17 pay or finance the costs of a project for the study, design,  
 18 construction, maintenance, repair, or operation of roads, streets,  
 19 highways, or other related facilities that are not part of a project  
 20 under this chapter; and

21 (2) prescribe terms for the use of the surplus  
 22 revenue, including the manner in which revenue from a project  
 23 becomes surplus revenue and the manner in which the roads, streets,  
 24 highways, or other related facilities are to be studied, designed,  
 25 constructed, maintained, repaired, or operated.

26 (b) To implement this section, a county may enter into an  
 27 agreement with the commission, the department, a local governmental

1 entity, or another political subdivision of this state.

2 (c) A county may not take an action under this section that  
3 violates or impairs a bond resolution, trust agreement, or  
4 indenture that governs the use of the revenue of a project.

5 (d) Except as provided by this section, a county has the  
6 same powers, including the powers to finance and to encumber  
7 surplus revenue, and may use the same procedures with respect to the  
8 study, financing, design, construction, maintenance, repair, or  
9 operation of a road, street, highway, or other related facility  
10 under this section as are available to the county with respect to a  
11 project under this chapter.

12 (e) Notwithstanding other provisions of this section:

13 (1) any work on the state highway system must be  
14 approved by the department; and

15 (2) the department shall supervise and regulate any  
16 work on a highway in the state highway system.

17 Sec. 284.0032. TRANS-TEXAS CORRIDOR PROJECTS. If a county  
18 is requested by the commission to participate in the development of  
19 a project under this chapter that has been designated as part of the  
20 Trans-Texas Corridor, the county has, in addition to all powers  
21 granted by this chapter, all powers of the department related to the  
22 development of a project that has been designated as part of the  
23 Trans-Texas Corridor.

24 Sec. 284.004. USE OF COUNTY PROPERTY. (a) Notwithstanding  
25 any other law, a county may use any county property for a project  
26 under this chapter, regardless of when or how the property is  
27 acquired.

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1           (b) In addition to authority granted by other law, a county  
2 may use state highway right-of-way and may access state highway  
3 right-of-way in accordance with Sections 228.011 and 228.0111.

4           SECTION 8.04. Subsections (c) and (d), Section 284.008,  
5 Transportation Code, are amended to read as follows:

6           (c) Except as provided by Subsection (d), a project becomes  
7 a part of the state highway system and the commission shall maintain  
8 the project without tolls when:

9                   (1) all of the bonds and interest on the bonds that are  
10 payable from or secured by revenues of the project have been paid by  
11 the issuer of the bonds or another person with the consent or  
12 approval of the issuer; or

13                   (2) a sufficient amount for the payment of all bonds  
14 and the interest on the bonds to maturity has been set aside by the  
15 issuer of the bonds or another person with the consent or approval  
16 of the issuer in a trust fund held for the benefit of the  
17 bondholders.

18           (d) A [~~Before construction on a project under this chapter~~  
19 ~~begins, a~~] county may request that the commission adopt an order  
20 stating that a [~~the~~] project will not become part of the state  
21 highway system under Subsection (c). If the commission adopts the  
22 order:

23                   (1) Section 362.051 does not apply to the project;

24                   (2) the project must be maintained by the county; and

25                   (3) the project will not become part of the state  
26 highway system unless the county transfers the project under  
27 Section 284.011.

1 SECTION 8.05. Subsections (b) and (c), Section 284.065,  
2 Transportation Code, are amended to read as follows:

3 (b) An existing project may be pooled in whole or in part  
4 with a new project or another existing project.

5 (c) A project may [~~not~~] be pooled more than once.

6 ARTICLE 9. REGIONAL TOLLWAY AUTHORITIES

7 SECTION 9.01. Section 366.003, Transportation Code, is  
8 amended by adding Subdivision (9-a) to read as follows:

9 (9-a) "Surplus revenue" means the revenue of a  
10 turnpike project or system remaining at the end of any fiscal year  
11 after all required payments and deposits have been made in  
12 accordance with all bond resolutions, trust agreements,  
13 indentures, credit agreements, or other instruments and  
14 contractual obligations of the authority payable from the revenue  
15 of the turnpike project or system.

16 SECTION 9.02. Section 366.301, Transportation Code, is  
17 amended by adding Subsection (e) to read as follows:

18 (e) An action of an authority taken under this chapter must  
19 comply with the requirements of applicable federal law, including  
20 provisions relating to the role of metropolitan planning  
21 organizations under federal law and the approval of projects for  
22 conformity with the state implementation plan relating to air  
23 quality, the use of toll revenue, and the use of the right-of-way of  
24 and access to federal-aid highways. Notwithstanding an action of  
25 an authority taken under this chapter, the commission or the  
26 department may take any action that in its reasonable judgment is  
27 necessary to comply with any federal requirement to enable this

1 state to receive federal-aid highway funds.

2 SECTION 9.03. Chapter 366, Transportation Code, is amended  
3 by adding Subchapter H to read as follows:

4 SUBCHAPTER H. COMPREHENSIVE DEVELOPMENT AGREEMENTS

5 Sec. 366.401. COMPREHENSIVE DEVELOPMENT AGREEMENTS.

6 (a) An authority may use a comprehensive development agreement  
7 with a private entity to design, develop, finance, construct,  
8 maintain, repair, operate, extend, or expand a turnpike project.

9 (b) A comprehensive development agreement is an agreement  
10 with a private entity that, at a minimum, provides for the design,  
11 construction, rehabilitation, expansion, or improvement of a  
12 turnpike project and may also provide for the financing,  
13 acquisition, maintenance, or operation of a turnpike project.

14 (c) An authority may negotiate provisions relating to  
15 professional and consulting services provided in connection with a  
16 comprehensive development agreement.

17 (d) An authority may authorize the investment of public and  
18 private money, including debt and equity participation, to finance  
19 a function described by this section.

