

By: Krusee

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 transportation
4 facilities and the progress, improvement, policing, and safety of
5 transportation in this state.

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

7 SECTION 1. Section 91.051, Transportation Code, is amended
8 to read as follows:

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

16 SECTION 2. Subchapter C, Chapter 91, Transportation Code,
17 is amending by adding Sections 91.054-91.061 to read as follows:

18 Sec. 91.054. COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a)
19 The department may enter into a comprehensive development agreement
20 with a private entity to finance, design, acquire, construct,
21 maintain, or operate a rail facility or system.

22 (b) In this subchapter, "comprehensive development
23 agreement" means an agreement that, at a minimum, provides for the
24 design and construction of a rail facility or system and may also

1 provide for the financing, designing, acquisition, maintenance, or
2 operation of the rail facility or system.

3 (c) The department may negotiate provisions relating to
4 professional and consulting services provided in connection with a
5 comprehensive development agreement.

6 (d) The department may authorize the investment of public
7 and private money, including debt and equity participation, to
8 finance a function described by this section.

9 (e) Claims arising under a comprehensive development
10 agreement are subject to Section 201.112.

11 Sec. 91.055. PROCESS FOR ENTERING INTO COMPREHENSIVE
12 DEVELOPMENT AGREEMENTS. (a) If the department enters into a
13 comprehensive development agreement, the department shall use a
14 competitive procurement process that provides the best value for
15 the department. The department may accept unsolicited proposals
16 for a proposed project or solicit proposals in accordance with this
17 section.

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

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

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

26 (3) any other information the department considers
27 relevant or necessary.

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

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

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

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

13 (e) The department may interview a private entity
14 submitting an unsolicited proposal or responding to a request under
15 Subsection (c). The department shall evaluate each proposal based
16 on the criteria described in the request for competing proposals
17 and qualifications and may qualify or shortlist private entities to
18 submit detailed proposals under Subsection (f). The department
19 must qualify or shortlist at least two private entities to submit
20 detailed proposals for a project under Subsection (f) unless the
21 department does not receive more than one proposal or one response
22 to a request under Subsection (c).

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

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

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

5 (3) engineering or architectural designs;

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

7 (5) a financial plan, including costing methodology
8 and cost proposals; or

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

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

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

20 (i) The department may enter into negotiations with the
21 private entity whose proposal offers the apparent best value for
22 the purpose of establishing the final terms of a comprehensive
23 development agreement.

24 (j) If at any point in negotiations under Subsection (i) it
25 appears to the department that the highest ranking proposal will
26 not provide the department with the overall best value, the
27 department may enter into negotiations with the private entity

1 submitting the next highest ranking proposal.

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

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

9 (m) The department shall pay an unsuccessful private entity
10 that submits a responsive proposal in response to a request for
11 detailed proposals under Subsection (f) a stipulated amount in
12 exchange for the work product contained in that proposal. The
13 stipulated amount must be stated in the request for proposals and
14 may not exceed the value of any work product contained in the
15 proposal that can, as determined by the department, be used by the
16 department in the performance of its functions. The use by the
17 department of any design element contained in an unsuccessful
18 proposal is at the sole risk and discretion of the department and
19 does not confer liability on the recipient of the stipulated amount
20 under this section. After payment of the stipulated amount:

21 (1) the department owns with the unsuccessful proposer
22 jointly the rights to, and may make use of any work product
23 contained in, the proposal, including the technologies,
24 techniques, methods, processes, ideas, and information contained
25 in the project design; and

26 (2) the use by the unsuccessful proposer of any
27 portion of the work product contained in the proposal is at the sole

1 risk of the unsuccessful proposer and does not confer liability on
2 the department.

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

8 (o) Chapter 2254, Government Code, does not apply to a
9 comprehensive development agreement entered into under Section
10 91.054.

11 Sec. 91.056. CONFIDENTIALITY OF INFORMATION RELATING TO
12 COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) To encourage private
13 entities to submit proposals under Section 91.055, the following
14 information is confidential, is not subject to disclosure,
15 inspection, or copying under Chapter 552, Government Code, and is
16 not subject to disclosure, discovery, subpoena, or other means of
17 legal compulsion for its release until a final contract for a
18 proposed project is entered into:

19 (1) all or part of a proposal that is submitted by a
20 private entity for a comprehensive development agreement, except
21 information provided under Sections 91.055(b)(1) and (2), unless
22 the private entity consents to the disclosure of the information;

23 (2) supplemental information or material submitted by
24 a private entity in connection with a proposal for a comprehensive
25 development agreement, unless the private entity consents to the
26 disclosure of the information or material; and

27 (3) information created or collected by the department

1 or its agent during consideration of a proposal for a comprehensive
2 development agreement.

3 (b) After the department completes its final ranking of
4 proposals under Section 91.055(h), the final rankings of each
5 proposal under each of the published criteria cease to be
6 confidential.

7 Sec. 91.057. PERFORMANCE AND PAYMENT SECURITY. (a)
8 Notwithstanding the requirements of Subchapter B, Chapter 2253,
9 Government Code, the department shall require a private entity
10 entering into a comprehensive development agreement under Section
11 91.054 to provide a performance and payment bond or an alternative
12 form of security in an amount sufficient to:

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

15 (2) protect:

16 (A) the department; and

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

20 (b) A performance and payment bond or alternative form of
21 security shall be in an amount equal to the cost of financing,
22 designing, constructing, or maintaining the project.

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

27 (d) A payment or performance bond or alternative form of

1 security is not required for the portion of an agreement that
2 includes only design or planning services, the performance of
3 preliminary studies, or the acquisition of real property.

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

6 (f) In addition to or instead of performance and payment
7 bonds, the department may require the following alternative forms
8 of security:

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

11 (2) a United States bond or note;

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

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

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

17 Sec. 91.058. OWNERSHIP OF RAIL FACILITY OR SYSTEM. (a) A
18 rail facility or system that is the subject of a comprehensive
19 development agreement with a private entity, including the
20 facilities financed, designed, acquired, or constructed on the
21 project, is public property and shall be jointly owned by the
22 department and the private entity.

23 (b) Notwithstanding Subsection (a), the department may
24 enter into an agreement that provides for the lease of
25 rights-of-way, the granting of easements, the issuance of
26 franchises, licenses, or permits, or any lawful uses to enable a
27 private entity to finance, design, construct, operate, and maintain

1 a rail facility or system. At the termination of the agreement, the
2 rail facility or system is to be in a state of proper maintenance as
3 determined by the department and shall be returned to the
4 department in satisfactory condition at no further cost.

5 (c) Notwithstanding Section 11.11, Tax Code, a private
6 entity that leases a rail facility or system under a comprehensive
7 development agreement is exempt from taxation of or assessment on
8 the facility or system.

9 Sec. 91.059. LIABILITY FOR PRIVATE OBLIGATIONS. The
10 department may not incur a financial obligation for a private
11 entity that finances, designs, constructs, maintains, or operates a
12 rail facility or system. The state or a political subdivision of
13 the state is not liable for any financial or other obligations of a
14 rail facility or system solely because a private entity finances,
15 designs, constructs, or operates any part of the project.

16 Sec. 91.060. TERMS OF PRIVATE PARTICIPATION. (a) The
17 department shall negotiate the terms of private participation in a
18 rail facility or system, including:

19 (1) methods to determine the applicable cost, profit,
20 and project distribution among the private participants and the
21 department;

22 (2) reasonable methods to determine and classify fare
23 rates;

24 (3) acceptable safety and policing standards; and

25 (4) other applicable professional, consulting,
26 financing, design, construction, operation, and maintenance
27 standards, expenses, and costs.

1 (b) A comprehensive development agreement entered into
2 under Section 91.054 must include a provision authorizing the
3 department to purchase, under terms and conditions agreed to by the
4 parties, the interest of a private participant in a rail facility or
5 system designed, financed, constructed, operated, or maintained
6 under the comprehensive development agreement.

7 Sec. 91.061. RULES, PROCEDURES, AND GUIDELINES GOVERNING
8 SELECTION AND NEGOTIATING PROCESS. (a) The commission shall adopt
9 rules, procedures, and guidelines governing selection of a
10 developer for a comprehensive development agreement and
11 negotiations to promote fairness, obtain private participants in
12 rail facility projects, and promote confidence among those
13 participants. The rules must contain criteria relating to the
14 qualifications of the participants and the award of the contracts.

15 (b) The department shall have up-to-date procedures for
16 participation in negotiations on rail facility projects.

17 (c) The department has exclusive judgment to determine the
18 terms of an agreement.

19 SECTION 3. Section 91.071, Transportation Code, is amended
20 to read as follows:

21 Sec. 91.071. FUNDING. The [~~(a) Except as provided in~~
22 ~~subsection (b), the~~] department may use any available funds to
23 implement this chapter, including funds from the state
24 infrastructure bank.

25 ~~[(b) Each fiscal year, the total amount disbursed by the~~
26 ~~department from the state highway fund to implement this chapter~~
27 ~~may not exceed \$12.5 million. This subsection does not apply to:~~

1 ~~[(1) the acquisition of abandoned rail facilities~~
2 ~~described in Section 91.007,~~

3 ~~[(2) funding derived from the issuance of bonds,~~
4 ~~private investment, and donations,~~

5 ~~[(3) federal funds from the Federal Railroad~~
6 ~~Administration, from the Federal Transit Administration, or~~
7 ~~authorized and appropriated by the United States Congress for a~~
8 ~~specific project,~~

9 ~~[(4) grants awarded by the governor from the Texas~~
10 ~~Enterprise Fund; and~~

11 ~~[(5) grading and bed preparation.]~~

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. A rail facility or
21 system that is used or leased by a private entity for a commercial
22 purpose is not exempt from ad valorem taxation and is subject to
23 local zoning regulations and building standards.

24 SECTION 5. Subchapter D, Chapter 91, Transportation Code,
25 is amended by adding Section 91.075 to read as follows:

26 Sec. 91.075. PASS-THROUGH FARES. (a) In this section,
27 "pass-through fare" means:

1 (1) a per passenger fee or a per passenger mile fee
2 that is determined by the number of passengers using a passenger
3 rail facility; or

4 (2) a fee that is determined based on the number of
5 carloads or commodity tonnages shipped using a freight rail
6 facility.

7 (b) The department may enter into an agreement with a public
8 or private entity that provides for the payment of pass-through
9 fares to the public or private entity as reimbursement for the
10 acquisition, design, development, financing, construction,
11 relocation, maintenance, or operation of a passenger rail facility
12 or a freight rail facility by the entity.

13 (c) The department or other public entity may use any
14 available funds for the purpose of making a pass-through fare
15 payment under this section, including funds from the state
16 infrastructure bank.

17 (d) The commission may adopt rules necessary to implement
18 this section. Rules adopted under this subsection may include
19 criteria for:

20 (1) determining the amount of pass-through fares to be
21 paid under this section; and

22 (2) allocating the risk that ridership on a passenger
23 rail facility or carloads or commodity tonnages shipped on a
24 freight rail facility will be higher or lower than the parties to an
25 agreement under this section anticipated in entering into the
26 agreement.

