

Amend CSHB 3588 by adding the following appropriately numbered article and renumbering subsequent articles accordingly:

ARTICLE ____ . TEXAS TURNPIKE AUTHORITY

SECTION __.01. Section 201.112(a), Transportation Code, is amended to read as follows:

(a) The commission may by rule establish procedures for the informal resolution of a claim arising out of a contract described by:

- (1) Section 22.018;
- (2) Chapter 223; ~~[or]~~
- (3) Chapter 361; or
- (4) Chapter 2254, Government Code.

SECTION __.02. The heading to Chapter 361, Transportation Code, is amended to read as follows:

CHAPTER 361. STATE HIGHWAY ~~[TEXAS]~~ TURNPIKE
PROJECTS ~~[AUTHORITY]~~

SECTION __.03. Sections 361.001(2), (3), (4), and (5), Transportation Code, are amended to read as follows:

(2) ~~["Board" means the board of directors of the authority.]~~

~~[(3)]~~ "Owner" includes a person having title to or an interest in any property, rights, easements, and interests authorized to be acquired under this chapter.

(3) ~~[(4)]~~ "Turnpike project" means a toll highway constructed, maintained, or operated under this chapter as part of the state highway system and any improvement, extension, or expansion to the highway and includes:

(A) a facility to relieve traffic congestion and promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, ramp, or service station;

(C) an administration, storage, or other building the department ~~[authority]~~ considers necessary to operate the project;

(D) property rights, easements, and interests the department ~~[authority]~~ acquires to construct or operate the

project;

(E) a parking area or structure, rest stop, park, and any other improvement or amenity the department [~~authority~~] considers necessary, useful, or beneficial for the operation of a turnpike project; and

(F) a toll-free facility that is appurtenant to and necessary for the efficient operation of a turnpike project, including a service road, access road, ramp, interchange, bridge, or tunnel.

(4) [~~(5)~~] "Regional tollway authority" means a regional tollway authority created under Chapter 366.

SECTION __.04. The heading to Subchapter B, Chapter 361, Transportation Code, is amended to read as follows:

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

~~[TEXAS TURNPIKE AUTHORITY]~~

SECTION __.05. Section 361.031, Transportation Code, as amended by Chapters 920 and 1237, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 361.031. TEXAS TURNPIKE AUTHORITY. (a) The Texas Turnpike Authority is a division of the Texas Department of Transportation. The [~~that has full~~] authority is responsible for promoting and coordinating the development of turnpike projects under this chapter. The commission and the director shall assign duties to [~~exercise all powers granted to it under this chapter. Powers granted to the department under this chapter and Chapter 362 to study, design, construct, operate, expand, enlarge, or extend a turnpike project as a part of the state highway system shall be exercised by the department acting by and through~~] the authority and other offices of the department as appropriate for the proper administration of this chapter and other law.

(b) The exercise by the department [~~authority~~] of the powers conferred by this chapter in the construction, operation, and maintenance of a turnpike project is:

(1) in all respects for the benefit of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions and public safety; and

(2) an essential governmental function of the state.

SECTION __.06. Section 361.042, Transportation Code, is redesignated as Section 361.032, Transportation Code, and amended to read as follows:

Sec. 361.032 [~~361.042~~]. GENERAL POWERS AND DUTIES. (a) The commission [~~board~~] shall[+]

~~[(1) on its own initiative or at the request of the commission, consider, study, plan, and develop turnpike projects under this chapter,~~

~~[(2)] adopt rules for the implementation and administration of this chapter [~~regulation of its affairs and the conduct of its business,~~ and~~

~~[(3) undertake such other duties as are delegated to it by the commission].~~

(b) The department [~~authority~~] may:

(1) construct, maintain, repair, and operate turnpike projects in this state;

(2) acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;

(3) with the approval of the governor and the commission, enter into contracts or operating agreements with similar authorities or agencies of another state, including a state of the United Mexican States;

(4) enter into contracts or agreements necessary or incidental to its duties and powers under this chapter;

(5) employ consulting engineers, accountants, construction and financial experts, superintendents, managers, and other employees and agents the department [~~authority~~] considers necessary and set their compensation;

~~[(6) [employ attorneys to advance or defend legal actions pertaining to the division's activities, notwithstanding any other law to the contrary, including Section 402.0212, Government Code,~~

~~[(7)] receive grants for the construction of a turnpike project and receive contributions of money, property, labor, or other things of value from any source to be used for the purposes~~

for which the grants or contributions are made;

(7) notwithstanding Chapter 2113, Government Code,
~~[(8) adopt and enforce rules not inconsistent with this chapter for
the use of any turnpike project, including rules establishing speed
limits and maximum allowable vehicle and load weight limits for
turnpike projects;~~

~~[(9)]~~ engage in marketing, advertising, and other
activities to promote the development and use of turnpike projects
and may enter into contracts or agreements necessary to procure
marketing, advertising, or other promotional services from outside
service providers;

~~[(10) with the concurrence of the commission, form,
develop, or utilize a corporation created under Chapter 431 for the
promotion and development of turnpike projects,]~~ and

(8) ~~[(11)]~~ do all things necessary or appropriate to
carry out the powers expressly granted by this chapter.

SECTION __.07. Section 361.054, Transportation Code, is
redesignated as Section 361.033, Transportation Code, and amended
to read as follows:

Sec. 361.033 ~~[361.054]~~. AUDIT. Notwithstanding any other
law to the contrary, the department ~~[authority]~~ shall have an
independent certified public accountant audit the department's
~~[authority's]~~ books and accounts for activities under this chapter
at least annually. The audit shall be conducted in accordance with
the requirements of any trust agreement securing bonds issued under
this chapter that is in effect at the time of the audit. The cost of
the audit may be treated as part of the cost of construction or
operation of a turnpike project. This section does not affect the
ability of a state agency to audit the department's ~~[authority's]~~
books and accounts.

SECTION __.08. The heading to Subchapter C, Chapter 361,
Transportation Code, is amended to read as follows:

SUBCHAPTER C. DEVELOPMENT ~~[APPROVAL]~~ OF
TURNPIKE PROJECTS

SECTION __.09. Section 361.101, Transportation Code, is
amended to read as follows:

Sec. 361.101. DETERMINATION OF TURNPIKE PROJECTS. The

department [~~authority~~] may:

(1) construct, maintain, repair, and operate a turnpike project to:

(A) facilitate vehicular traffic throughout this state;

(B) promote the agricultural and industrial development of this state;

(C) effect traffic safety; or

(D) improve connections between highways of this state, adjoining states, and the United Mexican States; and

(2) at any time determine to undertake a turnpike project, except that the commission by order must approve [~~the location of the project before~~] final designation.

SECTION __.10. Section 361.103, Transportation Code, is amended to read as follows:

Sec. 361.103. APPLICATION OF OTHER LAW. All other law applicable to the department, the commission, or the state highway system shall apply to the development, construction, maintenance, and operation of a turnpike project under this chapter unless in conflict with a provision of this chapter. [~~ENVIRONMENTAL REVIEW.~~

~~(a) The authority by rule shall provide for the authority's environmental review of turnpike projects. The rules must provide for:~~

~~[(1) public comment on environmental reviews of turnpike projects, including the types of projects for which public hearings are required, and a procedure for requesting a public hearing on an environmental review for which a public hearing is not required;~~

~~[(2) the environmental factors and impacts the authority will evaluate in its environmental reviews; and~~

~~[(3) environmental review of alternate routes for a proposed turnpike project.~~

~~[(b) The environmental review of a turnpike project must be conducted before the location or alignment of the project is adopted.~~

~~[(c) The commission must approve each environmental review under this section before construction of a turnpike project~~

~~begins.~~

~~[(d) At least once during each five-year period, the authority, after a public hearing, shall review the rules relating to environmental review and make appropriate changes.]~~

SECTION __.11. Subchapter C, Chapter 361, Transportation Code, is amended by adding Section 361.104 to read as follows:

Sec. 361.104. ENTRANCES AND EXITS OF TURNPIKE PROJECT. The department shall:

(1) designate the location of and establish, limit, and control the entrances and exits of a turnpike project as considered necessary or desirable to ensure the proper operation and maintenance of the project; and

(2) prohibit entrance to a project at any place not designated as an entrance.

