

By: Hardcastle

H.B. No. 3419

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the Trans-Texas Corridor and other transportation
3 projects.

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

5 SECTION 1. Section 91.034, Transportation Code, is amended
6 by adding subsection (d) to read as follows:

7 Section 91.034. ENVIRONMENTAL MITIGATION. (a) The
8 department may acquire, maintain, hold, restore, enhance, develop,
9 or redevelop property for the purpose of mitigating a past,
10 present, or future adverse environmental effect arising from the
11 construction, maintenance, or operation of a rail facility without
12 regard to whether the need for mitigation has already been
13 established for a particular project.

14 (b) The department may contract with a governmental or
15 private entity to maintain, control, hold, restore, enhance,
16 develop, or redevelop property for the mitigation of a past,
17 present, or future adverse environmental effect arising from the
18 construction, maintenance, or operation of a rail facility without
19 regard to whether the need for mitigation has already been
20 established for a particular project.

21 (c) If authorized by the applicable regulatory authority,
22 the department may pay an amount of money to an appropriate
23 governmental or private entity instead of acquiring or managing
24 property for the mitigation of a past, present, or future adverse

1 environmental effect arising from construction, maintenance, or
2 operation of a rail facility without regard to whether the need for
3 mitigation has already been established for a particular project.

4 (d) If authorized by the applicable regulatory authority,
5 the department shall purchase a conservation easement from an owner
6 of real property instead of acquiring or condemning the property
7 for the mitigation of past, present, or future adverse
8 environmental effect arising from the construction, maintenance,
9 or operation of a rail facility without regard to whether the need
10 for mitigation has already been established for a particular
11 project.

12 SECTION 2. Section 91.095, Transportation Code, is amended
13 to read as follows:

14 Section 91.095. DISPOSAL OF PROPERTY. Subject to the
15 requirements of Section 202.034, the [The] department may sell,
16 convey, or otherwise dispose of any rights or other interests in
17 real property acquired under this subchapter that the commission
18 determines are no longer needed for department purposes.

19 SECTION 3. Subchapter B, Chapter 202, Transportation Code,
20 is amended by adding Section 202.034 to read as follows:

21 Sec. 202.034. RECONVEYANCE OF PROPERTY ACQUIRED FOR
22 TRANS-TEXAS CORRIDOR. (a) Property acquired under Chapters 91,
23 227, 361, or 370 Transportation Code that has not been utilized for
24 transportation purposes five years after the date the property is
25 acquired, may be reconveyed to the grantor or the grantor's heirs or
26 assigns.

27 (b) The sale price for the property must be the same as the

1 purchase price paid by or for the state.

2 (c) The commission, within 60 days after the five year
3 anniversary of the acquisition of the property, shall send notice
4 of the option to repurchase to grantor's last known address.

5 (d) Not later than the first anniversary of the date the
6 notice is mailed, the grantor, or the grantor's heirs or assigns may
7 request in writing that the state reconvey the property to them.

8 (e) If the commission does not receive a request to reconvey
9 the property before the expiration of the stated period, the
10 commission may dispose of the property in the manner provided by
11 Section 202.021.

12 SECTION 4. Section 202.113, Transportation Code, is amended
13 to read as follows:

14 Section 202.113. EXPIRATION OF OPTION TO PURCHASE. An
15 option to acquire property purchased under Section 202.112 shall
16 expire upon the fifth anniversary of the purchase date and may be
17 renewed for subsequent five year periods by agreement of the
18 commission and the grantor of the property or the grantor's heirs or
19 assigns [~~DISPOSAL OF SURPLUS PROPERTY. The commission shall~~
20 ~~dispose of property acquired by advance acquisition that is not~~
21 ~~needed for a transportation facility in the manner provided by~~
22 ~~Subchapter B~~].