27 (e) Money repaid to the department under this section shall

1 be deposited to the credit of the fund from which the money was
2 originally provided and is exempt from the application of Section
3 403.095, Government Code.

4 SECTION 6. Section 91.102, Transportation Code, is amended
5 by adding Subsection (e) to read as follows:

6 (e) Notwithstanding Section 11.11, Tax Code, a private
7 entity that leases a rail facility or system is exempt from taxation
8 of or assessment on the facility or system.

9 SECTION 7. Section 201.001, Transportation Code, is amended
10 to read as follows:

11 Sec. 201.001. DEFINITIONS. (a) In this title:

12 (1) "Commission" means the Texas Transportation
13 Commission.

14 (2) "Department" means the Texas Department of
15 Transportation.

16 (3) "Director" means the executive director of the
17 Texas Department of Transportation.

18 (b) In this subtitle, "toll project" means one or more
19 tolled lanes of a highway or an entire toll highway constructed,
20 maintained, or operated as a part of the state highway system and
21 any improvement, extension, or expansion to the highway, including:

22 (1) a facility to relieve traffic congestion and
23 promote safety;

24 (2) a bridge, tunnel, overpass, underpass,
25 interchange, entrance plaza, approach, toll booth, toll plaza,
26 service road, ramp, or service center;

27 (3) an administration, storage, or other building,

1 operations center, maintenance or other facility, equipment, or
2 system the department considers necessary to operate the project;

3 (4) property rights, easements, and interests the
4 department acquires to construct, maintain, or operate the project;

5 (5) a parking area or structure, rest stop, park, and
6 any other improvement or amenity the department considers
7 necessary, useful, or beneficial for the operation and maintenance
8 of the project; and

9 (6) a nontolled facility that is appurtenant to and
10 necessary for the efficient operation and maintenance of the
11 project, including a connector, service road, access road, ramp,
12 interchange, bridge, or tunnel.

13 SECTION 8. Section 203.004, Transportation Code, is
14 transferred to Subchapter H, Chapter 201, Transportation Code,
15 redesignated as Section 201.617, Transportation Code, and amended
16 to read as follows:

17 Sec. 201.617 [~~203.004~~]. [~~CONTRACTS FOR MANAGEMENT OF~~
18 ~~PROPERTY USED FOR~~] MITIGATION OF ADVERSE ENVIRONMENTAL
19 IMPACTS. (a) If directed by an applicable regulatory authority
20 to mitigate an adverse environmental impact that is a direct result
21 of a state highway improvement project, the [The] department may:

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

24 (2) transfer real property to an entity designated by
25 an agency of the United States without monetary consideration if
26 the property is used or is proposed to be used for mitigation
27 purposes; or

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

5 (b) A contract under this section is not subject to Chapter
6 771, Government Code.

7 (c) In this section, "management," in connection with
8 property, means administration, control, or maintenance that is
9 required by an agency of the United States.

10 SECTION 9. Subchapter K, Chapter 201, Transportation Code,
11 is amended by adding Section 201.907 to read as follows:

12 Sec. 201.907. CONTRACT FOR ENFORCEMENT. The department and
13 a public or private entity jointly may contract with an agency of
14 this state or a local governmental entity for the services of peace
15 officers employed by the agency or entity to enforce laws related
16 to:

17 (1) the regulation and control of vehicular traffic on
18 a state highway; and

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

20 SECTION 10. Section 203.052(b), Transportation Code, is
21 amended to read as follows:

22 (b) Property necessary or convenient to a state highway for
23 purposes of Subsection (a) includes an interest in real property, a
24 property right, or a material that the commission determines is
25 necessary or convenient to:

26 (1) protect a state highway;

27 (2) drain a state highway;

1 (3) divert a stream, river, or other watercourse from
2 the right-of-way of a state highway;

3 (4) store materials or equipment for use or used in the
4 construction or maintenance of a state highway;

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

8 (6) lay out, construct, or maintain a roadside park;

9 (7) lay out, construct, or maintain a parking lot that
10 will contribute to maximum use of a state highway with the least
11 possible congestion;

12 (8) mitigate an adverse environmental effect that
13 directly results from construction or maintenance of a state
14 highway; [~~or~~]

15 (9) provide a location for an ancillary facility that
16 is anticipated to generate revenue for use in the design,
17 development, financing, construction, maintenance, or operation of
18 a toll project, including a gas station, garage, store, hotel,
19 restaurant, or other commercial facility; or

20 (10) accomplish any other purpose related to the
21 location, construction, improvement, maintenance, beautification,
22 preservation, or operation of a state highway.

23 SECTION 11. Sections 203.0521(b) and (c), Transportation
24 Code, are amended to read as follows:

25 (b) Instead of making a single fixed payment for real
26 property purchased under Subsection (a) for a toll project, the
27 department may agree to make a payment to the owner in the form of an

1 intangible legal right to receive a percentage of identified
2 revenue attributable to the applicable segment of the toll project
3 ~~[The department may acquire the remainder under this section only~~
4 ~~if the owner of the property consents to the acquisition of the~~
5 ~~remainder].~~

6 (c) A right to receive revenue under Subsection (b) is
7 subject to any pledge of the revenue under the term of a trust
8 agreement securing bonds issued for the applicable segment of the
9 toll project. ~~[The department is not required to make an offer on a~~
10 ~~remainder if an appraisal or environmental investigation indicates~~
11 ~~the presence of hazardous materials or substances.]~~

12 SECTION 12. Section 203.055, Transportation Code, is
13 amended to read as follows:

14 Sec. 203.055. ACQUISITION OF RIGHTS IN PUBLIC REAL PROPERTY
15 ~~[CONVEYANCE OF PROPERTY BELONGING TO POLITICAL SUBDIVISION OR~~
16 ~~PUBLIC AGENCY].~~ (a) The governing body of a political subdivision
17 or public agency that owns or is in charge of public real property
18 may consent to the use of the property for highway purposes.

19 (b) The governing body of a political subdivision or public
20 agency may, without advertisement, convey the title to or rights or
21 easements ~~[a right]~~ in real property that the department needs ~~[+~~

22 ~~[(1) is owned by the political subdivision or public~~
23 ~~agency, and~~

24 ~~[(2) may be acquired by the commission under this~~
25 ~~subchapter]~~ for highway purposes.

26 (c) Notwithstanding any law to the contrary, at the request
27 of the department, a political subdivision or a state agency may

1 lease, lend, grant, or convey to the department real property,
2 including a highway or real property currently devoted to public
3 use, that may be necessary or appropriate to accomplish the
4 department's purposes. The political subdivision or state agency
5 may lease, lend, grant, or convey the property:

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

8 (2) without advertisement, court order, or other
9 action or formality other than the regular and formal action of the
10 subdivision or agency concerned or action in the manner required by
11 law.

12 ~~[(b) In this section, "political subdivision" includes a~~
13 ~~county or municipality.]~~

14 SECTION 13. Sections 361.137, 361.138, 361.233, and
15 361.142, Transportation Code, are transferred to Subchapter D,
16 Chapter 203, Transportation Code, redesignated as Sections
17 203.066, 203.067, 203.068, and 203.069, Transportation Code, and
18 amended to read as follows:

19 Sec. 203.066 [~~361.137~~]. DECLARATION OF TAKING FOR TOLL
20 PROJECT. (a) This section and Sections 203.067 and 203.068 apply
21 only to a taking for a toll project.

22 (b) The department may file a declaration of taking with the
23 clerk of the court:

24 (1) in which the department files a condemnation
25 petition under Chapter 21, Property Code; or

26 (2) to which the case is assigned.

27 (c) [~~(b)~~] The department may file the declaration of taking

1 concurrently with or subsequent to the petition but may not file the
2 declaration after the special commissioners have made an award in
3 the condemnation proceeding.

4 (d) [~~(c)~~] The department may not file a declaration of
5 taking 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.

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

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

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

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

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

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

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

25 (4) the name and address of each property owner that
26 the department can obtain after reasonable investigation and a
27 description of the owner's interest in the property; and

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

4 (f) [~~(d-1)~~] A deposit to the registry of the court of an
5 amount equal to the appraised value, as determined by the
6 department, of the property to be condemned must accompany the
7 declaration of taking.

8 (g) [~~(e)~~] The date on which the declaration is filed is the
9 date of taking for the purpose of assessing damages to which a
10 property owner is entitled.

11 (h) [~~(f)~~] After a declaration of taking is filed, the case
12 shall proceed as any other case in eminent domain under Chapter 21,
13 Property Code.

14 Sec. 203.067 [~~361.138~~]. POSSESSION OF PROPERTY FOR TOLL
15 PROJECT. (a) Immediately on the filing of a declaration of taking
16 under Section 203.066, the department shall serve a copy of the
17 declaration on each person possessing an interest in the condemned
18 property by a method prescribed by Section 21.016(d), Property
19 Code. The department shall file evidence of the service with the
20 clerk of the court. On filing of that evidence, the department may
21 take possession of the property pending the litigation.

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

26 (c) A property owner or tenant who refuses to vacate the
27 property or yield possession is subject to forcible entry and

1 detainer under Chapter 24, Property Code.

2 Sec. 203.068 [~~361.233~~]. RIGHT OF ENTRY FOR TOLL PROJECT.

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

8 (b) An entry under this section is not:

9 (1) a trespass; or

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

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

14 Sec. 203.069 [~~361.142~~]. COVENANTS, CONDITIONS,
15 RESTRICTIONS, OR LIMITATIONS. Covenants, conditions,
16 restrictions, or limitations affecting property acquired in any
17 manner by the department are not binding against the department and
18 do not impair the department's ability to use the property for a
19 purpose authorized by this chapter. The beneficiaries of the
20 covenants, conditions, restrictions, or limitations are not
21 entitled to enjoin the department from using the property for a
22 purpose authorized under this chapter, but this section does not
23 affect the right of a person to seek damages to the person's
24 property under Section 17, Article I, Texas Constitution.

25 SECTION 14. Section 221.001(1), Transportation Code, is
26 amended to read as follows:

27 (1) "Highway" includes a tolled or nontolled public

1 road or part of a tolled or nontolled public road and a bridge,
2 culvert, or other necessary structure related to a public road,
3 including buildings.

4 SECTION 15. Section 222.104, Transportation Code, is
5 amended to read as follows:

6 Sec. 222.104. PASS-THROUGH TOLLS. (a) In this section,
7 "pass-through toll" means a per vehicle fee or a per vehicle mile
8 fee that is determined by the number of vehicles using a highway.

9 (b) The department may enter into an agreement with a public
10 or private entity that provides for the payment of pass-through
11 tolls to the public or private entity as reimbursement for the
12 design, development, financing, construction, maintenance, or
13 operation of a toll or nontoll facility on the state highway system
14 by the public or private entity.