SECTION __.12. Section 361.131, Transportation Code, is amended to read as follows:

Sec. 361.131. POWERS AND PROCEDURES OF DEPARTMENT [~~AUTHORITY~~] IN ACQUIRING PROPERTY. Except as otherwise provided by this chapter, the department [~~authority, acting by and through the board,~~] has the same powers and may use the same procedures:

(1) in acquiring property under this chapter as the commission or the department in acquiring property under Subchapter D, Chapter 203; and

(2) in disposing of surplus property acquired under this chapter as the commission or the department under Subchapter B, Chapter 202.

SECTION __.13. Section 361.132, Transportation Code, is amended to read as follows:

Sec. 361.132. ACQUISITION OF PROPERTY. (a) The department [~~authority~~] may acquire, in the name of the state, public or private real property it determines necessary or convenient for the construction, expansion, enlargement, extension, improvement, or operation of a turnpike project or for otherwise carrying out this chapter.

(b) The real property the department [~~authority~~] may acquire under this subchapter includes:

(1) public parks, playgrounds, or reservations;

(2) parts of or rights in public parks, playgrounds, or reservations;

(3) rights-of-way;

(4) property rights, including:

(A) a right of ingress or egress; and

(B) a reservation right in real property that restricts or prohibits for not more than seven years the:

(i) addition of a new improvement on the real property;

(ii) addition to or modification of an existing improvement on the real property; or

(iii) subdivision of the real property;

(5) franchises;

(6) easements; and

(7) other interests in real property.

(c) The department [~~authority~~] may acquire the real property by any method, including purchase and condemnation. The department [~~authority~~] may purchase public or private real property on the terms and at the price the department [~~authority~~] and the owner consider reasonable.

(d) Property necessary or convenient for the construction or operation of a turnpike project under Subsection (a) includes an interest in real property, a property right, or materials that the department [~~authority~~] determines are necessary or convenient to:

(1) protect a turnpike project;

(2) drain a turnpike project;

(3) divert a stream, river, or other watercourse from the right-of-way of a turnpike project;

(4) store materials or equipment used in the construction or maintenance of a turnpike project;

(5) provide a location for an ancillary facility that generates revenue for use in the construction, maintenance, or operation of a turnpike project, including a gas station, garage, store, hotel, or restaurant;

(6) construct or operate a warehouse, toll house, toll plaza, service station, or other facility used in connection with the construction, maintenance, or operation of a turnpike project;

(7) [~~(6)~~] lay out, construct, or maintain a roadside park;

(8) [~~(7)~~] lay out, construct, or maintain a parking lot that will contribute to the maximum use of a turnpike project with the least possible congestion;

(9) [~~(8)~~] mitigate an adverse environmental effect that directly results from the construction or maintenance of a turnpike project; or

(10) [~~(9)~~] accomplish any other purpose related to the location, construction, improvement, maintenance, beautification, preservation, or operation of a turnpike project.

(e) The department [~~authority~~] shall comply with all relocation assistance procedures applicable to the department in connection with any displacement of owners or tenants as a consequence of the department's [~~authority's~~] acquisition of real property under this chapter.

(f) The department [~~authority~~] may acquire timber, earth, stone, gravel, or other materials as necessary to carry out a purpose under this chapter.

SECTION __.14. Sections 361.133(b) and (c), Transportation Code, are amended to read as follows:

(b) The governing body of a political subdivision or public agency may without advertising convey title to or rights or easements in real property the department [~~authority~~] needs in connection with the construction or operation of a turnpike project.

(c) Notwithstanding any law to the contrary, a political subdivision or a state agency may lease, lend, grant, or convey to the department [~~authority~~] at its request real property, including highways and other real property already devoted to public use, that may be necessary or appropriate to accomplish the department's [~~authority's~~] purposes. The political subdivision or state agency may lease, lend, grant, or convey the property:

(1) on terms the subdivision or agency determines reasonable and fair; and

(2) without advertisement, court order, or other action or formality other than the regular and formal action of the

subdivision or agency concerned.

SECTION __.15. Section 361.134, Transportation Code, is amended to read as follows:

Sec. 361.134. DESCRIPTION OF REAL PROPERTY. Real property acquired by the department under this chapter [~~authority~~] shall be described so as to locate the boundary line of the property with reference to:

(1) lot and block lines and corners of all existing and recorded subdivision properties, if applicable; or

(2) survey lines and corners.

SECTION __.16. Section 361.135, Transportation Code, is amended to read as follows:

Sec. 361.135. CONDEMNATION OF REAL PROPERTY. (a) The [~~board, with the concurrence of the~~] commission[~~7~~] may approve the acquisition of [~~acquire~~] public or private real property in the name of the state by the exercise of the power of condemnation under the laws applicable to the exercise of that power on property for public use if:

(1) the department [~~authority~~] and the owner cannot agree on a reasonable price for the property; or

(2) the owner is legally incapacitated, absent, unknown, or unable to convey title.

(b) The [~~board, with the concurrence of the~~] commission[~~7~~] may approve the condemnation of [~~condemn~~] real property that the commission [~~authority~~] determines is:

(1) necessary or convenient for the construction or operation of [~~appropriate to construct or to efficiently operate~~] a turnpike project, as described by Section 361.132(d);

(2) necessary to restore public or private property damaged or destroyed, including property necessary or convenient to mitigate an environmental effect that directly results from the construction, operation, or maintenance of a turnpike project;

(3) necessary for access, approach, service, and interchange roads;

(4) necessary to provide proper drainage and ground slope for a turnpike project; or

(5) necessary otherwise to carry out this chapter.

(c) ~~[The authority may construct a supplemental facility only on real property the authority purchases.]~~

~~[(d)]~~ The court having jurisdiction of a condemnation proceeding may:

(1) make orders as are just to the department [~~authority~~] and the owners of the real property; and

(2) require an undertaking or other security to secure the owners against any loss or damage by reason of the department's [~~board's~~] failure to accept and pay for the real property.

(d) ~~[(e)]~~ An undertaking or security under Subsection (c)(2) ~~[(d)(2)]~~ or an act or obligation of the department [~~authority~~] or the commission [~~board~~] does not impose any liability on the state, the department [~~authority~~], or the commission [~~board~~] except liability that may be paid from the money authorized by this chapter.

SECTION __.17. Section 361.136, Transportation Code, is amended to read as follows:

Sec. 361.136. SEVERANCE OF REAL PROPERTY. (a) If a turnpike project severs an owner's real property, the department [~~authority~~] shall pay:

(1) the value of the property acquired; and

(2) the damages to the remainder of the owner's property caused by the severance, including damages caused by the inaccessibility of one tract from the other.

(b) The department [~~authority~~] may negotiate for and purchase the severed real property or either part of the severed real property if the department [~~authority~~] and the owner agree on terms for the purchase.

SECTION __.18. Sections 361.137(a), (b), (c), and (d), Transportation Code, are amended to read as follows:

(a) The department [~~authority~~] may file a declaration of taking with the clerk of the court:

(1) in which the department [~~authority~~] files a condemnation petition under Chapter 21, Property Code; or

(2) to which the case is assigned.

(b) The department [~~authority~~] may file the declaration of taking concurrently with or subsequent to the petition but may not

file the declaration after the special commissioners have made an award in the condemnation proceeding.

(c) The department may not file a declaration of taking before the completion of:

(1) all environmental documentation, including a final environmental impact statement or a record of decision, that is required by federal or state law;

(2) all public hearings and meetings, including those held in connection with the environmental process and under Sections 201.604 and 203.021, that are required by federal or state law; and

(3) all notifications required by Section 203.022.

