

By: Krusee

H.B. No. 2702

Substitute the following for H.B. No. 2702:

By: Phillips

C.S.H.B. No. 2702

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the construction, acquisition, financing, maintenance,
3 management, operation, ownership, and control of rail and highway
4 transportation facilities in this state.

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

6 SECTION 1. Section 91.004, Transportation Code, is amended
7 to read as follows:

8 Sec. 91.004. GENERAL POWERS. (a) The department may:

9 (1) plan and make policies for the location,
10 construction, maintenance, and operation of a rail facility or
11 system in this state;

12 (2) acquire, finance, construct, maintain, and
13 subject to Section 91.005, operate a passenger or freight rail
14 facility, individually or as one or more systems;

15 (3) for the purpose of acquiring or financing a rail
16 facility or system, accept a grant or loan from a:

17 (A) department or agency of the United States;

18 (B) department, agency, or political subdivision
19 of this state; or

20 (C) public or private person;

21 (4) contract with a public or private person to
22 finance, construct, maintain, or operate a rail facility under this
23 chapter; or

24 (5) perform any act necessary to the full exercise of

1 the department's powers under this chapter.

2 (b) Except as provided by Subsection (c), money
3 appropriated or allocated by the United States for the construction
4 and maintenance in this state of rail facilities owned by any public
5 or private entity shall be administered by the commission and may be
6 spent only under the supervision of the department.

7 (c) Subsection (b) does not apply to money appropriated or
8 allocated for a fixed rail guideway system constructed by a transit
9 authority described by Chapter 451, a transportation authority
10 described by Chapter 452 or 460, or a transit department described
11 by Chapter 453.

12 SECTION 2. Section 91.051, Transportation Code, is amended
13 to read as follows:

14 Sec. 91.051. AWARDING OF CONTRACTS. Except for a contract
15 entered into under Section 91.052, 91.054, or 91.102 [~~Unless~~
16 ~~otherwise provided by this subchapter~~], a contract made by the
17 department for the financing, design, construction, maintenance,
18 or operation of a rail facility must be let by a competitive bidding
19 procedure in which the contract is awarded to the lowest
20 responsible bidder that complies with the department's criteria.

21 SECTION 3. Subchapter C, Chapter 91, Transportation Code,
22 is amended by adding Section 91.054 to read as follows:

23 Sec. 91.054. COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) To
24 the extent and in the manner that the department may enter into a
25 comprehensive development agreement under Chapter 361 with regard
26 to a turnpike project, the department may enter into a
27 comprehensive development agreement under this chapter that

1 provides for the financing, design, acquisition, construction,
2 maintenance, or operation of a rail facility or system. All
3 provisions of Chapter 361 relating to comprehensive development
4 agreements for turnpike projects apply to comprehensive
5 development agreements for facilities under this chapter,
6 including provisions relating to the confidentiality of
7 information. Claims arising under a comprehensive development
8 agreement are subject to Section 201.112.

9 (b) The department may combine in a comprehensive
10 development agreement under this chapter a rail facility or system
11 and a turnpike project as defined by Section 361.001.

12 SECTION 4. Section 91.074(c), Transportation Code, is
13 amended to read as follows:

14 (c) The department may contract with a person for the use of
15 all or part of a rail facility or system or may lease or sell all or
16 part of a rail facility or system, including all or any part of the
17 right-of-way adjoining trackwork, for any purpose, including
18 placing on the adjoining right-of-way a storage or transfer
19 facility, warehouse, garage, parking facility, telecommunication
20 line or facility, restaurant, or gas station. Any portion of a rail
21 facility or system that is used or leased by a private person under
22 this subsection for a commercial purpose is not exempt from ad
23 valorem taxation and is subject to local zoning regulations and
24 building standards.

25 SECTION 5. Section 91.102, Transportation Code, is amended
26 by adding Subsection (e) to read as follows:

27 (e) Notwithstanding Section 11.11, Tax Code, a private

1 entity that leases a rail facility or system and provides rail
2 transportation services is exempt from taxation of or assessment on
3 the portion of the facility or system used for those purposes.

4 SECTION 6. Subchapter K, Chapter 201, Transportation Code,
5 is amended by adding Section 201.907 to read as follows:

6 Sec. 201.907. CONTRACT FOR ENFORCEMENT. The department or
7 a public or private entity contracted to operate a toll project may
8 contract with an agency of this state or a local governmental entity
9 for the services of peace officers employed by the agency or entity
10 to enforce laws related to:

11 (1) the regulation and control of vehicular traffic on
12 a state highway; and

13 (2) the payment of the proper toll on a toll project.