15 (c) The department and a regional mobility authority, a
16 regional tollway authority, or a county acting under Chapter 284
17 may enter into an agreement [~~with a regional mobility authority, a~~
18 ~~regional tollway authority, or a county acting under Chapter 284~~]
19 that provides for:

20 (1) the payment of pass-through tolls to the authority
21 or county as compensation for the payment of all or a portion of the
22 costs of operating and maintaining a state highway or a portion of a
23 state highway transferred to the authority or county and converted
24 to a toll facility [~~of the authority or county~~] that the department
25 estimates it would have incurred if the highway had not been
26 converted; or

27 (2) the payment by the authority or county of

1 pass-through tolls to the department as reimbursement for all or a
2 portion of the costs incurred by the department to design, develop,
3 finance, construct, and maintain a state highway or a portion of a
4 state highway converted to a toll facility under Section 366.035 or
5 370.035, as applicable, and transferred to the authority or county.

6 (d) The department or other public entity may use any
7 available funds for the purpose of making a pass-through toll
8 payment under this section, including funds from the state
9 infrastructure bank.

10 (e) A regional mobility authority, a regional tollway
11 authority, or a county acting under Chapter 284 is authorized to
12 secure and pay its obligations under an agreement under this
13 section from any lawfully available funds.

14 (f) [~~(e)~~] The commission may adopt rules necessary to
15 implement this section. Rules adopted under this subsection may
16 include [~~establish~~] criteria for:

17 (1) determining the amount of pass-through tolls to be
18 paid under this section; and

19 (2) allocating the risk that traffic volume will be
20 higher or lower than the parties to an agreement under this section
21 anticipated in entering the agreement.

22 (g) Money repaid to the department under this section shall
23 be deposited to the credit of the fund from which the money was
24 originally provided and is exempt from the application of Section
25 403.095, Government Code.

26 SECTION 16. Section 224.151(9), Transportation Code, is
27 amended to read as follows:

1 (9) "Restricted lane" includes:

2 (A) a high occupancy vehicle lane;

3 (B) a toll lane under Section 228.007 [~~224.154~~];

4 and

5 (C) an exclusive lane.

6 SECTION 17. Section 227.001(9), Transportation Code, is
7 amended to read as follows:

8 (9) "Turnpike" has the meaning assigned to toll
9 [~~turnpike~~] project under Section 228.001 [~~361.001~~].

10 SECTION 18. Section 227.023, Transportation Code, is
11 amended by amending Subsection (c) and adding Subsection (d) to
12 read as follows:

13 (c) To the extent and in the manner that the department may
14 enter into comprehensive development agreements under Subchapter
15 G, Chapter 228 [~~361~~] with regard to turnpikes, the department may
16 enter into a comprehensive development agreement under this chapter
17 that provides for the financing, development, design,
18 construction, or operation of a facility or a combination of
19 facilities on the Trans-Texas Corridor. All provisions of
20 Subchapter G, Chapter 228 [~~361~~] relating to comprehensive
21 development agreements for turnpikes apply to comprehensive
22 development agreements for facilities under this chapter,
23 including provisions relating to the confidentiality of
24 information. Claims arising under a comprehensive development
25 agreement are subject to Section 201.112.

26 (d) Notwithstanding Section 11.11, Tax Code, a private
27 entity that leases a facility under a comprehensive development

1 agreement, other than a facility described in Section 227.001(4)(E)
2 that is used for commercial purposes, is exempt from taxation of or
3 assessment on the facility.

4 SECTION 19. Section 227.041, Transportation Code, is
5 amended to read as follows:

6 Sec. 227.041. POWERS AND PROCEDURES. (a) Except as
7 otherwise provided by this subchapter, the commission has the same
8 powers and duties relating to the condemnation and acquisition of
9 real property for a facility of the Trans-Texas Corridor that the
10 commission and the department have relating to the condemnation or
11 purchase of real property under Subchapter D, Chapter 203, [~~361~~,
12 ~~and Section 361.233~~] for a toll [~~turnpike~~] project. The commission
13 may purchase an option to purchase property, other than real
14 property, a property right, or a right-of-way used for a public
15 utility facility, that the commission is considering for possible
16 use as part of the Trans-Texas Corridor even if it has not been
17 finally decided that the Trans-Texas Corridor will be located on
18 that property. An option to purchase may be purchased along
19 alternative potential routes for the Trans-Texas Corridor even if
20 only one of those potential routes will be selected as the final
21 route.

22 (b) An interest in real property or a property right is
23 necessary or convenient for the construction or operation of a
24 facility if it is located in or contiguous to an existing or planned
25 segment of the Trans-Texas Corridor or is needed for mitigation of
26 adverse environmental effects, and if its acquisition will further
27 the primary purposes of the Trans-Texas Corridor. Primary purposes

1 include:

2 (1) providing right-of-way or a location for a
3 facility;

4 (2) providing land for mitigation of adverse
5 environmental effects;

6 (3) providing buffer zones for scenic or safety
7 purposes;

8 (4) allowing for possible future expansion of any
9 facility; and

10 (5) generating revenue, directly or indirectly, for
11 use in constructing or operating the Trans-Texas Corridor from or
12 for ancillary facilities that directly benefit users of the
13 Trans-Texas Corridor.

14 (c) [~~Unless in conflict with this chapter, all laws~~
15 ~~governing the acquisition of right-of-way for a state highway apply~~
16 ~~to the acquisition of right-of-way for the Trans-Texas Corridor.~~
17 ~~Sections 203.056, 203.057, and 203.058 apply to an acquisition by~~
18 ~~the department from a state agency.] Compensation to a state agency
19 under those sections shall be reasonable and may take the form of a
20 single payment, a participation payment under Section 227.042, or
21 both a single payment and a participation payment.~~

22 SECTION 20. Subtitle B, Title 6, Transportation Code, is
23 amended by adding Chapter 228, and Sections 361.001, 361.301,
24 361.307, and 361.032, Transportation Code, are transferred to
25 Chapter 228, Transportation Code, designated as Subchapter A, and
26 amended to read as follows:

27 CHAPTER 228. STATE HIGHWAY TOLL PROJECTS

1 SUBCHAPTER A. GENERAL PROVISIONS

2 Sec. 228.001 [~~361.001~~]. DEFINITIONS. In this chapter:

3 (1) "Air quality project" means a project or program
4 of the department or another governmental entity that the
5 commission determines will mitigate or prevent air pollution caused
6 by the construction, maintenance, or use of public roads.
7 [~~"Authority" means the Texas Turnpike Authority division of the~~
8 ~~Texas Department of Transportation.~~]

9 (2) "Bond" means bonds, notes, or other obligations
10 issued under Subchapter C or another law with respect to a toll
11 project or system. [~~"Owner" includes a person having title to or an~~
12 ~~interest in any property, rights, easements, and interests~~
13 ~~authorized to be acquired under this chapter.~~]

14 (3) "System" means a toll project or any combination
15 of toll projects designated as a system under Section 228.011.

16 (4) "Toll [~~Turnpike~~] project" means one or more toll
17 lanes or an entire [a] toll highway constructed, maintained, or
18 operated [~~under this chapter~~] as part of the state highway system
19 and any improvement, extension, or expansion to the highway and
20 includes:

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

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

26 (C) an administration, storage, or other
27 building, an operations center, a maintenance or other facility, or

1 equipment the department considers necessary to operate the
2 project;

3 (D) property rights, easements, and interests
4 the department acquires to construct or operate the project;

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

9 (F) a nontolled [~~toll-free~~] facility that is
10 appurtenant to and necessary for the efficient operation and
11 maintenance of a toll [~~turnpike~~] project, including a connector,
12 service road, access road, ramp, interchange, bridge, or tunnel.

13 (5) "Transportation project" means:

14 (A) a tolled or nontolled state highway
15 improvement project;

16 (B) a toll project eligible for department cost
17 participation under Section 222.103;

18 (C) the acquisition, construction, maintenance,
19 or operation of a rail facility or system under Chapter 91;

20 (D) the acquisition, construction, maintenance,
21 or operation of a state-owned ferry under Subchapter A, Chapter
22 342;

23 (E) a public transportation project under
24 Chapter 455 or 456;

25 (F) the establishment, construction, or repair
26 of an aviation facility under Chapter 21; and

27 (G) a passenger rail project of another

1 governmental entity. [~~(4) "Regional tollway authority" means a~~
2 ~~regional tollway authority created under Chapter 366.~~]

3 Sec. 228.002 [~~361.301~~]. AGREEMENTS WITH PUBLIC [~~OR PRIVATE~~]
4 ENTITIES [~~TO CONSTRUCT, MAINTAIN, REPAIR, AND OPERATE TURNPIKE~~
5 ~~PROJECTS~~]. The [~~(a) Notwithstanding Section 361.231 and~~
6 ~~Subchapter A, Chapter 2254, Government Code, the~~] department may
7 enter into an agreement with a public [~~or private~~] entity[~~7~~
8 ~~including a toll road corporation,~~] to permit the entity,
9 independently or jointly with the department, to design, develop,
10 finance, construct, maintain, repair, or [~~and~~] operate a toll
11 project [~~turnpike projects~~].

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

15 Sec. 228.003 [~~361.307~~]. AGREEMENTS WITH [~~PRIVATE ENTITIES~~
16 ~~AND~~] OTHER GOVERNMENTAL AGENCIES. (a) The department [~~and a~~
17 ~~private entity jointly~~] may, with the approval of the governor and
18 the commission, enter into an agreement with another governmental
19 agency or entity, including a federal agency, an agency of this or
20 another state, including the United Mexican States or a state of the
21 United Mexican States, or a political subdivision, to independently
22 or jointly provide services, to study the feasibility of a toll
23 [~~turnpike~~] project, or to finance, construct, operate, and maintain
24 a toll [~~turnpike~~] project.

25 (b) If the department enters into an agreement with a
26 private entity, including a comprehensive development agreement
27 under Subchapter G, the department and the private entity may

1 jointly enter into an agreement under Subsection (a). [~~The~~
2 ~~department may not enter into an agreement with the United Mexican~~
3 ~~States or a state of the United Mexican States without the approval~~
4 ~~of the governor.~~]

5 Sec. 228.004. PROMOTION OF TOLL PROJECT. [~~361.032. GENERAL~~
6 ~~POWERS AND DUTIES. (a) The commission shall adopt rules for the~~
7 ~~implementation and administration of this chapter.~~

8 [~~(b)~~] The department may, ~~[~~÷

9 [~~(1) construct, maintain, repair, and operate~~
10 ~~turnpike projects in this state,~~

11 [~~(2) acquire, hold, and dispose of property in the~~
12 ~~exercise of its powers and the performance of its duties under this~~
13 ~~chapter,~~

14 [~~(3) with the approval of the governor and the~~
15 ~~commission, enter into contracts or operating agreements with~~
16 ~~similar authorities or agencies of another state, including a state~~
17 ~~of the United Mexican States,~~

18 [~~(4) enter into contracts or agreements necessary or~~
19 ~~incidental to its duties and powers under this chapter,~~

20 [~~(5) employ consulting engineers, accountants,~~
21 ~~construction and financial experts, superintendents, managers, and~~
22 ~~other employees and agents the department considers necessary and~~
23 ~~set their compensation,~~

24 [~~(6) receive grants for the construction of a turnpike~~
25 ~~project and receive contributions of money, property, labor, or~~
26 ~~other things of value from any source to be used for the purposes~~
27 ~~for which the grants or contributions are made,~~

1 ~~[(7)]~~ notwithstanding Chapter 2113, Government Code,
2 engage in marketing, advertising, and other activities to promote
3 the development and use of toll ~~[turnpike]~~ projects and may enter
4 into contracts or agreements necessary to procure marketing,
5 advertising, or other promotional services from outside service
6 providers ~~[, and~~

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

9 SECTION 21. Subchapter A, Chapter 228, Transportation Code,
10 is amended by adding Section 228.005 to read as follows:

11 Sec. 228.005. TOLL REVENUE. Except as provided by
12 Subchapter C, toll revenue collected or received by the department
13 under this chapter:

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

15 (2) may be used by the department to finance the
16 construction, maintenance, or operation of a transportation
17 project or air quality project in the region; and

18 (3) is exempt from the application of Section 403.095,
19 Government Code.