(d) [~~(c)~~] The declaration of taking must include:

(1) a specific reference to the legislative authority for the condemnation;

(2) a description and plot plan of the real property to be condemned, including the following information if applicable:

(A) the municipality in which the property is located;

(B) the street address of the property; and

(C) the lot and block number of the property;

(3) a statement of the property interest to be condemned;

(4) the name and address of each property owner that the department [~~authority~~] can obtain after reasonable investigation and a description of the owner's interest in the property; and

(5) a statement that immediate possession of all or part of the property to be condemned is necessary for the timely construction of a turnpike project.

(e) [~~(d)~~] A deposit to the registry of the court of an amount equal to the appraised value, as determined by the department [~~authority~~], of the property to be condemned must accompany the declaration of taking.

SECTION __.19. Sections 361.138(a) and (b), Transportation Code, are amended to read as follows:

(a) Immediately on the filing of a declaration of taking,

the department [~~authority~~] shall serve a copy of the declaration on each person possessing an interest in the condemned property by a method prescribed by Section 21.016(d), Property Code. The department [~~authority~~] shall file evidence of the service with the clerk of the court. On filing of that evidence, the department [~~authority~~] may take possession of the property pending the litigation.

(b) If the condemned property is a homestead or a portion of a homestead as defined by Section 41.002, Property Code, the department [~~authority~~] may not take possession sooner than the 91st [~~31st~~] day after the date of service under Subsection (a).

SECTION __.20. Section 361.141(a), Transportation Code, is amended to read as follows:

(a) The department [~~authority~~] may not pay compensation for public real property, parkways, streets, highways, alleys, or reservations it takes, except for:

(1) parks and playgrounds; and

(2) property acquired under restrictions and limitations requiring payment of compensation.

SECTION __.21. Section 361.142, Transportation Code, is amended to read as follows:

Sec. 361.142. COVENANTS, CONDITIONS, RESTRICTIONS, OR LIMITATIONS. Covenants, conditions, restrictions, or limitations affecting property acquired in any manner by the department [~~authority~~] are not binding against the department [~~authority~~] and do not impair the department's [~~authority's~~] ability to use the property for a purpose authorized by this chapter. The beneficiaries of the covenants, conditions, restrictions, or limitations are not entitled to enjoin the department [~~authority~~] from using the property for a purpose authorized under this chapter, but this section does not affect the right of a person to seek damages to the person's property under Section 17, Article I, Texas Constitution.

SECTION __.22. Section 361.171, Transportation Code, is amended to read as follows:

(a) The commission [~~authority~~] by order [~~resolution~~] may authorize [~~provide for~~] the issuance of turnpike revenue bonds to

pay all or part of the cost of a turnpike project. Each project shall be financed and built by a separate bond issue. The proceeds of a bond issue may be used solely for the payment of the project for which the bonds were issued and may not be divided between or among two or more projects. Each project is a separate undertaking, the cost of which shall be determined separately.

(b) As determined in the order authorizing the issuance, the ~~[The]~~ bonds of each issue shall:

(1) ~~[must]~~ be dated;

(2) bear interest at the rate or rates provided by the order and beginning on the dates provided by the order and as authorized by law, or bear no interest;

(3) mature at the time or times provided by the order, not exceeding 40 years from their date or dates, ~~[determined by the authority];~~ and

(4) ~~[may]~~ be made redeemable before maturity, at the price or prices and under the terms provided by the order ~~[set by the authority in the proceeding authorizing the issuance of the bonds].~~

(c) The commission ~~[authority]~~ may sell the bonds at public or private sale in the manner and for the price it determines to be in the best interest of the department ~~[authority]~~.

(d) The proceeds of each bond issue shall be disbursed in the manner and under the restrictions, if any, the commission ~~[authority]~~ provides in the order ~~[resolution]~~ authorizing the issuance of the bonds or in the trust agreement securing the bonds.

(e) If the proceeds of a bond issue are less than the turnpike project cost, additional bonds may ~~[in like manner]~~ be issued in the same manner to pay the costs of a turnpike project ~~[provide the amount of the deficit]~~. Unless otherwise provided in the order ~~[resolution]~~ authorizing the issuance of the bonds or in the trust agreement securing the bonds, the additional bonds are on a parity with and are payable, without preference of priority, from the same fund as ~~[without preference or priority of]~~ the bonds first issued. In addition, the commission may issue bonds for a turnpike project secured by a lien on the revenue of the turnpike project subordinate to the lien on the revenue securing other bonds issued

for the turnpike project.

(f) If the proceeds of a bond issue exceed the cost of the turnpike project for which the bonds were issued, the surplus shall be segregated from the other money of the commission and used only for the purposes specified in the order authorizing the issuance [~~deposited to the credit of the sinking fund for the bonds~~].

(g) In addition to other permitted uses, the proceeds of a bond issue may be used to pay costs incurred before the issuance of the bonds, including costs of environmental review, design, planning, acquisition of property, relocation assistance, construction, and operation.

(h) Bonds issued and delivered under this chapter and interest coupons on the bonds are a security under Chapter 8, Business & Commerce Code.

(i) Bonds issued under this chapter and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

SECTION __.23. Section 361.172, Transportation Code, is amended to read as follows:

Sec. 361.172. APPLICABILITY OF OTHER LAW; CONFLICTS [~~LAWS~~]. [~~(a) Except as provided by Subsection (b), the authority may issue turnpike revenue bonds or turnpike revenue refunding bonds under this chapter without complying with any other law applicable to the issuance of bonds.~~]

All [~~(b) Notwithstanding any other provisions of this chapter, the following~~] laws affecting the issuance of bonds by governmental entities, including Chapters 1201, 1202, 1204, 1207, and 1371, Government Code, apply to bonds issued under this chapter. To the extent of a conflict between those laws and this chapter, the provisions of this chapter prevail [~~by the authority.~~]

~~[(1) Chapters 1201, 1202, 1204, and 1371, Government Code, and]~~

~~[(2) Subchapters A-C, Chapter 1207, Government Code].~~

SECTION __.24. Section 361.173, Transportation Code, is amended to read as follows:

Sec. 361.173. PAYMENT OF BONDS; CREDIT OF STATE NOT PLEDGED. (a) The principal of, interest on, and any redemption

premium on bonds issued by the commission under this chapter [~~authority~~] are payable solely from:

(1) [~~the money authorized for their payment under this chapter or other law; and~~]

[~~(2)~~] the revenue of the turnpike project for which the bonds were issued, including tolls pledged to pay the bonds; and [~~+~~]

(2) amounts received under a credit agreement relating to the turnpike project for which the bonds are issued.

(b) Bonds issued under this chapter do not constitute a debt of the state or a pledge of the faith and credit of the state. Each bond must contain on its face a statement to the effect that:

(1) the state, the commission, and the department [~~authority~~] are not obligated to pay the bond or the interest on the bond from a source other than the amount pledged to pay the bond and the interest on the bond; and

(2) the faith and credit and the taxing power of the state are not pledged to the payment of the principal of or interest on the bond.

(c) The commission and the department [~~authority~~] may not incur financial obligations that cannot be paid from tolls or revenue derived from owning or operating turnpike projects or from money provided by law.

SECTION __.25. Section 361.174, Transportation Code, is amended to read as follows:

Sec. 361.174. SOURCES OF PAYMENT OF AND SECURITY FOR TURNPIKE PROJECT BONDS. Notwithstanding any other provisions of this chapter, turnpike project bonds issued by the commission [~~authority~~] may [~~+~~

[~~(1)~~] be payable from and secured by payments made under an agreement with a local governmental entity as provided by Subchapter A, Chapter 362, and may state on their faces any pledge of revenue or taxes and any security for the bonds under the agreement [~~+, and~~

[~~(2) be payable from and secured by money derived from any other source available to the authority, other than money derived from a different turnpike project~~].

