

By: Staples

S.B. No. 1706

A BILL TO BE ENTITLED

AN ACT

relating to the construction, acquisition, financing, maintenance, management, operation, ownership, and control of transportation facilities and the progress, improvement, policing, and safety of transportation in this state.

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

ARTICLE 1. RAIL FACILITIES

SECTION 1.01. Section 91.051, Transportation Code, is amended to read as follows:

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

SECTION 1.02. Subchapter C, Chapter 91, Transportation Code, is amending by adding Sections 91.054-91.061 to read as follows:

Sec. 91.054. COMPREHENSIVE DEVELOPMENT AGREEMENTS.

(a) The department may enter into a comprehensive development agreement with a private entity to acquire, construct, maintain, or operate a rail facility or system.

(b) In this subchapter, "comprehensive development

1 agreement" means an agreement that, at a minimum, provides for the  
2 design and construction of a rail facility or system and may also  
3 provide for the financing, acquisition, maintenance, or operation  
4 of the rail facility or system.

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

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

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

13 (f) The authority to enter into comprehensive development  
14 agreements provided by this section expires on August 31, 2011.

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

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

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

27 (2) information regarding the private entity's

1 qualifications, experience, technical competence, and capability  
2 to develop the project; and

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

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

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

12 (2) the department authorizes the further evaluation  
13 of an unsolicited proposal.

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

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

27 (f) The department shall issue a request for detailed

1 proposals from all private entities qualified or shortlisted under  
2 Subsection (e) if the department proceeds with the further  
3 evaluation of a proposed project. A request under this subsection  
4 may require additional information relating to:

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

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

9 (3) engineering or architectural designs;

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

11 (5) a financial plan, including costing methodology  
12 and cost proposals; or

13 (6) any other information the department considers  
14 relevant or necessary.

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

20 (h) The department shall evaluate each proposal based on the  
21 criteria described in the request for detailed proposals and select  
22 the private entity whose proposal offers the apparent best value to  
23 the department.

24 (i) The department may enter into discussions with the  
25 private entity whose proposal offers the apparent best value. The  
26 discussions shall be limited to:

27 (1) incorporation of aspects of other proposals for

1 the purpose of achieving the overall best value for the department;

2 (2) clarifications and minor adjustments in  
3 scheduling, cash flow, and similar items; and

4 (3) matters that have arisen since the submission of  
5 the proposal.

6 (j) If at any point in negotiations under Subsection (i) it  
7 appears to the department that the highest ranking proposal will  
8 not provide the department with the overall best value, the  
9 department may enter into negotiations with the private entity  
10 submitting the next highest ranking proposal.

11 (k) The department may withdraw a request for competing  
12 proposals and qualifications or a request for detailed proposals at  
13 any time. The department may then publish a new request for  
14 competing proposals and qualifications.

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

18 (m) The department shall pay an unsuccessful private entity  
19 that submits a responsive proposal in response to a request for  
20 detailed proposals under Subsection (f) a stipulated amount in  
21 exchange for the work product contained in that proposal. The  
22 stipulated amount must be stated in the request for proposals and  
23 may not exceed the value of any work product contained in the  
24 proposal that can, as determined by the department, be used by the  
25 department in the performance of its functions. The use by the  
26 department of any design element contained in an unsuccessful  
27 proposal is at the sole risk and discretion of the department and

1 does not confer liability on the recipient of the stipulated amount  
2 under this section. After payment of the stipulated amount:

3 (1) the department owns with the unsuccessful proposer  
4 jointly the rights to, and may make use of any work product  
5 contained in, the proposal, including the technologies,  
6 techniques, methods, processes, ideas, and information contained  
7 in the project design; and

8 (2) the use by the unsuccessful proposer of any  
9 portion of the work product contained in the proposal is at the sole  
10 risk of the unsuccessful proposer and does not confer liability on  
11 the department.

12 (n) The department may prescribe the general form of a  
13 comprehensive development agreement and may include any matter the  
14 department considers advantageous to the department. The  
15 department and the private entity shall finalize the specific terms  
16 of a comprehensive development agreement.

17 (o) Chapter 2254, Government Code, does not apply to a  
18 comprehensive development agreement entered into under Section  
19 91.054.

20 Sec. 91.056. CONFIDENTIALITY OF INFORMATION RELATING TO  
21 COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) To encourage private  
22 entities to submit proposals under Section 91.055, the following  
23 information is confidential, is not subject to disclosure,  
24 inspection, or copying under Chapter 552, Government Code, and is  
25 not subject to disclosure, discovery, subpoena, or other means of  
26 legal compulsion for its release until a final contract for a  
27 proposed project is entered into:

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

5           (2) supplemental information or material submitted by  
6 a private entity in connection with a proposal for a comprehensive  
7 development agreement, unless the private entity consents to the  
8 disclosure of the information or material; and

9           (3) information created or collected by the department  
10 or its agent during consideration of a proposal for a comprehensive  
11 development agreement.

12           (b) After the department completes its final ranking of  
13 proposals under Section 91.055(h), the final rankings of each  
14 proposal under each of the published criteria cease to be  
15 confidential.

16           Sec. 91.057. PERFORMANCE AND PAYMENT SECURITY.

17           (a) Notwithstanding the requirements of Subchapter B, Chapter  
18 2253, Government Code, the department shall require a private  
19 entity entering into a comprehensive development agreement under  
20 Section 91.054 to provide a performance and payment bond or an  
21 alternative form of security in an amount sufficient to:

22           (1) ensure the proper performance of the agreement;  
23 and

24           (2) protect:  
25                   (A) the department; and  
26                   (B) payment bond beneficiaries who have a direct  
27 contractual relationship with the private entity or a subcontractor

1 of the private entity to supply labor or material.

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

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

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

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

15 (f) In addition to or instead of performance and payment  
16 bonds, the department may require the following alternative forms  
17 of security:

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

20 (2) a United States bond or note;

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

22 (4) any other form of security determined suitable by  
23 the department.

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

26 Sec. 91.058. OWNERSHIP OF RAIL FACILITY OR SYSTEM. (a) A  
27 rail facility or system that is the subject of a comprehensive



1 development agreement with a private entity, including the  
2 facilities acquired or constructed on the project, is public  
3 property and shall be owned by the department.

4 (b) Notwithstanding Subsection (a), the department may  
5 enter into an agreement that provides for the lease of  
6 rights-of-way, the granting of easements, the issuance of  
7 franchises, licenses, or permits, or any lawful uses to enable a  
8 private entity to construct, operate, and maintain a rail facility  
9 or system. At the termination of the agreement, the rail facility  
10 or system is to be in a state of proper maintenance as determined by  
11 the department and shall be returned to the department in  
12 satisfactory condition at no further cost.

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

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

23 (1) methods to determine the applicable cost, profit,  
24 and project distribution among the private participants and the  
25 department;

26 (2) reasonable methods to determine and classify fare  
27 rates and responsibility for the setting of fares;

1           (3) acceptable safety and policing standards; and  
2           (4) other applicable professional, consulting,  
3 construction, operation, and maintenance standards, expenses, and  
4 costs.

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

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

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

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

23           SECTION 1.03. Section 91.071, Transportation Code, is  
24 amended to read as follows:

25           Sec. 91.071. FUNDING. The [~~(a) Except as provided in~~  
26 ~~subsection (b), the~~] department may use any available funds to  
27 implement this chapter, including funds from the state

1 infrastructure bank.

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

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

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

9 ~~[(3) federal funds from the Federal Railroad~~  
10 ~~Administration, from the Federal Transit Administration, or~~  
11 ~~authorized and appropriated by the United States Congress for a~~  
12 ~~specific project,~~

13 ~~[(4) grants awarded by the governor from the Texas~~  
14 ~~Enterprise Fund, and~~

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

16 SECTION 1.04. Section 91.074(c), Transportation Code, is  
17 amended to read as follows:

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

1 SECTION 1.05. Subchapter D, Chapter 91, Transportation  
2 Code, is amended by adding Section 91.075 to read as follows:

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

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

8 (2) a fee that is determined based on the number of  
9 carloads or commodity tonnages shipped using a freight rail  
10 facility.

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

17 (c) The department may use any available funds for the  
18 purpose of making a pass-through fare payment under this section,  
19 including funds from the state infrastructure bank.

20 (d) The commission may adopt rules necessary to implement  
21 this section. Rules adopted under this subsection may include  
22 criteria for:

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

25 (2) allocating the risk that ridership on a passenger  
26 rail facility or carloads or commodity tonnages shipped on a  
27 freight rail facility will be higher or lower than the parties to an

1 agreement under this section anticipated in entering into the  
2 agreement.

3 ARTICLE 2. HIGHWAYS

4 SECTION 2.01. Section 201.001, Transportation Code, is  
5 amended to read as follows:

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

7 (1) "Commission" means the Texas Transportation  
8 Commission.

9 (2) "Department" means the Texas Department of  
10 Transportation.

11 (3) "Director" means the executive director of the  
12 Texas Department of Transportation.

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

17 (1) a facility to relieve traffic congestion and  
18 promote safety;

19 (2) a bridge, tunnel, overpass, underpass,  
20 interchange, entrance plaza, approach, toll booth, toll plaza,  
21 service road, ramp, or service center;

22 (3) an administration, storage, or other building,  
23 operations center, maintenance or other facility, equipment, or  
24 system the department considers necessary to operate the project;

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

27 (5) a parking area or structure, rest stop, park, and

1 any other improvement or amenity the department considers  
2 necessary, useful, or beneficial for the operation and maintenance  
3 of the project; and

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

8 SECTION 2.02. Section 203.004, Transportation Code, is  
9 transferred to Subchapter H, Chapter 201, Transportation Code,  
10 redesignated as Section 201.617, Transportation Code, and amended  
11 to read as follows:

12 Sec. 201.617 [~~203.004~~]. [~~CONTRACTS FOR MANAGEMENT OF~~  
13 ~~PROPERTY USED FOR~~] MITIGATION OF ADVERSE ENVIRONMENTAL IMPACTS.

14 (a) If directed by an applicable regulatory authority to mitigate  
15 an adverse environmental impact that is a direct result of a state  
16 highway improvement project, the [The] department may:

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

19 (2) transfer real property to an entity designated by  
20 an agency of the United States without monetary consideration if  
21 the property is used or is proposed to be used for mitigation  
22 purposes; or

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

27 (b) A contract under this section is not subject to Chapter

1 771, Government Code.

