

By: Ogden

S.B. No. 1924

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;
providing 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 promote the consideration and use of multimodal
forms of transportation to address transportation needs in regions
of the state;

(3) 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

(4) to reduce burdens and demands on the limited money
available to the commission and to increase the effectiveness and

1 efficiency of the commission.

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

4 Sec. 370.003. DEFINITIONS. In this chapter:

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

8 (2) "Board" means the board of directors of an
9 authority.

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

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

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

21 (6) "Bondholder" means the owner of a bond and
22 includes a trustee acting on behalf of an owner of a bond under the
23 terms of a bond indenture.

24 (7) "Exclusive development agreement" means an
25 agreement with a private entity that, at a minimum, provides for the
26 design and construction of a transportation project and may also
27 provide for the financing, acquisition, maintenance, or operation

1 of a transportation project.

2 (8) "Governmental entity" means a political
3 subdivision of the state, including a municipality or a county, a
4 political subdivision of a county, a group of adjoining counties, a
5 district organized or operating under Section 52, Article III, or
6 Section 59, Article XVI, Texas Constitution, the department, a rail
7 district, a transit authority, a nonprofit corporation, including a
8 transportation corporation, that is created under Chapter 431, or
9 any other public entity or instrumentality.

10 (9) "Highway" means a road, highway, farm-to-market
11 road, or street under the supervision of the state or a political
12 subdivision of this state.

13 (10) "Public utility facility" means:

14 (A) a water, wastewater, natural gas, or
15 petroleum pipeline or facility;

16 (B) an electric transmission or distribution
17 facility; or

18 (C) telecommunications infrastructure,
19 including fiber optic cable, conduit, and wireless communications
20 facilities.

21 (11) "Revenue" means fares, fees, rents, tolls, and
22 other money received by an authority from the ownership or
23 operation of a transportation project.

24 (12) "Surplus revenue" means revenue that exceeds:

25 (A) an authority's debt service requirements for
26 a transportation project;

27 (B) coverage requirements of a bond indenture for

1 a transportation project;

2 (C) costs of operation and maintenance for a
3 transportation project;

4 (D) cost of repair, expansion, or improvement of
5 a transportation project;

6 (E) funds allocated for feasibility studies; and

7 (F) necessary reserves as determined by the
8 authority.

9 (13) "System" means a transportation project or a
10 combination of transportation projects designated as a system by
11 the board under Section 370.034.

12 (14) "Transportation project" means:

13 (A) a turnpike project;

14 (B) a system;

15 (C) a passenger or freight rail facility,
16 including:

17 (i) tracks;

18 (ii) a rail line;

19 (iii) switching, signaling, or other
20 operating equipment;

21 (iv) a depot;

22 (v) a locomotive;

23 (vi) rolling stock;

24 (vii) a maintenance facility; and

25 (viii) other real and personal property
26 associated with a rail operation;

27 (D) a roadway with a functional classification

1 greater than a local road or rural minor collector;

2 (E) border crossing inspection stations;

3 (F) a ferry;

4 (G) an airport;

5 (H) a pedestrian or bicycle facility;

6 (I) an air quality improvement initiative;

7 (J) a public utility facility; and

8 (K) if applicable, projects and programs listed
9 in the most recently approved state implementation plan for the
10 area covered by the authority, including an early action compact.

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

15 (A) an improvement to relieve traffic congestion
16 or promote safety;

17 (B) a bridge, tunnel, overpass, underpass,
18 interchange, service road, ramp, entrance plaza, approach, or
19 tollhouse;

20 (C) an administration, storage, or other
21 building the authority considers necessary for the operation of a
22 turnpike project;

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

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

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

4 (1) the actual acquisition, construction,
5 improvement, extension, or expansion of the transportation
6 project;

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

9 (3) machinery and equipment;

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

13 (5) traffic estimates, revenue estimates, engineering
14 and legal services, plans, specifications, surveys, appraisals,
15 construction cost estimates, and other expenses necessary or
16 incidental to determining the feasibility of the acquisition,
17 construction, improvement, extension, or expansion;

18 (6) necessary or incidental administrative, legal,
19 and other expenses;

20 (7) compliance with laws, regulations, and
21 administrative rulings, including any costs associated with
22 necessary environmental mitigation measures;

23 (8) financing; and

24 (9) expenses related to the initial operation of the
25 transportation project.

26 (b) Costs attributable to a transportation project and
27 incurred before the issuance of bonds to finance the transportation

1 project may be reimbursed from the proceeds of sale of the bonds.

2 [Sections 370.005-370.030 reserved for expansion]

3 SUBCHAPTER B. CREATION AND POWERS OF REGIONAL MOBILITY AUTHORITIES

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

5 (a) At the request of one or more counties, the commission by order
6 may authorize the creation of a regional mobility authority for the
7 purposes of constructing, maintaining, and operating
8 transportation projects in a region of this state. An authority is
9 governed in accordance with Subchapter F.

10 (b) An authority may not be created without the approval of
11 the commission under Subsection (a).

12 Sec. 370.0315. ADDITION AND WITHDRAWAL OF COUNTIES. (a)
13 One or more counties may petition the commission for approval to
14 become part of an existing authority. The commission may approve
15 the petition only if:

16 (1) the board has agreed to the addition; and

17 (2) the commission finds that the affected political
18 subdivisions in the county or counties will be adequately
19 represented on the board.

20 (b) One or more counties may petition the commission for
21 approval to withdraw from an authority. The commission may approve
22 the petition only if:

23 (1) the authority has no bonded indebtedness; or

24 (2) the authority has debt other than bonded
25 indebtedness, but the board has agreed to the withdrawal.

26 (c) A county may not become part of an authority or withdraw
27 from an authority without the approval of the commission.

1 Sec. 370.032. NATURE OF REGIONAL MOBILITY AUTHORITY. (a)

2 An authority is a body politic and corporate and a political
3 subdivision of this state.

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

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

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

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

16 (d) The operations of an authority are governmental, not
17 proprietary, functions.

18 Sec. 370.033. GENERAL POWERS. (a) An authority, through
19 its board, may:

20 (1) adopt rules for the regulation of its affairs and
21 the conduct of its business;

22 (2) adopt an official seal;

23 (3) study, evaluate, design, finance, acquire,
24 construct, maintain, repair, and operate transportation projects,
25 individually or as one or more systems, provided that a
26 transportation project that is subject to Subpart C, 23 C.F.R. Part
27 450, is:

1 (A) included in the plan approved by the
2 applicable metropolitan planning organization; and

3 (B) consistent with the statewide transportation
4 plan and the statewide transportation improvement plan;

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

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

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

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

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

22 (9) notwithstanding Sections 221.003 and 222.031 and
23 subject to Subsection (j), apply for, directly or indirectly
24 receive and spend loans, gifts, grants, and other contributions for
25 any purpose of this chapter, including the construction of a
26 transportation project, and receive and spend contributions of
27 money, property, labor, or other things of value from any source,

1 including the United States, a state of the United States, the
2 United Mexican States, a state of the United Mexican States, the
3 commission, the department, a subdivision of this state, or a
4 governmental entity or private entity, to be used for the purposes
5 for which the grants, loans, or contributions are made, and enter
6 into any agreement necessary for the grants, loans, or
7 contributions;

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

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

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

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

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

24 (15) do all things necessary or appropriate to carry
25 out the powers and duties expressly granted or imposed by this
26 chapter.

27 (b) Except as provided by this subsection, property that is

1 a part of a transportation project of an authority is not subject to
2 condemnation or the exercise of the power of eminent domain by any
3 person, including a governmental entity. The department may
4 condemn property that is a part of a transportation project of an
5 authority if the property is needed for the construction,
6 reconstruction, or expansion of a state highway or rail facility.

7 (c) An authority may, if requested by the commission,
8 perform any function not specified by this chapter to promote or
9 develop a transportation project in this state.

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

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

16 (f) An authority and a governmental entity may enter into a
17 contract, agreement, interlocal agreement, or other similar
18 arrangement under which the authority may plan, design, construct,
19 or operate a transportation project on behalf of the governmental
20 entity. An authority may enter into a contract with the department
21 under which the authority will plan, develop, operate, or maintain
22 a transportation project on behalf of the department.

23 (g) Payments to be made to an authority under a contract
24 described by Subsection (f) constitute operating expenses of the
25 transportation project or system that is to be operated under the
26 contract. The contract may extend for the number of years as agreed
27 to by the parties.

1 (h) An authority shall adopt a written drug and alcohol
2 policy restricting the use of controlled substances by officers and
3 employees of the authority, prohibiting the consumption of
4 alcoholic beverages by employees while on duty, and prohibiting
5 employees from working for the authority while under the influence
6 of a controlled substance or alcohol. An authority may adopt
7 policies regarding the testing of employees suspected of being in
8 violation of the authority's drug and alcohol policy. The policy
9 shall provide that, unless required by court order or permitted by
10 the person who is the subject of the testing, the authority shall
11 keep the results of the test confidential.

