

By: Krusee

H.B. No. 2459

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of a regional mobility authority,  
including the power of eminent domain and the power to issue bonds;  
imposing criminal penalties.

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

SECTION 1. Subtitle G, Title 6, Transportation Code, is  
amended by adding Chapter 370 to read as follows:

CHAPTER 370. REGIONAL MOBILITY AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 370.001. SHORT TITLE. This chapter may be cited as the  
Regional Mobility Authority Act.

Sec. 370.002. PURPOSES; LIBERAL CONSTRUCTION. (a) The  
purposes of this chapter are:

(1) to expand and improve transportation facilities  
and systems in this state;

(2) to create regional mobility authorities to secure  
and acquire rights-of-way for urgently needed transportation  
systems and to plan, design, construct, operate, expand, extend,  
and modify those systems; and

(3) to reduce burdens and demands on the limited money  
available to the commission and to increase the effectiveness and  
efficiency of the commission.

(b) This chapter shall be liberally construed to effect its  
purposes.

1           Sec. 370.003. DEFINITIONS. In this chapter:

2           (1) "Authority" means a regional mobility authority  
3 organized under this chapter or under Section 361.003, as that  
4 section existed before September 1, 2003.

5           (2) "Board" means the board of directors of an  
6 authority.

7           (3) "Bond" includes a bond, certificate, note, or  
8 other obligation of an authority authorized by this chapter,  
9 another statute, or the Texas Constitution.

10           (4) "Bond proceeding" includes a bond resolution and a  
11 bond indenture authorized by the bond resolution, a credit  
12 agreement, loan agreement, or other agreement entered into in  
13 connection with the bond or the payments to be made under the  
14 agreement, and any other agreement between an authority and another  
15 person providing security for the payment of a bond.

16           (5) "Bond resolution" means an order or resolution of  
17 a board authorizing the issuance of a bond.

18           (6) "Bondholder" means the owner of a bond and  
19 includes a trustee acting on behalf of an owner of a bond under the  
20 terms of a bond indenture.

21           (7) "Governmental entity" means a political  
22 subdivision of the state, including a municipality or a county, a  
23 political subdivision of a county, a group of adjoining counties, a  
24 district organized or operating under Section 52, Article III, or  
25 Section 59, Article XVI, Texas Constitution, the department, a rail  
26 district, a transit authority, a nonprofit corporation, including a  
27 transportation corporation, that is created under Chapter 431, or

1 any other public entity or instrumentality.

2 (8) "Highway" means a road, highway, farm-to-market  
3 road, or street under the supervision of the state or a political  
4 subdivision of this state.

5 (9) "Revenue" means fares, fees, rents, tolls, and  
6 other money received by an authority from the ownership or  
7 operation of a transportation project.

8 (10) "Surplus Revenue" means revenue that exceeds:

9 (A) an authority's debt service requirements for  
10 a transportation project;

11 (B) coverage requirements of a bond indenture for  
12 a transportation project;

13 (C) costs of operation and maintenance for a  
14 transportation project;

15 (D) cost of repair, expansion, or improvement of  
16 a transportation project;

17 (E) funds allocated for feasibility studies; and

18 (F) necessary reserves as determined by the  
19 authority.

20 (11) "System" means a transportation project or a  
21 combination of transportation projects designated as a system by  
22 the board under Section 370.034.

23 (12) "Transportation project" means:

24 (A) a turnpike project;

25 (B) a system;

26 (C) a passenger or freight rail facility,

27 including:

- 1                   (i) tracks;  
2                   (ii) a rail line;  
3                   (iii) switching, signaling, or other  
4 operating equipment;  
5                   (iv) a depot;  
6                   (v) a locomotive;  
7                   (vi) rolling stock;  
8                   (vii) a maintenance facility; and  
9                   (viii) other real and personal property  
10 associated with a rail operation;  
11                   (D) a roadway with a functional classification  
12 greater than a local road or rural minor collector;  
13                   (E) border crossing inspection stations;  
14                   (F) an airport;  
15                   (G) a public transit facility, including:  
16                         (i) a mass transit facility; and  
17                         (ii) a pedestrian or bicycle facility;  
18                   (H) an air quality improvement initiative;  
19                   (I) public utility infrastructure located, or to  
20 be located, within or adjacent to the right-of-way for a  
21 transportation project, including:  
22                         (i) a water, wastewater, natural gas, or  
23 petroleum pipeline or facility;  
24                         (ii) an electric transmission or  
25 distribution facility; and  
26                         (iii) telecommunications infrastructure,  
27 including fiber optic cable, conduit, and wireless communications

1 facilities; and

2 (J) if applicable, projects and programs listed  
3 in the most recently approved State Implementation Plan for the  
4 area covered by the authority.

5 (13) "Turnpike project" means a highway of any number  
6 of lanes, with or without grade separations, owned or operated by an  
7 authority under this chapter and any improvement, extension, or  
8 expansion to that highway, including:

9 (A) an improvement to relieve traffic congestion  
10 or promote safety;

11 (B) a bridge, tunnel, overpass, underpass,  
12 interchange, service road, ramp, entrance plaza, approach, or  
13 tollhouse;

14 (C) an administration, storage, or other  
15 building the authority considers necessary for the operation of a  
16 turnpike project;

17 (D) a parking area or structure, rest stop, park,  
18 and other improvement or amenity the authority considers necessary,  
19 useful, or beneficial for the operation of a turnpike project; and

20 (E) a property right, easement, or interest the  
21 authority acquires to construct or operate the turnpike project.

22 Sec. 370.004. CONSTRUCTION COSTS DEFINED. (a) The cost of  
23 acquisition, construction, improvement, extension, or expansion of  
24 a transportation project under this chapter includes the cost of:

25 (1) the actual acquisition, construction,  
26 improvement, extension, or expansion of the transportation  
27 project;

1           (2) the acquisition of real property, rights-of-way,  
2 property rights, easements, and other interests in real property;

3           (3) machinery and equipment;

4           (4) interest payable before, during, and for not more  
5 than three years after acquisition, construction, improvement,  
6 extension, or expansion as provided in the bond proceedings;

7           (5) traffic estimates, revenue estimates, engineering  
8 and legal services, plans, specifications, surveys, appraisals,  
9 construction cost estimates, and other expenses necessary or  
10 incidental to determining the feasibility of the acquisition,  
11 construction, improvement, extension, or expansion;

12           (6) necessary or incidental administrative, legal,  
13 and other expenses;

14           (7) compliance with laws, regulations, and  
15 administrative rulings, including any costs associated with  
16 necessary environmental mitigation measures;

17           (8) financing; and

18           (9) expenses related to the initial operation of the  
19 transportation project.

20           (b) Costs attributable to a transportation project and  
21 incurred before the issuance of bonds to finance the transportation  
22 project may be reimbursed from the proceeds of sale of the bonds.

23           [Sections 370.005-370.030 reserved for expansion]

24 SUBCHAPTER B. CREATION AND POWERS OF REGIONAL MOBILITY AUTHORITIES

25           Sec. 370.031. CREATION OF A REGIONAL MOBILITY AUTHORITY.

26 The commission by order may authorize the creation of a regional  
27 mobility authority for the purposes of constructing, maintaining,

1 and operating transportation projects in a region of this state. An  
2 authority is governed in accordance with Subchapter F.

3 Sec. 370.032. NATURE OF REGIONAL MOBILITY AUTHORITY. (a)  
4 An authority is a body politic and corporate and a political  
5 subdivision of this state.

6 (b) An authority is a governmental unit as that term is  
7 defined in Section 101.001, Civil Practice and Remedies Code.

8 (c) The exercise by an authority of the powers conferred by  
9 this chapter in the acquisition, design, financing, construction,  
10 operation, and maintenance of a transportation project or system  
11 is:

12 (1) in all respects for the benefit of the people of  
13 the counties in which an authority operates and of the people of  
14 this state, for the increase of their commerce and prosperity, and  
15 for the improvement of their health, living conditions, and public  
16 safety; and

17 (2) an essential governmental function of the state.

18 (d) The operations of an authority are governmental, not  
19 proprietary, functions.

20 Sec. 370.033. GENERAL POWERS. (a) An authority, through  
21 its board and without state approval, supervision, or regulation,  
22 may:

23 (1) adopt rules for the regulation of its affairs and  
24 the conduct of its business;

25 (2) adopt an official seal;

26 (3) study, evaluate, design, acquire, construct,  
27 maintain, repair, and operate transportation projects,

1 individually or as one or more systems;

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

5 (5) enter into contracts or operating agreements with  
6 a similar authority, another governmental entity, or an agency of  
7 the United States, a state of the United States, the United Mexican  
8 States, or a state of the United Mexican States;

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

11 (7) cooperate and work directly with property owners  
12 and governmental entities and officials to support an activity  
13 required to promote or develop a transportation project;

14 (8) employ and set the compensation and benefits of  
15 administrators, consulting engineers, attorneys, accountants,  
16 construction and financial experts, superintendents, managers,  
17 full-time and part-time employees, agents, consultants, and other  
18 persons as the authority considers necessary or useful;

19 (9) notwithstanding Sections 221.003 and 222.031,  
20 apply for, directly or indirectly receive and spend loans, gifts,  
21 grants, and other contributions for any purpose of this chapter,  
22 including the construction of a transportation project, and receive  
23 and spend contributions of money, property, labor, or other things  
24 of value from any source, including the United States, a state of  
25 the United States, the United Mexican States, a state of the United  
26 Mexican States, the commission, the department, a subdivision of  
27 the state, or a governmental entity or private entity, to be used



1 for the purposes for which the grants, loans, or contributions are  
2 made, and enter into any agreement necessary for the grants, loans,  
3 or contributions;

4 (10) install, construct, maintain, repair, renew,  
5 relocate, and remove public utility facilities in, on, along, over,  
6 or under a transportation project;

7 (11) organize a corporation under Chapter 431 for the  
8 promotion and development of transportation projects;

9 (12) adopt and enforce rules not inconsistent with  
10 this chapter for the use of any transportation project, including  
11 tolls, fares, or other user fees, speed and weight limits, and  
12 traffic and other public safety rules;

13 (13) enter into leases, operating agreements, service  
14 agreements, licenses, franchises, and similar agreements with a  
15 public or private party governing the party's use of all or any  
16 portion of a transportation project and the rights and obligations  
17 of the authority with respect to a transportation project;

18 (14) borrow money from or enter into a loan agreement  
19 or other arrangement with the state infrastructure bank; and

20 (15) do all things necessary or appropriate to carry  
21 out the powers and duties expressly granted or imposed by this  
22 chapter.