14 SECTION 7. Section 202.112, Transportation Code, is amended
15 by adding Subsection (d) to read as follows:

16 (d) An option to acquire property purchased under this
17 section or Section 227.041 may not expire later than the 10th
18 anniversary of the date the option was purchased and may be renewed
19 for subsequent periods that expire not later than the 10th
20 anniversary of the date the option was renewed, by agreement of the
21 commission and the grantor of the option or the grantor's heirs or
22 assigns.

23 SECTION 8. The heading to Section 203.004, Transportation
24 Code, is amended to read as follows:

25 Sec. 203.004. [~~CONTRACTS FOR MANAGEMENT OF PROPERTY USED~~
26 ~~FOR~~] MITIGATION OF ADVERSE ENVIRONMENTAL IMPACTS.

27 SECTION 9. Section 203.004, Transportation Code, is amended

1 by amending Subsection (a) and adding Subsection (a-1) to read as
2 follows:

3 (a) If authorized by an applicable regulatory authority, to
4 mitigate an adverse environmental impact that is a direct result of
5 a state highway improvement project, the [The] department may:

6 (1) pay a fee to an appropriate public agency or
7 private entity in lieu of acquiring or agreeing to manage property;

8 (2) transfer real property to an entity designated by
9 an agency of the United States without monetary consideration if
10 the property is used or is proposed to be used for mitigation
11 purposes; or

12 (3) contract with any public or private entity for the
13 management of property owned by the department and used for [the]
14 mitigation purposes [of an adverse environmental impact directly
15 resulting from the construction or maintenance of a state highway].

16 (a-1) Before the commission may acquire by purchase or
17 condemnation real property to mitigate an adverse environmental
18 impact that is a direct result of a state highway improvement
19 project, the department shall, if authorized by an applicable
20 regulatory authority, offer to purchase a conservation easement
21 from the owner of the real property. If the landowner does not
22 accept the offer to execute a conservation easement before the 61st
23 day after the date the offer is made, the department may acquire the
24 property by purchase or condemnation.

25 SECTION 10. Section 203.0521, Transportation Code, is
26 amended to read as follows:

27 Sec. 203.0521. ACQUISITION OF REMAINDER. (a) If a

1 proposed acquisition of a tract of real property under Section
2 203.052 would leave the owner of the property a remainder of the
3 tract, the department may negotiate for and purchase the severed
4 tract or either part of the severed tract if the department and the
5 owner agree on terms for the purchase. The department [~~commission~~]
6 shall offer to purchase a [~~the~~] remainder if the department
7 [~~commission~~] determines that:

8 (1) the remainder has little or no value or utility to
9 the owner; or

10 (2) the entire tract could be acquired for
11 substantially the same compensation as the partial tract.

12 (b) In acquiring a tract of real property under Subsection
13 (a), the department shall pay:

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

15 (2) the damages to the remainder of the owner's
16 property caused by the severance, including damages caused by the
17 inaccessibility of one tract from the other [~~The department may~~
18 acquire the remainder under this section only if the owner of the
19 property consents to the acquisition of the remainder].

20 (c) Instead of a single fixed payment for real property
21 purchased under Subsection (a) for a toll project, the department
22 may agree to a payment to the owner in the form of:

23 (1) an intangible legal right to receive a percentage
24 of identified revenue attributable to the applicable segment of the
25 toll project; or

26 (2) a right to use, without charge, a segment or part
27 of the toll project [~~The department is not required to make an offer~~

1 ~~on a remainder if an appraisal or environmental investigation~~
2 ~~indicates the presence of hazardous materials or substances].~~

3 (d) A right to receive revenue under Subsection (c)(1) is
4 subject to any pledge of the revenue under the terms of a trust
5 agreement securing bonds issued for the applicable segment of the
6 toll project.

7 (e) The department and its designated agents may enter the
8 real property [~~a remainder~~] to conduct an appraisal, survey, or
9 environmental investigation to determine whether the department
10 will offer to acquire the real property [~~remainder~~].

11 SECTION 11. Section 227.021, Transportation Code, is
12 amended by adding Subsection (f) to read as follows:

13 (f) The department may not limit the public's direct access
14 to or from the Trans-Texas Corridor with the intent to benefit the
15 economic viability of an ancillary facility.

16 SECTION 12. Section 227.023, Transportation Code, is
17 amended by adding Subsections (d) and (e) to read as follows:

18 (d) For the purposes of Section 11.11, Tax Code, a portion
19 of a facility that is licensed or leased to a private entity, other
20 than a facility described by Section 227.001(4)(E) that is used for
21 commercial purposes, is used for a public purpose if the facility is
22 operated by the private entity to provide transportation or utility
23 services. Property that is licensed or leased to a private entity
24 under Section 227.082 for a commercial purpose is not exempt from ad
25 valorem taxation and is subject to local zoning regulations and
26 building standards.