23 SECTION 5. Section 203.004, Transportation Code, is amended
24 by adding subsection (d) to read as follows:

25 Sec. 203.004. CONTRACTS FOR MANAGEMENT OF PROPERTY USED FOR
26 MITIGATION OF ADVERSE ENVIRONMENTAL IMPACTS. (a) The department
27 may contract with any public or private entity for the management of

1 property used for the mitigation of an adverse environmental impact
2 directly resulting from the construction or maintenance of a state
3 highway.

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

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

9 (d) If authorized by the applicable regulatory authority,
10 the department shall purchase a conservation easement from an owner
11 of real property instead of acquiring or condemning the property
12 for the mitigation of past, present, or future adverse
13 environmental effect arising from construction or operation of a
14 state highway.

15 SECTION 6. Subchapter C, Chapter 203, Transportation Code
16 is amended by adding Section 203.035 to read as follows:

17 Sec. 203.035. SEVERANCE OF REAL PROPERTY. (a) If a
18 transportation project severs an owner's real property, the
19 department shall pay:

20 (1) the value of the property acquired; and
21 (2) the damages to the remainder of the owner's
22 property caused by the severance, including damages caused by the
23 inaccessibility of one tract from the other.

24 (b) The department may negotiate for and purchase the
25 severed real property or either part of the severed real property if
26 the department and the owner agree on terms for the purchase.
27 Instead of a single fixed payment for the real property, the

1 department may agree to a payment to the owner in the form of:

2 (1) an intangible legal right to receive a percentage
3 of identified revenue attributable to the applicable segment of the
4 project; or

5 (2) an exclusive or nonexclusive right to use or
6 operate a segment or part of the project.

7 (c) A right to a payment under Subsection (b)(1) is senior
8 to any pledge of the revenue under the term of a trust agreement
9 securing bonds issued for the project.

10 SECTION 7. Section 203.051, Transportation Code, is amended
11 to read as follows:

12 Section 203.051. ACQUISITION OF PROPERTY AUTHORIZED. (a)
13 The commission may acquire by purchase, on terms and conditions the
14 commission considers proper or by the exercise of eminent domain,
15 in the name of the state:

16 (1) an interest in real property;

17 (2) any property rights, including:

18 (A) a right of ingress or egress; and

19 (B) a reservation right in real property that
20 restricts or prohibits for not more than seven years the:

21 (i) addition of a new improvement on the
22 real property;

23 (ii) addition to or modification of an
24 existing improvement on the real property; or

25 (iii) subdivision of the real property; and

26 (3) timber, earth, stone, gravel, or other material.

27 (b) Chapter 21, Property Code, applies to an acquisition by

1 eminent domain.

2 (c) The department may condemn the fee or a lesser interest
3 in the property.

4 (d) The department shall, in a statement or petition in
5 condemnation, exclude from the interest to be condemned all the
6 water, oil, gas, and sulphur that can be removed from beneath the
7 real property. This exclusion shall be made without providing the
8 owner of the water, oil, gas, or sulphur any right of ingress or
9 egress to or from the surface of the land to explore, develop,
10 drill, or mine the real property.

11 (e) Subsection (a) does not authorize the commission to
12 condemn property that is used and dedicated for cemetery purposes
13 under Subtitle C, Title 8, Health and Safety Code.

14 SECTION 8. Section 227.022, Transportation Code, is amended
15 to read as follows:

16 Sec. 227.022. PARTICIPATION BY OTHER ENTITIES. (a) A toll
17 or non-toll highway on the Trans-Texas Corridor that is constructed
18 or operated by another entity shall be part of the state highway
19 system. This subsection applies even if the entity constructing or
20 operating the highway is not independently authorized to construct
21 or operate a highway that is part of the state highway system.

22 (b) If the department authorizes another governmental
23 entity to construct or operate a facility on the Trans-Texas
24 Corridor, that entity has each power of the department under this
25 chapter with respect to that facility, including the right to
26 collect fees, except that:

27 (1) any property acquired by the entity shall be held

1 in the name of the state; and

2 (2) the entity may not file a declaration of taking and
3 obtain early possession of real property, unless the entity is a
4 regional mobility authority under Chapter 370.