20 Sec. 366.402. PROCESS FOR ENTERING INTO COMPREHENSIVE

21 DEVELOPMENT AGREEMENTS. (a) If an authority enters into a  
22 comprehensive development agreement, the authority shall use a  
23 competitive procurement process that provides the best value for  
24 the authority. An authority may accept unsolicited proposals for a  
25 proposed turnpike project or solicit proposals in accordance with  
26 this section.

27 (b) An authority shall establish rules and procedures for

1 accepting unsolicited proposals that require the private entity to  
2 include in the proposal:

3 (1) information regarding the proposed project  
4 location, scope, and limits;

5 (2) information regarding the private entity's  
6 qualifications, experience, technical competence, and capability  
7 to develop the project; and

8 (3) any other information the authority considers  
9 relevant or necessary.

10 (c) An authority shall publish a notice advertising a  
11 request for competing proposals and qualifications in the Texas  
12 Register that includes the criteria to be used to evaluate the  
13 proposals, the relative weight given to the criteria, and a  
14 deadline by which proposals must be received if:

15 (1) the authority decides to issue a request for  
16 qualifications for a proposed project; or

17 (2) the authority authorizes the further evaluation of  
18 an unsolicited proposal.

19 (d) A proposal submitted in response to a request published  
20 under Subsection (c) must contain, at a minimum, the information  
21 required by Subsections (b)(2) and (3).

22 (e) An authority may interview a private entity submitting  
23 an unsolicited proposal or responding to a request under Subsection  
24 (c). The authority shall evaluate each proposal based on the  
25 criteria described in the request for competing proposals and  
26 qualifications and may qualify or shortlist private entities to  
27 submit detailed proposals under Subsection (f). The authority must



1 qualify or shortlist at least two private entities to submit  
2 detailed proposals for a project under Subsection (f) unless the  
3 authority does not receive more than one proposal or one response to  
4 a request under Subsection (c).

5 (f) An authority shall issue a request for detailed  
6 proposals from all private entities qualified or shortlisted under  
7 Subsection (e) if the authority proceeds with the further  
8 evaluation of a proposed project. A request under this subsection  
9 may require additional information the authority considers  
10 relevant or necessary, including information relating to:

11 (1) the private entity's qualifications and  
12 demonstrated technical competence;

13 (2) the feasibility of developing the project as  
14 proposed;

15 (3) engineering or architectural designs;

16 (4) the private entity's ability to meet schedules; or

17 (5) a financial plan, including costing methodology  
18 and cost proposals.

19 (g) In issuing a request for proposals under Subsection (f),  
20 an authority may solicit input from entities qualified under  
21 Subsection (e) or any other person. An authority may also solicit  
22 input regarding alternative technical concepts after issuing a  
23 request under Subsection (f).

24 (h) An authority shall evaluate each proposal based on the  
25 criteria described in the request for detailed proposals and select  
26 the private entity whose proposal offers the apparent best value to  
27 the authority.

1       (i) An authority may enter into negotiations with the  
2 private entity whose proposal offers the apparent best value.

3       (j) If at any point in negotiations under Subsection (i), it  
4 appears to the authority that the highest ranking proposal will not  
5 provide the authority with the overall best value, the authority  
6 may enter into negotiations with the private entity submitting the  
7 next-highest-ranking proposal.

8       (k) An authority may withdraw a request for competing  
9 proposals and qualifications or a request for detailed proposals at  
10 any time. The authority may then publish a new request for  
11 competing proposals and qualifications.

12       (l) An authority may require that an unsolicited proposal be  
13 accompanied by a nonrefundable fee sufficient to cover all or part  
14 of its cost to review the proposal.

15       (m) An authority may pay an unsuccessful private entity that  
16 submits a responsive proposal in response to a request for detailed  
17 proposals under Subsection (f) a stipulated amount in exchange for  
18 the work product contained in that proposal. A stipulated amount  
19 must be stated in the request for proposals and may not exceed the  
20 value of any work product contained in the proposal that can, as  
21 determined by the authority, be used by the authority in the  
22 performance of its functions. The use by the authority of any  
23 design element contained in an unsuccessful proposal is at the sole  
24 risk and discretion of the authority and does not confer liability  
25 on the recipient of the stipulated amount under this subsection.  
26 After payment of the stipulated amount:

27       (1) the authority, with the unsuccessful private

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1 entity, jointly owns the rights to, and may make use of any work  
2 product contained in, the proposal, including the technologies,  
3 techniques, methods, processes, ideas, and information contained  
4 in the project design; and

5 (2) the use by the unsuccessful private entity of any  
6 portion of the work product contained in the proposal is at the sole  
7 risk of the unsuccessful private entity and does not confer  
8 liability on the authority.

9 (n) An authority may prescribe the general form of a  
10 comprehensive development agreement and may include any matter the  
11 authority considers advantageous to the authority. The authority  
12 and the private entity shall finalize the specific terms of a  
13 comprehensive development agreement.

14 (o) Section 366.185 and Subchapter A, Chapter 223, of this  
15 code and Chapter 2254, Government Code, do not apply to a  
16 comprehensive development agreement entered into under this  
17 subchapter.

18 Sec. 366.403. CONFIDENTIALITY OF INFORMATION. (a) To  
19 encourage private entities to submit proposals under this  
20 subchapter, the following information is confidential, is not  
21 subject to disclosure, inspection, or copying under Chapter 552,  
22 Government Code, and is not subject to disclosure, discovery,  
23 subpoena, or other means of legal compulsion for its release until a  
24 final contract for a proposed project is entered into:

25 (1) all or part of a proposal that is submitted by a  
26 private entity for a comprehensive development agreement, except  
27 information provided under Sections 366.402(b)(1) and (2), unless

1 the private entity consents to the disclosure of the information;

2 (2) supplemental information or material submitted by  
3 a private entity in connection with a proposal for a comprehensive  
4 development agreement unless the private entity consents to the  
5 disclosure of the information or material; and

6 (3) information created or collected by an authority  
7 or its agent during consideration of a proposal for a comprehensive  
8 development agreement or during the authority's preparation of a  
9 proposal to the department relating to a comprehensive development  
10 agreement.