SECTION __.26. Section 361.175, Transportation Code, is

amended to read as follows:

Sec. 361.175. TURNPIKE REVENUE REFUNDING BONDS. (a) The commission [~~authority~~] by order [~~resolution~~] may provide for the issuance of turnpike revenue refunding bonds to:

(1) refund any outstanding bonds issued under this chapter for a turnpike project, including the payment of any redemption premium on the bonds and any interest accrued as of the date of redemption of the bonds; and

(2) construct improvements, extensions, or enlargements to the turnpike project for which the outstanding bonds were issued.

(b) This chapter, to the extent applicable, governs:

(1) the issuance of the refunding bonds;

(2) the maturities and other details of the bonds;

(3) the rights of the bondholders; and

(4) the rights and obligations of the commission and the department [~~authority~~] with respect to the bonds and the bondholders.

(c) The commission [~~authority~~] may:

(1) issue refunding bonds in exchange for outstanding bonds; or

(2) sell refunding bonds and use the proceeds to pay or provide for the payment of the outstanding bonds.

SECTION __.27. Subchapter E, Chapter 361, Transportation Code, is amended by adding Sections 361.1751-361.1753 to read as follows:

Sec. 361.1751. INTERIM BONDS. (a) The commission may, before issuing definitive bonds, issue interim bonds, with or without coupons, exchangeable for definitive bonds.

(b) An order authorizing interim bonds may provide that the interim bonds recite that the bonds are issued under this chapter. The recital is conclusive evidence of the validity and the regularity of the bonds' issuance.

Sec. 361.1752. EFFECT OF LIEN. (a) A lien on or a pledge of revenue from a turnpike project or on a reserve, replacement, or other fund established in connection with a bond issued under this chapter:

(1) is enforceable at the time of payment for and delivery of the bond;

(2) applies to each item on hand or subsequently received;

(3) applies without physical delivery of an item or other act; and

(4) is enforceable against any person having a claim, in tort, contract, or other remedy, against the commission or the department without regard to whether the person has notice of the lien or pledge.

(b) An order authorizing the issuance of bonds is not required to be recorded except in the regular records of the department.

Sec. 361.1753. APPROVAL OF BONDS BY ATTORNEY GENERAL. (a) The commission shall submit to the attorney general for examination the record of proceedings relating to bonds authorized under this chapter. The record shall include the bond proceedings and any contract securing or providing revenue for the payment of the bonds.

(b) If the attorney general determines that the bonds, the bond proceedings, and any supporting contract are authorized by law, the attorney general shall approve the bonds and deliver to the comptroller:

(1) a copy of the legal opinion of the attorney general stating the approval; and

(2) the record of proceedings relating to the authorization of the bonds.

(c) On receipt of the legal opinion of the attorney general and the record of proceedings relating to the authorization of the bonds, the comptroller shall register the record of proceedings.

(d) After approval by the attorney general, the bonds, the bond proceedings, and any supporting contract are valid, enforceable, and incontestable in any court or other forum for any reason and are binding obligations according to their terms for all purposes.

SECTION __.28. Sections 361.176(a) and (e), Transportation Code, are amended to read as follows:

(a) Bonds issued under this chapter may be secured by a trust agreement between the commission [~~authority~~] and a corporate trustee that is a trust company or a bank that has the powers of a trust company.

(e) A trust agreement may:

(1) set forth the rights and remedies of the bondholders and the trustee;

(2) restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing corporate bonds and debentures; and

(3) contain provisions the commission [~~authority~~] determines reasonable and proper for the security of the bondholders.

SECTION __.29. Section 361.177, Transportation Code, is amended to read as follows:

Sec. 361.177. PROVISIONS PROTECTING AND ENFORCING RIGHTS AND REMEDIES OF BONDHOLDERS. A trust agreement or order [~~resolution~~] providing for the issuance of bonds may contain [~~reasonable~~] provisions to protect and enforce the rights and remedies of the bondholders, including:

(1) covenants establishing the commission's [~~stating the~~] duties relating [~~of the authority in relation~~] to:

(A) the acquisition of property; [~~and~~]

(B) the construction, improvement, expansion, maintenance, repair, operation, and insurance of the turnpike project in connection with which the bonds were authorized; and

(C) [~~(B)~~] the custody, safeguarding, and application of money; [~~and~~]

(2) covenants prescribing events that constitute default;

(3) covenants prescribing terms on which any or all of the bonds become or may be declared due before maturity;

(4) covenants relating to the rights, powers, liabilities, or duties that arise on the breach of a duty of the commission; and

(5) [~~(2)~~] provisions for the employment of consulting engineers in connection with the construction or operation of the

turnpike project.

SECTION __.30. Section 361.178, Transportation Code, is amended to read as follows:

Sec. 361.178. FURNISHING OF INDEMNIFYING BONDS OR PLEDGE OF SECURITIES. A bank or trust company incorporated under the laws of [~~that has its main office or a branch office in~~] this state and that acts as depository of the proceeds of bonds or of revenue may furnish indemnifying bonds or pledge securities that the department [~~authority~~] requires.

SECTION __.31. Sections 361.179(a), (b), (d), (e), and (g), Transportation Code, are amended to read as follows:

(a) The department [~~authority~~] may:

(1) impose tolls for the use of each turnpike project and the different parts or sections of each turnpike project; and

(2) notwithstanding anything in Chapter 202 to the contrary, contract with a person for the use of part of a turnpike project or lease [~~or sell~~] part of a turnpike project [~~, including the right-of-way adjoining the paved portion,~~] for [~~any purpose, including placing on the adjoining right-of-way~~] a gas station, garage, store, hotel, restaurant, railroad tracks, utilities, and [~~telephone line, telecommunication line,~~] telecommunications facilities and equipment [~~, and electric line,~~] and set the terms for the use or [~~]~~ lease [~~, or sale~~].

(b) The tolls shall be set so that the aggregate of tolls from the turnpike project:

(1) provides a fund sufficient with other revenue and contributions, if any, to pay:

(A) the cost of maintaining, repairing, and operating the project; and

(B) the principal of and interest on the bonds issued for the project as those bonds become due and payable; and

(2) creates reserves for the purposes listed under Subdivision (1).

(d) The tolls and other revenue derived from the turnpike project for which bonds were issued, except the part necessary to pay the cost of maintenance, repair, and operation and to provide reserves for those costs as may be provided in the order

~~[resolution]~~ authorizing the issuance of the bonds or in the trust agreement securing the bonds, shall be set aside at regular intervals as may be provided in the order ~~[resolution]~~ or trust agreement in a sinking fund that is pledged to and charged with the payment of:

- (1) interest on the bonds as it becomes due;
- (2) principal of the bonds as it becomes due;
- (3) necessary charges of paying agents for paying principal and interest; and
- (4) the redemption price or the purchase price of bonds retired by call or purchase as provided by the bonds.

(e) Use and disposition of money to the credit of the sinking fund are subject to the order ~~[resolution]~~ authorizing the issuance of the bonds or to the trust agreement.

(g) Money in the sinking fund, less the reserve provided by the order ~~[resolution]~~ or trust agreement, if not used within a reasonable time to purchase bonds for cancellation, shall be applied to the redemption of bonds at the applicable redemption price.

SECTION __.32. Section 361.183(b), Transportation Code, is amended to read as follows:

(b) Money spent under Subsection (a) for a proposed turnpike is reimbursable, with the consent of the commission ~~[authority]~~, to the person paying the expenses out of the proceeds from turnpike revenue bonds issued for or other proceeds that may be used for the construction, improvement, extension, expansion, or operation of the project.

SECTION __.33. Section 361.185, Transportation Code, is amended to read as follows:

Sec. 361.185. TRUST FUND. (a) All money received under this chapter, whether as proceeds from the sale of bonds or as revenue, is a trust fund to be held and applied as provided by this chapter. Notwithstanding any other law, including Section 9, Chapter 1123, Acts of the 75th Legislature, Regular Session, 1997, and without the prior approval of the comptroller, funds held under this chapter shall be held in trust by a banking institution chosen by the department ~~[authority]~~ or, at the discretion of the

department [~~authority~~], in trust in the state treasury outside the general revenue fund.

