

BILL ANALYSIS

Senate Research Center

S.B. 792
By: Williams et al.
Transportation & Homeland Security
10/11/2007
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Since its creation in 1983 under Chapter 284 (Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties), Transportation Code, the Harris County Toll Road Authority (HCTRA) has provided residents in the greater Houston area with much needed mobility solutions for the growing population. Subsequently, leaders in the Dallas-Fort Worth area created the North Texas Tollway Authority with a similar purpose of solving transportation issues locally. Recently, the Texas Department of Transportation (TxDOT) has sought to take control of locally planned projects, preventing locally created tollway authorities from solving their own transportation issues. There is no current law preventing TxDOT from requiring payment for the use of right-of-way or connection to the state highway system.

S.B. 792 grants county tollway authorities created under Chapter 284 and regional tollway authorities created under Chapter 366 (Regional Tollway Authorities), Transportation Code, the first option in building projects within their jurisdictions and provides these authorities with the powers to cost-effectively construct and complete these projects. This bill also requires TxDOT to assist such authorities in the completion of projects by providing right-of-way owned by TxDOT and access to the state highway system without requiring payment for those resources.

Furthermore, this bill makes adjustments to the regional tollway authority chapter of the Transportation Code, which will only affect the North Texas Tollway Authority (NTTA). This bill allows a regional tollway authority to enter into comprehensive development agreements (CDAs). It also gives NTTA design-build authority, similar to regional mobility authority (RMA) language, and construction manager-at-risk authority, similar to other Texas political entities. This bill also adds intangible property, such as software and know-how, to the assets or property which the authority may rent, lease, franchise, license, or otherwise make available. A provision, similar to RMA language, is added to authorize the authority to use all powers available to participate in the Trans-Texas Corridor. Finally, the NTTA will be allowed to use available toll revenues, under limited circumstances, for the design and construction of non-tolled roads in the service area.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to a regional tollway authority in SECTION 9.03 (Sections 366.402, 366.404, and 366.408, Transportation Code) and SECTION 9.07 (Section 366.185, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. TERM OF CERTAIN TOLL OR FEE COLLECTION CONTRACTS WITH PRIVATE ENTITIES

SECTION 1.01. Amends Section 223.203, Transportation Code, by adding Subsection (f-1), to authorize a private entity responding to a request for detailed proposals issued under Subsection (f) to submit alternative proposals based on comprehensive development agreements (CDA) having different terms, with the alternative terms in multiples of 10 years, ranging from 10 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity to 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity, not to exceed a total term of 52 years or any lesser term provided in a CDA.

SECTION 1.02. Amends Section 223.208(h), Transportation Code, as follows:

(h) Authorizes a CDA with a private participant that includes the collection by the private participant of tolls for the use of a toll project to be for a term not longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private participant, not to exceed a total term of 52 years. Requires the CDA to contain an explicit mechanism for setting the price for the purchase by the Texas Department of Transportation (TxDOT) of the interest of the private participant in the CDA and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the CDA. Deletes existing text providing an exception as provided by this section. Deletes existing text authorizing certain CDAs to be for a term not longer than 70 years. Deletes existing text requiring a CDA to outline the benefit to the state under certain conditions.

SECTION 1.03. Amends Section 227.023(f), Transportation Code, as follows:

(f) Prohibits a contract with a private entity that includes the collection by the private entity of a fee for the use of a facility from being for a term longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private participant, not to exceed a total term of 52 years. Requires the contract to contain an explicit mechanism for setting the price for the purchase by TxDOT of the interest of the private entity in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the contract.

SECTION 1.04. Amends Section 370.302(i), Transportation Code, as follows:

(i) Prohibits a contract with a private entity that includes the collection by the private entity of tolls for the use of a transportation project from being for a term longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private participant, not to exceed a total term of 52 years. Requires the agreement to contain an explicit mechanism for setting the price for the purchase by the regional mobility authority (RMA) of the interest of the private entity in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

SECTION 1.05. Makes application of the changes in law made by this article prospective.