23 (b) Property that is a part of a transportation project is  
24 not subject to condemnation or the power of eminent domain by any  
25 person, including a governmental entity.

26 (c) An authority may, if requested by the commission,  
27 perform any function not specified by this chapter to promote or

1 develop a transportation project in this state.

2 (d) An authority may sue and be sued and plead and be  
3 impleaded in its own name.

4 (e) An authority may rent, lease, franchise, license, or  
5 make portions of its properties available for use by others in  
6 furtherance of its powers under this chapter by increasing the  
7 feasibility or the revenue of a transportation project.

8 (f) An authority and a governmental entity may enter into a  
9 contract, agreement, interlocal agreement, or other similar  
10 arrangement under which the authority may plan, design, construct,  
11 or operate a transportation project on behalf of the governmental  
12 entity. An authority may enter into a contract with the department  
13 under which the authority will plan, develop, operate, or maintain  
14 a transportation project on behalf of the department.

15 (g) Payments to be made to an authority under a contract  
16 described by Subsection (f) constitute operating expenses of the  
17 transportation project or system that is to be operated under the  
18 contract. The contract may extend for the number of years as agreed  
19 to by the parties.

20 (h) An authority shall adopt a written drug and alcohol  
21 policy restricting the use of controlled substances by officers and  
22 employees of the authority, prohibiting the consumption of  
23 alcoholic beverages by employees while on duty, and prohibiting  
24 employees from working for the authority while under the influence  
25 of a controlled substance or alcohol. An authority may adopt  
26 policies regarding the testing of employees suspected of being in  
27 violation of the authority's drug and alcohol policy. The policy

1 shall provide that, unless required by court order or permitted by  
2 the person who is the subject of the testing, the authority shall  
3 keep the results of the test confidential.

4 (i) An authority shall adopt written procedures governing  
5 its procurement of goods and services that are consistent with  
6 general laws applicable to the authority.

7 Sec. 370.034. ESTABLISHMENT OF TRANSPORTATION SYSTEMS. (a)  
8 If an authority determines that the traffic needs of the counties in  
9 which it operates and the traffic needs of the surrounding region  
10 could be most efficiently and economically met by jointly operating  
11 two or more transportation projects as one operational and  
12 financial enterprise, it may create a system made up of those  
13 transportation projects. An authority may create more than one  
14 system and may combine two or more systems into one system. An  
15 authority may finance, acquire, construct, and operate additional  
16 transportation projects as additions to or expansions of a system  
17 if the authority determines that the transportation project could  
18 most efficiently and economically be acquired or constructed if it  
19 were a part of the system and that the addition will benefit the  
20 system.

21 (b) The revenue of a system shall be accounted for  
22 separately and may not be commingled with the revenue of a  
23 transportation project that is not a part of the system or with the  
24 revenue of another system.

25 Sec. 370.035. CONVERSION AND TRANSFER OF STATE HIGHWAY  
26 SYSTEM PROJECTS. (a) The commission by order may convert a segment  
27 of the free state highway system to a turnpike project and transfer

1 that segment to an authority, or may transfer an existing turnpike  
2 project that is part of the state highway system, whether  
3 previously tolled or not, to an authority if:

4 (1) the commission determines that the proposed  
5 transfer is an integral part of the region's overall plan to improve  
6 mobility in the region; and

7 (2) the authority agrees to assume all liability and  
8 responsibility for the maintenance and operation of the turnpike  
9 project on its transfer.

10 (b) An authority shall reimburse the commission for the cost  
11 of a transferred turnpike project, unless the commission determines  
12 that the transfer will result in substantial net benefits to the  
13 state, the department, and the traveling public that equal or  
14 exceed that cost. The cost includes the total amount expended by  
15 the department for the original construction of the turnpike  
16 project, including all costs associated with the preliminary  
17 engineering and design engineering for plans, specifications, and  
18 estimates, the acquisition of necessary rights-of-way, and actual  
19 construction of the turnpike project and all necessary appurtenant  
20 facilities. Costs anticipated to be expended to expand, improve,  
21 maintain, operate, or extend the turnpike project shall be deducted  
22 from the costs to be reimbursed to the commission.

23 (c) The commission may, at the time of a transfer, remove  
24 the turnpike project from the state highway system. After a  
25 transfer the commission has no liability, responsibility, or duty  
26 for the maintenance or operation of the turnpike project.

27 (d) Before transferring a turnpike project that is part of

1 the state highway system under this section, the commission shall  
2 conduct a public hearing to receive comments from interested  
3 persons concerning the proposed transfer. Notice of the hearing  
4 must be published in the Texas Register, one or more newspapers of  
5 general circulation in the counties in which the turnpike project  
6 is located, and a newspaper, if any, published in the counties of  
7 the applicable authority.

8 (e) The commission shall adopt rules implementing this  
9 section. The rules shall include criteria and guidelines for the  
10 approval of a transfer of a turnpike project.

11 (f) An authority shall adopt rules providing criteria and  
12 guidelines for approving the acceptance of a turnpike project under  
13 this section.

14 (g) The commission may not transfer the Queen Isabella  
15 Causeway in Cameron County to an authority under this section.

16 [Sections 370.036-370.070 reserved for expansion]

17 SUBCHAPTER C. FEASIBILITY OF REGIONAL TRANSPORTATION PROJECTS

18 Sec. 370.071. EXPENDITURES FOR FEASIBILITY STUDIES. (a)  
19 An authority may pay the expenses of studying the cost and  
20 feasibility and any other expenses relating to the preparation and  
21 issuance of bonds for a proposed transportation project by:

22 (1) using legally available revenue derived from an  
23 existing transportation project;

24 (2) borrowing money and issuing bonds or entering into  
25 a loan agreement payable out of legally available revenue  
26 anticipated to be derived from the operation of an existing  
27 transportation project; or

1           (3) pledging to the payment of the bonds or a loan  
2 agreement legally available revenue anticipated to be derived from  
3 the operation of transportation projects or revenue legally  
4 available to the authority from another source.

5           (b) Money spent under this section for a proposed  
6 transportation project must be reimbursed to the transportation  
7 project from which the money was spent from the proceeds of bonds  
8 issued for the acquisition and construction of the proposed  
9 transportation project.

10           (c) The use of any money of a transportation project to  
11 study the feasibility of another transportation project or used to  
12 repay any money used for that purpose does not constitute an  
13 operating expense of the transportation project producing the  
14 revenue and may be paid only from the surplus money of the  
15 transportation project as determined by the authority.

16           Sec. 370.072. FEASIBILITY STUDY FUND. (a) An authority may  
17 maintain a feasibility study fund. The fund is a revolving fund  
18 held in trust by a banking institution chosen by the authority and  
19 shall be kept separate from the money for a transportation project.

20           (b) An authority may transfer an amount from a surplus fund  
21 established for a transportation project to the authority's  
22 feasibility study fund if the remainder of the surplus fund after  
23 the transfer is not less than any minimum amount required by the  
24 bond proceedings to be retained for that transportation project.

25           (c) Money in the feasibility study fund may be used only to  
26 pay the expenses of studying the cost and feasibility and any other  
27 expenses relating to:

1           (1) the preparation and issuance of bonds for the  
2 acquisition and construction of a proposed transportation project;

3           (2) the financing of the improvement, extension, or  
4 expansion of an existing transportation project; and

5           (3) private participation, as authorized by law, in  
6 the financing of a proposed transportation project, the refinancing  
7 of an existing transportation project or system, or the  
8 improvement, extension, or expansion of a transportation project.

9           (d) Money spent under Subsection (c) for a proposed  
10 transportation project must be reimbursed from the proceeds of  
11 revenue bonds issued for, or other proceeds that may be used for,  
12 the acquisition, construction, improvement, extension, expansion,  
13 or operation of the transportation project.

14           (e) For a purpose described by Subsection (c), an authority  
15 may borrow money and issue promissory notes or other  
16 interest-bearing evidences of indebtedness payable out of its  
17 feasibility study fund, pledging money in the fund or to be placed  
18 in the fund.

19           Sec. 370.073. FEASIBILITY STUDY BY MUNICIPALITY, COUNTY,  
20 OTHER GOVERNMENTAL ENTITY, OR PRIVATE GROUP. (a) One or more  
21 municipalities, counties, or other governmental entities, a  
22 combination of municipalities, counties, and other governmental  
23 entities, or a private group or combination of individuals in this  
24 state may pay all or part of the expenses of studying the cost and  
25 feasibility and any other expenses relating to:

26           (1) the preparation and issuance of bonds for the  
27 acquisition or construction of a proposed transportation project by

1 an authority;

2 (2) the improvement, extension, or expansion of an  
3 existing transportation project of the authority; or

4 (3) the use of private participation under applicable  
5 law in connection with the acquisition, construction, improvement,  
6 expansion, extension, maintenance, repair, or operation of a  
7 transportation project by an authority.

8 (b) Money spent under Subsection (a) for a proposed  
9 transportation project is reimbursable without interest and with  
10 the consent of the authority to the person paying the expenses  
11 described in Subsection (a) out of the proceeds from revenue bonds  
12 issued for or other proceeds that may be used for the acquisition,  
13 construction, improvement, extension, expansion, maintenance,  
14 repair, or operation of the transportation project.

15 [Sections 370.074-370.110 reserved for expansion]

16 SUBCHAPTER D. TRANSPORTATION PROJECT FINANCING

17 Sec. 370.111. TRANSPORTATION REVENUE BONDS. (a) An  
18 authority, by bond resolution, may authorize the issuance of bonds  
19 to pay all or part of the cost of a transportation project, to  
20 refund any bonds previously issued for the transportation project,  
21 or to pay for all or part of the cost of a transportation project  
22 that will become a part of another system.