11 (b) After an authority completes its final ranking of  
12 proposals under Section 366.402(h), the final rankings of each  
13 proposal under each of the published criteria are not confidential.

14 Sec. 366.404. PERFORMANCE AND PAYMENT SECURITY.

15 (a) Notwithstanding the requirements of Subchapter B, Chapter  
16 2253, Government Code, an authority shall require a private entity  
17 entering into a comprehensive development agreement under this  
18 subchapter to provide a performance and payment bond or an  
19 alternative form of security in an amount sufficient to:

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

21 and

22 (2) protect:

23 (A) the authority; and

24 (B) payment bond beneficiaries who have a direct  
25 contractual relationship with the private entity or a subcontractor  
26 of the private entity to supply labor or material.

27 (b) A performance and payment bond or alternative form of

1 security shall be in an amount equal to the cost of constructing or  
2 maintaining the project.

3 (c) If an authority determines that it is impracticable for  
4 a private entity to provide security in the amount described by  
5 Subsection (b), the authority shall set the amount of the bonds or  
6 the alternative forms of security.

7 (d) A payment or performance bond or alternative form of  
8 security is not required for the portion of an agreement that  
9 includes only design or planning services, the performance of  
10 preliminary studies, or the acquisition of real property.

11 (e) The amount of the payment security must not be less than  
12 the amount of the performance security.

13 (f) In addition to, or instead of, performance and payment  
14 bonds, an authority may require the following alternative forms of  
15 security:

16 (1) a cashier's check drawn on a financial entity  
17 specified by the authority;

18 (2) a United States bond or note;

19 (3) an irrevocable bank letter of credit; or

20 (4) any other form of security determined suitable by  
21 the authority.

22 (g) An authority by rule shall prescribe requirements for  
23 alternative forms of security provided under this section.

24 Sec. 366.405. OWNERSHIP OF TURNPIKE PROJECTS. (a) A  
25 turnpike project that is the subject of a comprehensive development  
26 agreement with a private entity, including the facilities acquired  
27 or constructed on the project, is public property and is owned by

1 the authority.

2 (b) Notwithstanding Subsection (a), an authority may enter  
3 into an agreement that provides for the lease of rights-of-way, the  
4 granting of easements, the issuance of franchises, licenses, or  
5 permits, or any lawful uses to enable a private entity to construct,  
6 operate, and maintain a turnpike project, including supplemental  
7 facilities. At the termination of the agreement, the turnpike  
8 project, including the facilities, are to be in a state of proper  
9 maintenance as determined by the authority and shall be returned to  
10 the authority in satisfactory condition at no further cost.

11 Sec. 366.406. LIABILITY FOR PRIVATE OBLIGATIONS. An  
12 authority may not incur a financial obligation for a private entity  
13 that designs, develops, finances, constructs, operates, or  
14 maintains a turnpike project. The authority or a political  
15 subdivision of the state is not liable for any financial or other  
16 obligation of a turnpike project solely because a private entity  
17 constructs, finances, or operates any part of the project.

18 Sec. 366.407. TERMS OF PRIVATE PARTICIPATION. (a) An  
19 authority shall negotiate the terms of private participation in a  
20 turnpike project under this subchapter, including:

21 (1) methods to determine the applicable cost, profit,  
22 and project distribution among the private participants and the  
23 authority;

24 (2) reasonable methods to determine and classify toll  
25 rates and the responsibility for setting toll rates;

26 (3) acceptable safety and policing standards; and

27 (4) other applicable professional, consulting,

1 construction, operation, and maintenance standards, expenses, and  
2 costs.

3 (b) A comprehensive development agreement entered into  
4 under this subchapter may include any provision the authority  
5 considers appropriate, including a provision:

6 (1) providing for the purchase by the authority, under  
7 terms and conditions agreed to by the parties, of the interest of a  
8 private participant in the comprehensive development agreement and  
9 related property, including any interest in a turnpike project  
10 designed, developed, financed, constructed, operated, or  
11 maintained under the comprehensive development agreement;

12 (2) establishing the purchase price, as determined in  
13 accordance with the methodology established by the parties in the  
14 comprehensive development agreement, for the interest of a private  
15 participant in the comprehensive development agreement and related  
16 property;

17 (3) providing for the payment of an obligation  
18 incurred under the comprehensive development agreement, including  
19 an obligation to pay the purchase price for the interest of a  
20 private participant in the comprehensive development agreement,  
21 from any available source, including securing the obligation by a  
22 pledge of revenues of the authority derived from the applicable  
23 project, which pledge shall have priority as established by the  
24 authority;

25 (4) permitting the private participant to pledge its  
26 rights under the comprehensive development agreement;

27 (5) concerning the private participant's right to

1 operate and collect revenue from the turnpike project; and

2 (6) restricting the right of the authority to  
3 terminate the private participant's right to operate and collect  
4 revenue from the turnpike project unless and until any applicable  
5 termination payments have been made.

6 (c) An authority may enter into a comprehensive development  
7 agreement under this subchapter with a private participant only if  
8 the project is identified in the department's unified  
9 transportation program or is located on a transportation corridor  
10 identified in the statewide transportation plan.

11 (d) Section 366.406 does not apply to an obligation of an  
12 authority under a comprehensive development agreement, nor is an  
13 authority otherwise constrained from issuing bonds or other  
14 financial obligations for a turnpike project payable solely from  
15 revenues of that turnpike project or from amounts received under a  
16 comprehensive development agreement.