27 (e) If the department contracts with a private entity for

1 the collection of a fee for the use of a facility or a combination of
2 facilities that are part of the Trans-Texas Corridor, the private
3 entity shall submit to the department for approval:

4 (1) a plan outlining methods the entity will use to
5 collect the fee, including:

6 (A) any charge to be imposed as a penalty for late
7 payment of the fee;

8 (B) any charge to be imposed to recover the cost
9 of collecting a delinquent fee; and

10 (C) the methodology for increasing the amount of
11 the fee; and

12 (2) any proposed change in an approved plan for
13 collecting the fee.

14 SECTION 13. Section 227.028(a), Transportation Code, is
15 amended to read as follows:

16 (a) Subject to Section 203.004(a-1), the [~~The~~] department
17 may acquire, maintain, hold, restore, enhance, develop, or
18 redevelop property for the purpose of mitigating a past, present,
19 or future adverse environmental effect arising from the
20 construction or operation of any part of the Trans-Texas Corridor
21 without regard to whether the need for mitigation is established
22 for a particular project.

23 SECTION 14. Section 227.029(b), Transportation Code, is
24 amended to read as follows:

25 (b) If the department finds it necessary to change the
26 location of a portion of a facility, it shall reconstruct the
27 facility at a [~~the~~] location that the department determines

1 restores the utility of the facility [~~to be most favorable~~]. The
2 reconstructed facility must be of substantially the same type and
3 in as good condition as the original facility. The department shall
4 determine and pay the cost of the reconstruction and any damage
5 incurred in changing the location of a facility.

6 SECTION 15. Subchapter C, Chapter 227, Transportation Code,
7 is amended by adding Sections 227.032 and 227.033 to read as
8 follows:

9 Sec. 227.032. HIGHWAYS INTERSECTING TRANS-TEXAS CORRIDOR.

10 (a) The department shall ensure that, at each intersection of a
11 segment of a state highway that is designated as part of the
12 Trans-Texas Corridor and a segment of a highway that is designated
13 as an interstate highway, state highway, or United States highway,
14 the Trans-Texas Corridor and the interstate highway, state highway,
15 or United States highway are directly accessible to each other.

16 (b) The department shall make every reasonable effort to
17 connect a segment of a state highway that is designated as part of
18 the Trans-Texas Corridor with significant farm-to-market and
19 ranch-to-market roads and major county and city arterials included
20 in the locally adopted long-range transportation plan as determined
21 by the department, taking into consideration:

22 (1) financial feasibility;

23 (2) advice solicited from:

24 (A) county commissioners courts;

25 (B) governing bodies of municipalities; and

26 (C) metropolitan planning organizations;

27 (3) circuity of travel for landowners;

1 (4) access for emergency vehicles; and

2 (5) traffic volume.

3 Sec. 227.033. GROUNDWATER. (a) After receipt of an offer
4 to construct a facility for the transportation of groundwater from
5 the county in which the groundwater is pumped or extracted, but not
6 later than the 90th calendar day before entering into a lease
7 agreement, license agreement, or franchise agreement for the use of
8 any part of the Trans-Texas Corridor for that purpose, the
9 department shall provide written notice of the offer to:

10 (1) each groundwater conservation district,
11 subsidence district, or other local water authority having
12 territory in the county in which the groundwater is pumped or
13 extracted; and

14 (2) the commissioners court of the county in which the
15 groundwater is pumped or extracted.

16 (b) The department may not pump or extract, or allow the
17 pumping or extracting, of groundwater from the right-of-way of the
18 Trans-Texas Corridor unless the groundwater is needed for the
19 construction, operation, or maintenance of a facility other than a
20 public utility facility. If a well drilled and operated on the
21 Trans-Texas Corridor is located inside the boundaries of a
22 groundwater conservation district, the well is subject to the rules
23 of the district.

24 SECTION 16. Section 227.041, Transportation Code, is
25 amended by amending Subsection (b) and adding Subsections (d) and
26 (e) to read as follows:

27 (b) An interest in real property or a property right is

1 necessary or convenient for the construction or operation of a
2 facility if it is located in or contiguous to an existing or planned
3 segment of the Trans-Texas Corridor or is needed for mitigation of
4 adverse environmental effects, and if its acquisition will further
5 the primary purposes of the Trans-Texas Corridor. Primary purposes
6 include:

7 (1) providing right-of-way or a location for a
8 facility;

9 (2) providing land for mitigation of adverse
10 environmental effects;

11 (3) providing buffer zones for scenic or safety
12 purposes;

13 (4) allowing for possible future expansion of any
14 facility; and

15 (5) generating revenue, directly or indirectly, for
16 use in constructing or operating the Trans-Texas Corridor from or
17 for ancillary facilities that directly benefit users of the
18 Trans-Texas Corridor.