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

15 (j) An authority may not apply for federal highway or rail
16 funds without the approval of the department.

17 (k) The authority granted to an authority under Subsection
18 (a)(10) does not include the authority to operate a public utility
19 facility that provides retail public utility service.

20 (l) If an authority establishes an airport in Central Texas,
21 the authority may not establish the airport at a location
22 prohibited to the department by Section 21.069(c).

23 Sec. 370.034. ESTABLISHMENT OF TRANSPORTATION SYSTEMS. (a)
24 If an authority determines that the traffic needs of the counties in
25 which it operates and the traffic needs of the surrounding region
26 could be most efficiently and economically met by jointly operating
27 two or more transportation projects as one operational and

1 financial enterprise, it may create a system made up of those
2 transportation projects. An authority may create more than one
3 system and may combine two or more systems into one system. An
4 authority may finance, acquire, construct, and operate additional
5 transportation projects as additions to or expansions of a system
6 if the authority determines that the transportation project could
7 most efficiently and economically be acquired or constructed if it
8 were a part of the system and that the addition will benefit the
9 system.

10 (b) The revenue of a system shall be accounted for
11 separately and may not be commingled with the revenue of a
12 transportation project that is not a part of the system or with the
13 revenue of another system.

14 Sec. 370.035. CONVERSION AND TRANSFER OF STATE HIGHWAY
15 SYSTEM PROJECTS. (a) The commission by order may convert a segment
16 of the free state highway system to a turnpike project and transfer
17 that segment to an authority, or may transfer an existing turnpike
18 project that is part of the state highway system, whether
19 previously tolled or not, to an authority if:

20 (1) the commission determines that the proposed
21 transfer is an integral part of the region's overall plan to improve
22 mobility in the region;

23 (2) the commission determines that the public has a
24 reasonable alternative route on nontoll roads; and

25 (3) the authority agrees to assume all liability and
26 responsibility for the maintenance and operation of the turnpike
27 project on its transfer.

1 (b) An authority shall reimburse the commission for the cost
2 of a transferred turnpike project unless the commission determines
3 that the transfer will result in a substantial net benefit to the
4 state, the department, and the traveling public that equals or
5 exceeds that cost.

6 (c) In computing the cost of the turnpike project, the
7 commission shall:

8 (1) include the total amount spent by the department
9 for the original construction of the turnpike project, including
10 the costs associated with the preliminary engineering and design
11 engineering for plans, specifications, and estimates, the
12 acquisition of necessary rights-of-way, and actual construction of
13 the turnpike project and all necessary appurtenant facilities; and

14 (2) consider the anticipated future costs of
15 expanding, improving, maintaining, operating, or extending the
16 turnpike project to be incurred by the authority and not by the
17 department if the turnpike project is transferred.

18 (d) The commission may, at the time a turnpike project is
19 transferred, remove the turnpike project from the state highway
20 system. After a transfer, the commission has no liability,
21 responsibility, or duty for the maintenance or operation of the
22 turnpike project.

23 (e) Before transferring a turnpike project that is part of
24 the state highway system under this section, the commission shall
25 conduct a public hearing at which interested persons shall be
26 allowed to speak on the proposed transfer. Notice of the hearing
27 must be published in the Texas Register, one or more newspapers of

1 general circulation in the counties in which the turnpike project
2 is located, and a newspaper, if any, published in the counties of
3 the applicable authority.

4 (f) The commission shall adopt rules to implement this
5 section. The rules shall include criteria and guidelines for the
6 approval of a transfer of a turnpike project.

7 (g) An authority shall adopt rules providing criteria and
8 guidelines for approval of the transfer of a turnpike project under
9 this section.

10 (h) The commission may not transfer the Queen Isabella
11 Causeway in Cameron County to an authority under this section.

12 Sec. 370.036. TRANSFER OF BONDED TURNPIKE PROJECT TO
13 DEPARTMENT. (a) An authority may transfer to the department a
14 turnpike project of the authority that has outstanding bonded
15 indebtedness if the commission:

16 (1) agrees to the transfer; and

17 (2) agrees to assume the outstanding bonded
18 indebtedness.

19 (b) The commission may assume the outstanding bonded
20 indebtedness only if the assumption:

21 (1) is not prohibited under the terms of an existing
22 trust agreement or indenture securing bonds or other obligations
23 issued by the commission for another project;

24 (2) does not prevent the commission from complying
25 with covenants of the commission under an existing trust agreement
26 or indenture; and

27 (3) does not cause a rating agency maintaining a

1 rating on outstanding obligations of the commission to lower the
2 existing rating.

3 (c) If the commission agrees to the transfer under
4 Subsection (a), the authority shall convey the turnpike project and
5 any real property acquired to construct or operate the turnpike
6 project to the department.

7 (d) At the time of a conveyance under this section, the
8 commission shall designate the turnpike project as part of the
9 state highway system. After the designation, the authority has no
10 liability, responsibility, or duty to maintain or operate the
11 transferred turnpike project.

12 Sec. 370.037. TRANSFER OF FERRY CONNECTING STATE HIGHWAYS.

13 (a) The commission by order may transfer a ferry operated under
14 Section 342.001 to an authority if:

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

18 (2) the authority:

19 (A) agrees to the transfer; and

20 (B) agrees to assume all liability and
21 responsibility for the maintenance and operation of the ferry on
22 its transfer.

23 (b) An authority shall reimburse the commission for the cost
24 of a transferred ferry unless the commission determines that the
25 transfer will result in a substantial net benefit to the state, the
26 department, and the traveling public that equals or exceeds that
27 cost.

1 (c) In computing the cost of the ferry, the commission
2 shall:

3 (1) include the total amount spent by the department
4 for the original construction of the ferry, including the costs
5 associated with the preliminary engineering and design engineering
6 for plans, specifications, and estimates, the acquisition of
7 necessary rights-of-way, and actual construction of the ferry and
8 all necessary appurtenant facilities; and

9 (2) consider the anticipated future costs of
10 expanding, improving, maintaining, or operating the ferry to be
11 incurred by the authority and not by the department if the ferry is
12 transferred.

13 (d) The commission shall, at the time the ferry is
14 transferred, remove the ferry from the state highway system. After
15 a transfer, the commission has no liability, responsibility, or
16 duty for the maintenance or operation of the ferry.

17 (e) Before transferring a ferry that is a part of the state
18 highway system under this section, the commission shall conduct a
19 public hearing at which interested persons shall be allowed to
20 speak on the proposed transfer. Notice of the hearing must be
21 published in the Texas Register, one or more newspapers of general
22 circulation in the counties in which the ferry is located, and a
23 newspaper, if any, published in the counties of the applicable
24 authority.

25 (f) The commission shall adopt rules to implement this
26 section. The rules must include criteria and guidelines for the
27 approval of a transfer of a ferry.

1 (g) An authority shall adopt rules establishing criteria
2 and guidelines for approval of the transfer of a ferry under this
3 section.

4 (h) An authority may temporarily charge a toll for use of a
5 ferry transferred under this section to pay the costs necessary for
6 an expansion of the ferry. An authority may permanently charge a
7 toll for use of ferry facilities that are an expansion of the ferry
8 transferred under this section.

9 Sec. 370.038. COMMISSION RULES. (a) The commission shall
10 adopt rules that:

11 (1) govern the creation of an authority;

12 (2) govern the commission's approval of a project
13 under Section 370.188 and other commission approvals required by
14 this chapter;

15 (3) establish design and construction standards for a
16 transportation project that will connect with a highway in the
17 state highway system or a department rail facility;

18 (4) establish minimum audit and reporting
19 requirements and standards;

20 (5) establish minimum ethical standards for authority
21 directors and employees; and

22 (6) govern the authority of an authority to contract
23 with the United Mexican States or a state of the United Mexican
24 States.

25 (b) The commission shall appoint a rules advisory committee
26 to advise the department and the commission on the development of
27 the commission's initial rules required by this section. The

1 committee must include one or more members representing an existing
2 authority, if applicable. Chapter 2110, Government Code, does not
3 apply to the committee. This subsection expires on the date the
4 commission adopts initial rules under this section.

5 [Sections 370.039-370.070 reserved for expansion]

6 SUBCHAPTER C. FEASIBILITY OF REGIONAL TRANSPORTATION PROJECTS

7 Sec. 370.071. EXPENDITURES FOR FEASIBILITY STUDIES. (a)

8 An authority may pay the expenses of studying the cost and
9 feasibility and any other expenses relating to the preparation and
10 issuance of bonds for a proposed transportation project by:

11 (1) using legally available revenue derived from an
12 existing transportation project;

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

17 (3) pledging to the payment of the bonds or a loan
18 agreement legally available revenue anticipated to be derived from
19 the operation of transportation projects or revenue legally
20 available to the authority from another source.