17 (e) Notwithstanding any other law, and subject to  
18 compliance with the dispute resolution procedures set out in the  
19 comprehensive development agreement, an obligation of an authority  
20 under a comprehensive development agreement entered into under this  
21 subchapter to make or secure payments to a person because of the  
22 termination of the agreement, including the purchase of the  
23 interest of a private participant or other investor in a project,  
24 may be enforced by mandamus against the authority in a district  
25 court of any county of the authority, and the sovereign immunity of  
26 the authority is waived for that purpose. The district courts of  
27 any county of the authority shall have exclusive jurisdiction and



1 venue over and to determine and adjudicate all issues necessary to  
2 adjudicate any action brought under this subsection. The remedy  
3 provided by this subsection is in addition to any legal and  
4 equitable remedies that may be available to a party to a  
5 comprehensive development agreement.

6 (f) If an authority enters into a comprehensive development  
7 agreement with a private participant that includes the collection  
8 by the private participant of tolls for the use of a toll project,  
9 the private participant shall submit to the authority for approval:

10 (1) the methodology for:

11 (A) the setting of tolls; and

12 (B) increasing the amount of the tolls;

13 (2) a plan outlining methods the private participant  
14 will use to collect the tolls, including:

15 (A) any charge to be imposed as a penalty for late  
16 payment of a toll; and

17 (B) any charge to be imposed to recover the cost  
18 of collecting a delinquent toll; and

19 (3) any proposed change in an approved methodology for  
20 the setting of a toll or a plan for collecting the toll.

21 (g) Except as provided by this subsection, a comprehensive  
22 development agreement with a private participant that includes the  
23 collection by the private participant of tolls for the use of a toll  
24 project may be for a term not longer than 50 years from the later of  
25 the date of final acceptance of the project or the start of revenue  
26 operations by the private participant, not to exceed a total term of  
27 52 years. The contract must contain an explicit mechanism for

1 setting the price for the purchase by the department of the interest  
2 of the private participant in the contract and related property,  
3 including any interest in a highway or other facility designed,  
4 developed, financed, constructed, operated, or maintained under  
5 the contract.

6 Sec. 366.408. RULES, PROCEDURES, AND GUIDELINES GOVERNING  
7 SELECTION AND NEGOTIATING PROCESS. (a) To promote fairness,  
8 obtain private participants in turnpike projects, and promote  
9 confidence among those participants, an authority shall adopt  
10 rules, procedures, and other guidelines governing selection of  
11 private participants for comprehensive development agreements and  
12 negotiations of comprehensive development agreements. The rules  
13 must contain criteria relating to the qualifications of the  
14 participants and the award of the contracts.

15 (b) An authority shall have up-to-date procedures for  
16 participation in negotiations under this subchapter.

17 (c) An authority has exclusive judgment to determine the  
18 terms of an agreement.

19 Sec. 366.409. USE OF CONTRACT PAYMENTS. (a) Payments  
20 received by an authority under a comprehensive development  
21 agreement shall be used by the authority to finance the  
22 construction, maintenance, or operation of a turnpike project or a  
23 highway.

24 (b) The authority shall allocate the distribution of funds  
25 received under Subsection (a) to the counties of the authority  
26 based on the percentage of toll revenue from users, from each  
27 county, of the project that is the subject of the comprehensive

1 development agreement. To assist the authority in determining the  
2 allocation, each entity responsible for collecting tolls for a  
3 project shall calculate on an annual basis the percentage of toll  
4 revenue from users of the project from each county within the  
5 authority based on the number of recorded electronic toll  
6 collections.

7 SECTION 9.04. Subsection (f), Section 366.033,  
8 Transportation Code, is amended to read as follows:

9 (f) An authority may rent, lease, franchise, license, or  
10 otherwise make portions of any property of the authority, including  
11 tangible or intangible property, [~~its properties~~] available for use  
12 by others in furtherance of its powers under this chapter by  
13 increasing:

- 14 (1) the feasibility or efficient operation [the  
15 revenue] of a turnpike project or system; or
- 16 (2) the revenue of the authority.

17 SECTION 9.05. Subchapter B, Chapter 366, Transportation  
18 Code, is amended by adding Sections 366.037 and 366.038 to read as  
19 follows:

20 Sec. 366.037. OTHER HIGHWAY PROJECTS. (a) In addition to  
21 the powers granted under this chapter and without supervision or  
22 regulation by any state agency or local governmental entity, but  
23 subject to an agreement entered into under Subsection (c), the  
24 board of an authority may by resolution, and on making the findings  
25 set forth in this subsection, authorize the use of surplus revenue  
26 of a turnpike project or system for the study, design,  
27 construction, maintenance, repair, and operation of a highway or

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1 similar facility that is not a turnpike project if the highway or  
2 similar facility is:

3 (1) situated in a county in which the authority is  
4 authorized to design, construct, and operate a turnpike project;

5 (2) anticipated to either:

6 (A) enhance the operation or revenue of an  
7 existing, or the feasibility of a proposed, turnpike project by  
8 bringing traffic to that turnpike project or enhancing the flow of  
9 traffic either on that turnpike project or to or from that turnpike  
10 project to another facility; or

11 (B) ameliorate the impact of an existing or  
12 proposed turnpike project by enhancing the capability of another  
13 facility to handle traffic traveling, or anticipated to travel, to  
14 or from that turnpike project; and

15 (3) not anticipated to result in an overall reduction  
16 of revenue of any turnpike project or system.

17 (b) The board in the resolution may prescribe terms for the  
18 use of the surplus revenue, including the manner in which the  
19 highway or related facility shall be studied, designed,  
20 constructed, maintained, repaired, or operated.

21 (c) An authority shall enter into an agreement to implement  
22 this section with the department, the commission, a local  
23 governmental entity, or another political subdivision that owns a  
24 street, road, alley, or highway that is directly affected by the  
25 authority's turnpike project or related facility.