5 (c) If the department authorizes another governmental
6 entity to construct or operate a facility on the Trans-Texas
7 Corridor, that entity is liable for a claim relating to the
8 Trans-Texas Corridor only to the extent that the department would
9 be liable if it were constructing or operating the facility.

10 (d) A governmental entity or political subdivision may not
11 drill or operate a groundwater well, or lease the right to drill or
12 operate a groundwater well, on the Trans-Texas Corridor.

13 SECTION 9. Section 227.023, Transportation Code is amended
14 to read as follows:

15 Sec. 227.023. PARTICIPATION BY PRIVATE ENTITIES. (a) To
16 the maximum extent practical and economical, the department shall
17 encourage the participation of private entities in the planning,
18 design, construction, and operation of facilities.

19 (b) The department shall contract with a private entity to
20 operate a railroad using rail facilities owned by the department
21 and may not use department employees to operate a railroad. The
22 department may maintain a rail facility directly or through a
23 private entity.

24 (c) To the extent and in the manner that the department may
25 enter into comprehensive development agreements under Chapter 361
26 with regard to turnpikes, the department may enter into
27 comprehensive development agreements under this chapter with

1 regard to facilities on the Trans-Texas Corridor. All provisions
2 of Chapter 361 relating to comprehensive development agreements for
3 turnpikes apply to comprehensive development agreements for
4 facilities under this chapter, including provisions relating to the
5 confidentiality of information. Claims arising under a
6 comprehensive development agreement are subject to Section
7 201.112.

8 (d) A private entity may not drill or operate a groundwater
9 well, or lease to right to drill or operate a groundwater well on
10 the Trans-Texas Corridor.

11 SECTION 10. Section 227.028, Transportation Code, is
12 amended to read as follows:

13 Sec. 227.028. ENVIRONMENTAL MITIGATION. (a) The
14 department may acquire, maintain, hold, restore, enhance, develop,
15 or redevelop property for the purpose of mitigating a past,
16 present, or future adverse environmental effect arising from the
17 construction or operation of any part of the Trans-Texas Corridor
18 without regard to whether the need for mitigation is established
19 for a particular project.

20 (b) The department may contract with a governmental or
21 private entity, to maintain, control, hold, restore, enhance,
22 develop, or redevelop property for the mitigation of a past,
23 present, or future adverse environmental effect arising from the
24 construction or operation of any part of the Trans-Texas Corridor
25 without regard to whether the need for mitigation has already been
26 established for a particular project.

27 (c) If authorized by the applicable regulatory authority,

1 the department may pay a sum of money to an appropriate governmental
2 or private entity instead of acquiring or managing property for the
3 mitigation of a past, present, or future adverse environmental
4 effect arising from construction or operation of any part of the
5 Trans-Texas Corridor without regard to whether the need for
6 mitigation has already been established for a particular project.

7 (d) If authorized by the applicable regulatory authority,
8 the department shall purchase a conservation easement from an owner
9 of real property instead of acquiring or condemning the property
10 for the mitigation of past, present, or future adverse
11 environmental effect arising from construction or operation of any
12 part of the Trans-Texas Corridor without regard to whether the need
13 for mitigation has already been established for a particular
14 project.

15 SECTION 11. Section 227.042, Transportation Code is amended
16 to read as follows:

17 Sec. 227.042. CORRIDOR PARTICIPATION PAYMENT FOR REAL
18 PROPERTY. (a) The department, when acquiring real property under
19 this chapter, shall offer the owner of the real property the option
20 to receive as compensation:

21 (1) a single fixed payment,
22 (2) a corridor participation payment, or
23 (3) a combination of (a)(1) and (a)(2) [As an
24 alternative to paying for an interest in real property or a real
25 property right with a single fixed payment, the department may,
26 with the owner's consent, pay the owner by means of a corridor
27 participation payment].

