

By: Krusee

H.B. No. 2662

A BILL TO BE ENTITLED

AN ACT

relating to construction, maintenance, or operation of a turnpike project by a private entity.

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

SECTION 1. Section 361.304, Transportation Code, is amended to read as follows:

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

(b) Subsection (a) does not prohibit the department, a state agency, or a political subdivision of the state from:

(1) entering into an agreement with a private entity to design, finance, construct, maintain, repair, operate, extend, or expand a turnpike project under this chapter; or

(2) providing money, services, or property as provided by the agreement.

SECTION 2. Section 361.305, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) In negotiating the terms of private participation in a turnpike project under Subsection (a), the department shall ensure

1 that private equity investors are:

2 (1) held to the same standards as the department for:

3 (A) design and construction of a project,
4 including use of materials;

5 (B) operation of a project; and

6 (C) maintenance of a project;

7 (2) entitled to the same waivers, suspensions, or
8 modifications of local, state, and federal standards as the
9 department if approved by the appropriate state entity; and

10 (3) entitled to the same process for approval of a
11 waiver, suspension, or modification of standards by a state or
12 federal entity as the department.

13 SECTION 3. Section 361.307, Transportation Code, is amended
14 by adding Subsection (c) to read as follows:

15 (c) A private entity may enter into a performance contract
16 with a governmental agency or entity that specifies measurable
17 outcomes related to the success of the governmental agency or
18 entity in providing services under this chapter.

19 SECTION 4. Subchapter I, Chapter 361, Transportation Code,
20 is amended by adding Section 361.308 to read as follows:

21 Sec. 361.308. IMMUNITY FROM LIABILITY. A private entity
22 that develops, designs, finances, constructs, maintains, or
23 operates a turnpike project under this chapter, including Section
24 361.305, that is an essential governmental function is liable for
25 damages only to the extent that the department would be liable if
26 the department were performing the function.

27 SECTION 5. Section 370.302, Transportation Code, is amended

1 by adding Subsection (h) to read as follows:

2 (h) An authority or a private entity may enter into a
3 performance contract with a governmental agency or entity that
4 specifies measurable outcomes related to the success of the
5 governmental agency or entity in providing services under this
6 chapter.

7 SECTION 6. Section 370.310, Transportation Code, is amended
8 to read as follows:

9 Sec. 370.310. LIABILITY FOR PRIVATE OBLIGATIONS. (a) An
10 authority may not incur a financial obligation for a private entity
11 that constructs, maintains, or operates a transportation project.
12 The authority or a political subdivision of the state is not liable
13 for any financial or other obligation of a transportation project
14 solely because a private entity constructs, finances, or operates
15 any part of the project.

16 (b) Subsection (a) does not prohibit an authority, a state
17 agency, or a political subdivision of the state from:

18 (1) entering into an agreement with a private entity
19 to design, finance, construct, maintain, repair, operate, extend,
20 or expand a turnpike project under this chapter; or

21 (2) providing money, services, or property as provided
22 by the agreement.

23 SECTION 7. Section 370.311, Transportation Code, is amended
24 by adding Subsection (d) to read as follows:

25 (d) In negotiating the terms of private participation in a
26 turnpike project under Subsection (a), an authority shall ensure
27 that private equity investors are:

1 (1) held to the same standards as the department for:

2 (A) design and construction of a project,
3 including use of materials;

4 (B) operation of a project; and

5 (C) maintenance of a project;

6 (2) entitled to the same waivers, suspensions, or
7 modifications of local, state, and federal standards as the
8 department if approved by the appropriate state entity; and

9 (3) entitled to the same process for approval of a
10 waiver, suspension, or modification of standards by a state or
11 federal entity as the department.

12 SECTION 8. Subchapter G, Chapter 370, Transportation Code,
13 is amended by adding Section 370.317 to read as follows:

14 Sec. 370.317. IMMUNITY FROM LIABILITY. A private entity
15 that develops, designs, finances, constructs, maintains, or
16 operates a turnpike project under this chapter that is an essential
17 governmental function is liable for damages only to the extent that
18 the department would be liable if the department were performing
19 the function.

20 SECTION 9. The changes in law made by this Act to Chapters
21 361 and 370, Transportation Code, apply only to an agreement
22 entered into on or after the effective date of this Act. An
23 agreement entered into before the effective date of this Act is
24 governed by the law applicable to the agreement immediately before
25 the effective date of this Act, and that law is continued in effect
26 for that purpose.

27 SECTION 10. This Act takes effect September 1, 2005.