ARTICLE 2. PAYMENTS TO UNSUCCESSFUL PROPOSERS FOR COMPREHENSIVE DEVELOPMENT AGREEMENTS

SECTION 2.01. Amends Section 223.203(m), Transportation Code, as follows:

(m) Authorizes, rather than requires, TxDOT to pay an unsuccessful private entity that submits a responsive proposal in response to a request for detailed proposals under Subsection (f) a stipulated amount in exchange for the work product contained in that proposal. Makes a nonsubstantive change.

SECTION 2.02. Amends Section 370.306(m), Transportation Code, as follows:

(m) Authorizes, rather than requires, an RMA to pay an unsuccessful private entity that submits a response to a request for detailed proposals under Subsection (f) a stipulated amount of the final contract price for any costs incurred in preparing that proposal. Makes a nonsubstantive change.

ARTICLE 3. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS

SECTION 3.01. Amends Subchapter E, Chapter 223, Transportation Code, by adding Section 223.210, as follows:

Sec. 223.210. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS. (a) Defines "toll project" and "toll project entity."

(b) Prohibits a CDA entered into with a private participant by a toll project entity on or after May 1, 2007, for the acquisition, design, construction, financing, operation, or maintenance of a toll project from containing a provision permitting the private participant to operate the toll project or collect revenue from the toll project, regardless of whether the private participant operates the toll project or collects the revenue itself or engages a subcontractor or other entity to operate the toll project or collect the revenue.

(c) Provides that Subsection (b) does not apply to a CDA in connection with a project associated with the highway designated as the Trinity Parkway in the City of Dallas or a project that includes one or more managed lane facilities to be added to an existing controlled-access highway, a project of which a major portion is located in a nonattainment or near-nonattainment air quality area as designated by the United States Environmental Protection Agency, and a project for which TxDOT has issued a request for qualifications before May 1, 2007.

(d) Provides that Subsection (b) does not apply to a CDA in connection with a project associated with any portion of the Loop 9 project that is located in a nonattainment air quality area as designated by the United States Environmental Protection Agency that includes two adjacent counties that each have a population of one million or more.

(e) Provides that Subsection (b) does not apply to a CDA in connection with a project associated with any portion of the State Highway 99 project.

(f) Provides that Subsection (b) does not apply to a CDA in connection with certain projects related to the ISTEA High Priority Corridor as described in this subsection.

(g) Provides that Subsection (b) does not apply to a CDA in connection with the State Highway 161 project in Dallas County.

(g-1) Provides that Subsection (b) does not apply to a CDA in connection with a project other than a Trans-Texas Corridor (TTC) project if certain conditions apply.

(h) Provides that Subsection (b) does not apply to certain CDAs, notwithstanding the TxDOT/NTTA Regional Protocol entered into between TxDOT and the North Texas Tollway Authority (NTTA) and approved on August 10, 2006, by the tollway authority and on August 24, 2006, by TxDOT. Requires the Texas Transportation Commission (commission) to allow NTTA to develop a project if the financial value of the commitment is determined to be equal to or greater than the value of any other commitment submitted prior to March 26, 2007.

(i) Provides that Subsection (b) applies to any toll project or managed lane facility project located on any portion of U.S. Highway 281 that is located in a county with a population of more than one million in which more than 80 percent of the population lives in a single municipality, notwithstanding Subsection (c).

(j) Defines "managed lane facility" for purposes of Subsection (c)(2).

(k) Prohibits TxDOT from entering into a CDA in connection with a certain project described by Subsection (c)(2) unless the commissioners court of the county in which the majority of the project is located passes a resolution in support of the CDA stating that the commissioners court acknowledges that the CDA may contain penalties for the construction of future competing transportation projects that are acquired or constructed during the term of the

CDA and agrees that TxDOT should execute the CDA knowing of these potential penalties.