21 (b) Money spent under this section for a proposed
22 transportation project must be reimbursed to the transportation
23 project from which the money was spent from the proceeds of bonds
24 issued for the acquisition and construction of the proposed
25 transportation project.

26 (c) The use of any money of a transportation project to
27 study the feasibility of another transportation project or used to

1 repay any money used for that purpose does not constitute an
2 operating expense of the transportation project producing the
3 revenue and may be paid only from the surplus money of the
4 transportation project as determined by the authority.

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

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

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

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

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

21 (3) private participation, as authorized by law, in
22 the financing of a proposed transportation project, the refinancing
23 of an existing transportation project or system, or the
24 improvement, extension, or expansion of a transportation project.

25 (d) Money spent under Subsection (c) for a proposed
26 transportation project must be reimbursed from the proceeds of
27 revenue bonds issued for, or other proceeds that may be used for,

1 the acquisition, construction, improvement, extension, expansion,
2 or operation of the transportation project.

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

8 Sec. 370.073. FEASIBILITY STUDY BY MUNICIPALITY, COUNTY,
9 OTHER GOVERNMENTAL ENTITY, OR PRIVATE GROUP. (a) One or more
10 municipalities, counties, or other governmental entities, a
11 combination of municipalities, counties, and other governmental
12 entities, or a private group or combination of individuals in this
13 state may pay all or part of the expenses of studying the cost and
14 feasibility and any other expenses relating to:

15 (1) the preparation and issuance of bonds for the
16 acquisition or construction of a proposed transportation project by
17 an authority;

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

20 (3) the use of private participation under applicable
21 law in connection with the acquisition, construction, improvement,
22 expansion, extension, maintenance, repair, or operation of a
23 transportation project by an authority.

24 (b) Money spent under Subsection (a) for a proposed
25 transportation project is reimbursable without interest and with
26 the consent of the authority to the person paying the expenses
27 described in Subsection (a) out of the proceeds from revenue bonds

1 issued for or other proceeds that may be used for the acquisition,
2 construction, improvement, extension, expansion, maintenance,
3 repair, or operation of the transportation project.

4 [Sections 370.074-370.110 reserved for expansion]

5 SUBCHAPTER D. TRANSPORTATION PROJECT FINANCING

6 Sec. 370.111. TRANSPORTATION REVENUE BONDS. (a) An
7 authority, by bond resolution, may authorize the issuance of bonds
8 to pay all or part of the cost of a transportation project, to
9 refund any bonds previously issued for the transportation project,
10 or to pay for all or part of the cost of a transportation project
11 that will become a part of another system.

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

14 (1) be dated;

15 (2) bear interest at the rate or rates provided by the
16 bond resolution and beginning on the dates provided by the bond
17 resolution and as authorized by law, or bear no interest;

18 (3) mature at the time or times provided by the bond
19 resolution, not exceeding 40 years from their date or dates; and

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

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

25 (d) The proceeds of each bond issue shall be disbursed in
26 the manner and under any restrictions provided in the bond
27 resolution.

1 (e) Additional bonds may be issued in the same manner to pay
2 the costs of a transportation project. Unless otherwise provided
3 in the bond resolution, the additional bonds shall be on a parity,
4 without preference or priority, with bonds previously issued and
5 payable from the revenue of the transportation project. In
6 addition, an authority may issue bonds for a transportation project
7 secured by a lien on the revenue of the transportation project
8 subordinate to the lien on the revenue securing other bonds issued
9 for the transportation project.

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

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

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

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

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

27 (b) The interim bonds may be authorized and issued in

1 accordance with this chapter, without regard to a requirement,
2 restriction, or procedural provision in any other law.

3 (c) A bond resolution authorizing interim bonds may provide
4 that the interim bonds recite that the bonds are issued under this
5 chapter. The recital is conclusive evidence of the validity and the
6 regularity of the bonds' issuance.

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

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

10 (1) the revenue of the transportation project for
11 which the bonds are issued;

12 (2) payments made under an agreement with the
13 commission, the department, or other governmental entity as
14 provided by Subchapter G;

15 (3) money derived from any other source available to
16 the authority, other than money derived from a transportation
17 project that is not part of the same system or money derived from a
18 different system, except to the extent that the surplus revenue of a
19 transportation project or system has been pledged for that purpose;
20 and

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

23 (b) Bonds issued under this chapter do not constitute a debt
24 of this state or of a governmental entity, or a pledge of the faith
25 and credit of this state or of a governmental entity. Each bond
26 must contain on its face a statement to the effect that the state,
27 the authority, or any governmental entity is not obligated to pay

1 the bond or the interest on the bond from a source other than the
2 amount pledged to pay the bond and the interest on the bond, and
3 neither the faith and credit and taxing power of this state or of
4 any governmental entity are pledged to the payment of the principal
5 of or interest on the bond. This subsection does not apply to a
6 governmental entity that has entered into an agreement under
7 Section 370.303.

8 (c) An authority may not incur a financial obligation that
9 cannot be paid from revenue derived from owning or operating the
10 authority's transportation projects or from other revenue provided
11 by law.

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

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

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

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

22 (4) is enforceable against any person having a claim,
23 in tort, contract, or other remedy, against the applicable
24 authority without regard to whether the person has notice of the
25 lien or pledge.

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

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

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

8 (c) A bond indenture may:

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

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

14 (3) contain provisions the authority determines
15 reasonable and proper for the security of the bondholders,
16 including covenants:

17 (A) establishing the authority's duties relating
18 to:

19 (i) the acquisition of property;

20 (ii) the construction, maintenance,
21 operation, and repair of and insurance for a transportation
22 project; and

23 (iii) custody, safeguarding, and
24 application of money;

25 (B) prescribing events that constitute default;

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

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

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

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

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

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

16 Sec. 370.116. APPROVAL OF BONDS BY ATTORNEY GENERAL. (a)
17 An authority shall submit to the attorney general for examination
18 the record of proceedings relating to bonds authorized under this
19 chapter. The record shall include the bond proceedings and any
20 contract securing or providing revenue for the payment of the
21 bonds.

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

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

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

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

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

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

16 (b) Bonds of an authority may secure the deposit of public
17 money of this state or a political subdivision of this state to the
18 extent of the lesser of the face value of the bonds or their market
19 value.

20 Sec. 370.118. APPLICABILITY OF OTHER LAW; CONFLICTS. All
21 laws affecting the issuance of bonds by local governmental
22 entities, including Chapters 1201, 1202, 1204, and 1371, Government
23 Code, apply to bonds issued under this chapter. To the extent of a
24 conflict between those laws and this chapter, the provisions of
25 this chapter prevail.

26 [Sections 370.119-370.160 reserved for expansion]

27 SUBCHAPTER E. ACQUISITION, CONSTRUCTION, AND OPERATION OF

TRANSPORTATION PROJECTS

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

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

(2) a county that is not a part of the authority if:

(A) the transportation project in that county is a continuation of a transportation project of the authority extending from a county adjacent to that county;

(B) the county is given an opportunity to become part of the authority on terms and conditions acceptable to the authority and that county; and

(C) the commissioners court of the county agrees to the proposed acquisition, construction, operation, maintenance, expansion, or extension of the transportation project in that county.

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

Sec. 370.162. POWERS AND PROCEDURES OF AUTHORITY IN ACQUIRING PROPERTY. (a) An authority may construct or improve a transportation project on real property, including a right-of-way acquired by the authority or provided to the authority for that purpose by the commission, a political subdivision of this state, or any other governmental entity.

(b) Except as provided by this chapter, an authority has the

1 same powers and may use the same procedures as the commission in
2 acquiring property.

3 Sec. 370.163. ACQUISITION OF PROPERTY. (a) An authority
4 may acquire in the name of the authority public or private property
5 it determines necessary or convenient for the construction,
6 operation, maintenance, expansion, or extension of a
7 transportation project or for otherwise carrying out this chapter
8 only if the primary purpose of an acquisition is the furtherance of
9 a transportation project.

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

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

14 (2) franchises;

15 (3) easements;

16 (4) licenses; and

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

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

22 (d) Covenants, conditions, restrictions, or limitations
23 affecting property acquired in any manner by the authority are not
24 binding against the authority and do not impair the authority's
25 ability to use the property for a purpose authorized by this
26 chapter. The beneficiaries of the covenants, conditions,
27 restrictions, or limitations may not enjoin the authority from

1 using the property for a purpose authorized under this chapter, but
2 this section does not affect the right of a person to seek
3 compensation for damages to the person's property under Section 17,
4 Article I, Texas Constitution.

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

8 Sec. 370.164. RIGHT OF ENTRY. (a) To acquire property
9 necessary or useful in connection with a transportation project, an
10 authority may, on or after the fourth day after the date the
11 authority gives notice to the owner of the real property, water, or
12 premises, enter any real property, water, or premises to make a
13 survey, geotechnical evaluation, sounding, or examination.