2 (c) In this section, "management" [~~"management," in~~  
3 ~~connection with property,~~] means administration, control, or  
4 maintenance that is required by an agency of the United States.

5 SECTION 2.03. Subchapter K, Chapter 201, Transportation  
6 Code, is amended by adding Section 201.907 to read as follows:

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

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

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

15 SECTION 2.04. Section 203.052(b), Transportation Code, is  
16 amended to read as follows:

17 (b) Property necessary or convenient to a state highway for  
18 purposes of Subsection (a) includes an interest in real property, a  
19 property right, or a material that the commission determines is  
20 necessary or convenient to:

21 (1) protect a state highway;

22 (2) drain a state highway;

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

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

27 (5) construct or operate a warehouse or other facility

1 used in connection with the construction, maintenance, or operation  
2 of a state highway;

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

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

7 (8) mitigate an adverse environmental effect that  
8 directly results from construction or maintenance of a state  
9 highway; ~~or~~

10 (9) provide a location for a gas station, convenience  
11 store, or similar facility that provides services to and directly  
12 benefits users of a state highway toll project;

13 (10) construct or operate a toll booth, toll plaza,  
14 service center, or other facility used in connection with the  
15 construction, maintenance, or operation of a toll project; or

16 (11) accomplish any other purpose related to the  
17 location, construction, improvement, maintenance, beautification,  
18 preservation, or operation of a state highway.

19 SECTION 2.05. Sections 203.0521(a), (b), and (c),  
20 Transportation Code, are amended to read as follows:

21 (a) If a proposed acquisition of a tract of real property  
22 under Section 203.052 would leave the owner of the property a  
23 remainder of the tract, the department may negotiate for and  
24 purchase the remainder on terms agreed to by the department and the  
25 owner ~~[commission shall offer to purchase the remainder if the~~  
26 ~~commission determines that:~~

27 ~~[(1) the remainder has little or no value or utility to~~



1 ~~the owner, or~~

2 ~~[(2) the entire tract could be acquired for~~  
3 ~~substantially the same compensation as the partial tract].~~

4 (b) Instead of making a single fixed payment for real  
5 property purchased under Subsection (a) for a toll project, the  
6 department may agree to make a payment to the owner in the form of:

7 (1) an intangible legal right to receive a percentage  
8 of identified revenue attributable to the applicable segment of the  
9 toll project; or

10 (2) an exclusive or nonexclusive right to use or  
11 operate a segment or part of the toll project. ~~[The department may~~  
12 ~~acquire the remainder under this section only if the owner of the~~  
13 ~~property consents to the acquisition of the remainder.]~~

14 (c) A right to receive revenue under Subsection (b)(1) is  
15 subject to any pledge of the revenue under the term of a trust  
16 agreement securing bonds issued for the applicable segment of the  
17 toll project. ~~[The department is not required to make an offer on a~~  
18 ~~remainder if an appraisal or environmental investigation indicates~~  
19 ~~the presence of hazardous materials or substances.]~~

20 SECTION 2.06. Section 203.055, Transportation Code, is  
21 amended to read as follows:

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

27 (b) The governing body of a political subdivision or public

1 agency may, without advertisement, convey the title to or rights or  
2 easements [~~a right~~] in real property that the department needs[-

3 ~~(1) is owned by the political subdivision or public~~  
4 ~~agency; and~~

5 ~~(2) may be acquired by the commission under this~~  
6 ~~subchapter] for highway purposes.~~

7 (c) Notwithstanding any law to the contrary, at the request  
8 of the department, a political subdivision or a state agency may  
9 lease, lend, grant, or convey to the department real property,  
10 including a highway or real property currently devoted to public  
11 use, that may be necessary or appropriate to accomplish the  
12 department's purposes. The political subdivision or state agency  
13 may lease, lend, grant, or convey the property:

14 (1) on terms the subdivision or agency determines  
15 reasonable and fair; and

16 (2) without advertisement, court order, or other  
17 action or formality other than the regular and formal action of the  
18 subdivision or agency concerned.

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

21 SECTION 2.07. Sections 361.137, 361.138, 361.233, and  
22 361.142, Transportation Code, are transferred to Subchapter D,  
23 Chapter 203, Transportation Code, redesignated as Sections  
24 203.066, 203.067, 203.068, and 203.069, Transportation Code, and  
25 amended to read as follows:

26 Sec. 203.066 [~~361.137~~]. DECLARATION OF TAKING FOR TOLL  
27 PROJECT. (a) This section and Sections 203.067 and 203.068 apply

1 only to a taking for a toll project.

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

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

6 (2) to which the case is assigned.

7 (c) [~~(b)~~] The department may file the declaration of taking  
8 concurrently with or subsequent to the petition but may not file the  
9 declaration after the special commissioners have made an award in  
10 the condemnation proceeding.

11 (d) [~~(c)~~] The department may not file a declaration of  
12 taking before the completion of:

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

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

20 (3) all notifications required by Section 203.022.

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

22 (1) a specific reference to the legislative authority  
23 for the condemnation;

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

26 (A) the municipality in which the property is  
27 located;

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

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

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

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

8 (5) a statement that immediate possession of all or  
9 part of the property to be condemned is necessary for the timely  
10 construction of a toll [~~turnpike~~] project.

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

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

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

21 Sec. 203.067 [~~361.138~~]. POSSESSION OF PROPERTY FOR TOLL  
22 PROJECT. (a) Immediately on the filing of a declaration of taking  
23 under Section 203.066, the department shall serve a copy of the  
24 declaration on each person possessing an interest in the condemned  
25 property by a method prescribed by Section 21.016(d), Property  
26 Code. The department shall file evidence of the service with the  
27 clerk of the court. On filing of that evidence, the department may

1 take possession of the property pending the litigation.

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

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

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

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

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

16 (1) a trespass; or

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

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

21 Sec. 203.069 [~~361.142~~]. COVENANTS, CONDITIONS,  
22 RESTRICTIONS, OR LIMITATIONS. Covenants, conditions,  
23 restrictions, or limitations affecting property acquired in any  
24 manner by the department are not binding against the department and  
25 do not impair the department's ability to use the property for a  
26 purpose authorized by this chapter. The beneficiaries of the  
27 covenants, conditions, restrictions, or limitations are not

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

5 SECTION 2.08. Section 203.092(a), Transportation Code, is  
6 amended to read as follows:

7 (a) A utility shall make a relocation of a utility facility  
8 at the expense of this state if[+]

9 [~~(1)~~] relocation of the utility facility is required  
10 by improvement of:

11 (1) a highway in this state established by appropriate  
12 authority as part of the National System of Interstate and Defense  
13 Highways and the relocation is eligible for federal participation;  
14 [~~or~~]

15 (2) [~~relocation of the utility facility is required by~~  
16 ~~improvement of~~] any segment of the state highway system and the  
17 utility has a compensable property interest in the land occupied by  
18 the facility to be relocated; or

19 (3) a segment of the state highway system that was  
20 designated by the commission as a turnpike project or toll project  
21 before September 1, 2005.

22 SECTION 2.09. Section 221.001(1), Transportation Code, is  
23 amended to read as follows:

24 (1) "Highway" includes a tolled or nontolled public  
25 road or part of a tolled or nontolled public road and a bridge,  
26 culvert, or other necessary structure related to a public road,  
27 including buildings.

1 SECTION 2.10. Section 222.104, Transportation Code, is  
2 amended to read as follows:

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

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

12 (c) The department may enter into an agreement with a  
13 private entity that provides for the payment of pass-through tolls  
14 to the department as reimbursement for the department's design,  
15 development, financing, construction, maintenance, or operation of  
16 a toll or nontoll facility on the state highway system that is  
17 financed by the department.

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

23 (1) the payment of pass-through tolls to the authority  
24 or county as compensation for the payment of all or a portion of the  
25 costs of maintaining a state highway or a portion of a state highway  
26 transferred to the authority or county and converted to a toll  
27 facility [~~of the authority or county~~] that the department estimates

1 it would have incurred if the highway had not been converted; or

2 (2) the payment by the authority or county of  
3 pass-through tolls to the department as reimbursement for all or a  
4 portion of the costs incurred by the department to design, develop,  
5 finance, construct, and maintain a state highway or a portion of a  
6 state highway transferred to the authority or county and converted  
7 to a toll facility.

8 (e) [~~(d)~~] The department may use any available funds for the  
9 purpose of making a pass-through toll payment under this section.

10 (f) 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 (g) [~~(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 (h) 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 2.11. Chapter 223, Transportation Code, is amended  
27 by adding Subchapter E to read as follows:



1           SUBCHAPTER E. COMPREHENSIVE DEVELOPMENT AGREEMENTS

2           Sec. 223.201. AUTHORITY. (a) Subject to Section 223.202,  
3 the department may enter into a comprehensive development agreement  
4 with a private entity to design, develop, finance, construct,  
5 maintain, repair, operate, extend, or expand a state highway.

6           (b) In this subchapter, "comprehensive development  
7 agreement" means an agreement that, at a minimum, provides for the  
8 design and construction, rehabilitation, expansion, or improvement  
9 of a state highway and may also provide for the financing,  
10 acquisition, maintenance, or operation of a state highway.

11           (c) The department may negotiate provisions relating to  
12 professional and consulting services provided in connection with a  
13 comprehensive development agreement.

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

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

18                   (2) appropriated in Strategy A.1.1.  
19 Plan/Design/Manage of the General Appropriations Act for that  
20 biennium for the purpose of making the computation under Section  
21 223.041.

22           (e) The department may authorize the investment of public  
23 and private money, including debt and equity participation, to  
24 finance a function described by this section.

25           (f) The authority to enter into comprehensive development  
26 agreements provided by this section expires on August 31, 2011.

27           Sec. 223.202. LIMITATION ON DEPARTMENT FINANCIAL

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

7 Sec. 223.203. PROCESS FOR ENTERING INTO COMPREHENSIVE  
8 DEVELOPMENT AGREEMENTS. (a) If the department enters into a  
9 comprehensive development agreement, the department shall use a  
10 competitive procurement process that provides the best value for  
11 the department. The department may accept unsolicited proposals  
12 for a proposed project or solicit proposals in accordance with this  
13 section.