20 SECTION 22. Sections 361.189 and 224.154, Transportation
21 Code, are transferred to Subchapter A, Chapter 228, Transportation
22 Code, redesignated as Sections 228.006 and 228.007, Transportation
23 Code, and amended to read as follows:

24 Sec. 228.006 ~~[361.189]~~. USE OF SURPLUS REVENUE. The
25 commission by order may authorize the use of surplus revenue of a
26 toll ~~[turnpike]~~ project or system to pay the costs of a
27 transportation ~~[another turnpike]~~ project or air quality project

1 within the region. The commission may in the order prescribe terms
2 for the use of the revenue, including the pledge of the revenue, but
3 may not take an action under this section that violates, impairs, or
4 is inconsistent with a bond order, trust agreement, or indenture
5 governing the use of the surplus revenue.

6 Sec. 228.007 [~~224.154~~]. TOLL LANES. (a) The
7 [~~Notwithstanding any law of this state relating to charging tolls~~
8 ~~on existing free public highways, and subject to Section~~
9 ~~224.1541(d), the~~] commission may by order authorize the department
10 to charge a toll for the use of one or more lanes of a state highway
11 [~~facility~~], including a high occupancy vehicle lane designated
12 under Section 224.153 or an exclusive lane designated under Section
13 224.1541[~~, for the purposes of congestion mitigation~~].

14 (b) If the commission authorizes the department to charge a
15 toll under Subsection (a), the department may enter into an
16 agreement with a regional tollway authority described in Chapter
17 366, a transit authority described in Chapter 451, 452, or 453, a
18 regional mobility authority under Chapter 370 [~~361~~], a county
19 acting under Chapter 284, or a transportation corporation:

20 (1) to design, construct, operate, or maintain a toll
21 lane under this section; and

22 (2) to charge a toll for the use of one or more lanes of
23 a state highway facility under this section.

24 (c) The commission may by order authorize the department or
25 the entity contracted to operate the toll lane to set the amount of
26 toll charges. Any toll charges shall be imposed in a reasonable and
27 nondiscriminatory manner.

1 (d) ~~[Revenue generated from toll charges and collection~~
2 ~~fees assessed by the department in connection with a toll lane shall~~
3 ~~be deposited in the state highway fund and may be used only for~~
4 ~~projects for the improvement of the state highway system.]~~ Revenue
5 generated from toll charges and collection fees assessed by an
6 entity with whom the department contracts under this section shall
7 be allocated as required by the terms of the agreement.

8 (e) Before the commission authorizes the department to
9 charge a toll under Subsection (a) on a traffic lane that had been
10 opened to traffic as a nontolled facility, the department must
11 comply with Subchapter E. ~~[The powers granted by this section are~~
12 ~~subject to the restrictions of 23 U.S.C. Section 129.]~~

13 SECTION 23. Section 224.1541(d), Transportation Code, is
14 transferred to Subchapter A, Chapter 228, Transportation Code,
15 redesignated as Section 228.008, Transportation Code, and amended
16 to read as follows:

17 Sec. 228.008. TOLLS ON EXCLUSIVE LANE. ~~[(d)]~~ The department
18 may not charge a toll for the use of an exclusive lane unless:

19 (1) the lanes or multilane facility adjacent to the
20 exclusive lane is tolled; or

21 (2) a vehicle that is authorized to use the tolled
22 exclusive lane is authorized to use nontolled adjacent lanes or an
23 adjacent nontolled multilane facility.

24 SECTION 24. Sections 361.180 and 361.033, Transportation
25 Code, are transferred to Subchapter A, Chapter 228, Transportation
26 Code, redesignated as Sections 228.009 and 228.010, Transportation
27 Code, and amended to read as follows:

1 Sec. 228.009 [~~361.180~~]. TOLLS ON CONVERTED HIGHWAYS. If
2 converted to a toll facility under Section 222.102 or Subchapter E
3 [~~362.0041~~], the commission may impose a toll for transit over an
4 existing nontolled [~~free~~] public highway.

5 Sec. 228.010 [~~361.033~~]. AUDIT. Notwithstanding any other
6 law to the contrary, the department shall have an independent
7 certified public accountant audit the department's books and
8 accounts for each toll project or system [~~activities under this~~
9 ~~chapter~~] at least annually. The audit shall be conducted in
10 accordance with the requirements of any trust agreement securing
11 bonds issued under Subchapter C [~~this chapter~~] that is in effect at
12 the time of the audit. The cost of the audit may be treated as part
13 of the cost of construction or operation of a toll project or system
14 [~~turnpike project~~]. This section does not affect the ability of a
15 state agency to audit the department's books and accounts.

16 SECTION 25. Subchapter A, Chapter 228, Transportation Code,
17 is amended by adding Section 228.011 to read as follows:

18 Sec. 228.011. ESTABLISHMENT OF TOLL SYSTEMS. (a) If the
19 commission determines that the mobility needs of a region of this
20 state could be most efficiently and economically met by jointly
21 operating two or more toll projects in that region as one
22 operational and financial enterprise, it may create a system
23 composed of those projects. The commission may create more than one
24 system in a region and may combine two or more systems in a region
25 into one system. The department may finance, acquire, construct,
26 and operate additional toll projects in the region as additions to
27 or expansions of a system if the commission determines that the toll

1 project could most efficiently and economically be acquired or
2 constructed if it were part of the system and that the addition will
3 benefit the system.

4 (b) The revenue of a system shall be accounted for
5 separately and may not be commingled with the revenue of a toll
6 project that is not part of the system or with the revenue of
7 another system.

8 (c) In this section, "region" means a metropolitan
9 statistical area.

10 SECTION 26. Chapter 228, Transportation Code, is amended by
11 adding Subchapter B to read as follows:

12 SUBCHAPTER B. USE AND OPERATION OF TOLL PROJECTS OR SYSTEMS

13 Sec. 228.051. DESIGNATION. The commission by order may
14 designate one or more lanes of a segment of the state highway system
15 as a toll project or system.

16 Sec. 228.052. OPERATION OF TOLL PROJECT OR SYSTEM. The
17 department may enter into an agreement with one or more persons to
18 provide, on terms approved by the department, personnel, equipment,
19 systems, facilities, and services necessary to operate a toll
20 project or system, including the operation of toll plazas and lanes
21 and customer service centers and the collection of tolls.

22 SECTION 27. Sections 361.179, 361.252, 361.253, 361.254,
23 361.255, and 361.256, Transportation Code, are transferred to
24 Subchapter B, Chapter 228, Transportation Code, redesignated as
25 Sections 228.053, 228.054, 228.055, 228.056, 228.057, and 228.058,
26 Transportation Code, and amended to read as follows:

27 Sec. 228.053 [~~361.179~~]. REVENUE. (a) The department may:

1 (1) impose tolls for the use of each toll [~~turnpike~~]
2 project or system and the different segments or parts of each
3 [~~turnpike~~] project or system; and

4 (2) in addition to the powers granted [~~notwithstanding~~
5 ~~anything~~] in Chapter 202 [~~to the contrary~~], contract with a person
6 for the use of part of a toll [~~turnpike~~] project or system or lease
7 part of a toll [~~turnpike~~] project or system for a gas station,
8 garage, store, hotel, restaurant, railroad tracks, utilities, and
9 telecommunications facilities and equipment and set the terms for
10 the use or lease.

11 (b) The tolls shall be set so that, at a minimum, the
12 aggregate of tolls from the toll [~~turnpike~~] project or system:

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

15 (A) the cost of maintaining, repairing, and
16 operating the project or system; and

17 (B) the principal of and interest on the bonds
18 issued under Subchapter C for the project or system as those bonds
19 become due and payable; and

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

22 (c) The tolls are not subject to supervision or regulation
23 by any other state agency.

24 (d) The tolls and other revenue derived from the toll
25 [~~turnpike~~] project or system for which bonds were issued, except
26 the part necessary to pay the cost of maintenance, repair, and
27 operation and to provide reserves for those costs as may be provided

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

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

11 (e) Use and disposition of money to the credit of the
12 sinking fund are subject to the order authorizing the issuance of
13 the bonds or to the trust agreement.

14 (f) The revenue and disbursements for each toll [~~turnpike~~]
15 project or system shall be kept separately. The revenue from one
16 [~~turnpike~~] project may not be used to pay the cost of another
17 project except as authorized by Section 228.006 [~~361.189~~].

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

22 Sec. 228.054 [~~361.252~~]. FAILURE OR REFUSAL TO PAY TOLL;
23 OFFENSE. (a) The operator of a vehicle, other than an authorized
24 emergency vehicle, that is driven or towed through a toll
25 collection facility shall pay the proper toll.

26 (b) The operator of a vehicle who drives or tows a vehicle
27 through a toll collection facility and does not pay the proper toll

1 commits an offense.

2 (c) An offense under this section is a misdemeanor
3 punishable by a fine not to exceed \$250.

4 (d) In this section, "authorized emergency vehicle" has the
5 meaning assigned by Section 541.201.

6 Sec. 228.055 [~~361.253~~]. ADMINISTRATIVE FEE; NOTICE;
7 OFFENSE. (a) In the event of nonpayment of the proper toll as
8 required by Section 228.054 [~~361.252~~], on issuance of a written
9 notice of nonpayment, the registered owner of the nonpaying vehicle
10 is liable for the payment of both the proper toll and an
11 administrative fee.

12 (b) The department may impose and collect the
13 administrative fee, so as to recover the cost of collecting the
14 unpaid toll, not to exceed \$100. The department shall send a written
15 notice of nonpayment to the registered owner of the vehicle at that
16 owner's address as shown in the vehicle registration records of the
17 department by first class mail [~~not later than the 30th day after~~
18 ~~the date of the alleged failure to pay~~] and may require payment not
19 sooner than the 30th day after the date the notice was mailed. The
20 registered owner shall pay a separate toll and administrative fee
21 for each event of nonpayment under Section 228.054 [~~361.252~~].

22 (c) The registered owner of a vehicle for which the proper
23 toll was not paid who is mailed a written notice of nonpayment under
24 Subsection (b) and fails to pay the proper toll and administrative
25 fee within the time specified by the notice of nonpayment commits an
26 offense. Each failure to pay a toll or administrative fee under
27 this subsection is a separate offense.