26 (d) An authority may not:

27 (1) take an action under this section that violates,

1 impairs, or is inconsistent with a bond resolution, trust  
2 agreement, or indenture governing the use of the revenue of a  
3 turnpike project or system; or

4 (2) commit in any fiscal year expenditures under this  
5 section exceeding 10 percent of its surplus revenue from the  
6 preceding fiscal year.

7 (e) In authorizing expenditures under this section, the  
8 board shall consider:

9 (1) balancing throughout the counties of the authority  
10 the application of funds generated by its turnpike projects and  
11 systems, taking into account where those amounts are already  
12 committed or programmed as a result of this section or otherwise;  
13 and

14 (2) connectivity to an existing or proposed turnpike  
15 project or system.

16 (f) Except as provided by this section, an authority has the  
17 same powers and may use the same procedures with respect to the  
18 study, financing, design, construction, maintenance, repair, and  
19 operation of a highway or similar facility under this section as are  
20 available to the authority with respect to a turnpike project or  
21 system.

22 (g) Notwithstanding other provisions of this section:

23 (1) any work on a highway in the state highway system  
24 must be approved by the department; and

25 (2) the department shall supervise and regulate any  
26 work on a highway in the state highway system.

27 Sec. 366.038. TOLL COLLECTION. An authority shall provide,

1 for reasonable compensation, customer service and other toll  
2 collection and enforcement services for a toll project in the  
3 boundaries of the authority, regardless of whether the toll project  
4 is developed, financed, constructed, and operated under an  
5 agreement, including a comprehensive development agreement, with  
6 the authority or another entity.

7 SECTION 9.06. The heading to Section 366.185,  
8 Transportation Code, is amended to read as follows:

9 Sec. 366.185. ENGINEERING, DESIGN, AND CONSTRUCTION  
10 SERVICES [~~COMPETITIVE BIDDING~~].

11 SECTION 9.07. (a) Section 366.185, Transportation Code,  
12 is amended by amending Subsection (a) and adding Subsections (c)  
13 through (f) to read as follows:

14 (a) A contract made by an authority that requires the  
15 expenditures of public funds for the construction or maintenance of  
16 a turnpike project may [~~must~~] be let by a competitive bidding  
17 procedure in which the contract is awarded to the lowest  
18 responsible bidder that complies with the authority's criteria.

19 (c) An authority may procure a combination of engineering,  
20 design, and construction services in a single procurement for a  
21 turnpike project, provided that any contract awarded results in the  
22 best value to the authority.

23 (d) The authority shall adopt rules governing the award of  
24 contracts for engineering, design, construction, and maintenance  
25 services in a single procurement.

26 (d-1) The rules adopted under Subsection (d) may not  
27 materially conflict with the design-build procedures provided by

1 Subchapter J, Chapter 271, Local Government Code, and shall provide  
2 materially similar injunctive and declaratory action enforcement  
3 rights regarding the improper disclosure or use of unique or  
4 nonordinary information as provided in that subchapter.

5 (e) Notwithstanding any other law requiring a competitive  
6 bidding procedure, an authority may let a contract for the  
7 construction of a turnpike project by a construction  
8 manager-at-risk procedure under which the construction  
9 manager-at-risk provides consultation to the authority during the  
10 design of the turnpike project and is responsible for the  
11 construction of the turnpike project in accordance with the  
12 authority's specifications. A construction manager-at-risk shall  
13 be selected on the basis of criteria established by the authority,  
14 which may include the construction manager-at-risk's experience,  
15 past performance, safety record, proposed personnel and  
16 methodology, proposed fees, and other appropriate factors that  
17 demonstrate the construction manager-at-risk's ability to provide  
18 the best value to the authority and to deliver the required services  
19 in accordance with the authority's specifications.

20 (f) The authority shall adopt rules governing the award of  
21 contracts using construction manager-at-risk procedures under this  
22 section.

23 (b) Subsection (d-1), Section 366.185, Transportation Code,  
24 as added by this section, takes effect only if H.B. No. 1886, Acts  
25 of the 80th Legislature, Regular Session, 2007, is enacted and  
26 becomes law.

27 SECTION 9.08. Subchapter F, Chapter 366, Transportation

1 Code, is amended by adding Sections 366.2521 and 366.2522 to read as  
2 follows:

3 Sec. 366.2521. GIFTS AND CONTRIBUTIONS; OFFENSE. (a) In  
4 this section, "benefit" means anything reasonably regarded as  
5 pecuniary gain or pecuniary advantage, including benefit to any  
6 other person in whose welfare the beneficiary has a direct and  
7 substantial interest.

8 (b) A director commits an offense if the person solicits,  
9 accepts, or agrees to accept any benefit from:

10 (1) a person the director knows to be subject to  
11 regulation, inspection, or investigation by the authority; or

12 (2) a person the director knows is interested in or  
13 likely to become interested in any contract, purchase, payment,  
14 claim, transaction, or matter involving the exercise of the  
15 director's discretion.

16 (c) A director who receives an unsolicited benefit that the  
17 director is prohibited from accepting under this section may donate  
18 the benefit to a governmental entity that has the authority to  
19 accept the gift or may donate the benefit to a recognized tax-exempt  
20 charitable organization formed for educational, religious, or  
21 scientific purposes.

22 (d) This section does not apply to:

23 (1) a fee prescribed by law to be received by a  
24 director;

25 (2) a benefit to which the director is lawfully  
26 entitled; or

27 (3) a benefit for which the director gives legitimate



1 consideration in a capacity other than as a director.

2 (e) An offense under this section is a Class A misdemeanor.

3 (f) If conduct that constitutes an offense under this  
4 section also constitutes an offense under Section 36.08, Penal  
5 Code, the actor may be prosecuted under this section or Section  
6 36.08.

7 Sec. 366.2522. OFFERING GIFT TO A DIRECTOR; OFFENSE.

8 (a) A person commits an offense if the person offers, confers, or  
9 agrees to confer any benefit on a director that the person knows the  
10 director is prohibited from accepting under Section 366.2521.