1 (b) A right to receive a corridor participation payment
2 under this section is senior [~~subordinate~~] to any right to receive a
3 fee as payment on the principal of or interest on a bond that is
4 issued for the construction of the applicable segment of the
5 Trans-Texas Corridor.

6 (c) In this section, "corridor participation payment" means
7 an intangible legal right to receive a percentage of one or more
8 identified fees related to a segment of the Trans-Texas Corridor
9 for a fixed or indefinite term.

10 SECTION 12. Subchapter D, Chapter 227, Transportation Code
11 is amended by adding Section 227.0421 to read as follows:

12 Sec. 227.0421. COMPENSATION OR DAMAGES FOR ANCILLARY
13 FACILITIES. (a) If an ancillary facility is located on real
14 property acquired for the corridor, the entity acquiring the real
15 property under this chapter shall offer the owner of the real
16 property the following options for compensation:

17 (1) a single fixed payment; or

18 (2) an intangible legal right to receive a percentage
19 of identified lease revenue attributable to the ancillary facility
20 for a fixed or indefinite term; or

21 (3) a combination of (a)(1) and (a)(2).

22 (b) if an ancillary facility is located on real property
23 condemned for the corridor, the special commissioners shall offer
24 the owner of the real property the option of being compensated for
25 damages under Subsection (a)(1), (a)(2), or (a)(3).

26 (c) Notwithstanding Section 370.114, a right to receive a
27 payment under subsection (a)(2) is senior to any right to receive a

1 fee as payment on the principal of or interest on a bond that is
2 issued for the construction of the applicable segment of the
3 Trans-Texas Corridor.

4 SECTION 13. Subchapter D, Chapter 227, Transportation Code,
5 is amended by adding Sections 227.047 to read as follows:

6 Sec. 227.047. SEVERANCE OF REAL PROPERTY. (a) If a
7 Corridor project severs an owner's real property, the department
8 shall pay:

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

10 (2) the damages to the remainder of the owner's
11 property caused by the severance, including damages caused by the
12 inaccessibility of one tract from the other.

13 (b) The department may negotiate for and purchase the
14 severed real property or either part of the severed real property if
15 the department and the owner agree on terms for the purchase.
16 Instead of a single fixed payment for the real property, the
17 department may agree to a payment to the owner in the form of:

18 (1) an intangible legal right to receive a percentage
19 of identified revenue attributable to the applicable segment of the
20 Corridor; or

21 (2) an exclusive or nonexclusive right to use or
22 operate a segment or part of the Corridor project.

23 (c) A right to a payment under Subsection (b)(1) is senior
24 to any pledge of the revenue under the term of a trust agreement
25 securing bonds issued for the project.

26 SECTION 14. Section 361.132, Transportation Code, is
27 amended by adding Subsections (g) and (h) to read as follows:

1 Sec. 361.132. ACQUISITION OF PROPERTY. (a) The department
2 may acquire, in the name of the state, public or private real
3 property it determines necessary or convenient for the
4 construction, expansion, enlargement, extension, improvement, or
5 operation of a turnpike project or for otherwise carrying out this
6 chapter.

7 (b) The real property the department may acquire under this
8 subchapter includes:

9 (1) public parks, playgrounds, or reservations;

10 (2) parts of or rights in public parks, playgrounds,
11 or reservations;

12 (3) rights-of-way;

13 (4) property rights, including:

14 (A) a right of ingress or egress; and

15 (B) a reservation right in real property that
16 restricts or prohibits for not more than seven years the:

17 (i) addition of a new improvement on the
18 real property;

19 (ii) addition to or modification of an
20 existing improvement on the real property; or

21 (iii) subdivision of the real property;

22 (5) franchises;

23 (6) easements; and

24 (7) other interests in real property.