1 (d) It is an exception to the application of Subsection (a)
2 or (c) if the registered owner of the vehicle is a lessor of the
3 vehicle and not later than the 30th day after the date the notice of
4 nonpayment is mailed provides to the department a copy of the
5 rental, lease, or other contract document covering the vehicle on
6 the date of the nonpayment under Section 228.054 [~~361.252~~], with
7 the name and address of the lessee clearly legible. If the lessor
8 provides the required information within the period prescribed, the
9 department may send a notice of nonpayment to the lessee at the
10 address shown on the contract document by first class mail before
11 the 30th day after the date of receipt of the required information
12 from the lessor. The lessee of the vehicle for which the proper
13 toll was not paid who is mailed a written notice of nonpayment under
14 this subsection and fails to pay the proper toll and administrative
15 fee within the time specified by the notice of nonpayment commits an
16 offense. The lessee shall pay a separate toll and administrative
17 fee for each event of nonpayment. Each failure to pay a toll or
18 administrative fee under this subsection is a separate offense.

19 (e) It is an exception to the application of Subsection (a)
20 or (c) if the registered owner of the vehicle transferred ownership
21 of the vehicle to another person before the event of nonpayment
22 under Section 228.054 [~~361.252~~] occurred, submitted written notice
23 of the transfer to the department in accordance with Section
24 520.023, and, before the 30th day after the date the notice of
25 nonpayment is mailed, provides to the department the name and
26 address of the person to whom the vehicle was transferred. If the
27 former owner of the vehicle provides the required information

1 within the period prescribed, the department may send a notice of
2 nonpayment to the person to whom ownership of the vehicle was
3 transferred at the address provided the former owner by first class
4 mail before the 30th day after the date of receipt of the required
5 information from the former owner. The subsequent owner of the
6 vehicle for which the proper toll was not paid who is mailed a
7 written notice of nonpayment under this subsection and fails to pay
8 the proper toll and administrative fee within the time specified by
9 the notice of nonpayment commits an offense. The subsequent owner
10 shall pay a separate toll and administrative fee for each event of
11 nonpayment under Section 228.054 [~~361.252~~]. Each failure to pay a
12 toll or administrative fee under this subsection is a separate
13 offense.

14 (f) An offense under this section is a misdemeanor
15 punishable by a fine not to exceed \$250.

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

20 (h) In this section, "registered owner" means the owner of a
21 vehicle as shown on the vehicle registration records of the
22 department or the analogous department or agency of another state
23 or country.

24 (i) The department may contract, in accordance with Section
25 2107.003, Government Code, with a person to collect the unpaid toll
26 and administrative fee before referring the matter to a court with
27 jurisdiction over the offense.

1 Sec. 228.056 [~~361.254~~]. PRESUMPTIONS; PRIMA FACIE
2 EVIDENCE; DEFENSES. (a) In the prosecution of an offense under
3 Section 228.054 [~~361.252~~] or 228.055 [~~361.253~~], proof that the
4 vehicle was driven or towed through the toll collection facility
5 without payment of the proper toll may be shown by a video
6 recording, photograph, electronic recording, or other appropriate
7 evidence, including evidence obtained by automated enforcement
8 technology.

9 (b) In the prosecution of an offense under Section
10 228.055(c) [~~361.253(c)~~], (d), or (e):

11 (1) it is presumed that the notice of nonpayment was
12 received on the fifth day after the date of mailing;

13 (2) a computer record of the department of the
14 registered owner of the vehicle is prima facie evidence of its
15 contents and that the defendant was the registered owner of the
16 vehicle when the underlying event of nonpayment under Section
17 228.054 [~~361.252~~] occurred; and

18 (3) a copy of the rental, lease, or other contract
19 document covering the vehicle on the date of the underlying event of
20 nonpayment under Section 228.054 [~~361.252~~] is prima facie evidence
21 of its contents and that the defendant was the lessee of the vehicle
22 when the underlying event of nonpayment under Section 228.054
23 [~~361.252~~] occurred.

24 (c) It is a defense to prosecution under Section 228.055(c)
25 [~~361.253(c)~~], (d), or (e) that the motor vehicle in question was
26 stolen before the failure to pay the proper toll occurred and had
27 not been recovered before the failure to pay occurred, but only if

1 the theft was reported to the appropriate law enforcement authority
2 before the earlier of:

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

5 Sec. 228.057 [~~361.255~~]. ELECTRONIC TOLL COLLECTION [~~USE AND~~
6 ~~RETURN OF TRANSPONDERS~~]. (a) For purposes of this section, a
7 "transponder" means a device, placed on or within an automobile,
8 that is capable of transmitting information used to assess or to
9 collect tolls. A transponder is "insufficiently funded" when there
10 are no remaining funds in the account in connection with which the
11 transponder was issued.

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

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

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

22 Sec. 228.058 [~~361.256~~]. AUTOMATED ENFORCEMENT TECHNOLOGY.

23 (a) To aid in the collection of tolls and in the enforcement of toll
24 violations, the department may use automated enforcement
25 technology that it determines is necessary, including automatic
26 vehicle license plate identification photography and video
27 surveillance, by electronic imaging or photographic copying.

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

5 (c) This section does not authorize the use of automated
6 enforcement technology for any other purpose.

7 (d) Evidence obtained from technology approved by the
8 department under Subsection (a) may not be used in the prosecution
9 of an offense other than under Section 228.054 [~~361.252~~] or 228.055
10 or in the prosecution of a capital offense [~~361.253~~].

11 SECTION 28. Sections 361.004, 361.171, 361.172, 361.173,
12 361.174, 361.1751, 361.1752, 361.1753, 361.176, 361.177, 361.178,
13 361.183, 361.185, 361.186, 361.187, and 361.188, Transportation
14 Code, are transferred to Chapter 228, Transportation Code,
15 designated as Subchapter C, and amended to read as follows:

16 SUBCHAPTER C. TOLL REVENUE BONDS

17 Sec. 228.101 [~~361.004~~]. CONSTRUCTION COSTS. (a) The cost of
18 [~~acquisition,~~] construction, improvement, extension, or expansion
19 of a toll [~~turnpike~~] project or system under this chapter includes
20 the cost of:

21 (1) the actual acquisition, design, development,
22 planning, financing, construction, improvement, extension, or
23 expansion of the project or system;

24 (2) acquisition of real property, rights-of-way,
25 property rights, easements, and interests;

26 (3) the acquisition of machinery, [~~and~~] equipment,
27 software, and intellectual property;

1 (4) interest before, during, and for one year after
2 construction, improvement, extension, or expansion;

3 (5) traffic estimates, engineering, ~~and~~ legal and
4 other advisory services, plans, specifications, surveys,
5 appraisals, cost and revenue estimates, and other expenses
6 necessary or incident to determining the feasibility of the
7 construction, improvement, extension, or expansion;

8 (6) necessary or incidental administrative, legal,
9 and other expenses;

10 (7) financing; and

11 (8) placement of the project or system in operation
12 and expenses related to the initial operation of the [~~turnpike~~]
13 project or system.

14 (b) Costs attributable to a toll [~~turnpike~~] project or
15 system for which bonds are issued that are incurred before the
16 issuance of the bonds may be reimbursed from the proceeds of the
17 sale of the bonds.

18 Sec. 228.102 [~~361.171~~]. ISSUANCE OF [TURNPIKE REVENUE]
19 BONDS. (a) The commission by order may authorize the issuance of
20 toll [~~turnpike~~] revenue bonds to pay all or part of the cost of a
21 toll [~~turnpike~~] project or system. [~~Each project shall be financed~~
22 ~~and built by a separate bond issue.~~] The proceeds of a bond issue
23 may be used solely for the payment of the project or system for
24 which the bonds were issued and may not be divided between or among
25 two or more projects. Each project is a separate undertaking, the
26 cost of which shall be determined separately.

27 (b) As determined in the order authorizing the issuance, the

1 bonds of each issue shall:

2 (1) be dated;

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

6 (3) mature at the time or times provided by the order,
7 not exceeding 40 years from their date or dates; and

8 (4) be made redeemable before maturity, at the price
9 or prices and under the terms provided by the order.

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

13 (d) The proceeds of each bond issue shall be disbursed in
14 the manner and under the restrictions, if any, the commission
15 provides in the order authorizing the issuance of the bonds or in
16 the trust agreement securing the bonds.

17 (e) If the proceeds of a bond issue are less than the toll
18 [~~turnpike~~] project or system cost, additional bonds may be issued
19 in the same manner to pay the costs of a [~~turnpike~~] project or
20 system. Unless otherwise provided in the order authorizing the
21 issuance of the bonds or in the trust agreement securing the bonds,
22 the additional bonds are on a parity with and are payable, without
23 preference or priority, from the same fund as the bonds first
24 issued. In addition, the commission may issue bonds for a
25 [~~turnpike~~] project or system secured by a lien on the revenue of the
26 [~~turnpike~~] project or system subordinate to the lien on the revenue
27 securing other bonds issued for the [~~turnpike~~] project or system.

1 (f) If the proceeds of a bond issue exceed the cost of the
2 toll [~~turnpike~~] project or system for which the bonds were issued,
3 the surplus shall be segregated from the other money of the
4 commission and used only for the purposes specified in the order
5 authorizing the issuance.

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

11 (h) Bonds issued and delivered under this subchapter
12 [~~chapter~~] and interest coupons on the bonds are a security under
13 Chapter 8, Business & Commerce Code.

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

17 Sec. 228.103 [~~361.172~~]. APPLICABILITY OF OTHER LAW;
18 CONFLICTS. All laws affecting the issuance of bonds by
19 governmental entities, including Chapters 1201, 1202, 1204, 1207,
20 and 1371, Government Code, apply to bonds issued under this
21 subchapter [~~chapter~~]. To the extent of a conflict between those
22 laws and this subchapter [~~chapter~~], the provisions of this
23 subchapter [~~chapter~~] prevail.

24 Sec. 228.104 [~~361.173~~]. PAYMENT OF BONDS; CREDIT OF STATE
25 NOT PLEDGED. (a) The principal of, interest on, and any redemption
26 premium on bonds issued by the commission under this subchapter
27 [~~chapter~~] are payable solely from:

1 (1) the revenue of the toll [~~turnpike~~] project or
2 system for which the bonds are issued, including tolls pledged to
3 pay the bonds;

4 (2) the proceeds of bonds issued for the [~~turnpike~~]
5 project or system;

6 (3) the amounts deposited in a debt service reserve
7 fund as required by the trust agreement securing bonds issued for
8 the [~~turnpike~~] project or system; [~~and~~]

9 (4) amounts received under a credit agreement relating
10 to the [~~turnpike~~] project or system for which the bonds are issued;

11 (5) surplus revenue of another project or system as
12 authorized by Section 228.006; and

13 (6) amounts received by the department:

14 (A) as pass-through tolls under Section 222.104;

15 (B) under an agreement with a local governmental
16 entity entered into under Section 228.254;

17 (C) under other agreements with a local
18 governmental entity relating to the project or system for which the
19 bonds are issued; and

20 (D) under a comprehensive development agreement
21 entered into under Subchapter G.