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

17 (1) information regarding the proposed project  
18 location, scope, and limits;

19 (2) information regarding the private entity's  
20 qualifications, experience, technical competence, and capability  
21 to develop the project; and

22 (3) any other information the department considers  
23 relevant or necessary.

24 (c) The department shall publish a notice advertising a  
25 request for competing proposals and qualifications in the Texas  
26 Register that includes the criteria to be used to evaluate the  
27 proposals, the relative weight given to the criteria, and a

1 deadline by which proposals must be received if:

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

4 (2) the department authorizes the further evaluation  
5 of an unsolicited proposal.

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

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

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

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

26 (2) the feasibility of developing the project as  
27 proposed;

1           (3) engineering or architectural designs;

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

3           (5) a financial plan, including costing methodology  
4 and cost proposals; or

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

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

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

16           (i) The department may enter into discussions with the  
17 private entity whose proposal offers the apparent best value. The  
18 discussions shall be limited to:

19           (1) incorporation of aspects of other proposals for  
20 the purpose of achieving the overall best value for the department;

21           (2) clarifications and minor adjustments in  
22 scheduling, cash flow, and similar items; and

23           (3) matters that have arisen since the submission of  
24 the proposal.

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

1 department may enter into negotiations with the private entity  
2 submitting the next highest ranking proposal.

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

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

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

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

27 (2) the use by the unsuccessful proposer of any

1 portion of the work product contained in the proposal is at the sole  
2 risk of the unsuccessful proposer and does not confer liability on  
3 the department.

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

9 (o) Subchapter A of this chapter and Chapter 2254,  
10 Government Code, do not apply to a comprehensive development  
11 agreement entered into under this subchapter.

12 Sec. 223.204. CONFIDENTIALITY OF INFORMATION. (a) To  
13 encourage private entities to submit proposals under this  
14 subchapter, the following information is confidential, is not  
15 subject to disclosure, inspection, or copying under Chapter 552,  
16 Government Code, and is not subject to disclosure, discovery,  
17 subpoena, or other means of legal compulsion for its release until a  
18 final contract for a 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 223.203(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 223.203(h), the final rankings of each  
5 proposal under each of the published criteria are not confidential.

6 Sec. 223.205. PERFORMANCE AND PAYMENT SECURITY.

7 (a) Notwithstanding Section 223.006 and the requirements of  
8 Subchapter B, Chapter 2253, Government Code, the department shall  
9 require a private entity entering into a comprehensive development  
10 agreement under this subchapter to provide a performance and  
11 payment bond or an alternative form of security in an amount  
12 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 constructing or  
22 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 department by rule shall prescribe requirements for  
16 alternative forms of security provided under this section.

17 Sec. 223.206. OWNERSHIP OF HIGHWAY. (a) A state highway  
18 that is the subject of a comprehensive development agreement with a  
19 private entity, including the facilities acquired or constructed on  
20 the project, is public property and shall be owned by the  
21 department.

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



1 agreement, the highway, including the facilities, is to be in a  
2 state of proper maintenance as determined by the department and  
3 shall be returned to the department in satisfactory condition at no  
4 further cost.

5 (c) For purposes of Section 11.11, Tax Code, a state highway  
6 that is licensed or leased to a private entity under a comprehensive  
7 development agreement is used for a public purpose if the highway is  
8 operated by the private entity to provide transportation services.  
9 A highway asset or toll project that is used or leased by a private  
10 entity under Section 202.052 or 228.053 for a commercial purpose is  
11 not exempt from ad valorem taxation and is subject to local zoning  
12 regulations and building standards.

13 Sec. 223.207. LIABILITY FOR PRIVATE OBLIGATIONS. The  
14 department may not incur a financial obligation for a private  
15 entity that designs, develops, finances, constructs, maintains, or  
16 operates a state highway under this subchapter. The state or a  
17 political subdivision of the state is not liable for any financial  
18 or other obligations of a project solely because a private entity  
19 constructs, finances, or operates any part of the project.

20 Sec. 223.208. TERMS OF PRIVATE PARTICIPATION. (a) The  
21 department shall negotiate the terms of private participation under  
22 this subchapter, including:

23 (1) methods to determine the applicable cost, profit,  
24 and project distribution among the private participants and the  
25 department;

26 (2) reasonable methods to determine and classify toll  
27 rates and responsibility for the setting of tolls;

1           (3) acceptable safety and policing standards; and

2           (4) other applicable professional, consulting,  
3 construction, operation, and maintenance standards, expenses, and  
4 costs.

5           (b) A comprehensive development agreement entered into  
6 under this subchapter must include a provision authorizing the  
7 department to purchase, under terms and conditions agreed to by the  
8 parties, the interest of a private participant in a highway  
9 designed, developed, financed, constructed, operated, or  
10 maintained under the comprehensive development agreement.

11           (c) The department may enter into a comprehensive  
12 development agreement under this subchapter with a private  
13 participant only if the project is identified in the department's  
14 unified transportation program or is located on a transportation  
15 corridor identified in the statewide transportation plan.

16           Sec. 223.209. RULES, PROCEDURES, AND GUIDELINES GOVERNING  
17 SELECTION AND NEGOTIATING PROCESS. (a) The commission shall adopt  
18 rules, procedures, and guidelines governing selection of a  
19 developer for a comprehensive development agreement and  
20 negotiations to promote fairness, obtain private participants in  
21 projects, and promote confidence among those participants. The  
22 rules must contain criteria relating to the qualifications of the  
23 participants and the award of the contracts.

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

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

1 SECTION 2.12. Section 224.151(9), Transportation Code, is  
2 amended to read as follows:

3 (9) "Restricted lane" includes:

4 (A) a high occupancy vehicle lane;

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

6 and

7 (C) an exclusive lane.

8 SECTION 2.13. Section 227.001(9), Transportation Code, is  
9 amended to read as follows:

10 (9) "Turnpike" has the meaning assigned to toll  
11 [~~turnpike~~] project under Section 201.001(b) [~~361.001~~].

12 SECTION 2.14. Section 227.023, Transportation Code, is  
13 amended by amending Subsection (c) and adding Subsection (d) to  
14 read as follows:

15 (c) To the extent and in the manner that the department may  
16 enter into comprehensive development agreements under Chapter 223  
17 [~~361~~] with regard to state highways [~~turnpikes~~], the department may  
18 enter into a comprehensive development agreement under this chapter  
19 that provides for the financing, development, design,  
20 construction, or operation of a facility or a combination of  
21 facilities on the Trans-Texas Corridor. All provisions of Chapter  
22 223 [~~361~~] relating to comprehensive development agreements for  
23 state highways [~~turnpikes~~] apply to comprehensive development  
24 agreements for facilities under this chapter, including provisions  
25 relating to the confidentiality of information. Claims arising  
26 under a comprehensive development agreement are subject to Section  
27 201.112.

1       (d) For the purposes of Section 11.11, Tax Code, a facility  
2 that is licensed or leased to a private entity under a comprehensive  
3 development agreement, other than a facility described in Section  
4 227.001(4)(E) that is used for commercial purposes, is used for a  
5 public purpose if the facility is operated by the private entity to  
6 provide transportation or utility services. Property that is  
7 licensed or leased to a private entity under Section 227.082 for a  
8 commercial purpose is not exempt from ad valorem taxation and is  
9 subject to local zoning regulations and building standards.

10       SECTION 2.15. Section 227.021, Transportation Code, is  
11 amended by adding Subsection (f) to read as follows:

12       (f) The department may not pump or extract, or allow the  
13 pumping or extracting, of groundwater from the right-of-way of the  
14 Trans-Texas Corridor unless the groundwater is needed for the  
15 construction, operation, or maintenance of a facility.

16       SECTION 2.16. Section 227.041, Transportation Code, is  
17 amended to read as follows:

18       Sec. 227.041. POWERS AND PROCEDURES. (a) Except as  
19 otherwise provided by this subchapter, the commission has the same  
20 powers and duties relating to the condemnation and acquisition of  
21 real property for a facility of the Trans-Texas Corridor that the  
22 commission and the department have relating to the condemnation or  
23 purchase of real property under Subchapter D, Chapter 203, [~~361~~,  
24 ~~and Section 361.233~~] for a toll [~~turnpike~~] project. The commission  
25 may purchase an option to purchase property, other than real  
26 property, a property right, or a right-of-way used for a public  
27 utility facility, that the commission is considering for possible

1 use as part of the Trans-Texas Corridor even if it has not been  
2 finally decided that the Trans-Texas Corridor will be located on  
3 that property. An option to purchase may be purchased along  
4 alternative potential routes for the Trans-Texas Corridor even if  
5 only one of those potential routes will be selected as the final  
6 route.

7 (b) An interest in real property or a property right is  
8 necessary or convenient for the construction or operation of a  
9 facility if it is located in or contiguous to an existing or planned  
10 segment of the Trans-Texas Corridor or is needed for mitigation of  
11 adverse environmental effects, and if its acquisition will further  
12 the primary purposes of the Trans-Texas Corridor. Primary purposes  
13 include:

14 (1) providing right-of-way or a location for a  
15 facility;

16 (2) providing land for mitigation of adverse  
17 environmental effects;

18 (3) providing buffer zones for scenic or safety  
19 purposes;

20 (4) allowing for possible future expansion of any  
21 facility; and

22 (5) generating revenue, directly or indirectly, for  
23 use in constructing or operating the Trans-Texas Corridor from or  
24 for ancillary facilities that directly benefit users of the  
25 Trans-Texas Corridor.

26 (c) ~~[Unless in conflict with this chapter, all laws~~  
27 ~~governing the acquisition of right-of-way for a state highway apply~~

1 ~~to the acquisition of right-of-way for the Trans-Texas Corridor.~~  
2 ~~Sections 203.056, 203.057, and 203.058 apply to an acquisition by~~  
3 ~~the department from a state agency.] Compensation to a state agency~~  
4 under those sections shall be reasonable and may take the form of a  
5 single payment, a participation payment under Section 227.042, or  
6 both a single payment and a participation payment.

7 SECTION 2.17. Subtitle B, Title 6, Transportation Code, is  
8 amended by adding Chapter 228, and Sections 361.001, 361.301,  
9 361.307, and 361.032, Transportation Code, are transferred to  
10 Chapter 228, Transportation Code, designated as Subchapter A, and  
11 amended to read as follows:

12 CHAPTER 228. STATE HIGHWAY TOLL PROJECTS

13 SUBCHAPTER A. GENERAL PROVISIONS

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

15 (1) "Air quality project" means a project or program  
16 of the department or another governmental entity that the  
17 commission determines will mitigate or prevent air pollution caused  
18 by the construction, maintenance, or use of public roads.