(k-1) Authorizes payment of a monetary penalty TxDOT incurs for the construction of a competing transportation project under a provision in a CDA approved by a county under Subsection (k) to be made only with money that would otherwise be allocated for projects in the TxDOT district in which the county is located.

(l) Prohibits a toll project entity from selling or entering into a contract to sell the entity's toll project to a private entity on or after the effective date of this section.

(m) Creates a nine-member legislative study committee (committee) and sets forth the composition of the committee.

(n) Requires the committee to select a presiding officer from among its members and conduct public hearings and study the public policy implications of including in a CDA entered into by a toll project entity with a private participant in connection with a toll project a provision that permits the private participant to operate and collect revenue from the toll project. Requires the committee to examine the public policy implications of selling an existing and operating toll project to a private entity.

(o) Requires the committee, not later than December 1, 2008, to prepare a written report summarizing certain information and to deliver a copy of the report to certain persons.

(p) Abolishes the committee on December 31, 2008.

(q) Provides that this section expires September 1, 2009.

(r) Provides that Subsection (b) does not apply to a project that is located in a county with a population of 300,000 or more and adjacent to an international border, except that Subsection (b) does not apply to a project that is located in a county that has a population of 600,000 or more and is adjacent to an international border only if before May 1, 2007, the project has been adopted by the metropolitan planning organization for the county in the transportation improvement plan or metropolitan transportation plan.

ARTICLE 4. COMPREHENSIVE DEVELOPMENT AGREEMENT SUNSET DATE

SECTION 4.01. Amends Section 223.201, Transportation Code, by amending Subsection (f) and adding Subsections (h) and (i), as follows:

(f) Provides that the authority to enter into CDAs provided by this section (Authority) expires on August 31, 2009, rather than 2011, except as provided by Subsections (h) and (i).

(h) Provides that Subsection (f) does not apply to a CDA that does not grant a private entity a right to finance a toll project or to a CDA in connection with certain projects.

(i) Provides that the authority to enter into a CDA for a project exempted from Subsection (f) or Section 223.210(b) expires August 31, 2011.

SECTION 4.02. Amends Section 370.305(d), Transportation Code, by amending Subsection (d) and adding Subsections (e) and (f), as follows:

(d) Provides that the authority to enter into CDAs under this section (Authority) expires on August 31, 2009, rather than 2011, except as provided by Subsections (e) and (f).

(e) Provides that Subsection (d) does not apply to a CDA that does not grant a private entity a right to finance a toll project or to a CDA in connection with certain projects.

(f) Provides that the authority to enter into a CDA for a project exempted from Subsection (d) or Section 223.210(b) expires August 31, 2011.

ARTICLE 5. PUBLIC ACCESS TO TRANS-TEXAS CORRIDOR INFORMATION

SECTION 5.01. Amends Subchapter A, Chapter 227, Transportation Code, by adding Sections 227.005 and 227.006, as follows:

Sec. 227.005. PUBLIC ACCESS TO INFORMATION. (a) Requires TxDOT to provide, to the greatest extent possible, public access to information collected, assembled, or maintained by TxDOT relating to the TTC, and to make public in a timely manner all documents, plans, all updates to the master development plan, and contracts related to the TTC, including financial plans.

(b) Requires TxDOT to send electronic versions of all updates to the master development plan for the TTC to certain governmental entities in a timely manner.

Sec. 227.006. POSTING INFORMATION RELATING TO TRANS-TEXAS CORRIDOR ON DEPARTMENT'S WEBSITE. (a) Requires TxDOT to post on its Internet website, in a timely manner, the costs incurred by TxDOT in connection with the financing, design, construction, maintenance, or operation of the TTC.

(b) Requires TxDOT, not later than the 10th day after the date TxDOT enters into a contract relating to the TTC, to post a copy of the contract on TxDOT's Internet website.