23 (b) As determined in the bond resolution, the bonds of each  
24 issue shall:

25 (1) be dated;

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



1           (3) mature at the time or times, not exceeding 40 years  
2 from their date or dates; and

3           (4) be made redeemable before maturity at the price or  
4 prices and under the terms provided by the bond resolution.

5           (c) An authority may sell the bonds at public or private  
6 sale in the manner and for the price it determines to be in the best  
7 interest of the authority.

8           (d) The proceeds of each bond issue shall be disbursed in  
9 the manner and under any restrictions provided in the bond  
10 resolution.

11           (e) Additional bonds may be issued in the same manner to pay  
12 the costs of a transportation project. Unless otherwise provided  
13 in the bond resolution, the additional bonds shall be on a parity,  
14 without preference or priority, with bonds previously issued and  
15 payable from the revenue of the transportation project. In  
16 addition, an authority may issue bonds for a transportation project  
17 secured by a lien on the revenue of the transportation project  
18 subordinate to the lien on the revenue securing other bonds issued  
19 for the transportation project.

20           (f) If the proceeds of a bond issue exceed the cost of the  
21 transportation project for which the bonds were issued, the surplus  
22 shall be segregated from the other money of the authority and used  
23 only for the purposes specified in the bond resolution.

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

27           (h) Bonds issued under this chapter and income from the

1 bonds, including any profit made on the sale or transfer of the  
2 bonds, are exempt from taxation in this state.

3 (i) Bonds issued under this chapter shall be considered  
4 authorized investments under Chapter 2256, Government Code, for  
5 this state, any governmental entity, and any other public entity  
6 proposing to invest in the bonds.

7 Sec. 370.112. INTERIM BONDS. (a) An authority may, before  
8 issuing definitive bonds, issue interim bonds, with or without  
9 coupons, exchangeable for definitive bonds.

10 (b) The interim bonds may be authorized and issued in  
11 accordance with this chapter, without regard to a requirement,  
12 restriction, or procedural provision in any other law.

13 (c) A bond resolution authorizing interim bonds may provide  
14 that the interim bonds recite that the bonds are issued under this  
15 chapter. The recital is conclusive evidence of the validity and the  
16 regularity of the bonds' issuance.

17 Sec. 370.113. PAYMENT OF BONDS; STATE AND COUNTY CREDIT.

18 (a) The principal of, interest on, and any redemption premium on  
19 bonds issued by an authority are payable solely from:

20 (1) the revenue of the transportation project for  
21 which the bonds are issued;

22 (2) payments made under an agreement with the  
23 commission, the department, or other governmental entity as  
24 provided by Subchapter G;

25 (3) money derived from any other source available to  
26 the authority, other than money derived from a transportation  
27 project that is not part of the same system or money derived from a

1 different system, except to the extent that the surplus revenue of a  
2 transportation project or system has been pledged for that purpose;  
3 and

4 (4) amounts received under a credit agreement relating  
5 to the transportation project for which the bonds are issued.

6 (b) Bonds issued under this chapter do not constitute a debt  
7 of this state or of a governmental entity, or a pledge of the faith  
8 and credit of this state or of a governmental entity. Each bond  
9 must contain on its face a statement to the effect that the state,  
10 the authority, or any governmental entity is not obligated to pay  
11 the bond or the interest on the bond from a source other than the  
12 amount pledged to pay the bond and the interest on the bond, and  
13 neither the faith and credit and taxing power of this state or of  
14 any governmental entity are pledged to the payment of the principal  
15 of or interest on the bond. This subsection does not apply to a  
16 governmental entity that has entered into an agreement under  
17 Section 370.303.

18 (c) An authority may not incur a financial obligation that  
19 cannot be paid from revenue derived from owning or operating the  
20 authority's transportation projects or from other revenue provided  
21 by law.

22 Sec. 370.114. EFFECT OF LIEN. (a) A lien on or a pledge of  
23 revenue from a transportation project under this chapter or on a  
24 reserve, replacement, or other fund established in connection with  
25 a bond issued under this chapter:

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

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

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

5           (4) is enforceable against any person having a claim,  
6 in tort, contract, or other remedy, against the applicable  
7 authority without regard to whether the person has notice of the  
8 lien or pledge.

9           (b) A bond resolution is not required to be recorded except  
10 in the regular records of the authority.

11           Sec. 370.115. BOND INDENTURE. (a) Bonds issued by an  
12 authority under this chapter may be secured by a bond indenture  
13 between the authority and a corporate trustee that is a trust  
14 company or a bank that has the powers of a trust company.

15           (b) A bond indenture may pledge or assign the revenues to be  
16 received but may not convey or mortgage any part of a transportation  
17 project.

18           (c) A bond indenture may:

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

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

24           (3) contain provisions the authority determines  
25 reasonable and proper for the security of the bondholders,  
26 including covenants:

27           (A) establishing the authority's duties relating

1 to:

2 (i) the acquisition of property;

3 (ii) the construction, maintenance,  
4 operation, and repair of and insurance for a transportation  
5 project; and

6 (iii) custody, safeguarding, and  
7 application of money;

8 (B) prescribing events that constitute default;

9 (C) prescribing terms on which any or all of the  
10 bonds become or may be declared due before maturity; and

11 (D) relating to the rights, powers, liabilities,  
12 or duties that arise on the breach of a duty of the authority.

13 (d) An expense incurred in carrying out a trust agreement  
14 may be treated as part of the cost of operating the transportation  
15 project.

16 (e) In addition to all other rights by mandamus or other  
17 court proceeding, an owner or trustee of a bond issued under this  
18 chapter may enforce the owner's rights against an issuing  
19 authority, the authority's employees, the authority's board, or an  
20 agent or employee of the authority's board and is entitled to:

21 (1) require the authority or the board to impose and  
22 collect tolls, fares, fees, charges, and other revenue sufficient  
23 to carry out any agreement contained in the bond proceedings; and

24 (2) apply for and obtain the appointment of a receiver  
25 for the transportation project or system.

26 Sec. 370.116. APPROVAL OF BONDS BY ATTORNEY GENERAL. (a)

27 An authority shall submit to the attorney general for examination

1 the record of proceedings relating to bonds authorized under this  
2 chapter. The record shall include the bond proceedings and any  
3 contract securing or providing revenue for the payment of the  
4 bonds.

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

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

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

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

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

21 Sec. 370.117. FURNISHING OF INDEMNIFYING BONDS OR PLEDGES  
22 OF SECURITIES. (a) A bank or trust company incorporated under the  
23 laws of this state that acts as depository of the proceeds of bonds  
24 or of revenue may furnish indemnifying bonds or pledge securities  
25 that an authority requires.

26 (b) Bonds of an authority may secure the deposit of public  
27 money of this state or a political subdivision of this state to the

1 extent of the lesser of the face value of the bonds or their market  
2 value.

3 Sec. 370.118. APPLICABILITY OF OTHER LAW; CONFLICTS. All  
4 laws affecting the issuance of bonds by local governmental  
5 entities, including Chapters 1201, 1202, 1204, and 1371, Government  
6 Code, apply to bonds issued under this chapter. To the extent of a  
7 conflict between those laws and this chapter, the provisions of  
8 this chapter prevail.

9 [Sections 370.119-370.160 reserved for expansion]

10 SUBCHAPTER E. ACQUISITION, CONSTRUCTION, AND OPERATION OF  
11 TRANSPORTATION PROJECTS

12 Sec. 370.161. TRANSPORTATION PROJECTS EXTENDING INTO OTHER  
13 COUNTIES. (a) An authority may acquire, construct, operate,  
14 maintain, expand, or extend a transportation project in:

15 (1) a county that is a part of the authority; and

16 (2) a county in which the authority operates or is  
17 constructing a transportation project, if the transportation  
18 project in the affected county is a continuation of the authority's  
19 transportation project extending from a county adjacent to the  
20 affected county.

21 (b) An authority, under an agreement with another  
22 governmental entity, may construct, operate, maintain, expand, or  
23 extend a transportation project in a county that is not part of the  
24 authority and is not owned by the authority.

25 Sec. 370.162. POWERS AND PROCEDURES OF AUTHORITY IN  
26 ACQUIRING PROPERTY. (a) An authority may construct or improve a  
27 transportation project on real property, including a right-of-way

1 acquired by the authority or provided to the authority for that  
2 purpose by the commission, a political subdivision of this state,  
3 or any other governmental entity.

4 (b) Except as provided by this chapter, an authority has the  
5 same powers and may use the same procedures as the commission in  
6 acquiring property.

7 Sec. 370.163. ACQUISITION OF PROPERTY. (a) An authority  
8 may acquire in the name of the authority public or private property  
9 it determines necessary or convenient for the construction,  
10 operation, maintenance, expansion, or extension of a  
11 transportation project or for otherwise carrying out this chapter.

12 (b) The property an authority may acquire under this  
13 subchapter includes all or any portion of, and rights in and to:

14 (1) public or private land, streets, alleys,  
15 rights-of-way, parks, playgrounds, and reservations;

16 (2) franchises;

17 (3) easements;

18 (4) licenses; and

19 (5) other interests in real and other property.

20 (c) An authority may acquire real property by any method,  
21 including purchase and condemnation. An authority may purchase  
22 public or private real property on the terms and at the price the  
23 authority and the property owner consider reasonable.

24 (d) Covenants, conditions, restrictions, or limitations  
25 affecting property acquired in any manner by the authority are not  
26 binding against the authority and do not impair the authority's  
27 ability to use the property for a purpose authorized by this



1 chapter. The beneficiaries of the covenants, conditions,  
2 restrictions, or limitations may not enjoin the authority from  
3 using the property for a purpose authorized under this chapter, but  
4 this section does not affect the right of a person to seek  
5 compensation for damages to the person's property under Section 17,  
6 Article I, Texas Constitution.

7 (e) Subsection (d) does not affect the obligation of the  
8 authority under other state law to compensate this state for  
9 acquiring or using property owned by or on behalf of the state.