19 [~~"Authority" means the Texas Turnpike Authority division of the~~  
20 ~~Texas Department of Transportation.]~~

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

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

1           (4) "Toll [~~"Turnpike~~] project" has the meaning  
2 assigned by Section 201.001(b) [~~means a toll highway constructed,~~  
3 ~~maintained, or operated under this chapter as part of the state~~  
4 ~~highway system and any improvement, extension, or expansion to the~~  
5 ~~highway and includes:~~

6                   ~~[(A) a facility to relieve traffic congestion and~~  
7 ~~promote safety;~~

8                   ~~[(B) a bridge, tunnel, overpass, underpass,~~  
9 ~~interchange, entrance plaza, approach, toll house, service road,~~  
10 ~~ramp, or service station;~~

11                   ~~[(C) an administration, storage, or other~~  
12 ~~building the department considers necessary to operate the project;~~

13                   ~~[(D) property rights, easements, and interests~~  
14 ~~the department acquires to construct or operate the project;~~

15                   ~~[(E) a parking area or structure, rest stop,~~  
16 ~~park, and any other improvement or amenity the department considers~~  
17 ~~necessary, useful, or beneficial for the operation of a turnpike~~  
18 ~~project; and~~

19                   ~~[(F) a toll-free facility that is appurtenant to~~  
20 ~~and necessary for the efficient operation of a turnpike project,~~  
21 ~~including a service road, access road, ramp, interchange, bridge,~~  
22 ~~or tunnel].~~

23           (5) "Transportation project" means:

24                   (A) a tolled or nontolled state highway  
25 improvement project;

26                   (B) a toll project eligible for department cost  
27 participation under Section 222.103;

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

3            (D) the acquisition, construction, maintenance,  
4 or operation of a state-owned ferry under Subchapter A, Chapter  
5 342;

6            (E) a public transportation project under  
7 Chapter 455 or 456;

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

10           (G) a passenger rail project of another  
11 governmental entity. [~~(4) "Regional tollway authority" means a~~  
12 ~~regional tollway authority created under Chapter 366.]~~

13           Sec. 228.002 [~~361.301~~]. AGREEMENTS WITH PUBLIC [~~OR~~  
14 ~~PRIVATE~~] ENTITIES [~~TO CONSTRUCT, MAINTAIN, REPAIR, AND OPERATE~~  
15 ~~TURNPIKE PROJECTS~~]. The [~~(a) Notwithstanding Section 361.231 and~~  
16 ~~Subchapter A, Chapter 2254, Government Code, the~~] department may  
17 enter into an agreement with a public [~~or private~~] entity[~~,~~  
18 ~~including a toll road corporation,~~] to permit the entity,  
19 independently or jointly with the department, to design, develop,  
20 finance, construct, maintain, repair, or [~~and~~] operate a toll  
21 project [~~turnpike projects~~].

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

25           Sec. 228.003 [~~361.307~~]. AGREEMENTS WITH [~~PRIVATE ENTITIES~~  
26 ~~AND~~] OTHER GOVERNMENTAL AGENCIES. (a) The department [~~and a~~  
27 ~~private entity jointly~~] may, with the approval of the commission,



1 enter into an agreement with another governmental agency or entity,  
2 including a federal agency, an agency of this or another state,  
3 including the United Mexican States or a state of the United Mexican  
4 States, or a political subdivision, to independently or jointly  
5 provide services, to study the feasibility of a toll [~~turnpike~~]  
6 project, or to finance, construct, operate, and maintain a toll  
7 [~~turnpike~~] project. The department must obtain the approval of the  
8 governor to enter into an agreement with an agency of another state,  
9 the United Mexican States, or a state of the United Mexican States.

10 (b) If the department enters into an agreement with a  
11 private entity, including a comprehensive development agreement  
12 under Subchapter E, Chapter 223, the department and the private  
13 entity may jointly enter into an agreement under Subsection (a).  
14 [~~The department may not enter into an agreement with the United~~  
15 ~~Mexican States or a state of the United Mexican States without the~~  
16 ~~approval of the governor.~~]

17 Sec. 228.004. PROMOTION OF TOLL PROJECT.

18 [~~361.032. GENERAL POWERS AND DUTIES. (a) The commission shall~~  
19 ~~adopt rules for the implementation and administration of this~~  
20 ~~chapter.~~

21 [~~(b)~~] The department may, [~~+~~

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

24 [~~(2) acquire, hold, and dispose of property in the~~  
25 ~~exercise of its powers and the performance of its duties under this~~  
26 ~~chapter,~~

27 [~~(3) with the approval of the governor and the~~

1 ~~commission, enter into contracts or operating agreements with~~  
2 ~~similar authorities or agencies of another state, including a state~~  
3 ~~of the United Mexican States;~~

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

6 ~~[(5) employ consulting engineers, accountants,~~  
7 ~~construction and financial experts, superintendents, managers, and~~  
8 ~~other employees and agents the department considers necessary and~~  
9 ~~set their compensation;~~

10 ~~[(6) receive grants for the construction of a turnpike~~  
11 ~~project and receive contributions of money, property, labor, or~~  
12 ~~other things of value from any source to be used for the purposes~~  
13 ~~for which the grants or contributions are made;~~

14 ~~[(7)] notwithstanding Chapter 2113, Government Code,~~  
15 ~~engage in marketing, advertising, and other activities to promote~~  
16 ~~the development and use of toll [turnpike] projects and may enter~~  
17 ~~into contracts or agreements necessary to procure marketing,~~  
18 ~~advertising, or other promotional services from outside service~~  
19 ~~providers[, and~~

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

22 SECTION 2.18. Subchapter A, Chapter 228, Transportation  
23 Code, is amended by adding Section 228.005 to read as follows:

24 Sec. 228.005. TOLL REVENUE. Except as provided by  
25 Subchapter C or E, toll revenue collected or received by the  
26 department under this chapter:

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

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

4           (3) is exempt from the application of Section 403.095,  
5 Government Code.

6           SECTION 2.19. Sections 361.189 and 224.154, Transportation  
7 Code, are transferred to Subchapter A, Chapter 228, Transportation  
8 Code, redesignated as Sections 228.006 and 228.007, Transportation  
9 Code, and amended to read as follows:

10          Sec. 228.006 [~~361.189~~]. USE OF SURPLUS REVENUE. The  
11 commission by order may authorize the use of surplus revenue of a  
12 toll [~~turnpike~~] project or system to pay the costs of a  
13 transportation [~~another turnpike~~] project or air quality project  
14 within the region. The commission may in the order prescribe terms  
15 for the use of the revenue, including the pledge of the revenue, but  
16 may not take an action under this section that violates, impairs, or  
17 is inconsistent with a bond order, trust agreement, or indenture  
18 governing the use of the surplus revenue.

19          Sec. 228.007 [~~224.154~~]. TOLL LANES. (a) The  
20 [~~Notwithstanding any law of this state relating to charging tolls~~  
21 ~~on existing free public highways, and subject to Section~~  
22 ~~224.1541(d), the~~] commission may by order authorize the department  
23 to charge a toll for the use of one or more lanes of a state highway  
24 [~~facility~~], including a high occupancy vehicle lane designated  
25 under Section 224.153 or an exclusive lane designated under Section  
26 224.1541 [~~, for the purposes of congestion mitigation~~].

27          (b) If the commission authorizes the department to charge a

1 toll under Subsection (a), the department may enter into an  
2 agreement with a regional tollway authority described in Chapter  
3 366, a transit authority described in Chapter 451, 452, or 453, a  
4 regional mobility authority under Chapter 370 [~~361~~], a county  
5 acting under Chapter 284, or a transportation corporation:

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

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

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

14 (d) [~~Revenue generated from toll charges and collection~~  
15 ~~fees assessed by the department in connection with a toll lane shall~~  
16 ~~be deposited in the state highway fund and may be used only for~~  
17 ~~projects for the improvement of the state highway system.] Revenue  
18 generated from toll charges and collection fees assessed by an  
19 entity with whom the department contracts under this section shall  
20 be allocated as required by the terms of the agreement.~~

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

26 SECTION 2.20. Section 224.1541(d), Transportation Code, is  
27 transferred to Subchapter A, Chapter 228, Transportation Code,

1 redesignated as Section 228.008, Transportation Code, and amended  
2 to read as follows:

3 Sec. 228.008. TOLLS ON EXCLUSIVE LANE. [~~d~~] The  
4 department may not charge a toll for the use of an exclusive lane  
5 unless:

6 (1) the lanes or multilane facility adjacent to the  
7 exclusive lane is tolled; or

8 (2) a vehicle that is authorized to use the tolled  
9 exclusive lane is authorized to use nontolled adjacent lanes or an  
10 adjacent nontolled multilane facility.

11 SECTION 2.21. Sections 361.180 and 361.033, Transportation  
12 Code, are transferred to Subchapter A, Chapter 228, Transportation  
13 Code, redesignated as Sections 228.009 and 228.010, Transportation  
14 Code, and amended to read as follows:

15 Sec. 228.009 [~~361.180~~]. TOLLS ON CONVERTED HIGHWAYS. If  
16 converted to a toll facility under Section 222.102 or Subchapter E  
17 [~~362.0041~~], the commission may impose a toll for transit over an  
18 existing nontolled [~~free~~] public highway.

19 Sec. 228.010 [~~361.033~~]. AUDIT. Notwithstanding any other  
20 law to the contrary, the department shall have an independent  
21 certified public accountant audit the department's books and  
22 accounts for each toll project or system [~~activities under this~~  
23 ~~chapter~~] at least annually. The audit shall be conducted in  
24 accordance with the requirements of any trust agreement securing  
25 bonds issued under Subchapter C [~~this chapter~~] that is in effect at  
26 the time of the audit. The cost of the audit may be treated as part  
27 of the cost of construction or operation of a toll project or system

1 [~~turnpike project~~]. This section does not affect the ability of a  
2 state agency to audit the department's books and accounts.