(b) The order [~~resolution~~] authorizing the issuance of bonds or the trust agreement securing the bonds shall provide that an officer to whom or a bank or trust company to which the money is paid shall act as trustee of the money and shall hold and apply the money for the purpose of the order [~~resolution~~] or trust agreement, subject to this chapter and the order [~~resolution~~] or trust agreement.

SECTION __.34. Section 361.186, Transportation Code, is amended to read as follows:

Sec. 361.186. REMEDIES. Except to the extent restricted by a trust agreement, a holder of a bond issued under this chapter [~~or of a coupon incident to a bond~~] and a trustee under a trust agreement may:

(1) protect and enforce by a legal proceeding a right under:

(A) this chapter or another law of this state;

(B) the trust agreement; or

(C) the order [~~resolution~~] authorizing the issuance of the bond; and

(2) compel the performance of a duty this chapter, the trust agreement, or the order [~~resolution~~] requires the commission or the department [~~authority~~] or an officer of the commission or the department [~~authority~~] to perform, including the imposing of tolls.

SECTION __.35. Section 361.187(a), Transportation Code, is amended to read as follows:

(a) The commission [~~authority~~] is exempt from taxation of or assessments on:

(1) a turnpike project;

(2) property the department [~~authority~~] acquires or uses under this chapter; or

(3) income from property described by Subdivision (1) or (2).

SECTION __.36. Section 361.188, Transportation Code, is amended to read as follows:

Sec. 361.188. VALUATION OF BONDS SECURING DEPOSIT OF PUBLIC

FUNDS. Bonds of the commission [~~authority, when they are accompanied by the unmatured coupons incident to the bonds,~~] may secure the deposit of public funds of the state or a political subdivision of the state to the extent of the lesser of the face value of the bonds or their market value.

SECTION __.37. Section 361.189, Transportation Code, is amended to read as follows:

Sec. 361.189. USE OF SURPLUS REVENUE. The commission by order [~~resolution~~] may authorize the use of surplus revenue of a turnpike project to pay the costs of another turnpike project within the region [~~, other than a project financed under Subchapter I, or a toll-free project~~]. The commission may in the order [~~resolution~~] prescribe terms for the use of the revenue, including the pledge of the revenue, but may not take an action under this section that violates, impairs, or is inconsistent with a bond order [~~resolution~~], trust agreement, or indenture governing the use of the surplus revenue.

SECTION __.38. Section 361.191, Transportation Code, is amended to read as follows:

Sec. 361.191. EXPENDITURE OF MONEY AUTHORIZED BY COMMISSION [~~DEPARTMENT OF TRANSPORTATION~~]. (a) The commission [~~Texas Department of Transportation~~] may provide for the expenditure of money for the cost of the acquisition, construction, maintenance, or operation of a turnpike project [~~by the authority~~]. The commission [~~department~~] may require the repayment of [~~authority to repay~~] money provided under this section from toll revenue or other sources on terms established by the commission.

(b) Money repaid as required by the commission [~~department~~] shall be deposited to the credit of the fund from which the money was provided. Money deposited as required by this section is exempt from the application of Section 403.095, Government Code.

SECTION __.39. Section 361.231(a), Transportation Code, is amended to read as follows:

[~~(a)~~] A contract of the department [~~authority~~] for the construction, improvement, repair, or maintenance of a turnpike project shall [~~, to the extent applicable,~~] be awarded under the same terms as a contract of the department under Sections

223.001-223.007, [~~223.009,~~] and 223.009-223.011 [~~223.010~~].

SECTION __.40. Sections 361.232(b), (c), and (d), Transportation Code, are amended to read as follows:

(b) The department [~~authority~~] may construct a grade separation at an intersection of a turnpike project with a railroad or highway and change the line or grade of a highway to accommodate it to the design of a grade separation. The department [~~authority~~] shall pay the cost of a grade separation and any damage incurred in changing a line or grade of a railroad or highway as part of the cost of the turnpike project.

(c) If feasible, the department [~~authority~~] shall provide access to properties previously abutting a county or other public road that is taken for a turnpike project and shall pay abutting property owners the expenses or any resulting damages for denial of access to the road.

(d) If the department [~~authority~~] finds it necessary to change the location of a portion of a highway, it shall reconstruct the highway at the location the [~~authority and the~~] department determines [~~determine~~] to be most favorable. The reconstructed highway must be of substantially the same type and in as good condition as the original highway. The department [~~authority~~] shall determine and pay the cost of the reconstruction and any damage incurred in changing the location of a highway as part of the cost of the turnpike project.

SECTION __.41. Sections 361.233(a) and (c), Transportation Code, are amended to read as follows:

(a) The department [~~authority~~] and its authorized agents may enter any real property, water, or premises in this state to make a survey, sounding, drilling, or examination it determines necessary or appropriate for the purposes of this chapter.

(c) The department [~~authority~~] shall make reimbursement for any actual damages to real property, water, or premises that result from an activity described by Subsection (a).

SECTION __.42. Sections 361.234(a), (b), (d), (e), (f), and (g), Transportation Code, are amended to read as follows:

(a) The commission [~~authority~~] may adopt rules for the installation, construction, maintenance, repair, renewal,

relocation, and removal of a public utility facility in, on, along, over, or under a turnpike project.

(b) If the department [~~authority~~] determines it is necessary that a public utility facility located in, on, along, over, or under a turnpike project be relocated in the project, removed from the project, or carried along or across the turnpike by grade separation, the owner or operator of the facility shall relocate or remove the facility in accordance with the order of the department [~~authority~~]. The department [~~authority~~], as a part of the cost of the turnpike project or the cost of operating the project, shall pay the cost of the relocation, removal, or grade separation, including the cost of:

(1) installing the facility in a new location or locations;

(2) interests in real property, and other rights acquired to accomplish the relocation or removal; and

(3) maintenance of grade separation structures.

(d) The department [~~authority~~] and the public utility shall have 90 days from the date the department [~~authority~~] provides written notice to the public utility of the need for relocation of utility facilities to reach an agreement concerning the period for completion of the relocation. The 90-day period may be extended by mutual written agreement. If the parties are unable to reach an agreement for the period for completion of the relocation, the department [~~authority~~] may specify a reasonable period. The department [~~authority~~] may reduce the total costs to be paid by the department [~~authority~~] by 10 percent for each 30-day period or portion of a 30-day period that the relocation exceeds the period specified by agreement between the department [~~authority~~] and public utility or as reasonably specified by the department [~~authority~~] if no agreement is reached, unless the public utility's failure to timely perform results from a material action or inaction by the department [~~authority~~] or from conditions that were beyond the reasonable control of the utility. If an owner or operator of a public utility facility does not timely remove or relocate the facility as required under Subsection (b) and the department [~~authority~~] relocates the facility, the department

[~~authority~~] shall relocate the facility in a safe manner that complies with applicable law and utility construction standards recognized by the department [~~authority~~] and that minimizes disruption of utility service and shall notify the public utility and other appropriate regulatory agencies of the relocation. A public utility shall reimburse the department [~~authority~~] for expenses reasonably incurred for the relocation of a public utility facility unless the failure of the public utility to timely relocate the facility was the result of circumstances beyond the control of the utility, in which case the department [~~authority~~] shall pay the cost of the relocation.

(e) Notwithstanding anything in this chapter to the contrary, ~~[+]~~

~~[(1)]~~ Subchapter B, Chapter 181, Utilities Code, applies to the laying and maintenance of pipes, mains, conductors, and other facilities used for conducting gas by a gas utility described in that subchapter through, under, along, across, and over a turnpike project constructed by the department [~~authority~~], and

~~[(2) the authority has the powers and duties assigned to the commission by Subchapter B, Chapter 181, Utilities Code].~~

(f) Notwithstanding anything in this chapter to the contrary, Subchapter C, Chapter 181, Utilities Code, applies to the erection, construction, maintenance, and operation of lines and poles owned by an electric utility, as that term is defined by Section 181.041, Utilities Code, over, under, across, on, and along a turnpike project constructed by the department [~~authority~~]. ~~The authority has the powers and duties delegated to the commission by Subchapter C, Chapter 181, Utilities Code].~~

(g) Notwithstanding anything in this chapter to the contrary, the laws of this state applicable to the use of public roads, streets, and waters of this state by a telephone and telegraph corporation apply to the erection, construction, maintenance, location, and operation of a line, pole, or other fixture by a telephone and telegraph corporation over, under, across, on, and along a turnpike project constructed by the department [~~authority~~].