25 (c) The department may acquire the real property by any
26 method, including purchase and condemnation. The department may
27 purchase public or private real property on the terms and at the

1 price the department and the owner consider reasonable.

2 (d) Property necessary or convenient for the construction
3 or operation of a turnpike project under Subsection (a) includes an
4 interest in real property, a property right, or materials that the
5 department determines are necessary or convenient to:

6 (1) protect a turnpike project;

7 (2) drain a turnpike project;

8 (3) divert a stream, river, or other watercourse from
9 the right-of-way of a turnpike project;

10 (4) store materials or equipment used in the
11 construction or maintenance of a turnpike project;

12 (5) provide a location for an ancillary facility that
13 generates revenue for use in the construction, maintenance, or
14 operation of a turnpike project, including a gas station, garage,
15 store, hotel, or restaurant;

16 (6) construct or operate a warehouse, toll house, toll
17 plaza, service station, or other facility used in connection with
18 the construction, maintenance, or operation of a turnpike project;

19 (7) lay out, construct, or maintain a roadside park;

20 (8) lay out, construct, or maintain a parking lot that
21 will contribute to the maximum use of a turnpike project with the
22 least possible congestion;

23 (9) mitigate an adverse environmental effect that
24 directly results from the construction or maintenance of a turnpike
25 project; or

26 (10) accomplish any other purpose related to the
27 location, construction, improvement, maintenance, beautification,

1 preservation, or operation of a turnpike project.

2 (e) The department shall comply with all relocation
3 assistance procedures applicable to the department in connection
4 with any displacement of owners or tenants as a consequence of the
5 department's acquisition of real property under this chapter.

6 (f) The department may acquire timber, earth, stone,
7 gravel, or other materials as necessary to carry out a purpose under
8 this chapter.

9 (g) The department may not drill or operate a groundwater
10 well, or lease the right to drill or operate a groundwater well on a
11 turnpike project.

12 (h) If authorized by the applicable regulatory authority,
13 the department shall purchase a conservation easement from an owner
14 of real property instead of acquiring or condemning the property to
15 mitigate an adverse environmental effect that directly results from
16 the construction or maintenance of a turnpike project.

17 SECTION 15. Section 361.136, Transportation Code, is
18 amended to read as follows:

19 Section 361.136. SEVERANCE OF REAL PROPERTY. (a) If a
20 turnpike project severs an owner's real property, the department
21 shall pay:

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

23 (2) the damages to the remainder of the owner's
24 property caused by the severance, including damages caused by the
25 inaccessibility of one tract from the other.

26 (b) The department may negotiate for and purchase the
27 severed real property or either part of the severed real property if

1 the department and the owner agree on terms for the purchase.
2 Instead of a single fixed payment for the real property, the
3 department may agree to a payment to the owner in the form of:

4 (1) an intangible legal right to receive a percentage
5 of identified revenue attributable to the applicable segment of the
6 turnpike project; or

7 (2) an exclusive or nonexclusive right to use or
8 operate a segment or part of the turnpike project.

9 (c) Notwithstanding Section 361.1752, a [A] right to a
10 payment under Subsection (b)(1) is senior [~~subject~~] to any pledge
11 of the revenue under the term of a trust agreement securing bonds
12 issued for the project.

13 SECTION 16. Section 361.137, Transportation Code, is
14 amended to read as follows:

15 Sec. 361.137. DECLARATION OF TAKING. (a) The department
16 may file a declaration of taking with the clerk of the court:

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

19 (2) to which the case is assigned.

20 (b) The department may file the declaration of taking
21 concurrently with or subsequent to the petition but may not file the
22 declaration after the special commissioners have made an award in
23 the condemnation proceeding.

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

26 (1) all environmental documentation, including a
27 final environmental impact statement or a record of decision, that

1 is required by federal or state law;

2 (2) all public hearings and meetings, including those
3 held in connection with the environmental process and under
4 Sections 201.604 and 203.021, that are required by federal or state
5 law; and

6 (3) all notifications required by Section 203.022.