3 SECTION 2.22. Subchapter A, Chapter 228, Transportation  
4 Code, is amended by adding Section 228.011 to read as follows:

5 Sec. 228.011. ESTABLISHMENT OF TOLL SYSTEMS. (a) If the  
6 commission determines that the mobility needs of a region of this  
7 state could be most efficiently and economically met by jointly  
8 operating two or more toll projects in that region as one  
9 operational and financial enterprise, it may create a system  
10 composed of those projects. The commission may create more than one  
11 system in a region and may combine two or more systems in a region  
12 into one system. The department may finance, acquire, construct,  
13 and operate additional toll projects in the region as additions to  
14 or expansions of a system if the commission determines that the toll  
15 project could most efficiently and economically be acquired or  
16 constructed if it were part of the system and that the addition will  
17 benefit the system.

18 (b) The revenue of a system shall be accounted for  
19 separately and may not be commingled with the revenue of a toll  
20 project that is not part of the system or with the revenue of  
21 another system.

22 (c) In this section, "region" means:

23 (1) a metropolitan statistical area and any county  
24 contiguous with the metropolitan statistical area; or

25 (2) two adjacent districts of the department.

26 SECTION 2.23. Chapter 228, Transportation Code, is amended  
27 by adding Subchapter B to read as follows:

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

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

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

11        SECTION 2.24. Sections 361.179, 361.252, 361.253, 361.254,  
12 361.255, and 361.256, Transportation Code, are transferred to  
13 Subchapter B, Chapter 228, Transportation Code, redesignated as  
14 Sections 228.053, 228.054, 228.055, 228.056, 228.057, and 228.058,  
15 Transportation Code, and amended to read as follows:

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

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

20            (2) in addition to the powers granted [~~notwithstanding~~  
21 ~~anything~~] in Chapter 202 [~~to the contrary~~], contract with a person  
22 for the use of part of a toll [~~turnpike~~] project or system or lease  
23 part of a toll [~~turnpike~~] project or system for a gas station,  
24 convenience store, or similar facility that provides services to  
25 and directly benefits users of a toll project [~~garage, store,~~  
26 ~~hotel, restaurant, railroad tracks, utilities, and~~  
27 ~~telecommunications facilities and equipment and set the terms for~~

1 ~~the use or lease~~].

2       (a-1) A contract or lease agreement under Subsection (a)(2)  
3 may be entered into for the purpose of constructing and operating a  
4 commercial facility only if, on the effective date of the contract  
5 or lease agreement, a facility that provides a service described by  
6 that subdivision is not located within five miles of the part of the  
7 toll project to be used or leased.

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

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

12               (A) the cost of maintaining, repairing, and  
13 operating the project or system; and

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

17       (2) creates reserves for the purposes listed under  
18 Subdivision (1).

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

21       (d) The tolls and other revenue derived from the toll  
22 [~~turnpike~~] project or system for which bonds were issued, except  
23 the part necessary to pay the cost of maintenance, repair, and  
24 operation and to provide reserves for those costs as may be provided  
25 in the order authorizing the issuance of the bonds or in the trust  
26 agreement securing the bonds, shall be set aside at regular  
27 intervals as may be provided in the order or trust agreement in a



1 sinking fund that is pledged to and charged with the payment of:

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

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

4 (3) necessary charges of paying agents for paying  
5 principal and interest; and

6 (4) the redemption price or the purchase price of  
7 bonds retired by call or purchase as provided by the bonds.

8 (e) Use and disposition of money to the credit of the  
9 sinking fund are subject to the order authorizing the issuance of  
10 the bonds or to the trust agreement.

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

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

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

23 (b) The operator of a vehicle who drives or tows a vehicle  
24 through a toll collection facility and does not pay the proper toll  
25 commits an offense.

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

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

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

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

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

26 (d) It is an exception to the application of Subsection (a)  
27 or (c) if the registered owner of the vehicle is a lessor of the

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

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

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

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

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

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

22 (i) The department may contract, in accordance with Section  
23 2107.003, Government Code, with a person to collect the unpaid toll  
24 and administrative fee before referring the matter to a court with  
25 jurisdiction over the offense.

26 Sec. 228.056 [~~361.254~~]. PRESUMPTIONS; PRIMA FACIE  
27 EVIDENCE; DEFENSES. (a) In the prosecution of an offense under

1 Section 228.054 [~~361.252~~] or 228.055 [~~361.253~~], proof that the  
2 vehicle was driven or towed through the toll collection facility  
3 without payment of the proper toll may be shown by a video  
4 recording, photograph, electronic recording, or other appropriate  
5 evidence, including evidence obtained by automated enforcement  
6 technology.

7 (b) In the prosecution of an offense under Section  
8 228.055(c) [~~361.253(c)~~], (d), or (e):

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

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

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

22 (c) It is a defense to prosecution under Section 228.055(c)  
23 [~~361.253(c)~~], (d), or (e) that the motor vehicle in question was  
24 stolen before the failure to pay the proper toll occurred and had  
25 not been recovered before the failure to pay occurred, but only if  
26 the theft was reported to the appropriate law enforcement authority  
27 before the earlier of:

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

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

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

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

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

(e) Electronic toll collection customer account information, including contact and payment information and trip data, is confidential and not subject to disclosure under Chapter 552, Government Code.

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

(a) To aid in the collection of tolls and in the enforcement of toll violations, the department may use automated enforcement technology that it determines is necessary, including automatic

1 vehicle license plate identification photography and video  
2 surveillance, by electronic imaging or photographic copying.

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

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

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

13 SECTION 2.25. Sections 361.004, 361.171, 361.172, 361.173,  
14 361.174, 361.1751, 361.1752, 361.1753, 361.176, 361.177, 361.178,  
15 361.183, 361.185, 361.186, 361.187, and 361.188, Transportation  
16 Code, are transferred to Chapter 228, Transportation Code,  
17 designated as Subchapter C, and amended to read as follows:

18 SUBCHAPTER C. TOLL REVENUE BONDS

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

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

26 (2) acquisition of real property, rights-of-way,  
27 property rights, easements, and interests;

1           (3) the acquisition of machinery, [and] equipment,  
2 software, and intellectual property;

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

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

10          (6) necessary or incidental administrative, legal,  
11 and other expenses;

12          (7) financing; and

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

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

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



1 cost of which shall be determined separately.

2 (b) As determined in the order authorizing the issuance, the  
3 bonds of each issue shall:

4 (1) be dated;

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

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

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

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

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

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

1 ~~[turnpike]~~ project or system subordinate to the lien on the revenue  
2 securing other bonds issued for the ~~[turnpike]~~ project or system.

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

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

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

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

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

26 Sec. 228.104 ~~[361.173]~~. PAYMENT OF BONDS; CREDIT OF STATE  
27 NOT PLEDGED. (a) The principal of, interest on, and any

1 redemption premium on bonds issued by the commission under this  
2 subchapter [~~chapter~~] are payable solely from:

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

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

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

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

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

15 (6) amounts received by the department:

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

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

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

22 (D) under a comprehensive development agreement  
23 entered into under Section 223.201.

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

1 (1) the state, the commission, and the department are  
2 not obligated to pay the bond or the interest on the bond from a  
3 source other than the amount pledged to pay the bond and the  
4 interest on the bond; and

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

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

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

16 (1) be payable from and secured by:

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

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

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

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

27 (2) state on their faces any pledge of revenue or taxes

1 and any security for the bonds under the agreement.

2           Sec. 228.106 [~~361.1751~~]. INTERIM BONDS.           (a) The  
3 commission may, before issuing definitive bonds, issue interim  
4 bonds, with or without coupons, exchangeable for definitive bonds.

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

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

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

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

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

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

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

1           Sec. 228.108 [~~361.1753~~]. APPROVAL OF BONDS BY ATTORNEY  
2 GENERAL. (a) The commission shall submit to the attorney general  
3 for examination the record of proceedings relating to bonds  
4 authorized under this subchapter [~~chapter~~]. The record shall  
5 include the bond proceedings and any contract securing or providing  
6 revenue for the payment of the bonds.

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

11                 (1) a copy of the legal opinion of the attorney general  
12 stating the approval; and

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

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

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

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

27           (b) A trust agreement may pledge or assign the tolls and

1 other revenue to be received but may not convey or mortgage any part  
2 of a toll [~~turnpike~~] project or system.

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

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

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

9 (3) to create and maintain reserves for the purposes  
10 described by Subdivisions (1) and (2), as prescribed by Section  
11 228.053 [~~361.179~~]; and

12 (4) as otherwise provided by law.

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

16 (e) A trust agreement may:

17 (1) set forth the rights and remedies of the  
18 bondholders and the trustee;

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

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

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

27 Sec. 228.110 [~~361.177~~]. PROVISIONS PROTECTING AND

1 ENFORCING RIGHTS AND REMEDIES OF BONDHOLDERS. A trust agreement or  
2 order providing for the issuance of bonds may contain provisions to  
3 protect and enforce the rights and remedies of the bondholders,  
4 including:

5 (1) covenants establishing the commission's duties  
6 relating to:

7 (A) the acquisition of property;

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

12 (C) the custody, safeguarding, and application  
13 of money;

14 (2) covenants prescribing events that constitute  
15 default;

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

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

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

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



1 securities that the department requires.

2       Sec. 228.112 [~~361.183~~]. FEASIBILITY STUDY BY MUNICIPALITY,  
3 COUNTY, OR PRIVATE GROUP. (a) One or more municipalities, one or  
4 more counties, a combination of municipalities and counties, or a  
5 private group or combination of individuals in this state may pay  
6 all or part of the expenses of studying the cost and feasibility and  
7 any other expenses relating to:

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

11           (2) the improvement, extension, or expansion of an  
12 existing project or system; or

13           (3) the use of private participation under Subchapter  
14 E, Chapter 223 [~~±~~].

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

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

1 of the comptroller, funds held under this subchapter [~~chapter~~]  
2 shall be held in trust by a banking institution chosen by the  
3 department or, at the discretion of the department, in trust in the  
4 state treasury outside the general revenue fund.

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

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

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

17 (A) this subchapter [~~chapter~~] or another law of  
18 this state;

19 (B) the trust agreement; or

20 (C) the order authorizing the issuance of the  
21 bond; and

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

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

1 assessments on:

- 2 (1) a toll [~~turnpike~~] project or system;
- 3 (2) property the department acquires or uses under
- 4 this subchapter [~~chapter~~]; or
- 5 (3) income from property described by Subdivision (1)
- 6 or (2).