SECTION __.43. Section 361.235(a), Transportation Code, is amended to read as follows:

(a) The department [~~authority~~] may use real property owned by the state, including submerged land, that the department [~~authority~~] considers necessary for the construction or operation of a turnpike project.

SECTION __.44. Section 361.236, Transportation Code, is amended to read as follows:

Sec. 361.236. MAINTENANCE OF TURNPIKE PROJECT. The department [~~authority~~] shall maintain and keep in good condition and repair each turnpike project opened to traffic.

SECTION __.45. Section 361.238(b) and (c), Transportation Code, are amended to read as follows:

(b) If the conditions of Subsections (a)(1) and (2) are met, the commission may continue to charge a toll to fund the construction, maintenance, and operation of other turnpike projects in the region in which the turnpike project is located [~~sufficient to pay the costs of maintaining the facility~~].

(c) The following entities shall consider offering motor vehicle operators the option of using a transponder to pay tolls without stopping, to mitigate congestion at toll locations, to enhance traffic flow, and to otherwise increase the efficiency of operations:

(1) the department [~~authority~~];

(2) an entity to which a project authorized by this chapter is transferred; or

(3) a third party service provider under contract with an entity described by Subdivision (1) or (2).

SECTION __.46. Section 361.251, Transportation Code, is amended to read as follows:

Sec. 361.251. TURNPIKE PROJECT A STATE [~~PUBLIC~~] HIGHWAY. A turnpike project is a state highway subject to all laws applicable to the regulation and control of traffic on a state [~~public~~] highway.

SECTION __.47. Section 361.253, Transportation Code, is amended by amending Subsections (b), (d), (e), and (g) and adding Subsection (i) to read as follows:

(b) The department [~~authority~~] may impose and collect the administrative fee, so as to recover the cost of collecting the unpaid toll, not to exceed \$100. The department [~~authority~~] shall send a written notice of nonpayment to the registered owner of the vehicle at that owner's address as shown in the vehicle registration records of the department by first class mail not later than the 30th day after the date of the alleged failure to pay and may require payment not sooner than the 30th day the date the notice was mailed. The registered owner shall pay a separate toll and administrative fee for each event of nonpayment under Section 361.252.

(d) It is an exception to the application of Subsection (a) or (c) if the registered owner of the vehicle is a lessor of the vehicle and not later than the 30th day after the date the notice of nonpayment is mailed provides to the department [~~authority~~] a copy of the rental, lease, or other contract document covering the vehicle on the date of the nonpayment under Section 361.252, with the name and address of the lessee clearly legible. If the lessor provides the required information within the period prescribed, the department [~~authority~~] may send a notice of nonpayment to the lessee at the address shown on the contract document by first class mail before the 30th day after the date of receipt of the required information from the lessor. The lessee of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The lessee shall pay a separate toll and administrative fee for each event of nonpayment. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(e) It is an exception to the application of Subsection (a) or (c) if the registered owner of the vehicle transferred ownership of the vehicle to another person before the event of nonpayment under Section 361.252 occurred, submitted written notice of the transfer to the department in accordance with Section 520.023, and, before the 30th day after the date the notice of nonpayment is mailed, provides to the department [~~authority~~] the name and address

of the person to whom the vehicle was transferred. If the former owner of the vehicle provides the required information within the period prescribed, the department [~~authority~~] may send a notice of nonpayment to the person to whom ownership of the vehicle was transferred at the address provided the former owner by first class mail before the 30th day after the date of receipt of the required information from the former owner. The subsequent owner of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The subsequent owner shall pay a separate toll and administrative fee for each event of nonpayment under Section 361.252. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(g) The court in which a person is convicted of an offense under this section shall also collect the proper toll and administrative fee and forward the toll and fee to the department for deposit in the depository bank used for that purpose [~~authority~~].

(i) The department may contract, in accordance with Section 2107.003, Government Code, with a person to collect the unpaid toll and administrative fee before referring the matter to a court with jurisdiction over the offense.

SECTION __.48. Section 361.255(b), Transportation Code, is amended to read as follows:

(b) Any peace officer of this state may seize a stolen or insufficiently funded transponder and return it to the department [~~authority~~], except that an insufficiently funded transponder may not be seized sooner than the 30th day after the date the department [~~authority~~] has sent a notice of delinquency to the holder of the account.

SECTION __.49. Sections 361.256(a), (b), and (d), Transportation Code, are amended to read as follows:

(a) To aid in the collection of tolls and in the enforcement of toll violations, the department [~~authority~~] may use automated enforcement technology that it determines is necessary, including automatic vehicle license plate identification photography and

video surveillance, by electronic imaging or photographic copying.

(b) Automated enforcement technology approved by the department [~~authority~~] under Subsection (a) may be used only for the purpose of producing, depicting, photographing, or recording an image of a license plate attached to the front or rear of a vehicle.

(d) Evidence obtained from technology approved by the department [~~authority~~] under Subsection (a) may not be used in the prosecution of an offense other than under Section 361.252 or 361.253.

SECTION __.50. The heading to Subchapter H, Chapter 361, Transportation Code, is amended to read as follows:

SUBCHAPTER H. TRANSFER OF TURNPIKE PROJECT [~~TO COUNTY,~~
~~[MUNICIPALITY, REGIONAL TOLLWAY AUTHORITY,~~
~~[OR LOCAL GOVERNMENT CORPORATION]~~

SECTION __.51. Section 361.281, Transportation Code, is amended to read as follows:

Sec. 361.281. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to:

(1) a county with a population of more than 1.5 million;

(2) a local government corporation serving a county with a population of more than 1.5 million;

(3) an adjacent county in a joint turnpike authority with a county with a population of more than 1.5 million;

(4) a municipality with a population of more than 170,000 that is adjacent to the United Mexican States; [~~or~~]

(5) a regional tollway authority created under Chapter 366; or

(6) a regional mobility authority created under Section 361.003.

SECTION __.52. Section 361.282, Transportation Code, is amended to read as follows:

Sec. 361.282. LEASE, SALE, OR CONVEYANCE OF TURNPIKE PROJECT. (a) The department [~~authority~~] may lease, sell, or convey in another manner a turnpike project to a county, a municipality, regional tollway authority, regional mobility authority, or a local government corporation created under Chapter 431.

(b) The [~~authority, the~~] commission[~~r~~] and the governor must approve the transfer of the turnpike project as being in the best interests of the state and the entity receiving the turnpike project.

SECTION __.53. Section 361.283, Transportation Code, is amended to read as follows:

Sec. 361.283. DISCHARGE OF [~~AUTHORITY'S~~] OUTSTANDING BONDED INDEBTEDNESS. An agreement to lease, sell, or convey a turnpike project under Section 361.282 must provide for the discharge and final payment or redemption of the department [~~authority's~~] outstanding bonded indebtedness for the project.

SECTION __.54. Subchapter H, Chapter 361, Transportation Code, is amended by adding Section 361.284 to read as follows:

Sec. 361.284. REPAYMENT OF DEPARTMENT'S EXPENDITURES. (a) Except as provided by Subsection (b), an agreement to lease, sell, or convey a turnpike project under Section 361.282 must provide for the repayment of any expenditures of the department for the design, construction, operation, and maintenance of the project that have not been reimbursed with the proceeds of bonds issued for the project.