14 (b) To ensure the safety and convenience of the public, an
15 authority shall, when entering any real property, water, or
16 premises on which is located a public utility facility:

17 (1) comply with applicable industry standard safety
18 codes and practices; and

19 (2) notwithstanding Subsection (a), give the owner or
20 operator of the facility not less than 10 days' notice before
21 entering the real property, water, or premises.

22 (c) An entry under Subsection (a) or (b) is not:

23 (1) a trespass; or

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

25 (d) The authority shall make reimbursements for any actual
26 damages to real property, water, or premises that result from an
27 activity described by Subsection (a) or (b).

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

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

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

10 (b) An authority may condemn real property that the
11 authority determines is:

12 (1) necessary or appropriate to construct or to
13 efficiently operate a transportation project;

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

19 (3) necessary for access, approach, or interchange
20 roads;

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

23 (5) otherwise necessary to implement this chapter.

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

26 (d) An authority's acquisition of any property of the
27 commission under this section or any other section of this chapter

1 or an authority's relocation, rerouting, disruption, or alteration
2 of any facility of the commission is considered a conversion of a
3 state highway under Section 370.035 and is subject to each
4 requirement or approval of a conversion under that section.

5 (e) The authority granted under this section does not
6 include the authority to condemn a bridge connecting this state to
7 the United Mexican States that is owned by a county or municipality.

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

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

12 (2) to which the case is assigned.

13 (b) An authority may file the declaration of taking
14 concurrently with or subsequent to the filing of the condemnation
15 petition but may not file the declaration after the special
16 commissioners have made an award in the condemnation proceeding.

17 (c) The declaration of taking must include:

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

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

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

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

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

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

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

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

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

11 (e) Instead of the deposit under Subsection (d), at its
12 option, the authority may, concurrently with the declaration of a
13 taking, tender in favor of the owner of the property a bond or other
14 security in an amount sufficient to secure the owner for the value
15 of the property taken and damages to remaining property, if the
16 authority obtains the court's approval.

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

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

25 (h) A property owner who is a defendant in an eminent domain
26 action filed by an authority under this chapter has 20 days after
27 the date of service of process of both a condemnation petition and a

1 notice of declaration of taking to give notice to the court in which
2 the action is pending of the property owner's preference that the
3 condemnation petition be placed on the court's docket in the same
4 manner as other cases pending in the court. On receipt of timely
5 notice from the property owner, the court in which the action is
6 pending shall place the case on its docket in the same manner as
7 other cases pending in the court.

8 Sec. 370.167. POSSESSION OF PROPERTY. (a) Immediately on
9 the filing of a declaration of taking, an authority shall serve a
10 copy of the declaration on each person possessing an interest in the
11 condemned property by a method prescribed by Section 21.016(d),
12 Property Code. The authority shall file evidence of the service
13 with the clerk of the court. On filing of that evidence, the
14 authority may take possession of the property on the same terms as
15 if a commissioners hearing had been conducted, pending the
16 litigation.

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

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

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

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

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

4 (b) At its option, an authority may negotiate for and
5 purchase the severed real property or any part of the severed real
6 property if the authority and the property owner agree on terms for
7 the purchase. An authority may sell and dispose of severed real
8 property that it determines is not necessary or useful to the
9 authority. Severed property must be appraised before being offered
10 for sale by the authority.

11 Sec. 370.169. ACQUISITION OF RIGHTS IN PUBLIC REAL
12 PROPERTY. (a) An authority may use real property, including
13 submerged land, streets, alleys, and easements, owned by this state
14 or a local government that the authority considers necessary for
15 the construction or operation of a transportation project.

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

19 (c) Except as provided by Section 370.035, this state or a
20 local government may convey, grant, or lease to an authority real
21 property, including highways and other real property devoted to
22 public use and rights or easements in real property, that may be
23 necessary or convenient to accomplish a purpose of the authority,
24 including the construction or operation of a transportation
25 project. A conveyance, grant, or lease under this section may be
26 made without advertising, court order, or other action other than
27 the normal action of this state or local government necessary for a

1 conveyance, grant, or lease.

2 (d) This section does not deprive the School Land Board of
3 the power to execute a lease for the development of oil, gas, and
4 other minerals on state-owned real property adjoining a
5 transportation project or in tidewater limits. A lease may provide
6 for directional drilling from the adjoining property or tidewater
7 area.

8 (e) This section does not affect the obligation of the
9 authority under another law to compensate this state for acquiring
10 or using property owned by or on behalf of this state. An
11 authority's use of property owned by or on behalf of this state is
12 subject to any covenants, conditions, restrictions, or limitations
13 affecting that property.

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

19 (1) a park, playground, or designated environmental
20 preserve;

21 (2) property owned by or on behalf of this state that
22 under law requires compensation to this state for the use or
23 acquisition of the property; or

24 (3) as provided by this chapter.

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

1 (c) An authority has full easements and rights-of-way
2 through, across, under, and over any property owned by the state or
3 any local government that are necessary or convenient to construct,
4 acquire, or efficiently operate a transportation project or system
5 under this chapter. This subsection does not affect the obligation
6 of the authority under other law to compensate this state for the
7 use or acquisition of an easement or right-of-way on property owned
8 by or on behalf of this state. An authority's use of property owned
9 by or on behalf of this state is subject to any covenants,
10 conditions, restrictions, or limitations affecting that property.

11 Sec. 370.171. PUBLIC UTILITY FACILITIES. (a) An authority
12 may adopt rules for the installation, construction, operation,
13 maintenance, repair, renewal, relocation, or removal of a public
14 utility facility in, on, along, over, or under a transportation
15 project.

16 (b) If an authority determines it is necessary that a public
17 utility facility located in, on, along, over, or under a
18 transportation project be relocated in the transportation project,
19 removed from the transportation project, or carried along or across
20 the transportation project by grade separation, the owner or
21 operator of the facility shall relocate or remove the facility in
22 accordance with the requirements of the authority and in a manner
23 that does not impede the design, financing, construction,
24 operation, or maintenance of the transportation project.

25 (c) The authority, as a part of the cost of the
26 transportation project or the cost of operating the transportation
27 project, shall pay the cost of the relocation, removal, or grade

1 separation of a public utility facility under Subsection (a),
2 including the cost of:

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

9 (d) The authority may reduce the total costs to be paid by
10 the authority under Subsection (c) by 10 percent for each 30-day
11 period or portion of a 30-day period by which the relocation or
12 removal exceeds the reasonable limit specified by the authority
13 unless the failure of the owner or operator of the facility to
14 timely relocate or remove the facility results directly from:

- 15 (1) a material action or inaction of the authority; or
16 (2) conditions beyond the reasonable control of the
17 owner or operator of the facility, including:
18 (A) an act of God; or
19 (B) a labor shortage or strike.

20 (e) If an owner or operator of a public utility facility
21 does not timely relocate or remove the facility as required by
22 Subsection (b), the authority may do so at the expense of the owner
23 or operator. If the authority relocates or removes a facility under
24 this subsection the authority shall relocate or remove the facility
25 in a safe manner that:

- 26 (1) complies with applicable law; and
27 (2) attempts to minimize the disruption of utility

1 service.

2 (f) The owner or operator of a public utility facility
3 relocated or removed under Subsection (e) shall reimburse the
4 authority for the expenses incurred for the relocation or removal
5 of the facility, except that the owner or operator is not required
6 to reimburse the authority if the failure of the owner or operator
7 to timely relocate or remove the facility was the direct result of
8 circumstances beyond the control of the owner or operator.

9 (g) Not later than 60 days before relocating or removing a
10 public utility facility under Subsection (e), an authority shall
11 provide to the utility:

12 (1) written notice of the department's determination
13 that the facility must be removed;

14 (2) a final plan for relocation of the facility; and

15 (3) reasonable terms and conditions for the relocation
16 or removal of the facility.

17 (h) Subchapter C, Chapter 181, Utilities Code, applies to
18 the erection, construction, maintenance, and operation of a line or
19 pole owned by an electric utility, as that term is defined by
20 Section 181.041, Utilities Code, over, under, across, on, and along
21 a transportation project or system constructed by an authority. An
22 authority has:

23 (1) the powers and duties delegated to the
24 commissioners court by that subchapter; and

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

27 (i) Subchapter B, Chapter 181, Utilities Code, applies to

1 the laying and maintenance of facilities used for conducting gas by
2 a gas utility, as that term is defined by Section 181.021, Utilities
3 Code, through, under, along, across, and over a transportation
4 project or system constructed by an authority except as otherwise
5 provided by this section. An authority has:

6 (1) the power and duties delegated to the
7 commissioners court by that subchapter; and

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

10 (j) The laws of this state applicable to the use of public
11 roads, streets, and waters by a telephone or telegraph corporation
12 apply to the erection, construction, maintenance, location, and
13 operation of a line, pole, or other fixture by a telephone or
14 telegraph corporation over, under, across, on, and along a
15 transportation project constructed by an authority under this
16 chapter.