10 Sec. 370.164. RIGHT OF ENTRY. (a) To acquire property  
11 necessary or useful in connection with a transportation project, an  
12 authority may enter any real property, water, or premises to make a  
13 survey, geotechnical evaluation, sounding, or examination.

14 (b) An entry under Subsection (a) is not:

15 (1) a trespass; or

16 (2) an entry under a pending condemnation proceeding.

17 (c) The authority shall make reimbursements for any actual  
18 damages to real property, water, or premises that result from an  
19 activity described by Subsection (a).

20 Sec. 370.165. CONDEMNATION OF REAL PROPERTY. (a) Subject  
21 to Subsection (c), an authority may acquire public or private real  
22 property in the name of the authority by the exercise of the power  
23 of condemnation under the laws applicable to the exercise of that  
24 power on property for public use if:

25 (1) the authority and the property owner cannot agree  
26 on a reasonable price for the property; or

27 (2) the property owner is legally incapacitated,

1 absent, unknown, or unable to convey title.

2 (b) An authority may condemn real property that the  
3 authority determines is:

4 (1) necessary or appropriate to construct or to  
5 efficiently operate a transportation project;

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

11 (3) necessary for access, approach, or interchange  
12 roads;

13 (4) necessary to provide proper drainage or ground  
14 slope for a transportation project; or

15 (5) otherwise necessary to implement this chapter.

16 (c) An authority may construct a supplemental facility only  
17 on real property the authority purchases.

18 (d) An authority's acquisition of any property of the  
19 commission under this section or any other section of this chapter  
20 or an authority's relocation, rerouting, disruption, or alteration  
21 of any facility of the commission is considered a conversion of a  
22 state highway under Section 370.035 and is subject to each  
23 requirement or approval of a conversion under that section.

24 Sec. 370.166. DECLARATION OF TAKING. (a) An authority may  
25 file a declaration of taking with the clerk of the court:

26 (1) in which the authority files a condemnation  
27 petition under Chapter 21, Property Code; or

1           (2) to which the case is assigned.

2           (b) An authority may file the declaration of taking  
3 concurrently with or subsequent to the filing of the condemnation  
4 petition but may not file the declaration after the special  
5 commissioners have made an award in the condemnation proceeding.

6           (c) The declaration of taking must include:

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

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

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

13           (B) the street address of the property; and

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

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

17           (4) the name and address of each property owner that  
18 the authority can obtain after reasonable investigation and a  
19 description of that owner's interest in the property; and

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

23           (d) A deposit to the registry of the court of an amount equal  
24 to the fair market value, as determined by the authority, of the  
25 property to be condemned and any damages to the remainder must  
26 accompany the declaration of taking.

27           (e) Instead of the deposit under Subsection (d), at its

1 option, the authority may, concurrently with the declaration of a  
2 taking, tender in favor of the owner of the property a bond or other  
3 security in an amount sufficient to secure the owner for the value  
4 of the property taken and damages to remaining property, if the  
5 authority obtains the court's approval.

6 (f) The date on which the declaration is filed is the date of  
7 taking for the purpose of assessing the value of the property taken  
8 and damages to any remaining property to which an owner is entitled.

9 (g) An owner may draw upon the deposit held by the court  
10 under Subsection (d) on the same terms and conditions as are  
11 applicable under state law to a property owner's withdrawal of a  
12 commissioners' award deposited under Section 21.021(a)(1),  
13 Property Code.

14 (h) A property owner that is a defendant in an eminent  
15 domain action filed by an authority under this chapter has 20 days  
16 after the date of service of process of both a condemnation petition  
17 and a notice of declaration of taking to give notice to the court in  
18 which the action is pending of the property owner's preference that  
19 the condemnation petition be placed on the court's docket in the  
20 same manner as other cases pending in the court. On receipt of  
21 timely notice from the property owner, the court in which the action  
22 is pending shall place the case on its docket in the same manner as  
23 other cases pending in the court.

24 Sec. 370.167. POSSESSION OF PROPERTY. (a) Immediately on  
25 the filing of a declaration of taking, an authority shall serve a  
26 copy of the declaration on each person possessing an interest in the  
27 condemned property by a method prescribed by Section 21.016(d),

1 Property Code. The authority shall file evidence of the service  
2 with the clerk of the court. On filing of that evidence, the  
3 authority may take possession of the property on the same terms as  
4 if a commissioners hearing had been conducted, pending the  
5 litigation.

6 (b) If the condemned property is a homestead or a portion of  
7 a homestead as defined by Section 41.002, Property Code, an  
8 authority may not take possession before the 31st day after the date  
9 of service under Subsection (a).

10 (c) A property owner or tenant who refuses to vacate the  
11 property or yield possession is subject to forcible entry and  
12 detainer under Chapter 24, Property Code.

13 Sec. 370.168. SEVERANCE OF REAL PROPERTY. (a) If a  
14 transportation project of an authority severs a property owner's  
15 real property, the authority shall pay:

16 (1) the value of the property acquired; and

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

20 (b) At its option, an authority may negotiate for and  
21 purchase the severed real property or any part of the severed real  
22 property if the authority and the property owner agree on terms for  
23 the purchase. An authority may sell and dispose of severed real  
24 property that it determines is not necessary or useful to the  
25 authority. Severed property must be appraised before being offered  
26 for sale by the authority.

27 Sec. 370.169. ACQUISITION OF RIGHTS IN PUBLIC REAL

1 PROPERTY. (a) An authority may use real property, including  
2 submerged land, streets, alleys, and easements, owned by this state  
3 or a local government that the authority considers necessary for  
4 the construction or operation of a transportation project.

5 (b) This state or a local government having charge of public  
6 real property may consent to the use of the property for a  
7 transportation project.

8 (c) Except as provided by Section 370.035, this state or a  
9 local government may convey, grant, or lease to an authority real  
10 property, including highways and other real property devoted to  
11 public use and rights or easements in real property, that may be  
12 necessary or convenient to accomplish a purpose of the authority,  
13 including the construction or operation of a transportation  
14 project. A conveyance, grant, or lease under this section may be  
15 made without advertising, court order, or other action other than  
16 the normal action of this state or local government necessary for a  
17 conveyance, grant, or lease.

18 (d) This section does not deprive the School Land Board of  
19 the power to execute a lease for the development of oil, gas, and  
20 other minerals on state-owned real property adjoining a  
21 transportation project or in tidewater limits. A lease may provide  
22 for directional drilling from the adjoining property or tidewater  
23 area.

24 (e) This section does not affect the obligation of the  
25 authority under another law to compensate this state for acquiring  
26 or using property owned by or on behalf of this state. An  
27 authority's use of property owned by or on behalf of this state is

1 subject to any covenants, conditions, restrictions, or limitations  
2 affecting that property.

3 Sec. 370.170. COMPENSATION FOR AND RESTORATION OF PUBLIC  
4 PROPERTY. (a) Except as provided by Section 370.035 or 370.165(c),  
5 an authority may not pay compensation for public real property,  
6 parkways, streets, highways, alleys, or reservations it takes,  
7 other than:

8 (1) a park or playground;

9 (2) property owned by or on behalf of this state that  
10 under law requires compensation to this state for the use or  
11 acquisition of the property; or

12 (3) as provided by this chapter.

13 (b) Public property damaged in the exercise of a power  
14 granted by this chapter shall be restored or repaired and placed in  
15 its original condition as nearly as practicable.

16 (c) An authority has full easements and rights-of-way  
17 through, across, under, and over any property owned by the state or  
18 any local government that are necessary or convenient to construct,  
19 acquire, or efficiently operate a transportation project or system  
20 under this chapter. This subsection does not affect the obligation  
21 of the authority under other law to compensate this state for the  
22 use or acquisition of an easement or right-of-way on property owned  
23 by or on behalf of this state. An authority's use of property owned  
24 by or on behalf of this state is subject to any covenants,  
25 conditions, restrictions, or limitations affecting that property.

26 Sec. 370.171. PUBLIC UTILITY FACILITIES. (a) An authority  
27 may adopt rules for the installation, construction, operation,

1 maintenance, repair, renewal, relocation, or removal of a public  
2 utility facility in, on, along, over, or under a transportation  
3 project.

4 (b) If an authority determines it is necessary that a public  
5 utility facility located in, on, along, over, or under a  
6 transportation project be relocated in the transportation project,  
7 removed from the transportation project, or carried along or across  
8 the transportation project by grade separation, the owner or  
9 operator of the utility facility shall relocate or remove the  
10 facility in accordance with the requirements of the authority and  
11 in a manner that does not impede the design, financing,  
12 construction, operation, or maintenance of the transportation  
13 project. The authority, as a part of the cost of the transportation  
14 project or the cost of operating the transportation project, shall  
15 pay the cost of the relocation, removal, or grade separation,  
16 including the cost of:

- 17 (1) installation of the facility in a new location;  
18 (2) damages incurred by the utility to its facilities  
19 and services;  
20 (3) interests in real property and other rights  
21 acquired to accomplish the relocation or removal; and  
22 (4) maintenance of grade separation structures.

23 (c) The authority may reduce the total costs to be paid by  
24 the authority under Subsection (b) by 10 percent for each 30-day  
25 period or portion of a 30-day period by which the relocation or  
26 removal exceeds the limit specified by the authority. If an owner  
27 or operator of a public utility facility does not timely relocate or



1 remove as required under Subsection (b), the authority may do so at  
2 the expense of the public utility. If the authority determines that  
3 a delay in relocation or removal is the result of circumstances  
4 beyond the control of the utility, full costs shall be paid by the  
5 authority.

6 (d) Subchapter C, Chapter 181, Utilities Code, applies to  
7 the erection, construction, maintenance, and operation of a line or  
8 pole owned by an electric utility, as that term is defined by  
9 Section 181.041, Utilities Code, over, under, across, on, and along  
10 a transportation project or system constructed by an authority. An  
11 authority has:

12 (1) the powers and duties delegated to the  
13 commissioners court by that subchapter; and

14 (2) exclusive jurisdiction and control of utilities  
15 located in its rights-of-way.