(b) The commission may waive repayment of all or a portion of the expenditures if it finds that the transfer will result in substantial net benefits to the state, the department, and the public that equal or exceed the amount of repayment waived.

SECTION __.55. Section 361.285(a), Transportation Code, is amended to read as follows:

(a) An agreement for the lease, sale, or conveyance of a turnpike project under this subchapter shall be submitted to the attorney general for approval as part of the records of proceedings relating to the issuance of bonds of the county, municipality, regional tollway authority, regional mobility authority, or local government corporation.

SECTION __.56. Section 361.301, Transportation Code, is amended to read as follows:

Sec. 361.301. AGREEMENTS WITH PUBLIC OR PRIVATE ENTITIES TO CONSTRUCT, MAINTAIN, REPAIR, AND OPERATE TURNPIKE PROJECTS. (a) Notwithstanding Section 361.231 and Subchapter A, Chapter 2254,

Government Code, the department [~~The authority~~] may enter into an agreement with a public or private entity, including a toll road corporation, to permit the entity, independently or jointly with the department [~~authority~~], to construct, maintain, repair, and operate turnpike projects.

(b) The department [~~authority~~] may authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

SECTION __.57. Section 361.302, Transportation Code, is amended to read as follows:

Sec. 361.302. COMPREHENSIVE [~~EXCLUSIVE~~] DEVELOPMENT AGREEMENTS [~~WITH PUBLIC OR PRIVATE ENTITIES~~]. (a) Subject to Section 361.3021, the department [~~The authority~~] may enter into a comprehensive [~~use an exclusive~~] development agreement with a private entity to construct, maintain, repair, operate, extend, or expand a turnpike project.

(b) In this subchapter, "comprehensive development agreement" means an agreement with a private entity that, at a minimum, provides for the design and construction of a turnpike project and may also provide for the financing, acquisition, maintenance, or operation of a turnpike project [~~by invested private funding or by public and private funding~~].

(c) The department [~~authority~~]

[~~(1) has broad discretion to negotiate the terms of financing, and~~]

[~~(2)~~] may negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement [~~regard to the turnpike project and to the construction, maintenance, and operation of the project, including provisions for combining those services~~].

(d) The authority to enter into comprehensive development agreements provided by this section expires on August 31, 2011.

SECTION __.58. Subchapter I, Chapter 361, Transportation Code, is amended by adding Sections 361.3021-361.3024 to read as follows:

Sec. 361.3021. LIMITATION ON DEPARTMENT FINANCIAL PARTICIPATION. The amount of money disbursed by the department

from the state highway fund and the Texas mobility fund during a federal fiscal year to pay the costs under comprehensive development agreements may not exceed 40 percent of the obligation authority under the federal-aid highway program that is distributed to this state for the fiscal year.

Sec. 361.3022. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) If the department enters into a comprehensive development agreement, the department shall use a competitive procurement process that provides the best value for the department. The department may accept unsolicited proposals for a proposed project or solicit proposals in accordance with this section.

(b) The department shall establish rules and procedures for accepting unsolicited proposals that require the private entity to include in the proposal:

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

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

(3) a proposed financial plan for the proposed project that includes, at a minimum:

(A) projected project costs; and

(B) proposed sources of funds.

(c) The department shall publish a request for competing proposals and qualifications in the Texas Register that includes the criteria used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which proposals must be received if:

(1) the department decides to issue a request for qualifications for a proposed project; or

(2) the department authorizes the further evaluation of an unsolicited proposal.

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

(e) The department may interview a private entity

submitting an unsolicited proposal or responding to a request under Subsection (c). The department shall evaluate each proposal based on the criteria described in the notice. The department must qualify at least two private entities to submit detailed proposals for a project under Subsection (f) unless the department does not receive more than one proposal or one response to a request under Subsection (c).

(f) The department shall issue a request for detailed proposals from all private entities qualified under Subsection (e) if the department proceeds with the further evaluation of a proposed project. A request under this subsection may require additional information relating to:

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

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

(3) detailed engineering or architectural designs;

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

(5) costing methodology; or

(6) any other information the department considers relevant or necessary.

(g) In issuing a request for proposals under Subsection (f), the department may solicit input from entities qualified under Subsection (e) or any other person. The department may also solicit input regarding alternative technical concepts after issuing a request under Subsection (f).

(h) The department shall rank each proposal based on the criteria described in the request for proposals and select the private entity whose proposal offers the apparent best value to the department.

(i) The department may enter into discussions with the private entity whose proposal offers the apparent best value. The discussions shall be limited to:

(1) incorporation of aspects of other proposals for the purpose of achieving the overall best value for the department;

(2) clarifications and minor adjustments in scheduling, cash flow, and similar items; and

(3) matters that have arisen since the submission of the proposal.

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

(k) The department may withdraw a request for competing proposals and qualifications or a request for detailed proposals at any time. The department may then publish a new request for competing proposals and qualifications.

(l) The department may require that an unsolicited proposal be accompanied by a nonrefundable fee sufficient to cover all or part of its cost to review the proposal.

(m) The department may pay an unsuccessful private entity that submits a response to a request for detailed proposals under Subsection (f) a stipulated amount of the final contract price for any costs incurred in preparing that proposal. The stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions. The use by the department of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the department and does not confer liability on the recipient of the stipulated amount under this section. After payment of the stipulated amount:

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

(2) the work product contained in the proposal becomes the property of the department.

(n) The department may prescribe the general form of a comprehensive development agreement and may include any matter the department considers advantageous to the department. The department and the private entity shall finalize the specific terms of a comprehensive development agreement.

(o) Subchapter A, Chapter 223, and Chapter 2254, Government Code, do not apply to a comprehensive development agreement entered into under Section 361.302.

Sec. 361.3023. CONFIDENTIALITY OF INFORMATION RELATING TO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) To encourage private entities to submit proposals under Section 361.3022, the following information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project is entered into:

(1) all or part of a proposal that is submitted by a private entity for a comprehensive development agreement, except information provided under Section 361.3022(b)(1) and (2);

(2) supplemental information or material submitted by a private entity in connection with a proposal for a comprehensive development agreement; and

(3) information created or collected by the department or its agent during consideration of a proposal for a comprehensive development agreement.

(b) After the department completes its final ranking of proposals under Section 361.3022(h), the final rankings of each proposal under each of the published criteria are not confidential.

Sec. 361.3024. PERFORMANCE AND PAYMENT SECURITY. (a) Notwithstanding Section 223.006 and the requirements of Subchapter B, Chapter 2253, Government Code, the department shall require a private entity entering into a comprehensive development agreement under Section 361.302 to provide a performance and payment bond or an alternative form of security in an amount sufficient to:

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

(2) protect:
(A) the department; and
(B) payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

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

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

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

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

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

(f) In addition to performance and payment bonds, the department may require the following alternate forms of security:

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

(2) a United States bond or note;

(3) an irrevocable bank letter of credit; or

(4) any other form of security determined suitable by the department.

(g) The department by rule shall prescribe requirements for alternate forms of security provided under this section.

SECTION __.59. Section 361.303, Transportation Code, is amended to read as follows:

Sec. 361.303. OWNERSHIP OF TURNPIKE PROJECT. (a) A turnpike project that is the subject of a comprehensive development agreement with a private entity, including the facilities acquired or constructed on the project, is public property and belongs to the department [~~authority~~].

(b) Notwithstanding Subsection (a), the department [~~authority~~] may enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a turnpike project, including supplemental facilities. At the termination of the agreement, the turnpike project, including the facilities, is to be in a state of proper maintenance as determined by the

department [~~authority~~] and shall be returned to the department [~~authority~~] in satisfactory condition at no further cost.

SECTION __.60. Section 361.304, Transportation Code, is amended to read as follows:

Sec. 361.304. LIABILITY FOR PRIVATE OBLIGATIONS. The department [~~authority~~] may not incur a financial obligation for a private entity that constructs, maintains, or operates a turnpike project. The state [~~, the authority,~~] or a political subdivision of the state is not liable for any financial or other obligations of a turnpike project solely because a private entity constructs, finances, or operates any part of the project.