19 (d) The commission may not condemn property contiguous to an
20 existing or planned segment of the Trans-Texas Corridor for an
21 ancillary facility.

22 (e) If the commission acquires property not immediately
23 needed for department purposes, the department is encouraged to
24 acquire an option to purchase the property under Subsection (a) or
25 to lease back purchased land under Section 227.043 to continue the
26 agricultural or recreational use of the property.

27 SECTION 17. Subchapter D, Chapter 227, Transportation Code,

1 is amended by adding Sections 227.047 and 227.048 to read as
2 follows:

3 Sec. 227.047. ACQUISITION OF REMAINDER. (a) If a proposed
4 acquisition of a tract of real property under Section 227.041 would
5 leave the owner of the property a remainder of the tract, the
6 department may negotiate for and purchase the remainder or any part
7 of the severed tract if the department and the owner agree on terms
8 for the purchase. Except as provided by Subsection (d), the
9 department shall offer to purchase a remainder if the department
10 determines that:

11 (1) the remainder has little or no value or utility to
12 the owner; or

13 (2) the entire tract could be acquired for
14 substantially the same compensation as the partial tract.

15 (b) In acquiring a tract of real property under Subsection
16 (a), the department shall pay:

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

18 (2) the damages to the remainder of the owner's
19 property caused by the severance, including damages caused by the
20 loss of reasonable access between portions of a bisected tract.

21 (c) The department and its designated agents may enter the
22 real property to conduct an appraisal, survey, or environmental
23 investigation to determine whether the department will offer to
24 acquire the real property.

25 (d) The department is not required under Subsection (a) to
26 make an offer on a remainder if an appraisal or environmental
27 investigation indicates the presence of hazardous materials or

1 substances.

2 Sec. 227.048. LOSS OF ACCESS. If a portion of a tract or
3 parcel of real property is acquired under this subchapter, the
4 department shall pay for loss of reasonable access to or from the
5 remaining property in determining the damage to the property owner.

6 SECTION 18. Section 227.082, Transportation Code, is
7 amended by adding Subsection (f) to read as follows:

8 (f) The department may lease property or grant a franchise
9 or license under this section only if the agreement has been
10 approved by the commissioners court of the county in which the
11 property, facility, or other part of the Trans-Texas Corridor is
12 located. This subsection does not apply to a lease of property or a
13 grant of a franchise or license to a private entity for the purpose
14 of operating a highway, turnpike, rail facility, or utility
15 facility under a comprehensive development agreement.

16 SECTION 19. Section 284.009, Transportation Code, as added
17 by Chapters 953 and 1325, Acts of the 78th Legislature, Regular
18 Session, 2003, is reenacted and amended to read as follows:

19 Sec. 284.009. CONVERSION AND TRANSFER [CONVEYANCE] OF STATE
20 HIGHWAY TO COUNTY [OR TOLL ROAD AUTHORITY]. (a) The commission may
21 transfer [convey] a nontoll state highway or a segment of a nontoll
22 state highway, including real property acquired to construct or
23 operate the highway, to [(i)] a county [or a toll road authority in
24 the county in which the state highway or segment is located, or (ii)
25 a county or toll road authority in a county adjacent to the county
26 in which the highway or segment is located if the county or toll
27 road authority in the county in which the segment or highway is

1 ~~located approves the conveyance,~~ for the purpose of converting the
2 highway to a toll facility to be operated and maintained ~~[operation~~
3 ~~and maintenance]~~ as a project under this chapter, if:

4 (1) the commission determines that the proposed
5 transfer ~~[conveyance]~~ will improve overall mobility in the region
6 or is the most feasible and economic means of accomplishing
7 necessary improvements to the highway;

8 (2) any funds paid by the department for the
9 construction, maintenance, and operation of the transferred
10 ~~[conveyed]~~ highway are repaid to the department; and

11 (3) the county ~~[or toll road authority]~~ agrees to
12 assume all liability and responsibility for the maintenance and
13 operation of the transferred ~~[conveyed]~~ highway on its transfer
14 ~~[conveyance]~~.

15 (b) A county ~~[or toll road authority]~~ that receives a
16 nontoll state highway or a segment of a nontoll state highway under
17 Subsection (a) may own, operate, and maintain the highway as a
18 pooled project under Section 284.065. ~~[The commission may only~~
19 ~~make a conveyance under this section if the commission determines~~
20 ~~that the conveyance is the most feasible and economic means to~~
21 ~~accomplish necessary expansions, extensions, or improvements of~~
22 ~~the conveyed segment of the highway. Tolls may not be collected by~~
23 ~~an authority from a conveyed segment of highway except to finance~~
24 ~~the expansion, extension, operation, and maintenance of that~~
25 ~~highway segment.]~~

26 (c) The commission shall, at the time of a transfer
27 ~~[conveyance]~~, remove the highway or segment of highway from the

1 state highway system. After a transfer [~~conveyance~~], the
2 department has no liability, responsibility, or duty for the
3 maintenance or operation of the highway or segment.