16 (e) Subchapter B, Chapter 181, Utilities Code, applies to  
17 the laying and maintenance of facilities used for conducting gas by  
18 a gas utility, as that term is defined by Section 181.021, Utilities  
19 Code, through, under, along, across, and over a transportation  
20 project or system constructed by an authority except as otherwise  
21 provided by this section. An authority has:

22 (1) the power and duties delegated to the  
23 commissioners court by that subchapter; and

24 (2) exclusive jurisdiction and control of utilities  
25 located in its right-of-way.

26 (f) The laws of this state applicable to the use of public  
27 roads, streets, and waters by a telephone or telegraph corporation

1 apply to the erection, construction, maintenance, location, and  
2 operation of a line, pole, or other fixture by a telephone or  
3 telegraph corporation over, under, across, on, and along a  
4 transportation project constructed by an authority under this  
5 chapter.

6 (g) In this section "public utility facility" means a track,  
7 pipe, main, conduit, cable, wire, tower, pole, or other item of  
8 plant or equipment or an appliance of a public utility or other  
9 person.

10 Sec. 370.172. LEASE, SALE, OR CONVEYANCE OF TRANSPORTATION  
11 PROJECT. An authority may lease, sell, or convey in any other  
12 manner a transportation project to a governmental entity with the  
13 approval of the governing body of the governmental entity to which  
14 the project is transferred.

15 Sec. 370.173. REVENUE. (a) An authority may:

16 (1) impose tolls, fees, fares, or other charges for  
17 the use of each of its transportation projects and the different  
18 parts or sections of each of its transportation projects; and

19 (2) contract with a person for the use of part of a  
20 transportation project, or lease or sell part of a transportation  
21 project, including the right-of-way adjoining the portion used to  
22 transport people and property, for any purpose, including placing  
23 on the adjoining right-of-way a gas station, garage, store, hotel,  
24 restaurant, parking facility, railroad track, billboard, livestock  
25 pasturage, telephone line or facility, telecommunication line or  
26 facility, data transmission line or facility, or electric line or  
27 facility, under terms set by the authority.

1       (b) Tolls, fees, fares, or other charges must be set at  
2 rates or amounts so that the aggregate of tolls, fees, fares, or  
3 other charges from an authority's transportation project, together  
4 with other revenue of the transportation project:

5           (1) provides revenue sufficient to pay:

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

8                   (B) the principal of and interest on any bonds  
9 issued for the transportation project as those bonds become due and  
10 payable; and

11           (2) creates reserves for a purpose listed under  
12 Subdivision (1).

13       (c) Tolls, fees, fares, or other usage charges are not  
14 subject to supervision or regulation by any agency of this state or  
15 another governmental entity.

16       (d) Revenue derived from tolls, fees, and fares, and other  
17 revenue derived from a transportation project for which bonds are  
18 issued, other than any part necessary to pay the cost of  
19 maintenance, repair, and operation and to provide reserves for  
20 those costs as provided in the bond proceedings, shall be set aside  
21 at regular intervals as provided in the bond resolution or trust  
22 agreement in a sinking fund that is pledged to and charged with the  
23 payment of:

24           (1) interest on the bonds as it becomes due;

25           (2) principal of the bonds as it becomes due;

26           (3) necessary charges of paying agents for paying  
27 principal and interest;

1           (4) the redemption price or the purchase price of  
2 bonds retired by call or purchase as provided in the bond  
3 proceedings; and

4           (5) any amounts due under credit agreements.

5           (e) Use and disposition of money deposited to the credit of  
6 the sinking fund is subject to the bond proceedings.

7           (f) To the extent permitted under the applicable bond  
8 proceedings, revenue from one transportation project of an  
9 authority may be used to pay the cost of another transportation  
10 project of the authority.

11           (g) An authority may not use revenue from a transportation  
12 project in a manner not authorized by this chapter. Except as  
13 provided by this chapter, revenue derived from a transportation  
14 project may not be applied for a purpose or to pay a cost other than  
15 a cost or purpose that is reasonably related to or anticipated to be  
16 for the benefit of a transportation project.

17           Sec. 370.174. AUTHORITY REVOLVING FUND. (a) An authority  
18 may maintain a revolving fund to be held in trust by a banking  
19 institution chosen by the authority separate from any other funds  
20 and administered by the authority's board.

21           (b) An authority may transfer into its revolving fund money  
22 from any permissible source, including:

23           (1) money from a transportation project if the  
24 transfer does not diminish the money available for the project to  
25 less than any amount required to be retained by the bond proceedings  
26 pertaining to the project;

27           (2) money received by the authority from any source

1 and not otherwise committed, including money from the transfer of a  
2 transportation project or system or sale of authority assets;

3 (3) money received from the state highway fund; and

4 (4) contributions, loans, grants, or assistance from  
5 the United States, another state, another political subdivision of  
6 this state, a foreign governmental entity, including the United  
7 Mexican States or a state of the United Mexican States, a local  
8 government, any private enterprise, or any person.

9 (c) The authority may use money in the revolving fund to:

10 (1) finance the acquisition, construction,  
11 maintenance, or operation of a transportation project, including  
12 the extension, expansion, or improvement of a transportation  
13 project;

14 (2) provide matching money required in connection with  
15 any federal, state, local, or private aid, grant, or other funding,  
16 including aid or funding by or with public-private partnerships;

17 (3) provide credit enhancement either directly or  
18 indirectly for bonds issued to acquire, construct, extend, expand,  
19 or improve a transportation project;

20 (4) provide security for or payment of future or  
21 existing debt for the design, acquisition, construction,  
22 operation, maintenance, extension, expansion, or improvement of a  
23 transportation project or system;

24 (5) borrow money and issue promissory notes or other  
25 indebtedness payable out of the revolving fund for any purpose  
26 authorized by this chapter; and

27 (6) provide for any other reasonable purpose that

1 assists in the financing of an authority as authorized by this  
2 chapter.

3 (d) Money spent or advanced from the revolving fund for a  
4 transportation project must be reimbursed from the money of that  
5 transportation project. There must be a reasonable expectation of  
6 repayment at the time the expenditure or advancement is authorized.

7 Sec. 370.175. USE OF SURPLUS REVENUE. (a) Each year, if an  
8 authority determines that it has surplus revenue from  
9 transportation projects, it shall reduce tolls, spend the surplus  
10 revenue on other transportation projects in the counties of the  
11 authority in accordance with Subsection (b), or deposit the surplus  
12 revenue to the credit of the Texas Mobility Fund.

13 (b) Consistent with other law and commission rule, an  
14 authority may spend surplus revenue on other transportation  
15 projects by:

16 (1) constructing a transportation project located  
17 within the counties of the authority;

18 (2) assisting in the financing of a toll or toll-free  
19 transportation project of another governmental entity; or

20 (3) with the approval of the commission, constructing  
21 a toll or toll-free transportation project and, on completion of  
22 the project, transferring the project to another governmental  
23 entity if:

24 (A) the other governmental entity authorizes the  
25 authority to construct the project and agrees to assume all  
26 liability and responsibility for the maintenance and operation of  
27 the project on its transfer; and

1                   (B) the project is constructed in compliance with  
2 all laws applicable to the governmental entity.

3                   Sec. 370.176. EXEMPTION FROM TAXATION OR ASSESSMENT. (a)  
4 An authority is exempt from taxation of or assessments on:

- 5                   (1) a transportation project;  
6                   (2) property the authority acquires or uses under this  
7 chapter; or  
8                   (3) income from property described by Subdivision (1)  
9 or (2).

10                   (b) An authority is exempt from payment of development fees,  
11 utility connection fees, assessments, and service fees imposed or  
12 assessed by any governmental entity or any property owners' or  
13 homeowners' association.

14                   Sec. 370.177. ACTIONS AFFECTING EXISTING ROADS. (a) An  
15 authority may impose a toll for transit over an existing free road,  
16 street, or public highway transferred to the authority under this  
17 chapter.

18                   (b) An authority may construct a grade separation at an  
19 intersection of a transportation project with a railroad or highway  
20 and change the line or grade of a highway to accommodate the design  
21 of the grade separation. The action may not affect a segment of the  
22 state highway system without the department's consent. The  
23 authority shall pay the cost of a grade separation and any damage  
24 incurred in changing a line or grade of a railroad or highway as  
25 part of the cost of the transportation project.

26                   (c) If feasible, an authority shall provide access to  
27 properties previously abutting a county road or other public road

1 that is taken for a transportation project and shall pay abutting  
2 property owners the expenses or any resulting damages for a denial  
3 of access to the road.

4 Sec. 370.178. FAILURE OR REFUSAL TO PAY TURNPIKE PROJECT  
5 TOLL; OFFENSE; ADMINISTRATIVE PENALTY. (a) The operator of a  
6 vehicle, other than an authorized emergency vehicle as defined by  
7 Section 541.201, that is driven or towed through a toll collection  
8 facility of a turnpike project shall pay the proper toll. The  
9 operator of a vehicle who drives or tows a vehicle through a toll  
10 collection facility and does not pay the proper toll commits an  
11 offense. An offense under this subsection is a misdemeanor  
12 punishable by a fine not to exceed \$250.

13 (b) In the event of nonpayment of the proper toll as  
14 required by Subsection (a), on issuance of a written notice of  
15 nonpayment, the registered owner of the nonpaying vehicle is liable  
16 for the payment of both the proper toll and an administrative fee.

17 (c) The authority may impose and collect the administrative  
18 fee to recover the cost of collecting the unpaid toll, not to exceed  
19 \$100. The authority shall send a written notice of nonpayment to  
20 the registered owner of the vehicle at that owner's address as shown  
21 in the vehicle registration records of the department by first  
22 class mail not later than the 30th day after the date of the alleged  
23 failure to pay and may require payment not sooner than the 30th day  
24 after the date the notice was mailed. The registered owner shall  
25 pay a separate toll and administrative fee for each event of  
26 nonpayment under Subsection (a).

27 (d) The registered owner of a vehicle for which the proper



1 toll was not paid who is mailed a written notice of nonpayment under  
2 Subsection (c) and fails to pay the proper toll and administrative  
3 fee within the time specified by the notice of nonpayment commits an  
4 offense. Each failure to pay a toll or administrative fee under  
5 this subsection is a separate offense.