ARTICLE 6. USE OF CERTAIN CONTRACT PAYMENTS AND OTHER REVENUE

SECTION 6.01. Amends Section 228.0055, Transportation Code, as follows:

Sec. 228.0055. USE OF CONTRACT PAYMENTS AND OTHER REVENUE. (a) Creates this subsection from existing text. Requires, rather than authorizes, payments, project savings, refinancing dividends, and any other revenue received by the commission or TxDOT under a CDA to be used by the commission or TxDOT to finance the construction, maintenance, or operation of transportation projects or air quality projects in the region.

(b) Requires TxDOT to allocate the distribution of funds to TxDOT districts in the region that are located in the boundaries of the metropolitan planning organization (MPO) in which the project that is the subject of the CDA is located based on the percentage of toll revenue from users, from each TxDOT district, of the project. Requires each entity responsible for collecting tolls for a project, to assist TxDOT in determining the allocation, to calculate on an annual basis the percentage of toll revenue from users of the project from each TxDOT district based on the number of recorded electronic toll collections.

(c) Prohibits the commission or TxDOT from revising the formula as provided in TxDOT's unified transportation program, or its successor document, in a manner that results in a decrease of a TxDOT district's allocation because of a payment under Subsection (a). Prohibits the commission or TxDOT from taking any other action that would reduce funding allocated to a TxDOT district because of payments received under a CDA.

(d) Prohibits an MPO from taking any action that would reduce distribution of funds or other resources to a TxDOT district because of the use of a payment or other revenue under Subsection (a).

ARTICLE 7. TOLL PROJECTS IN TERRITORY OF LOCAL OR REGIONAL TOLL
PROJECT ENTITY

SECTION 7.01. Amends Subchapter A, Chapter 228, Transportation Code, by adding Sections 228.011, 228.0111, and 228.012, as follows:

Sec. 228.011. TOLL PROJECTS IN CERTAIN COUNTIES. (a) Provides that this section applies only to a county acting under Chapter 284 (Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties) and the development, construction, and operation of all or a portion of certain toll projects, components of that project, or the functional equivalent of that project set forth in this subsection.

(b) Provides that the county is the entity with the primary responsibility for the financing, construction, and operation of a toll project located in the county. Authorizes a county to develop, construct, and operate a project described in Subsection (a) at any time, regardless of whether it receives a first option notice from the commission or TxDOT under Subsection (e).

(b-1) Requires TxDOT, consistent with federal law, to assist the county in the financing, construction, and operation of a toll project in the county by allowing the county to use state highway right-of-way owned by TxDOT and to access the state highway system. Prohibits the commission or TxDOT from requiring the county to pay for the use of the right-of-way or access, except to reimburse TxDOT as provided by this subsection. Requires the county to pay an amount to reimburse TxDOT for TxDOT's actual costs to acquire the right-of-way. Requires the amount to be determined based on the average historical right-of-way acquisition values for right-of-way located in proximity to the project on the date of original acquisition of the right-of-way if TxDOT cannot determine that amount. Requires money received by TxDOT under this subsection to be deposited in the state highway fund and used in the TxDOT district in which the project is located.

(c) Requires TxDOT and the county to enter into an agreement that includes reasonable terms to accommodate the use of the right-of-way by the county and to protect the interests of the commission and TxDOT in the use of the right-of-way for operations of TxDOT, including public safety and congestion mitigation on the right-of-way.

(d) Provides that Subsection (b) does not limit the authority of the commission or TxDOT to participate in the cost of acquiring, constructing, maintaining, or operating a project of the county under Chapter 284.

(e) Requires the commission or TxDOT, before TxDOT is authorized to enter into a contract for the financing, construction, or operation of a proposed or existing toll project any part of which is located in the county, to provide the county the first option to finance, construct, or operate, as applicable, the portion of the toll project located in the county on terms agreeable to the county and in a manner determined by the county to be consistent with the practices and procedures by which the county finances, constructs, or operates a project.