11 (b) An offense under this section is a Class A misdemeanor.

12 (c) If conduct that constitutes an offense under this  
13 section also constitutes an offense under Section 36.09, Penal  
14 Code, the actor may be prosecuted under this section or Section  
15 36.09.

16 SECTION 9.09. Subchapter F, Chapter 366, Transportation  
17 Code, is amended by adding Section 366.2575 to read as follows:

18 Sec. 366.2575. BOARD VOTE ON COUNTY REQUEST. On request of  
19 the commissioners court of a county of an authority, the board shall  
20 vote on whether to build a project that the county requests.

21 SECTION 9.10. Subchapter G, Chapter 366, Transportation  
22 Code, is amended by adding Section 366.305 to read as follows:

23 Sec. 366.305. TRANS-TEXAS CORRIDOR PROJECTS. If an  
24 authority is requested by the commission to participate in the  
25 development of a turnpike project that has been designated as part  
26 of the Trans-Texas Corridor, the authority shall have, in addition  
27 to all powers granted in this chapter, all powers of the department

see Bill

1 related to the development of Trans-Texas Corridor projects.

2 SECTION 9.11. The TxDOT/NTTA Regional Protocol entered into  
3 between the Texas Department of Transportation and the North Texas  
4 Tollway Authority and approved on August 10, 2006, by the tollway  
5 authority and on August 24, 2006, by the department is invalidated.

6 ARTICLE 10. REGIONAL MOBILITY AUTHORITIES

7 SECTION 10.01. Section 370.251, Transportation Code, is  
8 amended by amending Subsection (a) and adding Subsection (a-1) to  
9 read as follows:

10 (a) Except as provided by Subsection (a-1), the [~~The~~]  
11 governing body of an authority is a board of directors consisting of  
12 representatives of each county in which a transportation project of  
13 the authority is located or is proposed to be located. The  
14 commissioners court of each county that initially forms the  
15 authority shall appoint at least two directors to the board.  
16 Additional directors may be appointed to the board at the time of  
17 initial formation by agreement of the counties creating the  
18 authority to ensure fair representation of political subdivisions  
19 in the counties of the authority that will be affected by a  
20 transportation project of the authority, provided that the number  
21 of directors must be an odd number. The commissioners court of a  
22 county that is subsequently added to the authority shall appoint  
23 one director to the board. The governor shall appoint one director  
24 to the board who shall serve as the presiding officer of the board  
25 and shall appoint an additional director to the board if an  
26 appointment is necessary to maintain an odd number of directors on  
27 the board.

1           (a-1) To be eligible to serve as director of an authority  
2 created by a municipality an individual:

3                   (1) may be a representative of an entity that also has  
4 representation on a metropolitan planning organization in the  
5 region where the municipality is located; and

6                   (2) is required to be a resident of Texas regardless of  
7 whether the metropolitan planning organization's geographic area  
8 includes territory in another state.

9           SECTION 10.02. Subsection (d), Section 370.301,  
10 Transportation Code, is amended to read as follows:

11           (d) The commission or department may use federal money for  
12 any purpose described by this chapter. An action of an authority  
13 taken under this chapter must comply with the requirements of  
14 applicable federal law, including provisions relating to the role  
15 of metropolitan planning organizations under federal law and the  
16 approval of projects for conformity with the state implementation  
17 plan relating to air quality, the use of toll revenue, and the use  
18 of the right-of-way of and access to federal-aid highways.  
19 Notwithstanding an action of an authority taken under this chapter,  
20 the commission or the department may take any action that in its  
21 reasonable judgment is necessary to comply with any federal  
22 requirement to enable this state to receive federal-aid highway  
23 funds.

24           SECTION 10.03. (a) Section 370.314, Transportation Code,  
25 is amended to read as follows:

26           Sec. 370.314. DESIGN-BUILD PROCEDURES [~~COMBINATION OF~~  
27 ~~ENGINEERING, DESIGN, AND CONSTRUCTION SERVICES~~]. (a) An

1 authority may procure a combination of engineering, design, and  
2 construction services in a single procurement for a transportation  
3 project provided that any contract awarded must be the one that  
4 results in the best value to the authority.

5 (b) Procedures adopted under Subsection (a) may not  
6 materially conflict with the design-build procedures provided by  
7 Subchapter J, Chapter 271, Local Government Code.

8 (b) Subsection (a) of this section takes effect only if H.B.  
9 No. 1886, Acts of the 80th Legislature, Regular Session, 2007, is  
10 enacted and becomes law.

11 ARTICLE 11. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR TOLL PROJECTS

12 SECTION 11.01. Subtitle G, Title 6, Transportation Code, is  
13 amended by adding Chapter 371 to read as follows:

14 CHAPTER 371. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR HIGHWAY TOLL

15 PROJECTS

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 371.001. DEFINITIONS. In this chapter:

18 (1) "Toll project" means a toll project described by  
19 Section 201.001(b), regardless of whether the toll project is:

20 (A) a part of the state highway system; or

21 (B) subject to the jurisdiction of the  
22 department.

23 (2) "Toll project entity" means an entity authorized  
24 by law to acquire, design, construct, operate, and maintain a toll  
25 project, including:

26 (A) the department, including under Chapter 227;

27 (B) a regional tollway authority under Chapter

see blue

1 366;

2 (C) a regional mobility authority under Chapter  
3 370; or

4 (D) a county under Chapter 284.

5 Sec. 371.002. APPLICABILITY. This chapter does not apply  
6 to a project for which the commission selected an apparent best  
7 value proposer before May 1, 2007.

8 [Sections 371.003-371.050 reserved for expansion]

9 SUBCHAPTER B. OVERSIGHT

10 Sec. 371.051. ATTORNEY GENERAL REVIEW. A toll project  
11 entity may not enter into a comprehensive development agreement  
12 unless the attorney general reviews the proposed agreement and  
13 determines that it is legally sufficient.