4 (d) The commission may waive all or a portion of an amount
5 due under Subsection (a)(2) if it finds that the transfer
6 [~~conveyance~~] will result in substantial net benefits to the state,
7 the department, and the traveling public that equal or exceed the
8 amount of payment waived.

9 (e) Before transferring [~~conveying~~] a nontoll state highway
10 or a segment of a nontoll state highway under this section, the
11 commission shall conduct a public hearing to receive comments from
12 interested persons concerning the proposed transfer [~~conveyance~~].
13 Notice of the hearing shall be published in the Texas Register and
14 in one or more newspapers of general circulation in any county in
15 which the highway or segment is located.

16 (f) A county [~~or toll road authority~~] may use toll revenue
17 collected from a highway or segment of highway transferred under
18 this section or from a highway or segment of highway described by
19 Subsection (j) to fund a transportation project or an air quality
20 project.

21 (g) The commission shall adopt rules implementing this
22 section, including criteria and guidelines for approval of a
23 transfer [~~conveyance~~] of a highway or segment.

24 (h) In this section:

25 (1) "Air quality project" means a project or program
26 of a county [~~, toll road authority,~~] or another governmental entity
27 that the county or other governmental entity [~~toll road authority~~]

1 determines will mitigate or prevent air pollution caused by the
2 construction, maintenance, or use of public roads within the
3 county.

4 (2) "Transportation project" means the construction,
5 improvement, maintenance, or operation of a transportation
6 facility:

7 (A) under the jurisdiction of a county, toll road
8 authority, or another governmental entity;

9 (B) located inside or outside the county or area
10 served by the toll road authority; and

11 (C) that the county or toll road authority
12 determines will improve mobility within the county or area served
13 by the toll road authority.

14 (i) Funds received by the department under this section:

15 (1) shall be deposited to the credit of the state
16 highway fund; and

17 (2) are exempt from the application of Section
18 403.095, Government Code.

19 (j) The requirements of this section do not apply to a
20 highway or segment:

21 (1) that the commission by order designated as a toll
22 project before the contract to construct the highway or segment was
23 awarded, regardless of whether the highway or segment is operated
24 without tolls for a period before toll collection operations begin;

25 (2) that was designated as a toll project in a plan or
26 program of a metropolitan planning organization on or before May 1,
27 2005;

1 (3) that is reconstructed so that the number of
2 nontolled lanes on the highway or segment is greater than or equal
3 to the number in existence before the reconstruction;

4 (4) to which an adjacent facility is constructed with
5 a number of nontolled lanes that, when combined with the number of
6 nontolled lanes on the converted highway or segment, is greater
7 than or equal to the number in existence on the converted highway or
8 segment before the conversion; or

9 (5) that was open to traffic as a high-occupancy
10 vehicle lane on May 1, 2005. [~~This section applies only to a~~
11 ~~nontoll state highway or a segment of a nontoll state highway that~~
12 ~~is conveyed for purposes of creating an outer loop or connecting to~~
13 ~~an outer loop located primarily in a county having a population of~~
14 ~~more than three million or an adjacent county.]~~

15 SECTION 20. Subchapter A, Chapter 361, Transportation Code,
16 is amended by adding Sections 361.005 and 361.006 to read as
17 follows:

18 Sec. 361.005. REVENUE OF TURNPIKE PROJECT. Except as
19 provided by Subchapter E, toll revenue collected or received by the
20 department under this chapter:

21 (1) shall be deposited in the state highway fund; and

22 (2) is exempt from the application of Section 403.095,
23 Government Code.

24 Sec. 361.006. USE OF CONTRACT PAYMENTS. Payments received
25 by the department under a comprehensive development agreement may
26 be used by the department to finance the construction, maintenance,
27 or operation of a transportation project or air quality project in

1 the region.

2 SECTION 21. Section 361.137(c), Transportation Code, is
3 amended to read as follows:

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

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

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

13 (3) all notifications required by Section 203.022; and

14 (4) if the property contains a business, farm, or
15 ranch, a written notification to the property owner that the
16 occupants:

17 (A) will not be required to move before the 90th
18 day after the date of the notice; and

19 (B) will receive, not later than the 30th day
20 before the date by which the property must be vacated, a written
21 notice specifying the date by which the property must be vacated.