6 (e) It is an exception to the application of Subsection (b)  
7 or (d) that the registered owner of the vehicle is a lessor of the  
8 vehicle and not later than the 30th day after the date the notice of  
9 nonpayment is mailed provides to the authority a copy of the rental,  
10 lease, or other contract document covering the vehicle on the date  
11 of the nonpayment under Subsection (a), with the name and address of  
12 the lessee clearly legible. If the lessor provides the required  
13 information within the period prescribed, the authority may send a  
14 notice of nonpayment to the lessee at the address shown on the  
15 contract document by first class mail before the 30th day after the  
16 date of receipt of the required information from the lessor. The  
17 lessee of the vehicle for which the proper toll was not paid who is  
18 mailed a written notice of nonpayment under this subsection and  
19 fails to pay the proper toll and administrative fee within the time  
20 specified by the notice of nonpayment commits an offense. The  
21 lessee shall pay a separate toll and administrative fee for each  
22 event of nonpayment. Each failure to pay a toll or administrative  
23 fee under this subsection is a separate offense.

24 (f) It is an exception to the application of Subsection (b)  
25 or (d) that the registered owner of the vehicle transferred  
26 ownership of the vehicle to another person before the event of  
27 nonpayment under Subsection (a) occurred, submitted written notice

1 of the transfer to the department in accordance with Section  
2 520.023, and before the 30th day after the date the notice of  
3 nonpayment is mailed, provides to the authority the name and  
4 address of the person to whom the vehicle was transferred. If the  
5 former owner of the vehicle provides the required information  
6 within the period prescribed, the authority may send a notice of  
7 nonpayment to the person to whom ownership of the vehicle was  
8 transferred at the address provided by the former owner by first  
9 class mail before the 30th day after the date of receipt of the  
10 required information from the former owner. The subsequent owner  
11 of the vehicle for which the proper toll was not paid who is mailed a  
12 written notice of nonpayment under this subsection and fails to pay  
13 the proper toll and administrative fee within the time specified by  
14 the notice of nonpayment commits an offense. The subsequent owner  
15 shall pay a separate toll and administrative fee for each event of  
16 nonpayment under Subsection (a). Each failure to pay a toll or  
17 administrative fee under this subsection is a separate offense.

18 (g) An offense under Subsection (d), (e), or (f) is a  
19 misdemeanor punishable by a fine not to exceed \$250.

20 (h) The court in which a person is convicted of an offense  
21 under this section shall also collect the proper toll and  
22 administrative fee and forward the toll and fee to the authority.

23 (i) In the prosecution of an offense under this section,  
24 proof that the vehicle passed through a toll collection facility  
25 without payment of the proper toll together with proof that the  
26 defendant was the registered owner or the driver of the vehicle when  
27 the failure to pay occurred, establishes the nonpayment of the

1 registered owner. The proof may be by testimony of a peace officer  
2 or authority employee, video surveillance, or any other reasonable  
3 evidence.

4 (j) It is a defense to prosecution under this section that  
5 the motor vehicle in question was stolen before the failure to pay  
6 the proper toll occurred and was not recovered by the time of the  
7 failure to pay, but only if the theft was reported to the  
8 appropriate law enforcement authority before the earlier of:

- 9 (1) the occurrence of the failure to pay; or  
10 (2) eight hours after the discovery of the theft.

11 (k) In this section, "registered owner" means the owner of a  
12 vehicle as shown on the vehicle registration records of the  
13 department or the analogous department or agency of another state  
14 or country.

15 Sec. 370.179. USE AND RETURN OF TRANSPONDERS. (a) For  
16 purposes of this section, "transponder" means a device placed on or  
17 within an automobile that is capable of transmitting or receiving  
18 information used to assess or collect tolls. A transponder is  
19 insufficiently funded if there is no money in the account for which  
20 the transponder was issued.

21 (b) Any law enforcement or peace officer of an entity with  
22 which an authority has contracted under Section 370.182(c) may  
23 seize a stolen or insufficiently funded transponder and return it  
24 to the authority that issued the transponder. An insufficiently  
25 funded transponder may not be seized before the 30th day after the  
26 date that an authority has sent a notice of delinquency to the  
27 holder of the account.

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

6           (1) the authority;

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

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

11       Sec. 370.180. CONTROLLED ACCESS TO TURNPIKE PROJECTS. (a)  
12 An authority may designate a turnpike project or a portion of a  
13 project as a controlled-access toll road.

14       (b) An authority by order may:

15           (1) prohibit the use of or access to or from a turnpike  
16 project by a motor vehicle, bicycle, another classification or type  
17 of vehicle, or a pedestrian;

18           (2) deny access to or from:

19                   (A) a turnpike project;

20                   (B) real property adjacent to a turnpike project;

21 or

22                   (C) a street, road, alley, highway, or other  
23 public or private way intersecting a turnpike project;

24           (3) designate locations on a turnpike project at which  
25 access to or from the toll road is permitted;

26           (4) control, restrict, and determine the type and  
27 extent of access permitted at a designated location of access to a

1 turnpike project; or

2 (5) erect appropriate protective devices to preserve  
3 the utility, integrity, and use of a turnpike project.

4 (c) Denial of access to or from a segment of the state  
5 highway system is subject to the approval of the commission.

6 Sec. 370.181. PROMOTION OF TRANSPORTATION PROJECT. An  
7 authority may promote the use of a transportation project,  
8 including a project that it operates on behalf of another entity, by  
9 appropriate means, including advertising or marketing as the  
10 authority determines appropriate.

11 Sec. 370.182. OPERATION OF TRANSPORTATION PROJECT. (a) An  
12 authority shall operate a transportation project with employees of  
13 the authority or by using services contracted under Subsection (b)  
14 or (c).

15 (b) An authority may enter into an agreement with one or  
16 more persons to provide, on terms and conditions approved by the  
17 authority, personnel and services to design, construct, operate,  
18 maintain, expand, enlarge, or extend the transportation project of  
19 the authority.

20 (c) An authority may contract with any state or local  
21 government for the services of peace officers of that agency.

22 Sec. 370.183. AUDIT. An authority shall have a certified  
23 public accountant audit the authority's books and accounts at least  
24 annually. The cost of the audit may be treated as part of the cost  
25 of construction or operation of a transportation project.

26 Sec. 370.184. DISADVANTAGED BUSINESSES. (a) Consistent  
27 with general law, an authority shall:

1           (1) set goals for the award of contracts to  
2 disadvantaged businesses and attempt to meet the goals;

3           (2) attempt to identify disadvantaged businesses that  
4 provide or have the potential to provide supplies, materials,  
5 equipment, or services to the authority; and

6           (3) give disadvantaged businesses full access to the  
7 authority's contract bidding process, inform the businesses about  
8 the process, offer the businesses assistance concerning the  
9 process, and identify barriers to the businesses' participation in  
10 the process.

11           (b) This section does not exempt an authority from  
12 competitive bidding requirements provided by other law.

13           Sec. 370.185. PROCUREMENT. An authority shall adopt rules  
14 governing the award of contracts for goods and services.  
15 Notwithstanding any other provision of state law, an authority may  
16 procure goods and services, including materials, engineering,  
17 design, construction, operations, maintenance, and other goods and  
18 services, through any procedure authorized by this chapter.  
19 Procurement of professional services is governed by Chapter 2254,  
20 Government Code.

21           Sec. 370.186. COMPETITIVE BIDDING. A contract made by an  
22 authority may be let by a competitive bidding procedure in which the  
23 contract is awarded to the lowest responsible bidder that complies  
24 with the authority's criteria.

25           Sec. 370.187. RESTRICTION ON LOCATION OF TURNPIKE PROJECTS.  
26 An authority may not construct, maintain, or operate a turnpike  
27 project in a county that, on November 6, 2001:

1           (1) was part of a regional tollway authority under  
2 Chapter 366; or

3           (2) operated a turnpike project under Chapter 284.

4           [Sections 370.188-370.250 reserved for expansion]

5                           SUBCHAPTER F. GOVERNANCE

6           Sec. 370.251. BOARD OF DIRECTORS. (a) The governing body  
7 of an authority is a board of directors consisting of  
8 representatives of each county in which a transportation project of  
9 the authority is located or is proposed to be located. The  
10 commissioners court of each county that initially forms the  
11 authority shall appoint at least two directors to the board.  
12 Additional directors may be appointed to the board at the time of  
13 initial formation by agreement of the counties creating the  
14 authority. The commissioners court of a county that is  
15 subsequently added to the authority shall appoint one director to  
16 the board. The governor shall appoint one director to the board who  
17 shall serve as the presiding officer of the board and shall appoint  
18 an additional director to the board if an appointment is necessary  
19 to maintain an odd number of directors on the board.

20           (b) The commissioners court of each county of an authority  
21 that contains an operating transportation project of the authority  
22 shall appoint one additional director.

23           (c) Directors serve staggered six-year terms with the terms  
24 of no more than one-third of the directors expiring on February 1 of  
25 each odd-numbered year.

26           (d) One director appointed to the initial board of an  
27 authority by the commissioners court of a county shall be

1 designated by the court to serve a term of two years and one  
2 director appointed to serve a term of four years. If one or more  
3 directors are subsequently appointed to the board, the directors  
4 other than the subsequent appointees shall determine the length of  
5 the appointees' terms, to comply with Subsection (c).

6 (e) If a vacancy occurs on the board, the appointing  
7 authority shall promptly appoint a successor to serve for the  
8 unexpired portion of the term.

9 (f) All appointments to the board shall be made without  
10 regard to race, color, disability, sex, religion, age, or national  
11 origin.

12 (g) The following individuals are ineligible to serve as a  
13 director:

14 (1) an elected official;

15 (2) a person who is not a resident of a county within  
16 the geographic area of the authority;

17 (3) a department employee;

18 (4) an employee of a governmental entity any part of  
19 which is located within the geographic boundaries of the authority;  
20 and

21 (5) a person owning an interest in real property that  
22 will be acquired for an authority project, if it is known at the  
23 time of the person's proposed appointment that the property will be  
24 acquired for the authority project.