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

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

15 SECTION 2.26. Subchapter H, Chapter 361, Transportation  
16 Code, is transferred to Chapter 228, Transportation Code,  
17 redesignated as Subchapter D, and amended to read as follows:

18 SUBCHAPTER D [~~H~~]. TRANSFER OF TOLL [~~TURNPIKE~~] PROJECT  
19 [~~Sec. 361.281. APPLICABILITY OF SUBCHAPTER. This~~  
20 ~~subchapter applies only to:~~

- 21 [~~(1) a county with a population of more than 1.5~~
- 22 ~~million;~~
- 23 [~~(2) a local government corporation serving a county~~
- 24 ~~with a population of more than 1.5 million;~~
- 25 [~~(3) an adjacent county in a joint turnpike authority~~
- 26 ~~with a county with a population of more than 1.5 million;~~
- 27 [~~(4) a municipality with a population of more than~~

1 ~~170,000 that is adjacent to the United Mexican States,~~

2 ~~[(5) a regional tollway authority created under~~  
3 ~~Chapter 366, or~~

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

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

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

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

24 Sec. 228.153 [~~361.284~~]. REPAYMENT OF DEPARTMENT'S  
25 EXPENDITURES. (a) Except as provided by Subsection (b), an  
26 agreement to lease, sell, or convey a toll [~~turnpike~~] project or  
27 system under Section 228.151 [~~361.282~~] must provide for the

1 repayment of any expenditures of the department for the financing,  
2 design, development, construction, operation, or [~~and~~] maintenance  
3 of the highway [~~project~~] that have not been reimbursed with the  
4 proceeds of bonds issued for the highway [~~project~~].

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

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

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

21 SECTION 2.27. Chapter 228, Transportation Code, is amended  
22 by adding Subchapter E to read as follows:

23 SUBCHAPTER E. CONVERSION OF NONTOLLED HIGHWAY

24 Sec. 228.201. APPLICABILITY OF SUBCHAPTER. The  
25 requirements of this subchapter do not apply to a highway or  
26 segment:

27 (1) that has not previously been open to traffic;

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

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

9           SECTION 2.28. Section 362.0041, Transportation Code, is  
10 transferred to Subchapter E, Chapter 228, Transportation Code,  
11 redesignated as Sections 228.202-228.208, and amended to read as  
12 follows:

13           Sec. 228.202 [~~362.0041~~]. COMMISSION DETERMINATION  
14 [~~CONVERSION OF PROJECTS~~]. [(a)] The [~~Except as provided in~~  
15 ~~Subsections (d) and (g), the~~] commission may by order convert a  
16 nontolled state highway or a segment of a nontolled state highway  
17 [~~the free state highway system~~] to a toll project [~~facility~~] if it  
18 determines that the conversion will improve overall mobility in the  
19 region or is the most feasible and economic means to accomplish  
20 necessary expansion, improvements, or extensions to that segment of  
21 the state highway system.

22           Sec. 228.203. PUBLIC HEARING. [(b)] Prior to converting a  
23 state highway or a segment of a [~~the~~] state highway [~~system~~] under  
24 this subchapter [~~section~~], the commission shall conduct a public  
25 hearing for the purpose of receiving comments from interested  
26 persons concerning the proposed conversion [~~transfer~~]. Notice of  
27 the hearing shall be published in the Texas Register, one or more

1 newspapers of general circulation, and a newspaper, if any,  
2 published in the county or counties in which the involved highway is  
3 located.

4 Sec. 228.204. RULES. [~~(c)~~] The commission shall adopt  
5 rules implementing this subchapter [~~section~~], including criteria  
6 and guidelines for the approval of a conversion of a highway.

7 Sec. 228.205. QUEEN ISABELLA CAUSEWAY. [~~(d)~~] The  
8 commission may not convert the Queen Isabella Causeway in Cameron  
9 County to a toll project [~~facility~~].

10 Sec. 228.206. TOLL REVENUE. [~~(e)~~ ~~Subchapter G, Chapter~~  
11 ~~361, applies to a highway converted to a toll facility under this~~  
12 ~~section.~~

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

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

15 (2) may be used by the department to finance the  
16 improvement, extension, expansion, or operation of the converted  
17 segment of highway and may not be collected except for those  
18 purposes; and

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

21 Sec. 228.207. COUNTY AND VOTER APPROVAL. [~~(g)~~] The  
22 commission may only convert a state highway or a segment of a [~~the~~]  
23 state highway [~~system~~] under this subchapter [~~section~~] if the  
24 conversion is approved by:

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

27 (2) the qualified voters who vote in an election under

1 Section 228.208 and who reside in the limits of:

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

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

7 Sec. 228.208. ELECTION TO APPROVE CONVERSION. (a) If  
8 notified by the department of the proposed conversion of a highway  
9 or segment under this subchapter, the governing body of a county or  
10 municipality shall by order or resolution call an election for the  
11 approval or disapproval of the conversion.

12 (b) If a county or municipality orders an election, the  
13 county or municipality shall publish notice of the election in a  
14 newspaper of general circulation published in the county or  
15 municipality at least once each week for three consecutive weeks,  
16 with the first publication occurring at least 21 days before the  
17 date of the election.

18 (c) An order or resolution ordering an election and the  
19 election notice required by Subsection (b) must show, in addition  
20 to the requirements of the Election Code, the location of each  
21 polling place and the hours that the polls will be open.

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

25 (e) At an election ordered under this section, the ballots  
26 shall be printed to permit voting for or against the proposition:  
27 "The conversion of (highway) from (beginning location) to (ending



1 location) to a toll project."

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

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

7 SECTION 2.29. 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  
27 laws affecting the issuance of bonds by local governmental

1 entities, particularly, but not by way of limitation, provisions of  
2 Chapters 1201 and 1371, Government Code, and Subchapters A-C,  
3 Chapter 1207, Government Code, are applicable to and apply to all  
4 bonds issued under this subchapter [~~chapter~~], regardless of any  
5 classification of any such local governmental entities thereunder;  
6 provided, however, in the event of any conflict between such laws  
7 and this subchapter [~~chapter~~], the provisions of this subchapter  
8 [~~chapter~~] 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 2.30. Section 284.061(c), Transportation Code, is  
5 amended to read as follows:

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

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

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

13 SECTION 2.31. Subchapter C, Chapter 284, Transportation  
14 Code, is amended by adding Section 284.0615 to read as follows:

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

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

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

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

23 (2) a reference to the department in that section  
24 means the county.

25 SECTION 2.32. Section 366.035, Transportation Code, is  
26 amended by amending Subsection (a) and adding Subsections (h) and  
27 (i) to read as follows:

1           (a) Except as provided under Subsections [~~Subsection~~] (g)  
2 and (h) and subject to Subsection (i), if the commission determines  
3 that the most feasible and economic means to accomplish necessary  
4 expansion, improvements, or extensions to the state highway system  
5 is the conversion to a turnpike project of a nontolled segment of  
6 the [~~free~~] state highway system, any segment located in a county of  
7 an authority or a county in which an authority operates a turnpike  
8 project or in any county adjacent to those counties may, on approval  
9 of the governor and the affected authority, be transferred by order  
10 of the commission to that authority. An authority that receives the  
11 segment of highway may own, operate, and maintain the segment as a  
12 turnpike project or system or a part of a turnpike project or system  
13 under this chapter.

14           (h) The requirements of this section do not apply to a  
15 highway or segment:

16                   (1) that has not previously been open to traffic;

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

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

25           (i) The commission may only transfer a highway or segment to  
26 an authority under this section if the transfer is approved by a  
27 majority of the voters in each county in which the highway or

1 segment is located.

2 SECTION 2.33. Subchapter B, Chapter 366, Transportation  
3 Code, is amended by adding Section 366.036 to read as follows:

4 Sec. 366.036. ELECTION TO APPROVE TRANSFER. (a) If  
5 notified by the department of the proposed transfer under Section  
6 366.035, the commissioners court of a county shall call an election  
7 for the approval or disapproval of the transfer.

8 (b) If a county orders an election, the county shall publish  
9 notice of the election in a newspaper of general circulation  
10 published in the county at least once each week for three  
11 consecutive weeks, with the first publication occurring at least 21  
12 days before the date of the election.

13 (c) An order calling an election and the election notice  
14 required by Subsection (b) must show, in addition to the  
15 requirements of the Election Code, the location of each polling  
16 place and the hours that the polls will be open.

17 (d) The proposition submitted in the election must  
18 distinctly state the highway or segment proposed to be transferred  
19 and the limits of that highway or segment.

20 (e) At an election ordered under this section, the ballots  
21 shall be printed to permit voting for or against the proposition:  
22 "The transfer of (highway) from (beginning location) to (ending  
23 location) to (authority) for purposes of operating and maintaining  
24 the highway as a (authority) turnpike project.

25 (f) A notice of the election and a certified copy of the  
26 order canvassing the election results shall be sent to the  
27 commission.

1 SECTION 2.34. Section 370.035, Transportation Code, is  
2 amended by amending Subsection (a) and adding Subsection (i) to  
3 read as follows:

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

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

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

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

18 (4) the transfer is approved by a majority of the  
19 voters in each county in which the segment is located; and

20 (5) [~~(4)~~] the transfer is approved by the governor.

21 (i) The requirements of this section do not apply to a  
22 highway or segment:

23 (1) that has not previously been open to traffic;

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

27 (3) for which an adjacent facility is constructed with

1 a number of nontolled lanes that, when combined with the number of  
2 nontolled lanes on the converted highway or segment, is greater  
3 than or equal to the number in existence on the converted highway or  
4 segment before the conversion.

5 SECTION 2.35. Subchapter B, Chapter 370, Transportation  
6 Code, is amended by adding Section 370.0355 to read as follows:

7 Sec. 370.0355. ELECTION TO APPROVE TRANSFER. (a) If  
8 notified by the department of the proposed transfer under Section  
9 370.035, the commissioners court of a county shall call an election  
10 for the approval or disapproval of the transfer.

11 (b) If a county orders an election, the county shall publish  
12 notice of the election in a newspaper of general circulation  
13 published in the county at least once each week for three  
14 consecutive weeks, with the first publication occurring at least 21  
15 days before the date of the election.