22 SECTION 22. Section 361.179(f), Transportation Code, is
23 amended to read as follows:

24 (f) The revenue and disbursements for each turnpike project
25 shall be kept separately. The revenue from one turnpike project may
26 not be used to pay the cost of another project except as authorized
27 by Sections ~~[Section]~~ 361.189 and 361.006.

1 SECTION 23. Subchapter F, Chapter 361, Transportation Code,
2 is amended by adding Section 361.237 to read as follows:

3 Sec. 361.237. OPERATION OF TURNPIKE PROJECT. The
4 department may enter into an agreement with one or more persons to
5 provide, on terms approved by the department, personnel, equipment,
6 systems, facilities, and services necessary to operate a turnpike
7 project, including the operation of toll plazas and lanes and
8 customer service centers and the collection of tolls.

9 SECTION 24. The heading to Section 361.255, Transportation
10 Code, is amended to read as follows:

11 Sec. 361.255. ELECTRONIC TOLL COLLECTION [~~USE AND RETURN OF~~
12 ~~TRANSPONDERS~~].

13 SECTION 25. Section 361.255, Transportation Code, is
14 amended by adding Subsections (c), (d), and (e) to read as follows:

15 (c) The department may enter into an agreement with one or
16 more persons to market and sell transponders for use on department
17 toll roads.

18 (d) The department may charge reasonable fees for
19 administering electronic toll collection customer accounts.

20 (e) A contract for the acquisition, construction,
21 maintenance, or operation of a toll project must ensure the
22 confidentiality of all electronic toll collection customer account
23 information, including contact and payment information and trip
24 data.

25 SECTION 26. Section 361.302, Transportation Code, is
26 amended by adding Subsection (f) to read as follows:

27 (f) The department may combine in a comprehensive

1 development agreement under this chapter a turnpike project and a
2 rail facility as defined by Section 91.001.

3 SECTION 27. Sections 361.3022(i) and (j), Transportation
4 Code, are amended to read as follows:

5 (i) The department may enter into negotiations
6 [~~discussions~~] with the private entity whose proposal offers the
7 apparent best value for the purpose of establishing the final terms
8 of a comprehensive development agreement. [~~The discussions shall~~
9 ~~be limited to:~~

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

12 [~~(2) clarifications and minor adjustments in~~
13 ~~scheduling, cash flow, and similar items; and~~

14 [~~(3) matters that have arisen since the submission of~~
15 ~~the proposal.]~~

16 (j) If at any point in negotiations [~~discussions~~] under
17 Subsection (i)[~~7~~] it appears to the department that the highest
18 ranking proposal will not provide the department with the overall
19 best value, the department may enter into negotiations
20 [~~discussions~~] with the private entity submitting the next-highest
21 ranking proposal.

22 SECTION 28. Section 361.303, Transportation Code, is
23 amended by adding Subsection (c) to read as follows:

24 (c) For purposes of Section 11.11, Tax Code, a portion of a
25 state highway that is licensed or leased to a private entity under a
26 comprehensive development agreement is used for a public purpose if
27 the highway is operated by the private entity to provide

1 transportation services. Any portion of a highway asset or
2 turnpike project that is used or leased by a private entity under
3 Section 202.052 or 361.179 for a commercial purpose is not exempt
4 from ad valorem taxation and is subject to local zoning regulations
5 and building standards.

6 SECTION 29. Section 361.305(a), Transportation Code, is
7 amended to read as follows:

8 (a) The department shall negotiate the terms of private
9 participation in a turnpike project, including:

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

13 (2) subject to Section 227.023(e), reasonable methods
14 to determine and classify toll 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 SECTION 30. Section 362.0041, Transportation Code, is
20 transferred to Chapter 361, Transportation Code, designated as
21 Subchapter K, and amended to read as follows:

22 SUBCHAPTER K. CONVERSION OF NONTOLLED HIGHWAY

23 Sec. 361.401 [~~362.0041~~]. COMMISSION DETERMINATION
24 [~~CONVERSION OF PROJECTS~~]. The [~~(a) Except as provided in~~
25 ~~Subsections (d) and (g), the~~] commission may by order convert a
26 nontolled state highway or a segment of a nontolled state highway
27 [~~the free state highway system~~] to a turnpike project [~~toll~~

1 ~~facility]~~ if the commission:

2 (1) [it] determines that the conversion will improve
3 overall mobility in the region or is the most feasible and economic
4 means to accomplish necessary expansion, improvements, or
5 extensions to that segment of the state highway system; and

6 (2) obtains county and voter approval as required by
7 Section 361.406.