7 (d) The declaration of taking must include:

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

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

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

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

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

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

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

21 (5) a statement that immediate possession of all or
22 part of the property to be condemned is necessary for the timely
23 construction of a turnpike project, and the need resulted from
24 circumstances beyond the control of the authority.

25 (d-1) A deposit to the registry of the court of an amount
26 equal to the appraised value, as determined by the department, of
27 the property to be condemned must accompany the declaration of

1 taking.

2 (e) The date on which the declaration is filed is the date of
3 taking for the purpose of assessing damages to which a property
4 owner is entitled.

5 (f) After a declaration of taking is filed, the case shall
6 proceed as any other case in eminent domain under Chapter 21,
7 Property Code.

8 (g) A taking under this section shall give rise to
9 compensable damages for early possession, which shall be assessed
10 by the special commissioners impaneled under Chapter 21, Property
11 Code.

12 SECTION 17. Chapter 361, Transportation Code, is amended by
13 adding Sections 361.143 and 361.144 to read as follows:

14 Sec. 361.143. PARTICIPATION PAYMENT FOR REAL PROPERTY (a)
15 The department, when acquiring real property under this chapter,
16 shall offer the owner of the real property the option to receive as
17 compensation:

18 (1) a single fixed payment,

19 (2) a participation payment, or

20 (3) a combination of (a)(1) and (a)(2).

21 (b) Notwithstanding Section 361.1752, a right to receive a
22 participation payment under this section is senior to any pledge of
23 the revenue under the terms of a trust agreement securing bonds
24 issued for the project.

25 (c) In this section, "participation payment" means an
26 intangible legal right to receive a percentage of one or more
27 identified fees related to a segment of the turnpike project for a

1 fixed or indefinite term.

2 Sec. 361.144. COMPENSATION OR DAMAGES FOR ANCILLARY
3 FACILITIES. (a) If an ancillary facility is located on real
4 property acquired for the corridor, the entity acquiring the real
5 property under this chapter shall offer the owner of the real
6 property the following options for compensation:

7 (1) a single fixed payment; or

8 (2) an intangible legal right to receive a percentage
9 of identified lease revenue attributable to the ancillary facility
10 for a fixed or indefinite term; or

11 (3) a combination of (a)(1) and (a)(2).

12 (b) If an ancillary facility is located on real property
13 condemned for the corridor, the special commissioners shall offer
14 the owner of the real property the option of being compensated for
15 damages under Subsection (a)(1), (a)(2), or (a)(3).

16 (c) Notwithstanding section 361.1752, a right to receive a
17 payment under this section is senior to any pledge of the revenue
18 under the terms of a trust agreement securing bonds issued for the
19 project.

20 SECTION 18. Subchapter E, Chapter 370, Transportation Code
21 is amended by adding Section 370.1631 to read as follows:

22 Sec. 370.1631. COMPENSATION OR DAMAGES FOR ANCILLARY
23 FACILITIES. (a) If an ancillary facility is located on real
24 property acquired for the corridor, the entity acquiring the real
25 property under this chapter shall offer the owner of the real
26 property the following options for compensation:

27 (1) a single fixed payment; or

1 (2) an intangible legal right to receive a percentage
2 of identified lease revenue attributable to the ancillary facility
3 for a fixed or indefinite term; or

4 (3) a combination of (a)(1) and (a)(2).

5 (b) If an ancillary facility is located on real property
6 condemned for the corridor, the special commissioners shall offer
7 the owner of the real property the option of being compensated for
8 damages under Subsection (a)(1), (a)(2), or (a)(3).

9 (c) Notwithstanding section 370.114, a right to receive a
10 payment under this section is senior to any pledge of the revenue
11 under the terms of a trust agreement securing bonds issued for the
12 project.