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

26 (1) the state, the commission, and the department are
27 not obligated to pay the bond or the interest on the bond from a

1 source other than the amount pledged to pay the bond and the
2 interest on the bond; and

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

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

10 Sec. 228.105 [~~361.174~~]. SOURCES OF PAYMENT OF AND SECURITY
11 FOR TOLL REVENUE [~~TURNPIKE PROJECT~~] BONDS. Notwithstanding any
12 other provisions of this subchapter, toll revenue [~~chapter,~~
13 ~~turnpike project~~] bonds issued by the commission may:

14 (1) be payable from and secured by:

15 (A) payments made under an agreement with a local
16 governmental entity as provided by Section 228.254 [~~Subchapter A,~~
17 ~~Chapter 362~~];

18 (B) the proceeds of bonds issued for the toll
19 [~~turnpike~~] project or system; [~~or~~]

20 (C) amounts deposited in a debt service reserve
21 fund as required by the trust agreement securing bonds issued for
22 the [~~turnpike~~] project or system; or

23 (D) surplus revenue of another toll project or
24 system as authorized by Section 228.006; and

25 (2) state on their faces any pledge of revenue or taxes
26 and any security for the bonds under the agreement.

27 Sec. 228.106 [~~361.1751~~]. INTERIM BONDS. (a) The commission

1 may, before issuing definitive bonds, issue interim bonds, with or
2 without coupons, exchangeable for definitive bonds.

3 (b) An order authorizing interim bonds may provide that the
4 interim bonds recite that the bonds are issued under this
5 subchapter [~~chapter~~]. The recital is conclusive evidence of the
6 validity and the regularity of the bonds' issuance.

7 Sec. 228.107 [~~361.1752~~]. EFFECT OF LIEN. (a) A lien on or a
8 pledge of revenue, a contract payment, or a pledge of money to the
9 payment of bonds issued under this subchapter is valid and
10 effective in accordance with Chapter 1208, Government Code, and
11 [~~from a turnpike project or on a reserve, replacement, or other fund~~
12 ~~established in connection with a bond issued under this chapter~~]:

13 (1) is enforceable in any court at the time of payment
14 for and delivery of the bond;

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

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

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

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

26 Sec. 228.108 [~~361.1753~~]. APPROVAL OF BONDS BY ATTORNEY
27 GENERAL. (a) The commission shall submit to the attorney general

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

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

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

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

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

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

21 Sec. 228.109 [~~361.176~~]. TRUST AGREEMENT. (a) Bonds issued
22 under this subchapter [~~chapter~~] may be secured by a trust agreement
23 between the commission and a corporate trustee that is a trust
24 company or a bank that has the powers of a trust company.

25 (b) A trust agreement may pledge or assign the tolls and
26 other revenue to be received but may not convey or mortgage any part
27 of a toll [~~turnpike~~] project or system.

1 (c) A trust agreement may not evidence a pledge of the
2 revenue of a toll [~~turnpike~~] project or system except:

3 (1) to pay the cost of maintaining, repairing, and
4 operating the project or system;

5 (2) to pay the principal of, interest on, and any
6 redemption premium on the bonds as they become due and payable;

7 (3) to create and maintain reserves for the purposes
8 described by Subdivisions (1) and (2), as prescribed by Section
9 228.053 [~~361.179~~]; and

10 (4) as otherwise provided by law.

11 (d) Notwithstanding Subsection (c), surplus revenue may be
12 used for a transportation or air quality [~~another turnpike~~] project
13 as authorized by Section 228.006 [~~361.189~~].

14 (e) A trust agreement may:

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

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

20 (3) contain provisions the commission determines
21 reasonable and proper for the security of the bondholders.

22 (f) The expenses incurred in carrying out a trust agreement
23 may be treated as part of the cost of operating the toll [~~turnpike~~]
24 project or system.

25 Sec. 228.110 [~~361.177~~]. PROVISIONS PROTECTING AND ENFORCING
26 RIGHTS AND REMEDIES OF BONDHOLDERS. A trust agreement or order
27 providing for the issuance of bonds may contain provisions to

1 protect and enforce the rights and remedies of the bondholders,
2 including:

3 (1) covenants establishing the commission's duties
4 relating to:

5 (A) the acquisition of property;

6 (B) the design, development, financing,
7 construction, improvement, expansion, maintenance, repair,
8 operation, and insurance of the toll [turnpike] project or system
9 in connection with which the bonds were authorized; and

10 (C) the custody, safeguarding, and application
11 of money;

12 (2) covenants prescribing events that constitute
13 default;

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

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

19 (4) ~~(5)]~~ provisions for the employment of consulting
20 engineers in connection with the construction or operation of the
21 [turnpike] project or system.

22 Sec. 228.111 ~~[361.178]~~. FURNISHING OF INDEMNIFYING BONDS
23 OR PLEDGE OF SECURITIES. A bank or trust company incorporated under
24 the laws of this state that acts as depository of the proceeds of
25 bonds or of revenue may furnish indemnifying bonds or pledge
26 securities that the department requires.

27 Sec. 228.112 ~~[361.183]~~. FEASIBILITY STUDY BY MUNICIPALITY,

1 COUNTY, OR PRIVATE GROUP. (a) One or more municipalities, one or
2 more counties, a combination of municipalities and counties, or a
3 private group or combination of individuals in this state may pay
4 all or part of the expenses of studying the cost and feasibility and
5 any other expenses relating to:

6 (1) the preparation and issuance of toll [~~turnpike~~]
7 revenue bonds for the construction of a proposed toll [~~turnpike~~]
8 project or system;

9 (2) the improvement, extension, or expansion of an
10 existing project or system; or

11 (3) the use of private participation under Subchapter
12 G [~~F~~].

13 (b) Money spent under Subsection (a) for a proposed toll
14 project or system [~~turnpike~~] is reimbursable, with the consent of
15 the commission, to the person paying the expenses out of the
16 proceeds from toll [~~turnpike~~] revenue bonds issued for or other
17 proceeds that may be used for the financing, design, development,
18 construction, improvement, extension, expansion, or operation of
19 the project.

20 Sec. 228.113 [~~361.185~~]. TRUST FUND. (a) All money
21 received under this subchapter [~~chapter~~], whether as proceeds from
22 the sale of bonds or as revenue, is a trust fund to be held and
23 applied as provided by this subchapter [~~chapter~~]. Notwithstanding
24 any other law, including Section 9, Chapter 1123, Acts of the 75th
25 Legislature, Regular Session, 1997, and without the prior approval
26 of the comptroller, funds held under this subchapter [~~chapter~~]
27 shall be held in trust by a banking institution chosen by the

1 department or, at the discretion of the department, in trust in the
2 state treasury outside the general revenue fund.

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

9 Sec. 228.114 [~~361.186~~]. REMEDIES. Except to the extent
10 restricted by a trust agreement, a holder of a bond issued under
11 this subchapter [~~chapter~~] and a trustee under a trust agreement
12 may:

13 (1) protect and enforce by a legal proceeding in any
14 court a right under:

15 (A) this subchapter [~~chapter~~] or another law of
16 this state;

17 (B) the trust agreement; or

18 (C) the order authorizing the issuance of the
19 bond; and

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

24 Sec. 228.115 [~~361.187~~]. EXEMPTION FROM TAXATION OR
25 ASSESSMENT. (a) The commission is exempt from taxation of or
26 assessments on:

27 (1) a toll [~~turnpike~~] project or system;

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

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

5 (b) Bonds issued under this subchapter [~~chapter~~] and income
6 from the bonds, including any profit made on the sale or transfer of
7 the bonds, are exempt from taxation in this state.

8 Sec. 228.116 [~~361.188~~]. VALUATION OF BONDS SECURING
9 DEPOSIT OF PUBLIC FUNDS. Bonds of the commission may secure the
10 deposit of public funds of the state or a political subdivision of
11 the state to the extent of the lesser of the face value of the bonds
12 or their market value.

13 SECTION 29. Subchapter H, Chapter 361, Transportation Code,
14 is transferred to Chapter 228, Transportation Code, redesignated as
15 Subchapter D, and amended to read as follows:

16 SUBCHAPTER D [~~H~~]. TRANSFER OF TOLL [~~TURNPIKE~~] PROJECT

17 [~~Sec. 361.281. APPLICABILITY OF SUBCHAPTER. This~~
18 ~~subchapter applies only to:~~

19 [~~(1) a county with a population of more than 1.5~~
20 ~~million;~~

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

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

25 [~~(4) a municipality with a population of more than~~
26 ~~170,000 that is adjacent to the United Mexican States;~~

27 [~~(5) a regional tollway authority created under~~

1 Chapter ~~366~~, or

2 ~~[(6) a regional mobility authority organized under~~
3 ~~Chapter 370 or Section 361.003, as that section existed before June~~
4 ~~22, 2003.]~~

5 Sec. 228.151 [~~361.282~~]. LEASE, SALE, OR CONVEYANCE OF TOLL
6 [~~TURNPIKE~~] PROJECT. (a) The department may lease, sell, or
7 transfer [~~convey~~] in another manner a toll [~~turnpike~~] project or
8 system to a governmental entity that has the authority to operate a
9 tolled highway [~~county, a municipality, regional tollway~~
10 ~~authority, regional mobility authority,~~] or a local government
11 corporation created under Chapter 431.

12 (b) The commission and the governor must approve the
13 transfer of the toll [~~turnpike~~] project or system as being in the
14 best interests of the state and the entity receiving the [~~turnpike~~]
15 project or system.

16 Sec. 228.152 [~~361.283~~]. DISCHARGE OF OUTSTANDING BONDED
17 INDEBTEDNESS. An agreement to lease, sell, or convey a toll
18 [~~turnpike~~] project or system under Section 228.151 [~~361.282~~] must
19 provide for the discharge and final payment or redemption of the
20 department's outstanding bonded indebtedness for the project or
21 system.

22 Sec. 228.153 [~~361.284~~]. REPAYMENT OF DEPARTMENT'S
23 EXPENDITURES. (a) Except as provided by Subsection (b), an
24 agreement to lease, sell, or convey a toll [~~turnpike~~] project or
25 system under Section 228.151 [~~361.282~~] must provide for the
26 repayment of any expenditures of the department for the financing,
27 design, development, construction, operation, or [~~and~~] maintenance

1 of the highway [~~project~~] that have not been reimbursed with the
2 proceeds of bonds issued for the highway [~~project~~].

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

7 Sec. 228.154 [~~361.285~~]. APPROVAL OF AGREEMENT BY ATTORNEY
8 GENERAL. (a) An agreement for the lease, sale, or conveyance of a
9 toll [~~turnpike~~] project or system under this subchapter shall be
10 submitted to the attorney general for approval as part of the
11 records of proceedings relating to the issuance of bonds of the
12 county, municipality, regional tollway authority, regional
13 mobility authority, or local government corporation.

14 (b) If the attorney general determines that the agreement is
15 in accordance with law, the attorney general shall approve the
16 agreement and deliver to the commission a copy of the legal opinion
17 of the attorney general stating that approval.