SECTION __.61. Section 361.305, Transportation Code, is amended to read as follows:

Sec. 361.305. TERMS OF PRIVATE PARTICIPATION. (a) The department [~~authority~~] shall negotiate the terms of private participation in a turnpike project, including:

(1) methods to determine the applicable cost, profit, and project distribution between the private equity investors and the department [~~authority~~];

(2) reasonable methods to determine and classify toll rates;

(3) acceptable safety and policing standards; and

(4) other applicable professional, consulting, construction, operation, and maintenance standards, expenses, and costs.

(b) A comprehensive development agreement entered into under Section 361.302 must include a provision authorizing the department to purchase, under terms and conditions agreed to by the parties, the interest of a private equity investor in a turnpike agreement.

(c) The department may only enter into a comprehensive development agreement under Section 361.302 with a private equity investor if the project is identified in the department's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan.

SECTION __.62. Section 361.306, Transportation Code, is amended to read as follows:

Sec. 361.306. RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATING PROCESS. (a) The commission [~~authority~~] shall adopt rules, procedures, and guidelines governing selection and negotiations to promote fairness, obtain private participants in turnpike projects, and promote confidence among those participants. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts [~~and may authorize the authority to impose a fee for reviewing proposals for private involvement in a turnpike project~~].

(b) The department [~~authority~~] shall have up-to-date procedures for participation in negotiations on turnpike projects.

(c) The department [~~authority~~] has exclusive judgment to determine the terms of an agreement.

(d) The department [~~authority~~] shall include the attorney general or the attorney general's designated representative in a negotiation with a private participant.

SECTION __.63. Section 361.307, Transportation Code, is amended to read as follows:

Sec. 361.307. AGREEMENTS WITH PRIVATE ENTITIES AND OTHER GOVERNMENTAL AGENCIES. (a) The department [~~authority~~] and a private entity jointly may enter into an agreement with another governmental agency or entity, including a federal agency, an agency of this or another state, including the United Mexican States or a state of the United Mexican States, or a political subdivision, to independently or jointly provide services, to study the feasibility of a turnpike project, or to finance, construct, operate, and maintain a turnpike project.

(b) The department may not enter into an agreement with the United Mexican States or a state of the United Mexican States without the approval of the governor.

SECTION __.64. Section 361.331(a), Transportation Code, is amended to read as follows:

(a) After the department [~~authority~~] conducts a public hearing in each affected county, [~~and with the approval of~~] the commission[~~, the authority~~] may designate as a pooled turnpike project two or more turnpike projects that are wholly or partly located in the territory of:

- (1) a metropolitan planning organization; or
- (2) two adjacent districts of the department.

SECTION __.65. Section 361.333, Transportation Code, is amended to read as follows:

Sec. 361.333. ISSUANCE OF TURNPIKE REVENUE BONDS; PLEDGE OF PROJECT REVENUE. Subject to this chapter, the commission [~~authority~~] may:

- (1) provide by order [~~resolution~~] for the issuance of turnpike revenue bonds to pay all or part of the cost of a pooled turnpike project; and

- (2) pledge all or part of the revenue of the project.

SECTION __.66. Sections 361.334(a) and (e), Transportation Code, are amended to read as follows:

(a) The commission [~~authority~~] by order [~~resolution~~] may issue turnpike revenue refunding bonds to:

- (1) refund any outstanding bonds issued under this chapter for a pooled turnpike project, including any redemption premium on the bonds and any interest accrued as of the date of redemption of the bonds; and

- (2) construct an improvement, extension, or enlargement to a pooled turnpike project.

(e) The commission [~~authority~~] may:

- (1) issue refunding bonds in exchange for outstanding bonds; or

- (2) sell refunding bonds and use the proceeds to redeem outstanding bonds.

SECTION __.67. Section 361.335, Transportation Code, is amended to read as follows:

Sec. 361.335. ISSUANCE OF BONDS AND PLEDGE OF TURNPIKE PROJECT REVENUE WITHOUT REGARD TO WHETHER BONDS ARE REFUNDED. Without regard to whether bonds are refunded, the commission [~~authority~~] by order [~~resolution~~] may:

- (1) issue bonds, of parity or otherwise, to:

- (A) pay all or part of the cost of a pooled turnpike project; or

- (B) construct an improvement, extension, or enlargement to a pooled turnpike project; and

(2) pledge all or part of the revenue of the pooled turnpike project to the payment of the bonds.

SECTION __.68. Sections 362.003(b) and (c), Transportation Code, are amended to read as follows:

(b) This chapter is cumulative of all laws affecting the commission, the department, and the local governmental entities, except that in the event any other law conflicts with this chapter, the provisions of this chapter prevail. Chapters 1201 and 1371, Government Code, and Subchapters A, B, and C, Chapter 1207, Government Code, apply to bonds issued by the commission under this chapter.

(c) The department may [~~This chapter is cumulative of all laws affecting the authority, and the authority is authorized to~~ enter into all agreements necessary or convenient to effectuate the purposes of this chapter. [~~Particularly, but not by way of limitation, the provisions of Chapters 1201 and 1371, Government Code, and Subchapters A-C, Chapter 1207, Government Code, and Chapter 361 are applicable to the bonds issued by the authority under this chapter.~~]

SECTION __.69. Sections 362.007(a) and (b), Transportation Code, are amended to read as follows:

(a) Under authority of Section 52, Article III, Texas Constitution, a local governmental entity other than a nonprofit corporation may, upon the required vote of the qualified voters, in addition to all other debts, issue bonds or enter into and make payments under agreements with the department [~~authority~~], not to exceed 40 years in term, in any amount not to exceed one-fourth of the assessed valuation of real property within the local governmental entity, except that the total indebtedness of any municipality shall never exceed the limits imposed by other provisions of the constitution, and levy and collect taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, for the purposes of construction, maintenance, and operation of turnpike projects of the department [~~authority~~], or in aid thereof.

(b) In addition to Subsection (a), a local governmental entity may, within any applicable constitutional limitations,

agree with the department [~~authority~~] to issue bonds or enter into and make payments under an agreement to construct, maintain, or operate any portion of a turnpike project of the department [~~authority~~].

SECTION __.70. Section 362.008, Transportation Code, is amended to read as follows:

Sec. 362.008. ADDITIONAL AGREEMENTS OF DEPARTMENT [~~AUTHORITY~~]. The department [~~authority~~] may enter into any agreement necessary or convenient to achieve the purposes of this subchapter.

SECTION __.71. The heading to Section 545.354, Transportation Code, is amended to read as follows:

Sec. 545.354. AUTHORITY OF [~~TEXAS TURNPIKE AUTHORITY AND~~] REGIONAL TOLLWAY AUTHORITIES TO ALTER SPEED LIMITS ON TURNPIKE PROJECTS.

SECTION __.72. Section 545.354(a)(1), Transportation Code, is amended to read as follows:

(1) In this section, "authority" means [~~the Texas Turnpike Authority or~~] a regional tollway authority governed by Chapter 366.

SECTION __.73. Section 621.102(a), Transportation Code, is amended to read as follows:

(a) The [~~Except as provided by Subsection (h), the~~] commission may set the maximum single axle weight, tandem axle weight, or gross weight of a vehicle, or maximum single axle weight, tandem axle weight, or gross weight of a combination of vehicles and loads, that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge or culvert along the road. A maximum weight set under this subsection may not exceed the maximum set by statute for that weight.

SECTION __.74. Sections 222.103(i) and (j), 361.005, 361.043, 361.046, 361.0485, 361.049, 361.051, 361.052, 361.053, 361.055, 361.102, 361.181, 361.182, 361.184, 361.231(b), 361.237, 361.308, 362.001(1), 362.052, 362.053, and 621.102(h), Transportation Code, are repealed.

SECTION __.75. This article takes effect immediately if this Act 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 article takes effect September 1, 2003.