16 (c) An order calling an election and the election notice  
17 required by Subsection (b) must show, in addition to the  
18 requirements of the Election Code, the location of each polling  
19 place and the hours that the polls will be open.

20 (d) The proposition submitted in the election must  
21 distinctly state the highway or segment proposed to be transferred  
22 and the limits of that highway or segment.

23 (e) At an election ordered under this section, the ballots  
24 shall be printed to permit voting for or against the proposition:  
25 "The transfer of (highway) from (beginning location) to (ending  
26 location) to (authority) for purposes of operating and maintaining  
27 the highway as a (authority) turnpike project."



1        (f) A notice of the election and a certified copy of the  
2 order canvassing the election results shall be sent to the  
3 commission.

4        SECTION 2.36. Section 370.163(a), Transportation Code, is  
5 amended to read as follows:

6        (a) Except as otherwise provided by this subchapter, the  
7 governing body of an authority has the same powers and duties  
8 relating to the condemnation and acquisition of real property for a  
9 transportation project that the commission and the department have  
10 under Subchapter D, Chapter 203 [~~361, and Section 361.233~~] relating  
11 to the condemnation or purchase of real property for a toll  
12 [~~turnpike~~] project. [~~Notwithstanding Section 361.135(a), the~~  
13 ~~concurrence of the commission is not a prerequisite to the exercise~~  
14 ~~of the power of condemnation by the governing body of the~~  
15 ~~authority.]~~

16        SECTION 2.37. Section 101.022, Civil Practice and Remedies  
17 Code, is amended to read as follows:

18        Sec. 101.022. DUTY OWED:    PREMISE AND SPECIAL DEFECTS.

19        (a) Except as provided in Subsection (c), if [~~If~~] a claim arises  
20 from a premise defect, the governmental unit owes to the claimant  
21 only the duty that a private person owes to a licensee on private  
22 property, unless the claimant pays for the use of the premises.

23        (b) The limitation of duty in this section does not apply to  
24 the duty to warn of special defects such as excavations or  
25 obstructions on highways, roads, or streets or to the duty to warn  
26 of the absence, condition, or malfunction of traffic signs,  
27 signals, or warning devices as is required by Section 101.060.

1        (c) If a claim arises from a premise defect on a toll  
2 highway, road, or street, the governmental unit owes to the  
3 claimant only the duty that a private person owes to a licensee on  
4 private property.

5        SECTION 2.38. Section 11.11, Tax Code, is amended by adding  
6 Subsection (j) to read as follows:

7        (j) For purposes of this section, a facility owned by the  
8 Texas Department of Transportation that is part of the Trans-Texas  
9 Corridor, is a rail facility or system, or is a highway in the state  
10 highway system, and that is licensed or leased to a private entity  
11 by that department under Chapter 91, 223, or 227, Transportation  
12 Code, is public property used for a public purpose if the rail  
13 facility or system, highway, or facility is operated by the private  
14 entity to provide transportation or utility services. Any part of a  
15 facility, rail facility or system, or state highway that is  
16 licensed or leased to a private entity for a commercial purpose is  
17 not exempt from taxation.

18        SECTION 2.39 The following provisions of the Transportation  
19 Code are repealed:

- 20            (1) Section 201.6061;  
21            (2) Section 222.103(h);  
22            (3) Sections 224.155-224.158 and 224.160;  
23            (4) Section 361.002;  
24            (5) Sections 361.031 and 361.050;  
25            (6) Sections 361.131-361.136, 361.1375, and  
26 361.140-361.142;  
27            (7) Sections 361.175 and 361.191;

- 1 (8) Subchapter F, Chapter 361;
- 2 (9) Section 361.251;
- 3 (10) Sections 361.302-361.306;
- 4 (11) Subchapter J, Chapter 361;
- 5 (12) Sections 362.002 and 362.008; and
- 6 (13) Section 370.163(b).

ARTICLE 3. AVIATION

8 SECTION 3.01. The heading to Subchapter A, Chapter 2205,  
9 Government Code, is amended to read as follows:

10 SUBCHAPTER A. STATE AIRCRAFT POOLING [~~BOARD~~]; GENERAL PROVISIONS

11 SECTION 3.02. Section 2205.002, Government Code, is amended  
12 by amending Subdivision (1) and adding Subdivision (1-a) to read as  
13 follows:

14 (1) "Commission [~~Board~~]" means the Texas  
15 Transportation Commission [~~State Aircraft Pooling Board~~].

16 (1-a) "Department" means the Texas Department of  
17 Transportation.

18 SECTION 3.03. Section 2205.032, Government Code, is amended  
19 to read as follows:

20 Sec. 2205.032. CUSTODY, CONTROL, OPERATION, AND  
21 MAINTENANCE. (a) The department [~~board~~] shall operate a pool for  
22 the custody, control, operation, and maintenance of all aircraft  
23 owned or leased by the state.

24 (b) The department [~~board~~] may purchase aircraft with funds  
25 appropriated for that purpose.

26 (c) The department [~~As part of the strategic plan that the~~  
27 ~~board develops and submits under Chapter 2056, the board~~] shall

1 develop a long-range plan for its pool of aircraft. [~~The board~~  
2 ~~shall include appropriate portions of the long-range plan in its~~  
3 ~~legislative appropriations request.~~] The long-range plan must  
4 include estimates of future aircraft replacement needs and other  
5 fleet management needs, including any projected need to increase or  
6 decrease the number of aircraft in the pool. In developing the  
7 long-range plan, the department [~~board~~] shall consider at a minimum  
8 for each aircraft in the pool:

9 (1) how much the aircraft is used and the purposes for  
10 which it is used;

11 (2) the cost of operating the aircraft and the revenue  
12 generated by the aircraft; and

13 (3) the demand for the aircraft or for that type of  
14 aircraft.

15 (d) This section does not apply to aircraft owned or  
16 operated by the Department of Public Safety or the Parks and  
17 Wildlife Department that are used for law enforcement purposes.

18 SECTION 3.04. Section 2205.034, Government Code, is amended  
19 to read as follows:

20 Sec. 2205.034. FACILITIES. (a) The department [~~board~~] may  
21 acquire appropriate facilities for the accommodation of all  
22 aircraft owned or leased by the state. The facilities may be  
23 purchased or leased as determined by the department [~~board~~] to be  
24 most economical for the state and as provided by legislative  
25 appropriations. The facilities may include adequate hangar space,  
26 an indoor passenger waiting area, a flight-planning area,  
27 communications facilities, and other related and necessary

1 facilities.

2 (b) A state agency that operates an aircraft may not use a  
3 facility in Austin other than a facility operated by the department  
4 [~~board~~] for the storage, parking, fueling, or maintenance of the  
5 aircraft, whether or not the aircraft is based in Austin. In a  
6 situation the department [~~board~~] determines to be an emergency, the  
7 department [~~board~~] may authorize a state agency to use a facility in  
8 Austin other than a department [~~board~~] facility for the storage,  
9 parking, fueling, or maintenance of an aircraft.

10 SECTION 3.05. Section 2205.035, Government Code, is amended  
11 to read as follows:

12 Sec. 2205.035. AIRCRAFT LEASES. (a) The department [~~board~~  
13 ~~by interagency contract~~] may lease state-owned aircraft to a state  
14 agency.

15 (b) [~~A state agency that is the prior owner or lessee of an~~  
16 ~~aircraft has the first option to lease that aircraft from the board.~~

17 [~~(c)~~] The lease may provide for operation or maintenance by  
18 the department [~~board~~] or the state agency.

19 (c) [~~(d)~~] A state agency may not expend appropriated funds  
20 for the lease of an aircraft unless the department [~~board~~] executes  
21 the lease or approves the lease [~~by board order~~].

22 (d) [~~(e)~~] A state agency may not use money appropriated by  
23 the legislature to rent or lease aircraft except from the  
24 department [~~board~~] or as provided by Subsection (e) [~~(f)~~]. For  
25 purposes of this subsection and Subsection (e) [~~(f)~~], payments of  
26 mileage reimbursements provided for by the General Appropriations  
27 Act are not rentals or leases of aircraft.

1           (e) [~~(f)~~] If the department [~~board~~] determines that no  
2 state-owned aircraft is available to meet a transportation need  
3 that has arisen or that a rental or lease of aircraft would reduce  
4 the state's transportation costs, the department [~~board~~] shall  
5 authorize a state agency to expend funds for the rental or lease of  
6 aircraft, which may include a helicopter.

7           SECTION 3.06. Section 2205.036, Government Code, is amended  
8 to read as follows:

9           Sec. 2205.036. PASSENGER TRANSPORTATION.           (a) The  
10 department [~~board~~] shall provide aircraft transportation, to the  
11 extent that its aircraft are available, to:

12           (1) state officers and employees who are traveling on  
13 official business according to the coordinated passenger  
14 scheduling system and the priority scheduling system developed as  
15 part of the aircraft operations manual under Section 2205.038;

16           (2) persons in the care or custody of state officers or  
17 employees described by Subdivision (1); and

18           (3) persons whose transportation furthers official  
19 state business.

20           (b) The department [~~board~~] may not provide aircraft  
21 transportation to a passenger if the passenger is to be transported  
22 to or from a place where the passenger:

23           (1) will make or has made a speech not related to  
24 official state business;

25           (2) will attend or has attended an event sponsored by a  
26 political party;

27           (3) will perform a service or has performed a service

1 for which the passenger is to receive an honorarium, unless the  
2 passenger reimburses the department [~~board~~] for the cost of  
3 transportation;

4 (4) will attend or has attended an event at which money  
5 is raised for private or political purposes; or

6 (5) will attend or has attended an event at which an  
7 audience was charged an admission fee to see or hear the passenger.

8 (c) The department [~~board~~] may not provide aircraft  
9 transportation to a destination unless:

10 (1) the destination is not served by a commercial  
11 carrier;

12 (2) the time required to use a commercial carrier  
13 interferes with passenger obligations; or

14 (3) the number of passengers traveling makes the use  
15 of state aircraft cost-effective.

16 (d) The department may monitor and ensure compliance with  
17 the requirements of this section.

18 SECTION 3.07. Section 2205.038, Government Code, is amended  
19 to read as follows:

20 Sec. 2205.038. AIRCRAFT OPERATIONS MANUAL. (a) The  
21 department [~~board~~] shall:

22 (1) prepare a manual that establishes minimum  
23 standards for the operation of passenger aircraft by state  
24 agencies; and

25 (2) adopt procedures for the distribution of the  
26 manual to state agencies.