17 Sec. 370.172. LEASE, SALE, OR CONVEYANCE OF TRANSPORTATION
18 PROJECT. An authority may lease, sell, or convey in any other
19 manner a transportation project to a governmental entity with the
20 approval of the governing body of the governmental entity to which
21 the project is transferred.

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

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

26 (2) contract with a person for the use of part of a
27 transportation project, or lease or sell part of a transportation

1 project, including the right-of-way adjoining the portion used to
2 transport people and property, for any purpose, including placing
3 on the adjoining right-of-way a gas station, garage, store, hotel,
4 restaurant, parking facility, railroad track, billboard, livestock
5 pasturage, telephone line or facility, telecommunication line or
6 facility, data transmission line or facility, or electric line or
7 facility, under terms set by the authority.

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

12 (1) provides revenue sufficient to pay:

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

15 (B) the principal of and interest on any bonds
16 issued for the transportation project as those bonds become due and
17 payable; and

18 (2) creates reserves for a purpose listed under
19 Subdivision (1).

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

23 (d) Revenue derived from tolls, fees, and fares, and other
24 revenue derived from a transportation project for which bonds are
25 issued, other than any part necessary to pay the cost of
26 maintenance, repair, and operation and to provide reserves for
27 those costs as provided in the bond proceedings, shall be set aside

1 at regular intervals as provided in the bond resolution or trust
2 agreement in a sinking fund that is pledged to and charged with the
3 payment of:

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

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

6 (3) necessary charges of paying agents for paying
7 principal and interest;

8 (4) the redemption price or the purchase price of
9 bonds retired by call or purchase as provided in the bond
10 proceedings; and

11 (5) any amounts due under credit agreements.

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

14 (f) To the extent permitted under the applicable bond
15 proceedings, revenue from one transportation project of an
16 authority may be used to pay the cost of another transportation
17 project of the authority.

18 (g) An authority may not use revenue from a transportation
19 project in a manner not authorized by this chapter. Except as
20 provided by this chapter, revenue derived from a transportation
21 project may not be applied for a purpose or to pay a cost other than
22 a cost or purpose that is reasonably related to or anticipated to be
23 for the benefit of a transportation project.

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

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

3 (1) money from a transportation project if the
4 transfer does not diminish the money available for the project to
5 less than any amount required to be retained by the bond proceedings
6 pertaining to the project;

7 (2) money received by the authority from any source
8 and not otherwise committed, including money from the transfer of a
9 transportation project or system or sale of authority assets;

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

11 (4) contributions, loans, grants, or assistance from
12 the United States, another state, another political subdivision of
13 this state, a foreign governmental entity, including the United
14 Mexican States or a state of the United Mexican States, a local
15 government, any private enterprise, or any person.

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

17 (1) finance the acquisition, construction,
18 maintenance, or operation of a transportation project, including
19 the extension, expansion, or improvement of a transportation
20 project;

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

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

27 (4) provide security for or payment of future or

1 existing debt for the design, acquisition, construction,
2 operation, maintenance, extension, expansion, or improvement of a
3 transportation project or system;

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

7 (6) provide for any other reasonable purpose that
8 assists in the financing of an authority as authorized by this
9 chapter.

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

14 Sec. 370.175. USE OF SURPLUS REVENUE. (a) Each year, if an
15 authority determines that it has surplus revenue from
16 transportation projects, it shall reduce tolls, spend the surplus
17 revenue on other transportation projects in the counties of the
18 authority in accordance with Subsection (b), or deposit the surplus
19 revenue to the credit of the Texas Mobility Fund.

20 (b) Consistent with other law and commission rule, an
21 authority may spend surplus revenue on other transportation
22 projects by:

23 (1) constructing a transportation project located
24 within the counties of the authority;

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

27 (3) with the approval of the commission, constructing

1 a toll or toll-free transportation project and, on completion of
2 the project, transferring the project to another governmental
3 entity if:

4 (A) the other governmental entity authorizes the
5 authority to construct the project and agrees to assume all
6 liability and responsibility for the maintenance and operation of
7 the project on its transfer; and

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

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

12 (1) a transportation project or system;

13 (2) property the authority acquires or uses under this
14 chapter for a transportation project or system; or

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

17 (b) An authority is exempt from payment of development fees,
18 utility connection fees, assessments, and service fees imposed or
19 assessed by any governmental entity or any property owners' or
20 homeowners' association.

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

25 (b) An authority may construct a grade separation at an
26 intersection of a transportation project with a railroad or highway
27 and change the line or grade of a highway to accommodate the design

1 of the grade separation. The action may not affect a segment of the
2 state highway system without the department's consent. The
3 authority shall pay the cost of a grade separation and any damage
4 incurred in changing a line or grade of a railroad or highway as
5 part of the cost of the transportation project.

6 (c) If feasible, an authority shall provide access to
7 properties previously abutting a county road or other public road
8 that is taken for a transportation project and shall pay abutting
9 property owners the expenses or any resulting damages for a denial
10 of access to the road.

11 (d) If an authority changes the location of a segment of a
12 county road as part of its development of a transportation project,
13 the authority shall, on the request of the county, reconstruct that
14 segment of the road at a location that the authority determines, in
15 its discretion, restores the utility of the road. The
16 reconstruction and its associated costs are in furtherance of a
17 transportation project.

18 Sec. 370.178. FAILURE OR REFUSAL TO PAY TURNPIKE PROJECT
19 TOLL; OFFENSE; ADMINISTRATIVE PENALTY. (a) The operator of a
20 vehicle, other than an authorized emergency vehicle as defined by
21 Section 541.201, that is driven or towed through a toll collection
22 facility of a turnpike project shall pay the proper toll. The
23 operator of a vehicle who drives or tows a vehicle through a toll
24 collection facility and does not pay the proper toll commits an
25 offense. An offense under this subsection is a misdemeanor
26 punishable by a fine not to exceed \$250.

27 (b) In the event of nonpayment of the proper toll as

1 required by Subsection (a), on issuance of a written notice of
2 nonpayment, the registered owner of the nonpaying vehicle is liable
3 for the payment of both the proper toll and an administrative fee.

4 (c) The authority may impose and collect the administrative
5 fee to recover the cost of collecting the unpaid toll, not to exceed
6 \$100. The authority shall send a written notice of nonpayment to
7 the registered owner of the vehicle at that owner's address as shown
8 in the vehicle registration records of the department by first
9 class mail not later than the 30th day after the date of the alleged
10 failure to pay and may require payment not sooner than the 30th day
11 after the date the notice was mailed. The registered owner shall
12 pay a separate toll and administrative fee for each event of
13 nonpayment under Subsection (a).

14 (d) The registered owner of a vehicle for which the proper
15 toll was not paid who is mailed a written notice of nonpayment under
16 Subsection (c) and fails to pay the proper toll and administrative
17 fee within the time specified by the notice of nonpayment commits an
18 offense. Each failure to pay a toll or administrative fee under
19 this subsection is a separate offense.

20 (e) It is an exception to the application of Subsection (b)
21 or (d) that the registered owner of the vehicle is a lessor of the
22 vehicle and not later than the 30th day after the date the notice of
23 nonpayment is mailed provides to the authority a copy of the rental,
24 lease, or other contract document covering the vehicle on the date
25 of the nonpayment under Subsection (a), with the name and address of
26 the lessee clearly legible. If the lessor provides the required
27 information within the period prescribed, the authority may send a

1 notice of nonpayment to the lessee at the address shown on the
2 contract document by first class mail before the 30th day after the
3 date of receipt of the required information from the lessor. The
4 lessee of the vehicle for which the proper toll was not paid who is
5 mailed a written notice of nonpayment under this subsection and
6 fails to pay the proper toll and administrative fee within the time
7 specified by the notice of nonpayment commits an offense. The
8 lessee shall pay a separate toll and administrative fee for each
9 event of nonpayment. Each failure to pay a toll or administrative
10 fee under this subsection is a separate offense.

11 (f) It is an exception to the application of Subsection (b)
12 or (d) that the registered owner of the vehicle transferred
13 ownership of the vehicle to another person before the event of
14 nonpayment under Subsection (a) occurred, submitted written notice
15 of the transfer to the department in accordance with Section
16 520.023, and before the 30th day after the date the notice of
17 nonpayment is mailed, provides to the authority the name and
18 address of the person to whom the vehicle was transferred. If the
19 former owner of the vehicle provides the required information
20 within the period prescribed, the authority may send a notice of
21 nonpayment to the person to whom ownership of the vehicle was
22 transferred at the address provided by the former owner by first
23 class mail before the 30th day after the date of receipt of the
24 required information from the former owner. The subsequent owner
25 of the vehicle for which the proper toll was not paid who is mailed a
26 written notice of nonpayment under this subsection and fails to pay
27 the proper toll and administrative fee within the time specified by

1 the notice of nonpayment commits an offense. The subsequent owner
2 shall pay a separate toll and administrative fee for each event of
3 nonpayment under Subsection (a). Each failure to pay a toll or
4 administrative fee under this subsection is a separate offense.