8 Sec. 361.402. APPLICABILITY OF SUBCHAPTER. The
9 requirements of this subchapter do not apply to a highway or
10 segment:

11 (1) that the commission by order designated as a toll
12 project before the contract to construct the highway or segment was
13 awarded, regardless of whether the highway or segment is operated
14 without tolls for a period before toll collection operations begin;

15 (2) that was designated as a toll project in a plan or
16 program of a metropolitan planning organization on or before May 1,
17 2005;

18 (3) that is reconstructed so that the number of
19 nontolled lanes on the highway or segment is greater than or equal
20 to the number in existence before the reconstruction;

21 (4) to which an adjacent facility is constructed with
22 a number of nontolled lanes that, when combined with the number of
23 nontolled lanes on the converted highway or segment, is greater
24 than or equal to the number in existence on the converted highway or
25 segment before the conversion; or

26 (5) that was open to traffic as a high-occupancy
27 vehicle lane on May 1, 2005.

1 Sec. 361.403. PUBLIC HEARING. [~~(b)~~] Prior to converting a
2 state highway or a segment of a [~~the~~] state highway [~~system~~] under
3 this subchapter [~~section~~], the commission shall conduct a public
4 hearing for the purpose of receiving comments from interested
5 persons concerning the proposed conversion [~~transfer~~]. Notice of
6 the hearing shall be published in the Texas Register, one or more
7 newspapers of general circulation, and a newspaper, if any,
8 published in the county or counties in which the involved highway is
9 located.

10 Sec. 361.404. RULES. [~~(c)~~] The commission shall adopt
11 rules implementing this subchapter [~~section~~], including criteria
12 and guidelines for the approval of a conversion of a highway.

13 Sec. 361.405. QUEEN ISABELLA CAUSEWAY. [~~(d)~~] The
14 commission may not convert the Queen Isabella Causeway in Cameron
15 County to a turnpike project [~~toll facility~~].

16 Sec. 361.406. COUNTY AND VOTER APPROVAL. [~~(e)~~ ~~Subchapter~~
17 ~~G, Chapter 361, applies to a highway converted to a toll facility~~
18 ~~under this section.~~

19 [~~(f)~~ ~~Toll revenue collected under this section:~~

20 [~~(1)~~ ~~shall be deposited in the state highway fund,~~

21 [~~(2)~~ ~~may be used by the department to finance the~~
22 ~~improvement, extension, expansion, or operation of the converted~~
23 ~~segment of highway and may not be collected except for those~~
24 ~~purposes, and~~

25 [~~(3)~~ ~~is exempt from the application of Section~~
26 ~~403.095, Government Code.~~

27 [~~(g)~~] The commission may only convert a state highway or a

1 segment of a [the] state highway [system] under this subchapter
2 [section] if the conversion is approved by:

3 (1) the commissioners court of each county within
4 which the highway or segment is located; and

5 (2) the qualified voters who vote in an election under
6 Section 361.407 and who reside in the limits of:

7 (A) a county if any part of the highway or segment
8 to be converted is located in an unincorporated area of the county;

9 or

10 (B) a municipality in which the highway or
11 segment to be converted is wholly located.

12 Sec. 361.407. ELECTION TO APPROVE CONVERSION. (a) If
13 notified by the department of the proposed conversion of a highway
14 or segment under this subchapter, the governing body of a county or
15 municipality shall order an election for the approval of the
16 conversion.

17 (b) A governing body that orders an election shall publish
18 notice of the election in a newspaper of general circulation
19 published in the county or municipality at least once each week for
20 three consecutive weeks, with the first publication occurring at
21 least 21 days before the date of the election.

22 (c) The proposition submitted in the election must
23 distinctly describe the highway or segment proposed to be converted
24 and the limits of that highway or segment.

25 (d) At an election ordered under this section, the ballot
26 shall be printed to permit voting for or against the proposition:

27 "The conversion of (highway) from (beginning location) to (ending

1 location) to a toll project."

2 (e) A proposed conversion is approved only if it is approved
3 by a majority of the votes cast.

4 (f) A notice of the election and a certified copy of the
5 order canvassing the election results shall be sent to the
6 commission.

7 (g) The election shall be held on the first uniform election
8 date under Section 41.001, Election Code, on which the county or
9 municipality is holding another election that occurs on or after
10 the 62nd day after the date the election is ordered.

11 SECTION 31. Section 366.035, Transportation Code, is
12 amended by amending Subsection (a) and adding Subsections (h) and
13 (i) to read as follows:

14 (a) Except as provided under Subsections [~~Subsection~~] (g)
15 and (h), if the commission determines that the most feasible and
16 economic means to accomplish necessary expansion, improvements, or
17 extensions to the state highway system is the conversion to a
18 turnpike project of a nontolled segment of the [~~free~~] state highway
19 system, any segment located in a county of an authority or a county
20 in which an authority operates a turnpike project or in any county
21 adjacent to those counties may, on approval of the governor and the
22 affected authority, be transferred by order of the commission to
23 that authority. An authority that receives the segment of highway
24 may own, operate, and maintain the segment as a turnpike project or
25 system or a part of a turnpike project or system under this chapter.