(f) Provides that a county's right to exercise the first option under Subsection (e) is effective for six months after the date of the receipt by the county of written notice from the commission or TxDOT meeting the requirements of Subsection (e) and describing in reasonable detail the location of the toll project, a projected cost estimate, sources and uses of funds, and a construction schedule. Requires a county, if the county exercises the first option with respect to a toll project, to enter into one or more contracts for the financing, construction, or operation of the toll project within two years after the date on which all environmental requirements necessary for the development of the project are secured and all legal challenges to development are concluded. Authorizes a contract to include agreements for design of the project, acquisition of right-of-way, and utility

relocation. Authorizes the commission or TxDOT to enter into a contract for the financing, construction, or operation of the toll project with a different entity if the county does not enter into a contract during the two-year period.

(g) Provides that an agreement entered into by the county and TxDOT in connection with a project under Chapter 284 that is financed, constructed, or operated by the county and that is on or directly connected to a highway in the state highway system does not create a joint enterprise for liability purposes.

(h) Authorizes the commission to remove any right-of-way to be used by a county under this section from the state highway system if the county approves. Requires the county to comply with TxDOT design and construction standards if the right-of-way used by a county under this section remains part of the state highway system.

(i) Authorizes the commission or TxDOT to take any action that is necessary in its reasonable judgment to comply with any federal requirement to enable this state to receive federal-aid highway funds, notwithstanding an action of a county taken under this section.

(j) Provides that notwithstanding any other law, the commission and TxDOT are not liable for any damages that result from a county's use of state highway right-of-way or access to the state highway system under this section, regardless of the legal theory, statute, or cause of action under which liability is asserted.

Sec. 228.0111. TOLL PROJECTS OF LOCAL TOLL PROJECT ENTITIES. (a) Defines "local toll project entity," "market valuation," "region," and "toll project subaccount."

(b) Provides that this section does not apply to a toll project described in Section 228.011(a).

(c) Provides that a toll project entity is the entity with primary responsibility for the financing, construction, and operation of a toll project located within its boundaries.

(d) Provides that Subsection (c) does not limit the authority of the commission or TxDOT to participate in the cost of acquiring, constructing, maintaining, or operating a toll project of a local toll project entity.

(e) Requires a local toll project entity and TxDOT, except as provided in this subsection, to mutually agree on the terms and conditions for the development, construction, and operation of a toll project, including the initial rate and the toll rate escalation methodology, if a local toll project entity or TxDOT determines that a toll project located within the boundaries of the local toll project entity should be developed, constructed, and operated as a toll project. Requires the terms and conditions for the procurement and operation of the State Highway 99 project to be approved by the MPO in which the project is located.

(e-1) Prohibits a local toll project entity and TxDOT from developing a project as a toll project if the local toll project entity and TxDOT are unable to mutually agree on the terms and conditions for the development, construction, and operation of the toll project as required by Subsection (e).

(f) Requires the local toll project entity and TxDOT, after agreeing on the terms and conditions for a toll project under Subsection (e), or after MPO approval of the terms and conditions for the State Highway 99 project, to mutually determine which entity, including a third party under contract with the local toll project entity or TxDOT, will develop a market valuation of the toll project that is based on the terms and conditions established under Subsection (e). Provides that TxDOT and the local toll project entity have 90 days after the date of the receipt

of a final draft version of the market valuation with a specific designation to mutually approve the market valuation included in the draft version or, in the alternative, negotiate and agree on a different market valuation. Provides that the market valuation in the draft version is considered to be final for purposes of this section and mutually approved on the last day of that period if TxDOT and the local toll project entity are unable to agree on a market valuation within the 90-day period.

(f-1) Authorizes TxDOT and a local toll project entity to agree to waive the requirement to develop a market valuation under this section.