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

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

10 (i) In the prosecution of an offense under this section,
11 proof that the vehicle passed through a toll collection facility
12 without payment of the proper toll together with proof that the
13 defendant was the registered owner or the driver of the vehicle when
14 the failure to pay occurred, establishes the nonpayment of the
15 registered owner. The proof may be by testimony of a peace officer
16 or authority employee, video surveillance, or any other reasonable
17 evidence.

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

23 (1) the occurrence of the failure to pay; or

24 (2) eight hours after the discovery of the theft.

25 (k) In this section, "registered owner" means the owner of a
26 vehicle as shown on the vehicle registration records of the
27 department or the analogous department or agency of another state

1 or country.

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

8 (b) Any law enforcement or peace officer of an entity with
9 which an authority has contracted under Section 370.182(c) may
10 seize a stolen or insufficiently funded transponder and return it
11 to the authority that issued the transponder. An insufficiently
12 funded transponder may not be seized before the 30th day after the
13 date that an authority has sent a notice of delinquency to the
14 holder of the account.

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

20 (1) the authority;

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

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

25 Sec. 370.180. CONTROLLED ACCESS TO TURNPIKE PROJECTS. (a)
26 An authority by order may designate a turnpike project or a portion
27 of a project as a controlled-access toll road.

1 (b) An authority by order may:

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

5 (2) deny access to or from:

6 (A) a turnpike project;

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

8 or

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

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

13 (4) control, restrict, and determine the type and
14 extent of access permitted at a designated location of access to a
15 turnpike project; or

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

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

20 Sec. 370.181. PROMOTION OF TRANSPORTATION PROJECT. An
21 authority may promote the use of a transportation project,
22 including a project that it operates on behalf of another entity, by
23 appropriate means, including advertising or marketing as the
24 authority determines appropriate.

25 Sec. 370.182. OPERATION OF TRANSPORTATION PROJECT. (a) An
26 authority shall operate a transportation project with employees of
27 the authority or by using services contracted under Subsection (b)

1 or (c).

2 (b) An authority may enter into an agreement with one or
3 more persons to provide, on terms and conditions approved by the
4 authority, personnel and services to design, construct, operate,
5 maintain, expand, enlarge, or extend the transportation project of
6 the authority.

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

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

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

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

17 (2) attempt to identify disadvantaged businesses that
18 provide or have the potential to provide supplies, materials,
19 equipment, or services to the authority; and

20 (3) give disadvantaged businesses full access to the
21 authority's contract bidding process, inform the businesses about
22 the process, offer the businesses assistance concerning the
23 process, and identify barriers to the businesses' participation in
24 the process.

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

27 Sec. 370.185. PROCUREMENT. An authority shall adopt rules

1 governing the award of contracts for goods and services.
2 Notwithstanding any other provision of state law, an authority may
3 procure goods and services, including materials, engineering,
4 design, construction, operations, maintenance, and other goods and
5 services, through any procedure authorized by this chapter.
6 Procurement of professional services is governed by Chapter 2254,
7 Government Code.

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

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

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

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

18 Sec. 370.188. PROJECT APPROVAL. (a) An authority may not
19 begin construction of a transportation project that will connect to
20 the state highway system or to a department rail facility without
21 the approval of the commission.

22 (b) The commission by rule shall establish procedures and
23 criteria for an approval under this section. The rules must require
24 the commission to consider a request for project approval not later
25 than the 60th day after the date the department receives all
26 information reasonably necessary to review the request.

27 Sec. 370.189. ENVIRONMENTAL REVIEW OF AUTHORITY PROJECTS.

1 (a) An authority shall adopt rules for environmental review of a
2 transportation project that is not subject to review under the
3 National Environmental Policy Act (42 U.S.C. Section 4321 et seq.),
4 as amended. The rules must:

5 (1) specify the types of projects for which a public
6 hearing is required;

7 (2) establish procedures for public comment on the
8 environmental review, including a procedure for requesting a public
9 hearing on an environmental review for which a public hearing is not
10 required; and

11 (3) require:

12 (A) an evaluation of any direct or indirect
13 environmental effect of the project;

14 (B) an analysis of project alternatives; and

15 (C) a written report that briefly explains the
16 authority's review of the project and that specifies any mitigation
17 measures on environmental harm on which the project is conditioned.

18 (b) An environmental review of a project must be conducted
19 before the authority may approve the location or alignment of the
20 project.

21 (c) The authority shall consider the results of the
22 environmental review in executing its duties.

23 (d) The authority shall coordinate with the Texas
24 Commission on Environmental Quality and the Parks and Wildlife
25 Department in the preparation of an environmental review.

26 [Sections 370.190-370.250 reserved for expansion]

27 SUBCHAPTER F. GOVERNANCE

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

19 (b) Unless the commissioners courts of the counties of the
20 authority unanimously agree otherwise, the commissioners court of
21 each county of an authority that contains an operating
22 transportation project of the authority shall appoint one
23 additional director.

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

27 (d) One director appointed to the initial board of an

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

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

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

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

15 (1) an elected official;

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

18 (3) a department employee;

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

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

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

27 (i) The vote of a majority attending a board meeting is

1 necessary for any action taken by the board. If a vacancy exists on
2 a board, the majority of directors serving on the board is a quorum.

3 (j) The commission may refuse to authorize the creation of
4 an authority if the commission determines that the proposed board
5 will not fairly represent political subdivisions in the counties of
6 the authority that will be affected by the creation of the
7 authority.

8 Sec. 370.2515. BOARD COMPOSITION PROPOSAL BY TURNPIKE
9 AUTHORITY. If a county in which a turnpike authority under Chapter
10 366 operates or a county owning or operating a toll project under
11 Chapter 284 is part of an authority, the turnpike authority or the
12 county may submit to the commission a proposed structure for the
13 board and a method of appointment to the board:

14 (1) at the creation of the authority if the county is a
15 county that initially forms an authority;

16 (2) when a new county is added to the authority; and

17 (3) when the county is initially added to the
18 authority.

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

21 (1) accept or solicit any gift, favor, or service
22 that:

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

25 (B) the director or employee knows or should know
26 is being offered with the intent to influence the director's or
27 employee's official conduct;

1 (2) accept other employment or engage in a business or
2 professional activity that the director or employee might
3 reasonably expect would require or induce the director or employee
4 to disclose confidential information acquired by reason of the
5 official position;

6 (3) accept other employment or compensation that could
7 reasonably be expected to impair the director's or employee's
8 independence of judgment in the performance of the director's or
9 employee's official duties;

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

13 (5) intentionally or knowingly solicit, accept, or
14 agree to accept any benefit for having exercised the director's or
15 employee's official powers or performed the director's or
16 employee's official duties in favor of another; or

17 (6) have a personal interest in an agreement executed
18 by the authority.

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

22 (1) is employed by or participates in the management
23 of a business entity or other organization, other than a
24 governmental entity, that is regulated by or receives funds from
25 the authority or the department;

26 (2) directly or indirectly owns or controls more than
27 a 10 percent interest in a business or other organization that is

1 regulated by or receives funds from the authority or the
2 department;

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

5 (4) is required to register as a lobbyist under
6 Chapter 305, Government Code, because of the person's activities
7 for compensation on behalf of a profession related to the operation
8 of the authority or the department.

9 (c) A person is not eligible to serve as a director or chief
10 administrative officer of an authority if the person is an officer,
11 employee, or paid consultant of a Texas trade association in the
12 field of road construction or maintenance, public transportation,
13 or aviation, or if the person's spouse is an officer, manager, or
14 paid consultant of a Texas trade association in the field of road
15 construction or maintenance, public transportation, or aviation.

16 (d) In this section, "Texas trade association" means a
17 nonprofit, cooperative, and voluntarily joined association of
18 business or professional competitors in this state designed to
19 assist its members and its industry or profession in dealing with
20 mutual business or professional problems and in promoting their
21 common interests.

22 (e) A person is not ineligible to serve as a director or
23 chief administrative officer of an authority if the person has
24 received funds from the department for acquisition of highway
25 right-of-way unless the acquisition was for a project of the
26 authority.

27 Sec. 370.253. SURETY BONDS. (a) Before beginning a term,

1 each director shall execute a surety bond in the amount of \$25,000,
2 and the secretary and treasurer shall execute a surety bond in the
3 amount of \$50,000.

4 (b) Each surety bond must be:

5 (1) conditioned on the faithful performance of the
6 duties of office;

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

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

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

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

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

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

18 (3) cannot discharge the director's duties for a
19 substantial part of the term for which the director is appointed
20 because of illness or disability; or

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

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

27 (c) If the chief administrative officer of the authority has

1 knowledge that a potential ground for removal exists, that person
2 shall notify the presiding officer of the board of the ground. The
3 presiding officer shall then notify the person that appointed the
4 director that a potential ground for removal exists.