18 SECTION 30. Section 362.0041, Transportation Code, is
19 transferred to Chapter 228, Transportation Code, designated as
20 Subchapter E, and amended to read as follows:

21 SUBCHAPTER E. CONVERSION OF NONTOLLED HIGHWAY

22 Sec. 228.201 [~~362.0041~~]. COMMISSION DETERMINATION
23 [~~CONVERSION OF PROJECTS~~]. (a) The [~~Except as provided in~~
24 ~~Subsections (d) and (g), the~~] commission may by order convert a
25 nontolled state highway or a segment of a nontolled state highway
26 [~~the free state highway system~~] to a toll project [~~facility~~] if it
27 determines that the conversion will improve overall mobility in the

1 region or is the most feasible and economic means to accomplish
2 necessary expansion, improvements, or extensions to that segment of
3 the state highway system.

4 Sec. 228.202. PUBLIC HEARING. [~~(b)~~] Prior to converting a
5 state highway or a segment of a [~~the~~] state highway [~~system~~] under
6 this subchapter [~~section~~], the commission shall conduct a public
7 hearing for the purpose of receiving comments from interested
8 persons concerning the proposed conversion [~~transfer~~]. Notice of
9 the hearing shall be published in the Texas Register, one or more
10 newspapers of general circulation, and a newspaper, if any,
11 published in the county or counties in which the involved highway is
12 located.

13 Sec. 228.203. RULES. [~~(c)~~] The commission shall adopt
14 rules implementing this subchapter [~~section~~], including criteria
15 and guidelines for the approval of a conversion of a highway.

16 Sec. 228.204. QUEEN ISABELLA CAUSEWAY. [~~(d)~~] The
17 commission may not convert the Queen Isabella Causeway in Cameron
18 County to a toll project [~~facility~~].

19 Sec. 228.205. COUNTY APPROVAL. [~~(e)~~ ~~Subchapter G, Chapter~~
20 ~~361, applies to a highway converted to a toll facility under this~~
21 ~~section.~~

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

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

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

1 ~~[(3) is exempt from the application of Section~~
2 ~~403.095, Government Code.~~

3 ~~[(g)]~~ The commission may only convert a segment of the state
4 highway system under this subchapter ~~[section]~~ if the conversion is
5 approved by the commissioners court of each county within which the
6 segment is located.

7 SECTION 31. Sections 362.001, 362.003, 362.006, and
8 362.007, Transportation Code, are transferred to Chapter 228,
9 Transportation Code, designated as Subchapter F, and amended to
10 read as follows:

11 SUBCHAPTER F. JOINT TOLL PROJECTS

12 Sec. 228.251 ~~[362.001]~~. DEFINITIONS. In this subchapter:

13 (1) ~~[(2)]~~ "Bonds" includes certificates, notes, and
14 other obligations of an issuer authorized by statute, municipal
15 home-rule charter, or the Texas Constitution.

16 (2) ~~[(3)] "Cost" means those costs included under~~
17 ~~Section 361.004.~~

18 ~~[(4)]~~ "Local governmental entity" means a political
19 subdivision of the state, including a municipality or a county, a
20 political subdivision of a county, a group of adjoining counties, a
21 defined district, or a nonprofit corporation, including a
22 transportation corporation created under Chapter 431.

23 ~~[(5)] "Turnpike project" has the meaning assigned by~~
24 ~~Section 361.001.]~~

25 Sec. 228.252 ~~[362.003]~~. APPLICABILITY OF OTHER LAW;
26 CONFLICTS. (a) This subchapter ~~[chapter]~~ is cumulative of all laws
27 affecting the issuance of bonds by local governmental entities,

1 particularly, but not by way of limitation, provisions of Chapters
2 1201 and 1371, Government Code, and Subchapters A-C, Chapter 1207,
3 Government Code, are applicable to and apply to all bonds issued
4 under this subchapter [~~chapter~~], regardless of any classification
5 of any such local governmental entities thereunder; provided,
6 however, in the event of any conflict between such laws and this
7 subchapter [~~chapter~~], the provisions of this subchapter [~~chapter~~]
8 prevail.

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

17 (c) The department may enter into all agreements necessary
18 or convenient to effectuate the purposes of this subchapter
19 [~~chapter~~].

20 Sec. 228.253 [~~362.006~~]. USE OF FEDERAL FUNDS. The
21 department may use federal funds for any purpose described by this
22 subchapter.

23 Sec. 228.254 [~~362.007~~]. AGREEMENTS BETWEEN AUTHORITY AND
24 LOCAL GOVERNMENTAL ENTITIES. (a) Under authority of Section 52,
25 Article III, Texas Constitution, a local governmental entity other
26 than a nonprofit corporation may, upon the required vote of the
27 qualified voters, in addition to all other debts, issue bonds or

1 enter into and make payments under agreements with the department,
2 not to exceed 40 years in term, in any amount not to exceed
3 one-fourth of the assessed valuation of real property within the
4 local governmental entity, except that the total indebtedness of
5 any municipality shall never exceed the limits imposed by other
6 provisions of the constitution, and levy and collect taxes to pay
7 the interest thereon and provide a sinking fund for the redemption
8 thereof, for the purposes of construction, maintenance, and
9 operation of toll [~~turnpike~~] projects or systems of the department,
10 or in aid thereof.

11 (b) In addition to Subsection (a), a local governmental
12 entity may, within any applicable constitutional limitations,
13 agree with the department to issue bonds or enter into and make
14 payments under an agreement to construct, maintain, or operate any
15 portion of a toll [~~turnpike~~] project or system of the department.

16 (c) To make payments under an agreement under Subsection (b)
17 or pay the interest on bonds issued under Subsection (b) and to
18 provide a sinking fund for the bonds or the contract, a local
19 governmental entity may:

20 (1) pledge revenue from any available source,
21 including annual appropriations;

22 (2) levy and collect taxes; or

23 (3) provide for a combination of Subdivisions (1) and
24 (2).

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

27 (e) Any election required to permit action under this

1 subchapter must be held in conformance with Chapter 1251,
2 Government Code, or other law applicable to the local governmental
3 entity.

4 SECTION 32. Chapter 228, Transportation Code, is amended by
5 adding Subchapter G to read as follows:

6 SUBCHAPTER G. COMPREHENSIVE DEVELOPMENT AGREEMENTS

7 Sec. 228.301. AUTHORITY. (a) Subject to Section 228.302,
8 the department may enter into a comprehensive development agreement
9 with a private entity to design, develop, finance, construct,
10 maintain, repair, operate, extend, or expand a toll project.

11 (b) In this subchapter, "comprehensive development
12 agreement" means an agreement that, at a minimum, provides for the
13 design and construction, rehabilitation, expansion, or improvement
14 of a toll project and may also provide for the financing,
15 acquisition, maintenance, or operation of a toll project.

16 (c) The department may negotiate provisions relating to
17 professional and consulting services provided in connection with a
18 comprehensive development agreement.

19 (d) Money disbursed by the department under a comprehensive
20 development agreement is not included in the amount:

21 (1) required to be spent in a state fiscal biennium for
22 engineering and design contracts under Section 223.041; or

23 (2) appropriated in Strategy A.1.1.
24 Plan/Design/Manage of the General Appropriations Act for that
25 biennium for the purpose of making the computation under Section
26 223.041.

27 (e) The department may authorize the investment of public

1 and private money, including debt and equity participation, to
2 finance a function described by this section.

3 Sec. 228.302. LIMITATION ON DEPARTMENT FINANCIAL
4 PARTICIPATION. The amount of money disbursed by the department
5 from the state highway fund and the Texas mobility fund during a
6 federal fiscal year to pay the costs under comprehensive
7 development agreements may not exceed 40 percent of the obligation
8 authority under the federal-aid highway program that is distributed
9 to this state for the fiscal year.

10 Sec. 228.303. PROCESS FOR ENTERING INTO COMPREHENSIVE
11 DEVELOPMENT AGREEMENTS. (a) If the department enters into a
12 comprehensive development agreement, the department shall use a
13 competitive procurement process that provides the best value for
14 the department. The department may accept unsolicited proposals
15 for a proposed project or solicit proposals in accordance with this
16 section.

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

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

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

25 (3) any other information the department considers
26 relevant or necessary.

27 (c) The department shall publish a notice advertising a

1 request for competing proposals and qualifications in the Texas
2 Register that includes the criteria to be used to evaluate the
3 proposals, the relative weight given to the criteria, and a
4 deadline by which proposals must be received if:

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

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

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

12 (e) The department may interview a private entity
13 submitting an unsolicited proposal or responding to a request under
14 Subsection (c). The department shall evaluate each proposal based
15 on the criteria described in the request for competing proposals
16 and qualifications and may qualify or shortlist private entities to
17 submit detailed proposals under Subsection (f). The department
18 must qualify or shortlist at least two private entities to submit
19 detailed proposals for a project under Subsection (f) unless the
20 department does not receive more than one proposal or one response
21 to a request under Subsection (c).

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

27 (1) the private entity's qualifications and

1 demonstrated technical competence;

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

4 (3) engineering or architectural designs;

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

6 (5) a financial plan, including costing methodology
7 and cost proposals; or

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

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

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

19 (i) The department may enter into negotiations with the
20 private entity whose proposal offers the apparent best value for
21 the purpose of establishing the final terms of a comprehensive
22 development agreement.

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

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

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

8 (m) The department shall pay an unsuccessful private entity
9 that submits a responsive proposal in response to a request for
10 detailed proposals under Subsection (f) a stipulated amount in
11 exchange for the work product contained in that proposal. The
12 stipulated amount must be stated in the request for proposals and
13 may not exceed the value of any work product contained in the
14 proposal that can, as determined by the department, be used by the
15 department in the performance of its functions. The use by the
16 department of any design element contained in an unsuccessful
17 proposal is at the sole risk and discretion of the department and
18 does not confer liability on the recipient of the stipulated amount
19 under this section. After payment of the stipulated amount:

20 (1) the department owns with the unsuccessful proposer
21 jointly the rights to, and may make use of any work product
22 contained in, the proposal, including the technologies,
23 techniques, methods, processes, ideas, and information contained
24 in the project design; and

25 (2) the use by the unsuccessful proposer of any
26 portion of the work product contained in the proposal is at the sole
27 risk of the unsuccessful proposer and does not confer liability on

1 the department.

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

7 (o) Subchapter A, Chapter 223, of this code and Chapter
8 2254, Government Code, do not apply to a comprehensive development
9 agreement entered into under this subchapter.

10 Sec. 228.304. CONFIDENTIALITY OF INFORMATION. (a) To
11 encourage private entities to submit proposals under this
12 subchapter, the following information is confidential, is not
13 subject to disclosure, inspection, or copying under Chapter 552,
14 Government Code, and is not subject to disclosure, discovery,
15 subpoena, or other means of legal compulsion for its release until a
16 final contract for a proposed project is entered into:

17 (1) all or part of a proposal that is submitted by a
18 private entity for a comprehensive development agreement, except
19 information provided under Sections 228.303(b)(1) and (2), unless
20 the private entity consents to the disclosure of the information;

21 (2) supplemental information or material submitted by
22 a private entity in connection with a proposal for a comprehensive
23 development agreement, unless the private entity consents to the
24 disclosure of the information or material; and

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

1 (b) After the department completes its final ranking of
2 proposals under Section 228.303(h), the final rankings of each
3 proposal under each of the published criteria are not confidential.