13 SECTION 19. Section 370.164, Transportation Code, is
14 amended to read as follows:

15 Section 370.164. DECLARATION OF TAKING. (a) An authority
16 may file a declaration of taking with the clerk of the court:

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

19 (2) to which the case is assigned.

20 (b) An authority may file the declaration of taking
21 concurrently with or subsequent to the filing of the condemnation
22 petition but may not file the declaration after the special
23 commissioners have made an award in the condemnation proceeding.

24 (c) An authority may not file a declaration of taking before
25 the completion of all:

26 (1) environmental documentation, including a final
27 environmental impact statement or a record of decision, that is

1 required by federal or state law;

2 (2) public hearings and meetings, including those held
3 in connection with the environmental rules adopted by the authority
4 under Section 370.188, that are required by federal or state law;
5 and

6 (3) notifications required by the rules adopted by the
7 authority under Section 370.188.

8 (d) The declaration of taking must include:

9 (1) a specific reference to the legislative authority
10 for the condemnation;

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

13 (A) the municipality in which the property is
14 located;

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

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

17 (3) a statement of the property interest to be
18 condemned;

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

22 (5) a statement that immediate possession of all or
23 part of the property to be condemned is necessary for the timely
24 construction of a transportation project, and the need resulted
25 from circumstances beyond the control of the authority.

26 (e) A deposit to the registry of the court of an amount equal
27 to the appraised value as determined by the authority of the

1 property to be condemned must accompany the declaration of taking.

2 (f) The date on which the declaration is filed is the date of
3 taking for the purpose of assessing damages under Chapter 21,
4 Property Code.

5 (g) After a declaration of taking is filed, the case shall
6 proceed as any other case in eminent domain under Chapter 21,
7 Property Code.

8 (h) A taking under this section shall give rise to
9 compensable damages for early possession, which shall be assessed
10 by the special commissioners impaneled under Chapter 21, Property
11 Code.

12 SECTION 20. Section 370.166, Transportation Code, is
13 amended to read as follows:

14 Section 370.166. PARTICIPATION PAYMENT FOR REAL PROPERTY.

15 (a) The authority, when acquiring real property under this
16 chapter, shall offer the owner of the real property the option to
17 receive as compensation:

18 (1) a single fixed payment,

19 (2) a participation payment, or

20 (3) a combination of (a)(1) and (a)(2) [As an
21 alternative to paying for an interest in real property or a real
22 property right with a single fixed payment, the authority may, with
23 the owner's consent, pay the owner by means of a participation
24 payment].

25 (b) Notwithstanding Section 370.114, a [A] right to receive
26 a participation payment under this section is senior [subordinate]
27 to any right to receive a fee as payment on the principal of or

1 interest on a bond that is issued for the construction of the
2 applicable segment.

3 (c) In this section, "participation payment" means an
4 intangible legal right to receive a percentage of one or more
5 identified fees related to a segment constructed by the authority
6 for a fixed or indefinite period.

7 SECTION 21. Section 370.167, Transportation Code, is
8 amended to read as follows:

9 Section 370.167. SEVERANCE OF REAL PROPERTY. (a) If a
10 transportation project of an authority severs a property owner's
11 real property, the authority shall pay:

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

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

16 (b) At its option, an authority may negotiate for and
17 purchase the severed real property or any part of the severed real
18 property if the authority and the property owner agree on terms for
19 the purchase. Instead of a single fixed payment for the real
20 property, the authority may agree to a payment to the owner in the
21 form of:

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

25 (2) an exclusive or nonexclusive right to use or
26 operate a segment or part of the transportation project.

27 (c) Notwithstanding Section 370.114, a right to a payment

1 under this section is senior to any pledge of the revenue under the
2 terms of a trust agreement securing bonds issued for the project.

3 (d) An authority may sell and dispose of severed real
4 property that it determines is not necessary or useful to the
5 authority. Severed property must be appraised before being offered
6 for sale by the authority.

7 SECTION 22. This Act takes effect September 1, 2005.