5 Sec. 370.255. COMPENSATION OF DIRECTOR. Each director is
6 entitled to reimbursement for the director's actual expenses
7 necessarily incurred in the performance of the director's duties.
8 A director is not entitled to any additional compensation for the
9 director's services.

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

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

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

17 (2) prepare and maintain a written plan that describes
18 how an individual who does not speak English or who has a physical,
19 mental, or developmental disability may be provided reasonable
20 access to the authority's programs.

21 Sec. 370.258. INDEMNIFICATION. (a) An authority may
22 indemnify one or more of its directors or officers for necessary
23 expenses and costs, including attorney's fees, incurred by the
24 directors or officers in connection with any claim asserted against
25 the directors or officers in their respective capacities as
26 directors or officers.

27 (b) If an authority does not fully indemnify a director or

1 officer as provided by Subsection (a), the court in a proceeding in
2 which any claim against the director or officer is asserted or any
3 court with jurisdiction of an action instituted by the director or
4 officer on a claim for indemnity may assess indemnity against the
5 authority, its receiver, or trustee only if the court finds that, in
6 connection with the claim, the director or officer is not guilty of
7 negligence or misconduct.

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

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

12 Sec. 370.259. PURCHASE OF LIABILITY INSURANCE. (a) An
13 authority shall insure its officers and employees from liability
14 arising from the use, operation, or maintenance of equipment that
15 is used or may be used in connection with the laying out,
16 construction, or maintenance of the authority's transportation
17 projects.

18 (b) Insurance coverage under this section must be provided
19 by the purchase of a policy of liability insurance from a reliable
20 insurance company authorized to do business in this state. The form
21 of the policy must be approved by the commissioner of insurance.

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

25 (d) In this section, "equipment" includes an automobile,
26 motor truck, trailer, aircraft, motor grader, roller, tractor,
27 tractor power mower, locomotive, rail car, and other power

1 equipment.

2 Sec. 370.260. CERTAIN CONTRACTS AND SALES PROHIBITED. (a)

3 A director, agent, or employee of an authority may not:

4 (1) contract with the authority; or

5 (2) be directly or indirectly interested in:

6 (A) a contract with the authority; or

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

8 (b) A person who violates Subsection (a) is liable for a

9 civil penalty to the authority in an amount not to exceed \$1,000.

10 Sec. 370.261. STRATEGIC PLANS AND ANNUAL REPORTS. (a) An

11 authority shall make a strategic plan for its operations. A

12 majority of the commissioners courts of the counties of the

13 authority shall by concurrent resolution determine the types of

14 information required to be included in the strategic plan. Each

15 even-numbered year, an authority shall issue a plan covering the

16 succeeding five fiscal years, beginning with the next odd-numbered

17 fiscal year.

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

19 file with the commissioners court of each county of the authority a

20 written report on the authority's activities describing all

21 transportation revenue bond issuances anticipated for the coming

22 year, the financial condition of the authority, all project

23 schedules, and the status of the authority's performance under the

24 most recent strategic plan. At the invitation of a commissioners

25 court of a county of the authority, representatives of the board and

26 the administrative head of an authority shall appear before the

27 commissioners court to present the report and receive questions and

1 comments.

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

5 Sec. 370.262. MEETINGS BY TELEPHONE CONFERENCE CALL. (a)
6 Chapter 551, Government Code, does not prohibit any open or closed
7 meeting of the board, a committee of the board, or the staff, or any
8 combination of the board or staff, from being held by telephone
9 conference call.

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

12 (c) Notice of a telephone conference call meeting that by
13 law must be open to the public must specify the location of the
14 meeting. The location must be a conference room of the authority or
15 other facility in a county of the authority that is accessible to
16 the public.

17 (d) Each part of the telephone conference call meeting that
18 by law must be open to the public shall be audible to the public at
19 the location specified in the notice and shall be tape-recorded or
20 documented by written minutes. On conclusion of the meeting, the
21 tape recording or the written minutes of the meeting shall be made
22 available to the public.

23 [Sections 370.263-370.300 reserved for expansion]

24 SUBCHAPTER G. PARTICIPATION IN FINANCING, CONSTRUCTION, AND
25 OPERATION OF TRANSPORTATION PROJECTS

26 Sec. 370.301. DEPARTMENT CONTRIBUTIONS TO TURNPIKE
27 PROJECTS. (a) The department may agree with an authority to

1 provide for or contribute to the payment of costs of financial or
2 engineering and traffic feasibility studies and the design,
3 financing, acquisition, construction, operation, or maintenance of
4 a turnpike project or system on terms agreed on by the commission or
5 department, as applicable, and the authority. The agreement may
6 not be inconsistent with the rights of the bondholders or persons
7 operating the turnpike project under a lease or other contract.

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

11 (c) An obligation or expense incurred by the commission or
12 department under this section is a part of the cost of the turnpike
13 project for which the obligation or expense was incurred. The
14 commission or department may require money contributed by the
15 commission or department under this section to be repaid from tolls
16 or other revenue of the turnpike project on which the money was
17 spent. Money repaid as required by the commission or department
18 shall be deposited to the credit of the fund from which the
19 contribution was made. Money deposited as required by this section
20 is exempt from the application of Section 403.095, Government Code.

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

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

26 (f) The commission may grant or loan department money to an
27 authority for the acquisition of land for or the construction,

1 maintenance, or operation of a turnpike project. The commission
2 may require the authority to repay money provided under this
3 section from toll revenue or other sources on terms established by
4 the commission.

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

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

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

26 (1) the design, financing, construction, maintenance,
27 and operation of a transportation project in accordance with

1 standards adopted by the authority; and

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

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

8 (d) An authority or a county in an authority is not liable
9 for any financial or other obligation of a transportation project
10 solely because a private entity constructs, finances, or operates
11 any part of a transportation project.

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

15 Sec. 370.303. AGREEMENTS BETWEEN AUTHORITY AND LOCAL
16 GOVERNMENTAL ENTITIES. (a) A governmental entity other than a
17 nonprofit corporation may, consistent with the Texas Constitution,
18 issue bonds, notes, or other obligations or enter into and make
19 payments under agreements with an authority to acquire, construct,
20 maintain, or operate a transportation project, whether inside or
21 outside the geographic boundaries of the governmental entity,
22 including agreements to pay the principal of, and interest on,
23 bonds, notes, or other obligations issued by the authority and make
24 payments under any related credit agreements. The entity may
25 impose and collect taxes to pay the interest on the bonds and to
26 provide a sinking fund for the redemption of the bonds.

27 (b) In addition to the powers provided by Subsection (a), a

1 governmental entity may, to the extent constitutionally permitted,
2 agree with an authority to issue bonds, notes, or other
3 obligations, create a taxing district or an entity to promote
4 economic development, fund public improvements to promote economic
5 development, or enter into and make payments under an agreement to
6 acquire, construct, maintain, or operate any portion of a
7 transportation project of the authority. An agreement may include
8 a means for a local governmental entity to provide funds for a
9 transportation project that benefits the governmental entity to be
10 developed by the authority.

11 (c) To make payments under an agreement under Subsection
12 (b), to pay the interest on bonds issued under Subsection (b), or to
13 provide a sinking fund for the bonds or the agreement, a
14 governmental entity may:

15 (1) pledge revenue from any available source,
16 including annual appropriations;

17 (2) impose and collect taxes; or

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

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

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

24 (f) The governing body of any governmental entity issuing
25 bonds, notes, or other obligations or entering into agreements
26 under this section may exercise the authority granted to the
27 governing body of an issuer with regard to issuance of obligations

1 under Chapter 1371, Government Code, except that the prohibition in
2 that chapter on the repayment of an obligation with ad valorem taxes
3 does not apply to an issuer exercising the authority granted by this
4 section.

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

8 Sec. 370.305. EXCLUSIVE DEVELOPMENT AGREEMENTS. An
9 authority may use an exclusive development agreement to construct,
10 maintain, repair, operate, extend, or expand a transportation
11 project by invested private funding or by public funding, private
12 funding, or any combination. An agreement under this section is not
13 subject to a requirement or restriction of Section 222.103(i).

14 Sec. 370.306. PROCESS FOR ENTERING INTO EXCLUSIVE
15 DEVELOPMENT AGREEMENTS. (a) If an authority enters into an
16 exclusive development agreement, the authority shall use a
17 competitive procurement process that provides the best value for
18 the authority. The authority may accept unsolicited proposals for
19 a proposed transportation project or solicit proposals in
20 accordance with this section.

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

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

26 (2) information regarding the private entity's
27 qualifications, experience, technical competence, and capability

1 to develop the project; and

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

4 (A) projected project costs; and

5 (B) proposed sources of funds.