4 Sec. 228.305. PERFORMANCE AND PAYMENT SECURITY. (a)
5 Notwithstanding Section 228.306 and the requirements of Subchapter
6 B, Chapter 2253, Government Code, the department shall require a
7 private entity entering into a comprehensive development agreement
8 under this subchapter to provide a performance and payment bond or
9 an alternative form of security in an amount sufficient to:

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

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

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

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

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

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

3 (f) In addition to or instead of performance and payment
4 bonds, the department may require the following alternative forms
5 of security:

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

8 (2) a United States bond or note;

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

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

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

14 Sec. 228.306. OWNERSHIP OF TOLL PROJECT. (a) A toll
15 project that is the subject of a comprehensive development
16 agreement with a private entity, including the facilities acquired
17 or constructed on the project, is public property and shall be owned
18 by the department.

19 (b) Notwithstanding Subsection (a), the department may
20 enter into an agreement that provides for the lease of
21 rights-of-way, the granting of easements, the issuance of
22 franchises, licenses, or permits, or any lawful uses to enable a
23 private entity to construct, operate, and maintain a toll project,
24 including supplemental facilities. At the termination of the
25 agreement, the project, including the facilities, is to be in a
26 state of proper maintenance as determined by the department and
27 shall be returned to the department in satisfactory condition at no

1 further cost.

2 (c) Notwithstanding Section 11.11, Tax Code, a private
3 entity that leases a toll project under a comprehensive development
4 agreement is exempt from taxation of or assessment on the facility.

5 Sec. 228.307. LIABILITY FOR PRIVATE OBLIGATIONS. The
6 department may not incur a financial obligation for a private
7 entity that designs, develops, finances, constructs, maintains, or
8 operates a toll project under this subchapter. The state or a
9 political subdivision of the state is not liable for any financial
10 or other obligations of a project solely because a private entity
11 constructs, finances, or operates any part of the project.

12 Sec. 228.308. TERMS OF PRIVATE PARTICIPATION. (a) The
13 department shall negotiate the terms of private participation under
14 this subchapter, including:

15 (1) methods to determine the applicable cost, profit,
16 and project distribution among the private participants and the
17 department;

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

20 (3) acceptable safety and policing standards; and

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

24 (b) A comprehensive development agreement entered into
25 under this subchapter must include a provision authorizing the
26 department to purchase, under terms and conditions agreed to by the
27 parties, the interest of a private participant in a toll project

1 designed, developed, financed, constructed, operated, or
2 maintained under the comprehensive development agreement.

3 (c) The department may enter into a comprehensive
4 development agreement under this subchapter with a private
5 participant only if the project is identified in the department's
6 unified transportation program or is located on a transportation
7 corridor identified in the statewide transportation plan.

8 Sec. 228.309. RULES, PROCEDURES, AND GUIDELINES GOVERNING
9 SELECTION AND NEGOTIATING PROCESS. (a) The commission shall adopt
10 rules, procedures, and guidelines governing selection of a
11 developer for a comprehensive development agreement and
12 negotiations to promote fairness, obtain private participants in
13 projects, and promote confidence among those participants. The
14 rules must contain criteria relating to the qualifications of the
15 participants and the award of the contracts.

16 (b) The department shall have up-to-date procedures for
17 participation in negotiations under this subchapter.

18 (c) The department has exclusive judgment to determine the
19 terms of an agreement.

20 Sec. 228.310. IMMUNITY FROM LIABILITY. A private entity
21 that constructs, maintains, or operates a toll project under this
22 chapter that is an essential governmental function is liable for
23 damages only to the extent that the department would be liable if
24 the department were performing the function.

25 SECTION 33. Section 284.009, Transportation Code, as added
26 by Chapters 953 and 1325, Acts of the 78th Legislature, Regular
27 Session, 2003, is reenacted and amended to read as follows:

1 Sec. 284.009. CONVERSION AND TRANSFER [~~CONVEYANCE~~] OF STATE
2 HIGHWAY TO COUNTY [~~OR TOLL ROAD AUTHORITY~~]. (a) The commission may
3 transfer [~~convey~~] a nontoll state highway or a segment of a nontoll
4 state highway, including real property acquired to construct or
5 operate the highway, to [~~(i)~~] a county [~~or a toll road authority in~~
6 ~~the county in which the state highway or segment is located, or (ii)~~
7 ~~a county or toll road authority in a county adjacent to the county~~
8 ~~in which the highway or segment is located if the county or toll~~
9 ~~road authority in the county in which the segment or highway is~~
10 ~~located approves the conveyance,~~] for the purpose of converting the
11 highway to a toll facility to be operated and maintained [~~operation~~
12 ~~and maintenance~~] as a project under this chapter, if:

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

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

20 (3) the county [~~or toll road authority~~] agrees to
21 assume all liability and responsibility for the maintenance and
22 operation of the transferred [~~conveyed~~] highway on its transfer
23 [~~conveyance~~].

24 (b) A county [~~or toll road authority~~] that receives a
25 nontoll state highway or a segment of a nontoll state highway under
26 Subsection (a) may own, operate, and maintain the highway as a
27 pooled project under Section 284.065. [~~The commission may only~~

1 ~~make a conveyance under this section if the commission determines~~
2 ~~that the conveyance is the most feasible and economic means to~~
3 ~~accomplish necessary expansions, extensions, or improvements of~~
4 ~~the conveyed segment of the highway. Tolls may not be collected by~~
5 ~~an authority from a conveyed segment of highway except to finance~~
6 ~~the expansion, extension, operation, and maintenance of that~~
7 ~~highway segment.]~~

8 (c) The commission shall, at the time of a transfer
9 ~~[conveyance]~~, remove the highway or segment of highway from the
10 state highway system. After a transfer ~~[conveyance]~~, the
11 department has no liability, responsibility, or duty for the
12 maintenance or operation of the highway or segment.

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

18 (e) Before transferring ~~[conveying]~~ a nontoll state highway
19 or a segment of a nontoll state highway under this section, the
20 commission shall conduct a public hearing to receive comments from
21 interested persons concerning the proposed transfer ~~[conveyance]~~.
22 Notice of the hearing shall be published in the Texas Register and
23 in one or more newspapers of general circulation in any county in
24 which the highway or segment is located.

25 (f) A county ~~[or toll road authority]~~ may use toll revenue
26 collected under this section to fund a transportation project or an
27 air quality project.

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

4 (h) In this section:

5 (1) "Air quality project" means a project or program
6 of a county, toll road authority, or another governmental entity
7 that the county or toll road authority determines will mitigate or
8 prevent air pollution caused by the construction, maintenance, or
9 use of public roads within the county.

10 (2) "Transportation project" means the construction,
11 improvement, maintenance, or operation of a transportation
12 facility:

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

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

17 (C) that the county or toll road authority
18 determines will improve mobility within the county or area served
19 by the toll road authority.

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

21 (1) shall be deposited to the credit of the state
22 highway fund; and

23 (2) are exempt from the application of Section
24 403.095, Government Code. [~~This section applies only to a nontoll
25 state highway or a segment of a nontoll state highway that is
26 conveyed for purposes of creating an outer loop or connecting to an
27 outer loop located primarily in a county having a population of more~~

1 ~~than three million or an adjacent county.]~~

2 SECTION 34. Section 284.061(c), Transportation Code, is
3 amended to read as follows:

4 (c) Except as provided by Section 284.0615 [~~361.1375~~], if
5 applicable, the county is entitled to immediate possession of
6 property subject to a condemnation proceeding brought by the county
7 after:

8 (1) a tender of a bond or other security in an amount
9 sufficient to secure the owner for damages; and

10 (2) the approval of the bond or security by the court.

11 SECTION 35. Subchapter C, Chapter 284, Transportation Code,
12 is amended by adding Section 284.0615 to read as follows:

13 Sec. 284.0615. DECLARATION OF TAKING BY CERTAIN COUNTIES.

14 (a) This section applies only to a county with a population of 3.3
15 million or more.

16 (b) If, in connection with a project under this chapter, a
17 commissioners court of the county authorizes the county to proceed
18 in the manner provided by Section 203.066:

19 (1) the county may file a declaration of taking and
20 proceed in the manner provided by that section on the project; and

21 (2) a reference to the department in that section
22 means the county.

23 SECTION 36. Section 370.035(a), Transportation Code, is
24 amended to read as follows:

25 (a) The commission by order may transfer [~~convert~~] a
26 nontolled segment of the [~~free~~] state highway system [~~to a turnpike~~
27 ~~project and transfer that segment~~] to an authority for the purpose

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

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

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

9 (3) the authority agrees to assume all liability and
10 responsibility for the maintenance and operation of the turnpike
11 project on its transfer; and

12 (4) the transfer is approved by the governor.

13 SECTION 37. Section 370.163(a), Transportation Code, is
14 amended to read as follows:

15 (a) Except as otherwise provided by this subchapter, the
16 governing body of an authority has the same powers and duties
17 relating to the condemnation and acquisition of real property for a
18 transportation project that the commission and the department have
19 under Subchapter D, Chapter 203 [~~361, and Section 361.233~~] relating
20 to the condemnation or purchase of real property for a turnpike
21 project. [~~Notwithstanding Section 361.135(a), the concurrence of
22 the commission is not a prerequisite to the exercise of the power of
23 condemnation by the governing body of the authority.~~]

24 SECTION 38. The following provisions of the Transportation
25 Code are repealed:

26 (1) Section 201.6061;

27 (2) Sections 224.155-224.158 and 224.160;

- 1 (3) Sections 227.062(c)-(g);
- 2 (4) Section 361.002;
- 3 (5) Sections 361.031 and 361.050;
- 4 (6) Sections 361.131-361.136, 361.1375, and
- 5 361.140-361.142;
- 6 (7) Sections 361.175 and 361.191;
- 7 (8) Subchapter F, Chapter 361;
- 8 (9) Section 361.251;
- 9 (10) Sections 361.302-361.306;
- 10 (11) Subchapter J, Chapter 361;
- 11 (12) Sections 362.002 and 362.008; and
- 12 (13) Section 370.163(b).

13 SECTION 39. The changes in law made by this Act to
14 Subchapter I, Chapter 361, Transportation Code, apply only to an
15 agreement between the Texas Department of Transportation and a
16 private entity entered into on or after the effective date of this
17 Act. An agreement entered into before the effective date of this
18 Act is governed by the law applicable to the agreement immediately
19 before the effective date of this Act, and that law is continued in
20 effect for that purpose.

21 SECTION 40. This Act takes effect immediately if it
22 receives a vote of two-thirds of all the members elected to each
23 house, as provided by Section 39, Article III, Texas Constitution.
24 If this Act does not receive the vote necessary for immediate
25 effect, this Act takes effect September 1, 2005.