26 (h) The commission may transfer a segment of the state
27 highway system to an authority under this section only if the

1 transfer is approved by the commissioners court of each county in
2 which the segment of highway to be transferred is located.

3 (i) The requirements of this section do not apply to a
4 segment of the state highway system:

5 (1) that the commission by order designated as a toll
6 project before the contract to construct the highway or segment was
7 awarded, regardless of whether the project is operated without
8 tolls for a period before toll collection operations begin;

9 (2) that was designated as a toll project in a plan or
10 program of a metropolitan planning organization on or before May 1,
11 2005;

12 (3) that is reconstructed so that the number of
13 nontolled lanes on the segment of highway is greater than or equal
14 to the number in existence before the reconstruction;

15 (4) to which an adjacent facility is constructed with
16 a number of nontolled lanes that, when combined with the number of
17 nontolled lanes on the converted segment of highway, is greater
18 than or equal to the number in existence on the converted highway or
19 segment before the conversion; or

20 (5) that was open to traffic as a high-occupancy
21 vehicle lane on May 1, 2005.

22 SECTION 32. The heading to Section 370.035, Transportation
23 Code, is amended to read as follows:

24 Sec. 370.035. [~~CONVERSION AND~~] TRANSFER OF STATE HIGHWAY
25 SYSTEM TURNPIKE PROJECTS.

26 SECTION 33. Section 370.035, Transportation Code, is
27 amended by amending Subsection (a) and adding Subsection (i) to

1 read as follows:

2 (a) The commission by order may transfer [~~convert~~] a
3 nontolled segment of the [~~free~~] state highway system [~~to a turnpike~~
4 ~~project and transfer that segment~~] to an authority for the purpose
5 of converting the segment to a turnpike project, or may transfer an
6 existing toll [~~turnpike~~] project that is part of the state highway
7 system, whether previously tolled or not, to an authority if:

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

11 (2) the commission determines that the public has a
12 reasonable alternative route on nontoll roads;

13 (3) the authority agrees to assume all liability and
14 responsibility for the maintenance and operation of the turnpike
15 project on its transfer; [~~and~~]

16 (4) the transfer is approved by the governor; and

17 (5) in the case of a nontolled segment of the state
18 highway system, the transfer is approved by the commissioners court
19 of each county in which the segment of highway to be transferred is
20 located.

21 (i) The requirements of this section do not apply to a
22 nontolled segment of the state highway system:

23 (1) that the commission by order designated as a toll
24 project before the contract to construct the segment of highway was
25 awarded, regardless of whether the segment is operated without
26 tolls for a period before toll collection operations begin;

27 (2) that was designated as a toll project in a plan or

1 program of a metropolitan planning organization on or before May 1,
2 2005;

3 (3) that is reconstructed so that the number of
4 nontolled lanes on the segment of highway is greater than or equal
5 to the number in existence before the reconstruction;

6 (4) to which an adjacent facility is constructed with
7 a number of nontolled lanes that, when combined with the number of
8 nontolled lanes on the converted segment of highway, is greater
9 than or equal to the number in existence on the converted segment of
10 highway before the conversion; or

11 (5) that was open to traffic as a high-occupancy
12 vehicle lane on May 1, 2005.

13 SECTION 34. Section 11.11, Tax Code, is amended by adding
14 Subsection (j) to read as follows:

15 (j) For purposes of this section, any portion of a facility
16 owned by the Texas Department of Transportation that is part of the
17 Trans-Texas Corridor, is a rail facility or system, or is a highway
18 in the state highway system, and that is licensed or leased to a
19 private entity by that department under Chapter 91, 227, or 361,
20 Transportation Code, is public property used for a public purpose
21 if the rail facility or system, highway, or facility is operated by
22 the private entity to provide transportation or utility services.
23 Any part of a facility, rail facility or system, or state highway
24 that is licensed or leased to a private entity for a commercial
25 purpose is not exempt from taxation.

26 SECTION 35. Sections 91.071(b), 227.062(c)-(g), 361.180,
27 and 370.163(b), Transportation Code, are repealed.

1 SECTION 36. This Act takes effect immediately if it
2 receives a vote of two-thirds of all the members elected to each
3 house, as provided by Section 39, Article III, Texas Constitution.
4 If this Act does not receive the vote necessary for immediate
5 effect, this Act takes effect September 1, 2005.