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

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

13 (2) the authority authorizes the further evaluation of
14 an unsolicited proposal.

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

18 (e) An authority may interview a private entity submitting
19 an unsolicited proposal or responding to a request under Subsection
20 (c). The authority shall evaluate each proposal based on the
21 criteria described in the notice. The authority must qualify at
22 least two private entities to submit detailed proposals for a
23 project under Subsection (f) unless the authority does not receive
24 more than one proposal or one response to a request under Subsection
25 (c).

26 (f) An authority shall issue a request for detailed
27 proposals from all private entities qualified under Subsection (e)

1 if the authority proceeds with the further evaluation of a proposed
2 project. A request under this subsection may require additional
3 information relating to:

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

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

8 (3) detailed engineering or architectural designs;

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

10 (5) costing methodology; or

11 (6) any other information the authority considers
12 relevant or necessary.

13 (g) In issuing a request for proposals under Subsection (f),
14 an authority may solicit input from entities qualified under
15 Subsection (e) or any other person. An authority may also solicit
16 input regarding alternative technical concepts after issuing a
17 request under Subsection (f).

18 (h) An authority shall rank each proposal based on the
19 criteria described in the request for proposals and select the
20 private entity whose proposal offers the best value to the
21 authority.

22 (i) An authority may require that an unsolicited proposal be
23 accompanied by a nonrefundable fee sufficient to cover all or part
24 of its cost to review the proposal.

25 (j) An authority shall pay an unsuccessful private entity
26 that submits a response to a request for detailed proposals under
27 Subsection (f) a stipulated amount of the final contract price for

1 any costs incurred in preparing that proposal. The stipulated
2 amount must be stated in the request for proposals and may not
3 exceed the value of any work product contained in the proposal that
4 can, as determined by the authority, be used by the authority in the
5 performance of its functions. After payment of the stipulated
6 amount:

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

11 (2) the work product contained in the proposal becomes
12 the property of the authority.

13 (k) An authority shall prescribe the general form of an
14 exclusive development agreement and may include any matter the
15 authority considers advantageous to the authority. The authority
16 and the private entity shall negotiate the specific terms of an
17 exclusive development agreement.

18 (1) Subchapter A, Chapter 223, of this code and Chapter
19 2254, Government Code, do not apply to an exclusive development
20 agreement entered into under Section 370.305.

21 Sec. 370.307. CONFIDENTIALITY OF NEGOTIATIONS FOR
22 EXCLUSIVE DEVELOPMENT AGREEMENTS. To encourage private entities to
23 submit proposals under Section 370.306, the following information
24 is confidential, is not subject to disclosure, inspection, or
25 copying under Chapter 552, Government Code, and is not subject to
26 disclosure, discovery, subpoena, or other means of legal compulsion
27 for its release until a final contract for a proposed project is

1 entered into:

2 (1) all or part of a proposal submitted by a private
3 entity for an exclusive development agreement, except information
4 provided under Section 370.306(b);

5 (2) supplemental information or material submitted by
6 a private entity in connection with a proposal for an exclusive
7 development agreement; and

8 (3) information created or collected by an authority
9 or its agent during consideration of a proposal for an exclusive
10 development agreement.

11 Sec. 370.308. PERFORMANCE AND PAYMENT SECURITY. (a)
12 Notwithstanding Section 223.006 and the requirements of Subchapter
13 B, Chapter 2253, Government Code, an authority shall require a
14 private entity entering into an exclusive development agreement
15 under Section 370.005 to provide a performance and payment bond or
16 an alternative form of security in an amount sufficient to:

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

19 (2) protect:

20 (A) the authority; and

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

24 (b) A performance and payment bond or alternative form of
25 security shall be in an amount equal to the cost of constructing or
26 maintaining the project.

27 (c) If an authority determines that it is impracticable for

1 a private entity to provide security in the amount described by
2 Subsection (b), the authority shall set the amount of the bonds or
3 the alternative forms of security.

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

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

10 (f) In addition to performance and payment bonds, an
11 authority may require the following alternative forms of security:

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

14 (2) a United States bond or note;

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

16 (4) any other form of security determined suitable by
17 the authority.

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

20 Sec. 370.309. OWNERSHIP OF TRANSPORTATION PROJECTS. (a) A
21 transportation project that is the subject of a development
22 agreement with a private entity, including the facilities acquired
23 or constructed on the project, is public property and belongs to the
24 authority that entered into the agreement.

25 (b) An authority may enter into an agreement that provides
26 for the lease of rights-of-way, the granting of easements, the
27 issuance of franchises, licenses, or permits, or any lawful uses to

1 enable a private entity to construct, operate, and maintain a
2 transportation project, including supplemental facilities. At the
3 termination of the agreement, the transportation project,
4 including the facilities, must be in a state of proper maintenance
5 as determined by the authority and shall be returned to the
6 authority in satisfactory condition at no further cost.

7 Sec. 370.310. TERMS OF PRIVATE PARTICIPATION. An authority
8 shall negotiate the terms of private participation in a
9 transportation project, including:

10 (1) methods to determine the applicable cost, profit,
11 and project distribution between the private equity investors and
12 the authority;

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

15 (3) acceptable safety and policing standards; and

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

19 Sec. 370.311. RULES, PROCEDURES, AND GUIDELINES GOVERNING
20 NEGOTIATING PROCESS. (a) An authority shall adopt rules,
21 procedures, and other guidelines governing negotiations to promote
22 fairness, obtain private participants in transportation projects,
23 and promote confidence among those participants. The rules must
24 contain criteria relating to the qualifications of the participants
25 and the award of the contracts and may authorize the authority to
26 impose a fee for reviewing proposals for private involvement in a
27 transportation project.

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

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

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

15 (e) An authority may agree to acquire the work product of an
16 unsuccessful proposer for the development of a project through an
17 exclusive development agreement or other form of private
18 involvement in a transportation project if the payment for such
19 work product does not exceed its value to the authority.

20 Sec. 370.312. PARTICIPATION ON CERTAIN OTHER BOARDS,
21 COMMISSIONS, OR PUBLIC BODIES. (a) An authority may participate in
22 and designate board members to serve as representatives on boards,
23 commissions, or public bodies, the purposes of which are to promote
24 the development of joint toll facilities in this state, between
25 this state and other states of the United States, or between this
26 state and the United Mexican States or states of the United Mexican
27 States.

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

4 Sec. 370.313. COMBINATION OF ENGINEERING, DESIGN, AND
5 CONSTRUCTION SERVICES. An authority may procure a combination of
6 engineering, design, and construction services in a single
7 procurement for a transportation project provided that any contract
8 awarded must be the one that results in the best value to the
9 authority.

10 Sec. 370.314. PERFORMANCE AND PAYMENT BONDS AND SECURITY.
11 Notwithstanding Chapter 2253, Government Code, an authority shall
12 require any party to an agreement to operate or maintain a
13 transportation project to provide performance and payment bonds or
14 other forms of security in amounts considered by the authority to be
15 adequate to protect the authority and to assure performance of all
16 obligations to the authority and to subcontractors providing
17 materials or labor for a transportation project.

18 Sec. 370.315. TRANS-TEXAS CORRIDOR PROJECTS. In the event
19 that an authority is requested by the commission to participate in
20 the development of a transportation project that has been
21 designated as part of the Trans-Texas Corridor, the authority shall
22 have, in addition to all powers granted in this chapter, all powers
23 of the department related to the development of Trans-Texas
24 Corridor projects.

25 [Sections 370.316-370.330 reserved for expansion]

26 SUBCHAPTER H. DISSOLUTION OF AUTHORITY

27 Sec. 370.331. VOLUNTARY DISSOLUTION. (a) An authority may

1 not be dissolved unless the dissolution is approved by the
2 commission.

3 (b) A board may submit a request to the commission for
4 approval to dissolve.

5 (c) The commission may approve a request to dissolve only
6 if:

7 (1) all debts, obligations, and liabilities of the
8 authority have been paid and discharged or adequate provision has
9 been made for the payment of all debts, obligations, and
10 liabilities;

11 (2) there are no suits pending against the authority,
12 or adequate provision has been made for the satisfaction of any
13 judgment, order, or decree that may be entered against it in any
14 pending suit; and

15 (3) the authority has commitments from other
16 governmental entities to assume jurisdiction of all authority
17 transportation facilities.

18 Sec. 370.332. INVOLUNTARY DISSOLUTION. (a) The commission
19 by order may require an authority to dissolve if the commission
20 determines that the authority has not substantially complied with
21 the requirements of a commission rule or an agreement between the
22 department and the authority.

23 (b) The commission may not require dissolution unless:

24 (1) the conditions described in Sections
25 370.331(c)(1) and (2) have been met; and

26 (2) the holders of any indebtedness have evidenced
27 their agreement to the dissolution.

1 SECTION 2. Section 361.003, Transportation Code, is
2 repealed.

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

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