14 Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD AND  
15 STATE AUDITOR. (a) Not later than the 10th day after the date of  
16 qualifying or shortlisting private entities to submit detailed  
17 proposals for a toll project, a toll project entity shall provide  
18 the Legislative Budget Board with the names of qualifying or  
19 shortlisted proposers and their team members.

20 (b) At least 30 days before entering into a comprehensive  
21 development agreement, a toll project entity shall provide the  
22 Legislative Budget Board with:

23 (1) a copy of the version of the proposed  
24 comprehensive development agreement to be executed;

25 (2) a copy of the proposal submitted by the apparent  
26 best value proposer; and

27 (3) a financial forecast prepared by the toll project

1 entity that includes:

2 (A) toll revenue the entity projects will be  
3 derived from the project during the planned term of the agreement;

4 (B) estimated construction costs and operating  
5 expenses; and

6 (C) the amount of income the entity projects the  
7 private participant in the agreement will realize during the  
8 planned term of the agreement.

9 (c) Before entering into a comprehensive development  
10 agreement, a toll project entity shall provide the state auditor  
11 with the traffic and revenue report prepared by the toll project  
12 entity or its consultant for the project. The entity may not enter  
13 into the comprehensive development agreement before the 30th day  
14 after the date that the state auditor receives the report so that  
15 the state auditor may review and comment on the report and the  
16 methodology used to develop the report.

17 (d) Before the comprehensive development agreement is  
18 entered into, financial forecasts and traffic and revenue reports  
19 prepared by or for a toll project entity for the project are  
20 confidential and are not subject to disclosure, inspection, or  
21 copying under Chapter 552, Government Code. On or after the date  
22 the comprehensive development agreement is entered into, the  
23 financial forecasts and traffic revenue reports are public  
24 information under Chapter 552, Government Code.

25 [Sections 371.053-371.100 reserved for expansion]

26 SUBCHAPTER C. CONTRACT PROVISIONS

27 Sec. 371.101. TERMINATION FOR CONVENIENCE. (a) A toll

1 project entity having rulemaking authority by rule and a toll  
2 project entity without rulemaking authority by official action  
3 shall develop a formula for making termination payments to  
4 terminate a comprehensive development agreement under which a  
5 private participant receives the right to operate and collect  
6 revenue from a toll project. A formula must calculate an estimated  
7 amount of loss to the private participant as a result of the  
8 termination for convenience.

9 (b) The formula shall be based on investments,  
10 expenditures, and the internal rate of return on equity under the  
11 agreed base case financial model as projected over the original  
12 term of the agreement, plus an agreed percentage markup on that  
13 amount.

14 (c) A formula under Subsection (b) may not include any  
15 estimate of future revenue from the project, if not included in an  
16 agreed base case financial model under Subsection (b).  
17 Compensation to the private participant upon termination for  
18 convenience may not exceed the amount determined using the formula  
19 under Subsection (b).

20 Sec. 371.102. TERMINATION OF CERTAIN COMPREHENSIVE  
21 DEVELOPMENT AGREEMENTS. If a toll project entity elects to  
22 terminate a comprehensive development agreement under which a  
23 private participant receives the right to operate and collect  
24 revenue from a project, the entity may:

25 (1) if authorized to issue bonds for that purpose,  
26 issue bonds to:

27 (A) make any applicable termination payments to

1 the private participant; or

2 (B) purchase the interest of the private  
3 participant in the comprehensive development agreement or related  
4 property; or

5 (2) provide for the payment of obligations of the  
6 private participant incurred pursuant to the comprehensive  
7 development agreement.

8 Sec. 371.103. PROHIBITION AGAINST LIMITING OR PROHIBITING  
9 CONSTRUCTION OF TRANSPORTATION PROJECTS. (a) A comprehensive  
10 development agreement may not contain a provision that limits or  
11 prohibits the construction, reconstruction, expansion,  
12 rehabilitation, operation, or maintenance of a highway or other  
13 transportation project, as that term is defined by Section 370.003,  
14 by the toll project entity or other governmental entity, or by a  
15 private entity under a contract with the toll project entity or  
16 other governmental entity.

17 (b) Except as provided by Subsection (c), a comprehensive  
18 development agreement may contain a provision authorizing the toll  
19 project entity to compensate the private participant in the  
20 agreement for the loss of toll revenues attributable to the  
21 construction by the entity of a limited access highway project  
22 located within an area that extends up to four miles from either  
23 side of the centerline of the project developed under the  
24 agreement, less the private participant's decreased operating and  
25 maintenance costs attributable to the highway project, if any.

26 (c) A comprehensive development agreement may not require  
27 the toll project entity to provide compensation for the



1 construction of:

2 (1) a highway project contained in the state  
3 transportation plan or a transportation plan of a metropolitan  
4 planning organization in effect on the effective date of the  
5 agreement;

6 (2) work on or improvements to a highway project  
7 necessary for improved safety, or for maintenance or operational  
8 purposes;

9 (3) a high occupancy vehicle exclusive lane addition  
10 or other work on any highway project that is required by an  
11 environmental regulatory agency; or

12 (4) a transportation project that provides a mode of  
13 transportation that is not included in the project that is the  
14 subject of the comprehensive development agreement.

15 (d) The private participant has the burden of proving any  
16 loss of toll revenue resulting from the construction of a highway  
17 project described by Subsection (b).

18 (e) A comprehensive development agreement that contains a  
19 provision described by Subsection (b) must require the private  
20 participant to provide compensation to the toll project entity in  
21 the amount of any increase in toll revenues received by the private  
22 participant that is attributable to the construction of a highway  
23 project described by Subsection (b), less the private participant's  
24 increased operation and maintenance costs attributable to the  
25 highway project, if any.