25 (h) Each director has equal status and may vote.

26 (i) The vote of a majority attending a board meeting is  
27 necessary for any action taken by the board. If a vacancy exists on



1 a board, the majority of directors serving on the board is a quorum.

2 Sec. 370.252. PROHIBITED CONDUCT FOR DIRECTORS AND  
3 EMPLOYEES. (a) A director or employee of an authority may not:

4 (1) accept or solicit any gift, favor, or service  
5 that:

6 (A) might reasonably influence the director or  
7 employee in the discharge of an official duty; or

8 (B) the director or employee knows or should know  
9 is being offered with the intent to influence the director's or  
10 employee's official conduct;

11 (2) accept other employment or engage in a business or  
12 professional activity that the director or employee might  
13 reasonably expect would require or induce the director or employee  
14 to disclose confidential information acquired by reason of the  
15 official position;

16 (3) accept other employment or compensation that could  
17 reasonably be expected to impair the director's or employee's  
18 independence of judgment in the performance of the director's or  
19 employee's official duties;

20 (4) make personal investments that could reasonably be  
21 expected to create a substantial conflict between the director's or  
22 employee's private interest and the interest of the authority;

23 (5) intentionally or knowingly solicit, accept, or  
24 agree to accept any benefit for having exercised the director's or  
25 employee's official powers or performed the director's or  
26 employee's official duties in favor of another; or

27 (6) have a personal interest in an agreement executed

1 by the authority.

2 (b) A person is not eligible to serve as a director or chief  
3 administrative officer of an authority if the person or the  
4 person's spouse:

5 (1) is employed by or participates in the management  
6 of a business entity or other organization, other than a  
7 governmental entity, that is regulated by or receives funds from  
8 the department;

9 (2) directly or indirectly owns or controls more than  
10 a 10 percent interest in a business or other organization that is  
11 regulated by or receives funds from the department;

12 (3) uses or receives a substantial amount of tangible  
13 goods, services, or funds from the department; or

14 (4) is required to register as a lobbyist under  
15 Chapter 305, Government Code, because of the person's activities  
16 for compensation on behalf of a profession related to the operation  
17 of the department.

18 (c) A person is not eligible to serve as a director or chief  
19 administrative officer of an authority if the person is an officer,  
20 employee, or paid consultant of a Texas trade association in the  
21 field of road construction or maintenance, public transportation,  
22 or aviation, or if the person's spouse is an officer, manager, or  
23 paid consultant of a Texas trade association in the field of road  
24 construction or maintenance, public transportation, or aviation.

25 (d) In this section, "Texas trade association" means a  
26 nonprofit, cooperative, and voluntarily joined association of  
27 business or professional competitors in this state designed to

1 assist its members and its industry or profession in dealing with  
2 mutual business or professional problems and in promoting their  
3 common interests.

4 (e) A person is not ineligible to serve as a director or  
5 chief administrative officer of an authority if the person has  
6 received funds from the department for acquisition of highway  
7 right-of-way unless the acquisition was for a project of the  
8 authority.

9 Sec. 370.253. SURETY BONDS. (a) Before beginning a term,  
10 each director shall execute a surety bond in the amount of \$25,000,  
11 and the secretary and treasurer shall execute a surety bond in the  
12 amount of \$50,000.

13 (b) Each surety bond must be:

14 (1) conditioned on the faithful performance of the  
15 duties of office;

16 (2) executed by a surety company authorized to  
17 transact business in this state; and

18 (3) filed with the secretary of state's office.

19 (c) The authority shall pay the expense of the bonds.

20 Sec. 370.254. REMOVAL OF DIRECTOR. (a) It is a ground for  
21 removal of a director from the board if the director:

22 (1) did not have at the time of appointment the  
23 qualifications required by Section 370.251;

24 (2) at the time of appointment or at any time during  
25 the director's term, is ineligible under Section 370.251 or 370.252  
26 to serve as a director;

27 (3) cannot discharge the director's duties for a

1 substantial part of the term for which the director is appointed  
2 because of illness or disability; or

3 (4) is absent from more than half of the regularly  
4 scheduled board meetings that the director is eligible to attend  
5 during a calendar year.

6 (b) The validity of an action of the board is not affected by  
7 the fact that it is taken when a ground for removal of a director  
8 exists.

9 (c) If the chief administrative officer of the authority has  
10 knowledge that a potential ground for removal exists, that person  
11 shall notify the presiding officer of the board of the ground. The  
12 presiding officer shall then notify the person that appointed the  
13 director that a potential ground for removal exists.

14 Sec. 370.255. COMPENSATION OF DIRECTOR. Each director is  
15 entitled to reimbursement for the director's actual expenses  
16 necessarily incurred in the performance of the director's duties.  
17 A director is not entitled to any additional compensation for the  
18 director's services.

19 Sec. 370.256. EVIDENCE OF AUTHORITY ACTIONS. Actions of an  
20 authority are the actions of its board and may be evidenced in any  
21 legal manner, including a board resolution.

22 Sec. 370.257. PUBLIC ACCESS. An authority shall:

23 (1) make and implement policies that provide the  
24 public with a reasonable opportunity to appear before the board to  
25 speak on any issue under the jurisdiction of the authority; and

26 (2) prepare and maintain a written plan that describes  
27 how an individual who does not speak English or who has a physical,

1 mental, or developmental disability may be provided reasonable  
2 access to the authority's programs.

3 Sec. 370.258. INDEMNIFICATION. (a) An authority may  
4 indemnify one or more of its directors or officers for necessary  
5 expenses and costs, including attorney's fees, incurred by the  
6 directors or officers in connection with any claim asserted against  
7 the directors or officers in their respective capacities as  
8 directors or officers.

9 (b) If an authority does not fully indemnify a director or  
10 officer as provided by Subsection (a), the court in a proceeding in  
11 which any claim against the director or officer is asserted or any  
12 court with jurisdiction of an action instituted by the director or  
13 officer on a claim for indemnity may assess indemnity against the  
14 authority, its receiver, or trustee only if the court finds that, in  
15 connection with the claim, the director or officer is not guilty of  
16 negligence or misconduct.

17 (c) A court may not assess indemnity under Subsection (b)  
18 for an amount paid by the director or officer to the authority.

19 (d) This section applies to a current or former director or  
20 officer of the authority.

21 Sec. 370.259. PURCHASE OF LIABILITY INSURANCE. (a) An  
22 authority shall insure its officers and employees from liability  
23 arising from the use, operation, or maintenance of equipment that  
24 is used or may be used in connection with the laying out,  
25 construction, or maintenance of the authority's transportation  
26 projects.

27 (b) Insurance coverage under this section must be provided

1 by the purchase of a policy of liability insurance from a reliable  
2 insurance company authorized to do business in this state. The form  
3 of the policy must be approved by the commissioner of insurance.

4 (c) This section is not a waiver of immunity of the  
5 authority or the counties in an authority from liability for the  
6 torts or negligence of an officer or employee of an authority.

7 (d) In this section, "equipment" includes an automobile,  
8 motor truck, trailer, aircraft, motor grader, roller, tractor,  
9 tractor power mower, locomotive, rail car, and other power  
10 equipment.

11 Sec. 370.260. CERTAIN CONTRACTS AND SALES PROHIBITED. (a)  
12 A director, agent, or employee of an authority may not:

13 (1) contract with the authority; or

14 (2) be directly or indirectly interested in:

15 (A) a contract with the authority; or

16 (B) the sale of property to the authority.

17 (b) A person who violates Subsection (a) is liable for a  
18 civil penalty to the authority in an amount not to exceed \$1,000.

19 Sec. 370.261. STRATEGIC PLANS AND ANNUAL REPORTS. (a) An  
20 authority shall make a strategic plan for its operations. A  
21 majority of the commissioners courts of the counties of the  
22 authority shall by concurrent resolution determine the types of  
23 information required to be included in the strategic plan. Each  
24 even-numbered year, an authority shall issue a plan covering the  
25 succeeding five fiscal years, beginning with the next odd-numbered  
26 fiscal year.

27 (b) Not later than March 31 of each year, an authority shall

1 file with the commissioners court of each county of the authority a  
2 written report on the authority's activities describing all  
3 transportation revenue bond issuances anticipated for the coming  
4 year, the financial condition of the authority, all project  
5 schedules, and the status of the authority's performance under the  
6 most recent strategic plan. At the invitation of a commissioners  
7 court of a county of the authority, representatives of the board and  
8 the administrative head of an authority shall appear before the  
9 commissioners court to present the report and receive questions and  
10 comments.

11 (c) The authority shall give notice to the commissioners  
12 court of each county of the authority not later than the 90th day  
13 before the date of issuance of revenue bonds.

14 Sec. 370.262. MEETINGS BY TELEPHONE CONFERENCE CALL. (a)  
15 Chapter 551, Government Code, does not prohibit any open or closed  
16 meeting of the board, a committee of the board, or the staff, or any  
17 combination of the board or staff, from being held by telephone  
18 conference call.

19 (b) A telephone conference call meeting is subject to the  
20 notice requirements applicable to other meetings.

21 (c) Notice of a telephone conference call meeting that by  
22 law must be open to the public must specify the location of the  
23 meeting. The location must be a conference room of the authority or  
24 other facility in a county of the authority that is accessible to  
25 the public.

26 (d) Each part of the telephone conference call meeting that  
27 by law must be open to the public shall be audible to the public at

1 the location specified in the notice and shall be tape-recorded or  
2 documented by written minutes. On conclusion of the meeting, the  
3 tape recording or the written minutes of the meeting shall be made  
4 available to the public.

5 [Sections 370.263-370.300 reserved for expansion]

6 SUBCHAPTER G. PARTICIPATION IN FINANCING, CONSTRUCTION, AND  
7 OPERATION OF TRANSPORTATION PROJECTS

8 Sec. 370.301. DEPARTMENT CONTRIBUTIONS TO TURNPIKE  
9 PROJECTS. (a) The department may agree with an authority to  
10 provide for or contribute to the payment of costs of financial or  
11 engineering and traffic feasibility studies and the design,  
12 financing, acquisition, construction, operation, or maintenance of  
13 a turnpike project or system on terms agreed on by the commission or  
14 department, as applicable, and the authority. The agreement may  
15 not be inconsistent with the rights of the bondholders or persons  
16 operating the turnpike project under a lease or other contract.