27 (b) The manual must include provisions for:

- 1 (1) pilot certification standards, including medical
- 2 requirements for pilots;
- 3 (2) recurring training programs for pilots;
- 4 (3) general operating and flight rules;
- 5 (4) coordinated passenger scheduling; and
- 6 (5) other issues the department [~~board~~] determines are
- 7 necessary to ensure the efficient and safe operation of aircraft by
- 8 a state agency.

9 (c) The department [~~board~~] shall confer with and solicit the  
10 written advice of state agencies the department [~~board~~] determines  
11 are principal users of aircraft operated by the department [~~board~~]  
12 and, to the extent practicable, incorporate that advice in the  
13 development of the manual and subsequent changes to the manual.

14 (d) The department [~~board~~] shall give an officer normally  
15 elected by statewide election priority in the scheduling of  
16 aircraft. The department [~~board~~] by rule may require a 12-hour  
17 notice by the officer to obtain the priority in scheduling.

18 SECTION 3.08. Section 2205.039, Government Code, is amended  
19 to read as follows:

20 Sec. 2205.039. TRAVEL LOG. (a) The Legislative Budget  
21 Board, in cooperation with the department [~~board~~], shall prescribe:

- 22 (1) a travel log form for gathering information about
- 23 the use of state-operated aircraft;
- 24 (2) procedures to ensure that individuals who travel
- 25 as passengers on or operate state-operated aircraft provide in a
- 26 legible manner the information requested of them by the form; and
- 27 (3) procedures for each state agency that operates an



1 aircraft for sending the form to the department [~~board~~] and the  
2 Legislative Budget Board.

3 (b) The travel log form must request the following  
4 information about a state-operated aircraft each time the aircraft  
5 is flown:

6 (1) a mission statement, which may appear as a  
7 selection to be identified from general categories appearing on the  
8 form;

9 (2) the name, state agency represented, destination,  
10 and signature of each person who is a passenger or crew member of  
11 the aircraft;

12 (3) the date of each flight;

13 (4) a detailed and specific description of the  
14 official business purpose of each flight; and

15 (5) other information determined by the Legislative  
16 Budget Board and the department [~~board~~] to be necessary to monitor  
17 the proper use of the aircraft.

18 (c) A state agency other than the department [~~board~~] shall  
19 send travel logs to the department [~~board~~] each month in which the  
20 agency operates an aircraft.

21 (d) The department may monitor and ensure compliance by  
22 state agencies with the requirements of this section.

23 SECTION 3.09. Section 2205.040, Government Code, is amended  
24 to read as follows:

25 Sec. 2205.040. RATES AND BILLING PROCEDURES. (a) The  
26 department [~~board~~] shall adopt rates for interagency aircraft  
27 services that are sufficient to recover, in the aggregate and to the

1 extent possible, all direct costs for the services provided,  
2 including a state agency's pro rata share of major maintenance,  
3 overhauls of equipment and facilities, and pilots' salaries.

4 (b) The department shall deposit all revenue received under  
5 this chapter to the credit of the state highway fund. Money  
6 deposited to the credit of the state highway fund under this chapter  
7 is exempt from the application of Section 403.095 [Legislative  
8 Budget Board, in cooperation with the board and the state auditor,  
9 shall prescribe a billing procedure for passenger travel on  
10 state-operated aircraft].

11 (c) The department may spend money from the state highway  
12 fund for expenses incurred under this chapter.

13 (d) It is the intent of the legislature that receipts and  
14 expenditures that relate to the state highway fund under this  
15 chapter be balanced over time so that, to the extent practicable,  
16 the receipts and expenditures do not result in a net gain or net  
17 loss to the fund.

18 SECTION 3.10. Subsection (a), Section 2205.041, Government  
19 Code, is amended to read as follows:

20 (a) The Legislative Budget Board, in cooperation with the  
21 department [~~board~~], shall prescribe:

22 (1) an annual aircraft use form for gathering  
23 information about the use of state-operated aircraft, including the  
24 extent to which and the methods by which the goal provided by  
25 Section 2205.031(b) is being met; and

26 (2) procedures for each state agency that operates an  
27 aircraft for sending the form to the department [~~board~~] and the

1 Legislative Budget Board.

2 SECTION 3.11. Subsection (b), Section 2205.043, Government  
3 Code, is amended to read as follows:

4 (b) The commission [~~board~~] shall adopt rules, consistent  
5 with federal regulations and Subtitle A, Title 11 [~~Article 6139F,~~  
6 ~~Revised Statutes~~], governing the color, size, and location of marks  
7 of identification required by this section.

8 SECTION 3.12. Section 2205.044, Government Code, is amended  
9 to read as follows:

10 Sec. 2205.044. FUEL AND MAINTENANCE [~~CONTRACTS~~]. The  
11 department [~~board~~] may provide aircraft fuel or aircraft  
12 maintenance services to [~~contract with~~] a state or federal  
13 governmental agency or a political subdivision if the agency or  
14 political subdivision reimburses the department at the current  
15 rates for the fuel or [~~to provide aircraft fuel or to provide~~  
16 ~~aircraft maintenance~~] services.

17 SECTION 3.13. Subsection (a), Section 2205.045, Government  
18 Code, is amended to read as follows:

19 (a) The department [~~board~~] may purchase insurance to  
20 protect the department [~~board~~] from loss caused by damage, loss,  
21 theft, or destruction of aircraft owned or leased by the state and  
22 may [~~shall~~] purchase liability insurance to protect the officers  
23 and employees of each state agency from loss arising from the  
24 operation of state-owned aircraft.

25 SECTION 3.14. Section 2205.046, Government Code, is amended  
26 to read as follows:

27 Sec. 2205.046. AIRCRAFT FOR FLIGHT TRAINING PROGRAMS.

1 (a) The department [~~board~~] may transfer aircraft to a public  
2 technical institute or other public postsecondary educational  
3 institution for use in the institution's flight training program.  
4 Except as provided by this section, the department [~~board~~] has no  
5 responsibility for continued maintenance of aircraft transferred  
6 under this section.

7 (b) As a condition to the transfer of the aircraft, the  
8 institution must certify in writing to the department [~~board~~] that  
9 the institution will accept full responsibility for maintenance of  
10 the aircraft and that it will be properly maintained while in the  
11 custody and control of the institution. The department [~~board~~] is  
12 entitled to inspect the aircraft without notice for the purpose of  
13 insuring that the aircraft are properly maintained.

14 (c) The department [~~board~~] may immediately reassume custody  
15 and control of a transferred aircraft on a finding by the department  
16 [~~board~~] that:

- 17 (1) the aircraft is not being properly maintained;  
18 (2) the aircraft is being used for a purpose other than  
19 flight training; or  
20 (3) the institution has discontinued its flight  
21 training program.

22 SECTION 3.15. Section 2205.047, Government Code, is amended  
23 to read as follows:

24 Sec. 2205.047. INFORMATION POSTED ON THE INTERNET. The  
25 department [~~board~~] shall post information related to travel and  
26 other services provided by the department under this chapter  
27 [~~board~~] on an Internet site maintained by or for the department

1 ~~[board]~~. The site must be generally accessible to state agencies,  
2 persons who use the department's ~~[board's]~~ services, and, to the  
3 extent appropriate, the general public.

4 SECTION 3.16. Subsection (c), Section 2175.134, Government  
5 Code, is amended to read as follows:

6 (c) Proceeds from the sale of surplus and salvage property  
7 formerly belonging to ~~[of]~~ the State Aircraft Pooling Board shall  
8 be deposited to the credit of the state highway fund to be used for  
9 the purpose of administering Chapter 2205 ~~[board]~~.

10 SECTION 3.17. Subsection (c), Section 2175.191, Government  
11 Code, is amended to read as follows:

12 (c) Proceeds from the sale of surplus and salvage property  
13 formerly belonging to ~~[of]~~ the State Aircraft Pooling Board shall  
14 be deposited to the credit of the state highway fund to be used for  
15 the purpose of administering Chapter 2205 ~~[board]~~.

16 SECTION 3.18. The following laws are repealed:

17 (1) Sections 2205.003-2205.019 and 2205.042,  
18 Government Code; and

19 (2) Section 31.01, Chapter 3, Acts of the 78th  
20 Legislature, 3rd Called Session, 2003.

21 ARTICLE 4. TRANSITION PROVISIONS; EFFECTIVE DATE

22 SECTION 4.01. Section 101.022, Civil Practice and Remedies  
23 Code, as amended by this Act, applies only to a cause of action that  
24 accrues on or after the effective date of this Act. A cause of  
25 action that accrued before the effective date of this Act is  
26 governed by the law in effect at the time the cause of action  
27 accrued, and that law is continued in effect for that purpose.

1           SECTION 4.02. On the effective date of this Act:

2           (1) the State Aircraft Pooling Board is abolished, and  
3 all powers, duties, obligations, rights, contracts, bonds,  
4 appropriations, records, and real or personal property of the State  
5 Aircraft Pooling Board are transferred to the Texas Department of  
6 Transportation;

7           (2) a rule, policy, procedure, or decision of the  
8 State Aircraft Pooling Board continues in effect as a rule, policy,  
9 procedure, or decision of the Texas Department of Transportation  
10 until superseded by an act of the Texas Department of  
11 Transportation;

12           (3) a reference in law to the State Aircraft Pooling  
13 Board means the Texas Department of Transportation;

14           (4) all temporary employees of the Texas Department of  
15 Transportation who were previously employed by the State Aircraft  
16 Pooling Board on August 31, 2003, become regular full-time  
17 employees of the Texas Department of Transportation; and

18           (5) notwithstanding Section 31.01, Chapter 3, Acts of  
19 the 78th Legislature, 3rd Called Session, 2003, any memorandum of  
20 understanding or interagency contract entered into between the  
21 Texas Department of Transportation and the State Aircraft Pooling  
22 Board for the operation of state aircraft expires.

23           SECTION 4.03. This Act takes effect immediately if it  
24 receives a vote of two-thirds of all the members elected to each  
25 house, as provided by Section 39, Article III, Texas Constitution.  
26 If this Act does not receive the vote necessary for immediate  
27 effect, this Act takes effect September 1, 2005.