26 [Sections 371.104-371.150 reserved for expansion]

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SUBCHAPTER D. DISCLOSURE OF INFORMATION

Sec. 371.151. DISCLOSURE OF FINANCIAL INFORMATION.

(a) Before a toll project entity enters into a contract for the construction of a toll project, the entity shall publish in the manner provided by Section 371.152 information regarding:

(1) project financing, including:

(A) the total amount of debt that has been and will be assumed to acquire, design, construct, operate, and maintain the toll project;

(B) a description of how the debt will be repaid, including a projected timeline for repaying the debt; and

(C) the projected amount of interest that will be paid on the debt;

(2) whether the toll project will continue to be tolled after the debt has been repaid;

(3) a description of the method that will be used to set toll rates;

(4) a description of any terms in the contract relating to competing facilities, including any penalties associated with the construction of a competing facility;

(5) a description of any terms in the contract relating to a termination for convenience provision, including any information regarding how the value of the project will be calculated for the purposes of making termination payments;

(6) the initial toll rates, the methodology for increasing toll rates, and the projected toll rates at the end of the term of the contract; and

1           (7) the projected total amount of concession payments.

2           (b) A toll project entity may not enter into a contract for  
3 the construction of a toll project before the 30th day after the  
4 date the information is first published under Section 371.152.

5           Sec. 371.152. DISCLOSURE BY PUBLICATION. (a) Information  
6 under Section 371.151 must be published in a newspaper published in  
7 the county in which the toll project is to be constructed once a  
8 week for at least two weeks before the time set for entering into  
9 the contract and in two other newspapers that the toll project  
10 entity may designate.

11           (b) Instead of the notice required by Subsection (a), if the  
12 toll project entity estimates that the contract involves an amount  
13 less than \$300,000, the information may be published in two  
14 successive issues of a newspaper published in the county in which  
15 the project is to be constructed.

16           (c) If a newspaper is not published in the county in which  
17 the toll project is to be constructed, notice shall be published in  
18 a newspaper published in the county:

19                   (1) nearest the county seat of the county in which the  
20 improvement is to be made; and

21                   (2) in which a newspaper is published.

22           Sec. 371.153. HEARING. (a) A toll project entity shall  
23 hold a public hearing on the information published under Section  
24 371.152 not later than the 10th day after the date the information  
25 is first published and not less than 10 days before the entity  
26 enters into the contract.

27           (b) A hearing under this section must be held in the county

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1 seat of the county in which the toll project is located.

2 (c) A hearing under this section must include a formal  
3 presentation and a mechanism for responding to comments and  
4 questions.

5 ARTICLE 12. METROPOLITAN PLANNING ORGANIZATIONS

6 SECTION 12.01. Subchapter D, Chapter 472, Transportation  
7 Code, is amended by adding Section 472.034 to read as follows:

8 Sec. 472.034. ETHICS POLICY. Each policy board shall adopt  
9 bylaws establishing an ethics policy to prevent a policy board  
10 member from having a conflict of interest in business before the  
11 metropolitan planning organization.

12 ARTICLE 13. TOLL COLLECTION

13 SECTION 13.01. Subchapter B, Chapter 228, Transportation  
14 Code, is amended by adding Section 228.059 to read as follows:

15 Sec. 228.059. TOLL COLLECTION AND ENFORCEMENT BY OTHER  
16 ENTITY; OFFENSE. An entity operating a toll lane pursuant to  
17 Section 228.007(b) has, with regard to toll collection and  
18 enforcement for that toll lane, the same powers and duties as the  
19 department under this chapter. A person who fails to pay a toll or  
20 administrative fee imposed by the entity commits an offense. Each  
21 failure to pay a toll or administrative fee imposed by the entity is  
22 a separate offense. An offense under this section is a misdemeanor  
23 punishable by a fine not to exceed \$250, and the provisions of  
24 Section 228.056 apply to the prosecution of the offense under this  
25 section. The entity may use revenues for improvement, extension,  
26 expansion, or maintenance of the toll lane.

ARTICLE 14. ISSUANCE OF BONDS

SECTION 14.01. Subsections (b) and (d), Section 222.003, Transportation Code, are amended to read as follows:

(b) The aggregate principal amount of the bonds and other public securities that are issued may not exceed \$6 [~~\$3~~] billion. The commission may only issue bonds or other public securities in an aggregate principal amount of not more than \$1.5 [~~\$1~~] billion each year.

(d) Of the aggregate principal amount of bonds and other public securities that may be issued under this section, the commission shall issue bonds or other public securities in an aggregate principal amount of \$1.2 billion [~~\$600 million~~] to fund projects that reduce accidents or correct or improve hazardous locations on the state highway system. The commission by rule shall prescribe criteria for selecting projects eligible for funding under this section. In establishing criteria for the projects, the commission shall consider accident data, traffic volume, pavement geometry, and other conditions that can create or exacerbate hazardous roadway conditions.

ARTICLE 15. EFFECTIVE DATE

SECTION 15.01. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

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S.B. No. 792

David Newkum

President of the Senate

Jim Caddick

Speaker of the House

I hereby certify that S.B. No. 792 passed the Senate on May 14, 2007, by the following vote: Yeas 31, Nays 0; May 18, 2007, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2007, House granted request of the Senate; May 25, 2007, Senate adopted Conference Committee Report by the following vote: Yeas 29, Nays 1.

Patsy Spaw  
Secretary of the Senate

I hereby certify that S.B. No. 792 passed the House, with amendments, on May 17, 2007, by the following vote: Yeas 143, Nays 2, one present not voting; May 22, 2007, House granted request of the Senate for appointment of Conference Committee; May 26, 2007, House adopted Conference Committee Report by the following vote: Yeas 127, Nays 19, two present not voting.

Robert Hancy  
Chief Clerk of the House

Approved:

11 JUN 07

Date

RICK PERRY  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
8:45pm O'CLOCK

JUN 11 2007

Roger Whinnis