17 (b) The department may use its engineering and other  
18 personnel, including consulting engineers and traffic engineers,  
19 to conduct feasibility studies under Subsection (a).

20 (c) An obligation or expense incurred by the commission or  
21 department under this section is a part of the cost of the turnpike  
22 project for which the obligation or expense was incurred. The  
23 commission or department may require money contributed by the  
24 commission or department under this section to be repaid from tolls  
25 or other revenue of the turnpike project on which the money was  
26 spent. Money repaid as required by the commission or department  
27 shall be deposited to the credit of the fund from which the



1 contribution was made. Money deposited as required by this section  
2 is exempt from the application of Section 403.095, Government Code.

3 (d) The commission or department may use federal money for  
4 any purpose described by this chapter.

5 (e) A turnpike project developed by an authority may not be  
6 part of the state highway system unless otherwise agreed to by the  
7 authority and the department.

8 (f) The commission may grant or loan department money to an  
9 authority for the acquisition of land for or the construction,  
10 maintenance, or operation of a turnpike project. The commission  
11 may require the authority to repay money provided under this  
12 section from toll revenue or other sources on terms established by  
13 the commission.

14 (g) Money repaid as required by the commission shall be  
15 deposited to the credit of the fund from which the money was  
16 provided. Money deposited as required by this section is exempt  
17 from the application of Section 403.095, Government Code.

18 Sec. 370.302. AGREEMENTS TO CONSTRUCT, MAINTAIN, AND  
19 OPERATE TRANSPORTATION PROJECTS. (a) An authority may enter into  
20 an agreement with a public or private entity, including a toll road  
21 corporation, the United States, a state of the United States, the  
22 United Mexican States, a state of the United Mexican States,  
23 another governmental entity, or a political subdivision, to permit  
24 the entity, independently or jointly with the authority, to study  
25 the feasibility of a transportation project or to acquire, design,  
26 finance, construct, maintain, repair, operate, extend, or expand a  
27 transportation project. An authority and a private entity jointly

1 may enter into an agreement with another governmental entity to  
2 study the feasibility of a transportation project or to acquire,  
3 design, finance, construct, maintain, repair, operate, extend, or  
4 expand a transportation project.

5 (b) An authority has broad discretion to negotiate  
6 provisions in a development agreement with a private entity. The  
7 provisions may include provisions relating to:

8 (1) the design, financing, construction, maintenance,  
9 and operation of a transportation project in accordance with  
10 standards adopted by the authority; and

11 (2) professional and consulting services to be  
12 rendered under standards adopted by the authority in connection  
13 with a transportation project.

14 (c) An authority may not incur a financial obligation on  
15 behalf of, or guarantee the obligations of, a private entity that  
16 constructs, maintains, or operates a transportation project.

17 (d) An authority or a county in an authority is not liable  
18 for any financial or other obligation of a transportation project  
19 solely because a private entity constructs, finances, or operates  
20 any part of a transportation project.

21 (e) An authority may authorize the investment of public and  
22 private money, including debt and equity participation, to finance  
23 a function described by this section.

24 Sec. 370.303. AGREEMENTS BETWEEN AUTHORITY AND LOCAL  
25 GOVERNMENTAL ENTITIES. (a) A governmental entity other than a  
26 nonprofit corporation may, consistent with the Texas Constitution,  
27 issue bonds, notes, or other obligations or enter into and make

1 payments under agreements with an authority to acquire, construct,  
2 maintain, or operate a transportation project, whether inside or  
3 outside the geographic boundaries of the governmental entity,  
4 including agreements to pay the principal of, and interest on,  
5 bonds, notes, or other obligations issued by the authority and make  
6 payments under any related credit agreements. The entity may  
7 impose and collect taxes to pay the interest on the bonds and to  
8 provide a sinking fund for the redemption of the bonds.

9 (b) In addition to the powers provided by Subsection (a), a  
10 governmental entity may, to the extent constitutionally permitted,  
11 agree with an authority to issue bonds, notes, or other  
12 obligations, create a taxing district or an entity to promote  
13 economic development, fund public improvements to promote economic  
14 development, or enter into and make payments under an agreement to  
15 acquire, construct, maintain, or operate any portion of a  
16 transportation project of the authority. An agreement may include  
17 a means for a local governmental entity to provide funds for a  
18 transportation project that benefits the governmental entity to be  
19 developed by the authority.

20 (c) To make payments under an agreement under Subsection  
21 (b), to pay the interest on bonds issued under Subsection (b), or to  
22 provide a sinking fund for the bonds or the agreement, a  
23 governmental entity may:

24 (1) pledge revenue from any available source,  
25 including annual appropriations;

26 (2) impose and collect taxes; or

27 (3) pledge revenue and impose and collect taxes.

1       (d) The term of an agreement under this section may not  
2 exceed 40 years.

3       (e) An election required to authorize action under this  
4 subchapter must be held in conformity with Chapter 1251, Government  
5 Code, or other law applicable to the governmental entity.

6       (f) The governing body of any governmental entity issuing  
7 bonds, notes, or other obligations or entering into agreements  
8 under this section may exercise the authority granted to the  
9 governing body of an issuer with regard to issuance of obligations  
10 under Chapter 1371, Government Code, except that the prohibition in  
11 that chapter on the repayment of an obligation with ad valorem taxes  
12 does not apply to an issuer exercising the authority granted by this  
13 section.

14       Sec. 370.304. ADDITIONAL AGREEMENTS OF AUTHORITY. An  
15 authority may enter into any agreement necessary or convenient to  
16 achieve the purposes of this subchapter.

17       Sec. 370.305. EXCLUSIVE DEVELOPMENT AGREEMENTS WITH  
18 PRIVATE ENTITIES. An authority may use an exclusive development  
19 agreement with a private entity to construct, maintain, repair,  
20 operate, extend, or expand a transportation project by invested  
21 private funding or by public funding, private funding, or any  
22 combination. An agreement under this section is not subject to a  
23 requirement or restriction of Section 222.103(i).

24       Sec. 370.306. OWNERSHIP OF TRANSPORTATION PROJECTS. (a) A  
25 transportation project that is the subject of a development  
26 agreement with a private entity, including the facilities acquired  
27 or constructed on the project, is public property and belongs to the

1 authority that entered into the agreement.

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

11 Sec. 370.307. TERMS OF PRIVATE PARTICIPATION. An authority  
12 shall negotiate the terms of private participation in a  
13 transportation project, including:

14 (1) methods to determine the applicable cost, profit,  
15 and project distribution between the private equity investors and  
16 the authority;

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

19 (3) acceptable safety and policing standards; and

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

23 Sec. 370.308. RULES, PROCEDURES, AND GUIDELINES GOVERNING  
24 NEGOTIATING PROCESS. (a) An authority shall adopt rules,  
25 procedures, and other guidelines governing negotiations to promote  
26 fairness, obtain private participants in transportation projects,  
27 and promote confidence among those participants. The rules must

1 contain criteria relating to the qualifications of the participants  
2 and the award of the contracts and may authorize the authority to  
3 impose a fee for reviewing proposals for private involvement in a  
4 transportation project.

5 (b) An authority shall have up-to-date procedures for  
6 participation in negotiations on transportation projects.

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

9 (d) A proposal and related information submitted for  
10 private involvement in a transportation project, and all documents  
11 and information created by the authority or its agents during the  
12 authority's consideration of a proposal for private involvement in  
13 a transportation project, are excepted from disclosure,  
14 inspection, or copying under Chapter 552, Government Code, and are  
15 not subject to discovery, subpoena, or other means of legal  
16 compulsion for release, until the authority has entered into an  
17 exclusive development agreement or until it has determined not to  
18 develop a proposed project through an exclusive development  
19 agreement.

20 (e) An authority may agree to acquire the work product of an  
21 unsuccessful proposer for the development of a project through an  
22 exclusive development agreement or other form of private  
23 involvement in a transportation project if the payment for such  
24 work product does not exceed its value to the authority.

25 Sec. 370.309. PARTICIPATION ON CERTAIN OTHER BOARDS,  
26 COMMISSIONS, OR PUBLIC BODIES. (a) An authority may participate in  
27 and designate board members to serve as representatives on boards,

1 commissions, or public bodies, the purposes of which are to promote  
2 the development of joint toll facilities in this state, between  
3 this state and other states of the United States, or between this  
4 state and the United Mexican States or states of the United Mexican  
5 States.

6 (b) A fee or expense associated with authority  
7 participation under this section may be reimbursed from money in  
8 the authority's feasibility study fund.

9 Sec. 370.310. COMBINATION OF ENGINEERING, DESIGN, AND  
10 CONSTRUCTION SERVICES. An authority may procure a combination of  
11 engineering, design, and construction services in a single  
12 procurement for a transportation project provided that any contract  
13 awarded must be the one that results in the best value to the  
14 authority.

15 Sec. 370.311. PERFORMANCE AND PAYMENT BONDS AND SECURITY.  
16 Notwithstanding Chapter 2253, Government Code, an authority shall  
17 require any party to an agreement to develop, operate, or maintain a  
18 transportation project to provide performance and payment bonds or  
19 other forms of security in amounts considered by the authority to be  
20 adequate to protect the authority and to assure performance of all  
21 obligations to the authority and to subcontractors providing  
22 materials or labor for a transportation project.

23 Sec. 370.312. TRANS-TEXAS CORRIDOR PROJECTS. In the event  
24 that an authority is requested by the commission to participate in  
25 the development of a transportation project that has been  
26 designated as part of the Trans-Texas Corridor, the authority shall  
27 have, in addition to all powers granted in this chapter, all powers

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

3 SECTION 2. Section 361.003, Transportation Code, is  
4 repealed.

5 SECTION 3. (a) This Act takes effect September 1, 2003.

6 (b) This Act does not affect the term of a member of the  
7 board of directors of a regional mobility authority serving on the  
8 effective date of this Act.