(f-2) Prohibits TxDOT and the local toll project entity from developing, constructing, or operating a project as a toll project if TxDOT and the local toll project entity are unable to mutually determine which entity will develop the market valuation of the toll project under Subsection (f).

(f-3) Prohibits a third party that develops a market valuation under Subsection (f) from performing certain actions.

(g) Provides that a local toll project entity has the first option to develop, finance, construct, and operate a toll project under the terms and conditions established under Subsection (e). Provides that a local toll project entity, other than an RMA under Chapter 370 (Regional Mobility Authorities), has six months after the date that the market valuation is mutually approved under Subsection (f) to decide whether to exercise the option. Requires the MPO for the region in which a project proposed to be located within the boundaries of an RMA under Chapter 370 is located to determine whether the toll project should be developed using the business terms incorporated in the market valuation. Provides that an RMA has six months after the date the MPO decides whether to exercise the option to develop the project if the MPO determines that the toll project should be developed using the business terms in the market valuation. Requires a local toll project, after exercising the option and within two years after the date on which all environmental requirements necessary for the development of the toll project are secured and all legal challenges to development are concluded, to perform certain actions if a local toll project entity exercises the option with respect to a toll project under this subsection.

(h) Requires a local toll project entity to begin an environmental review within six months of exercising an option if it exercises the option with respect to a toll project under Subsection (g) and has not begun the environmental review of the project.

(i) Provides that TxDOT has the option to develop, finance, construct, and operate the toll project under the terms and conditions agreed to under Subsection (e) if a local toll project entity does not exercise the option to develop, finance, construct, and operate a toll project under Subsection (g), or does not enter into a contract for the construction of the project and make a commitment described in Subsection (g). Provides that TxDOT has two months after the date the local toll project entity fails to exercise its option or enter into a construction contract and make a commitment described in Subsection (g)(2) to decide whether to exercise its option. Requires TxDOT, after exercising the option and within two years after the date on which all environmental requirements necessary for the development of the project are secured and all legal challenges to such development are concluded, to perform certain actions if it exercises its option with respect to a toll project under this subsection.

(j) Authorizes a local toll project entity and TxDOT to meet again for the purpose of agreeing on revised terms and conditions for the development, construction, and operation of the toll project, and requires the local toll project entity and TxDOT to follow the process prescribed in Subsections (f)-(i) if TxDOT does not exercise the option to develop, finance, construct, and operate a toll project under

Subsection (i), or does not enter into a contract for the construction of the project and make a commitment described in Subsection (i)(2) within the two-year period prescribed in Subsection (i).

(k) Requires the commission and TxDOT, consistent with federal law, to assist a local toll project entity in the financing, construction, and operation of a toll project for which the local toll project entity has exercised its option to develop, finance, construct, and operate the project under Subsection (g) by allowing the local toll project entity to use state highway right-of-way and to access the state highway system as necessary to construct and operate the toll project. Authorizes the toll project entity and the commission to agree to remove the project from the state highway system and transfer ownership to the local toll project entity, notwithstanding any other law. Prohibits the commission or TxDOT from requiring a local toll project entity to pay for the use of the right-of-way or access, except to reimburse TxDOT for actual costs incurred or to be incurred by TxDOT that are owed to a third party, including the federal government, as a result of that use by the local toll project entity. Requires certain amounts to be deducted from the amount of the toll project entity commitment under Subsection (g)(2) if a local toll project entity exercises its option to develop, construct, and operate a toll project under this section.

(l) Requires a local toll project entity to enter into an agreement with TxDOT for any project for which the entity has exercised its option to develop, finance, construct, and operate the project under Subsection (g) and for which the entity intends to use state highway right-of-way. Requires an agreement entered into under this subsection to contain provisions necessary to ensure that the local toll project entity's construction, maintenance, and operation of the project complies with the requirements of applicable federal and state law.

(m) Provides that the commission and TxDOT are not liable for any damages that result from a local toll project entity's use of state highway right-of-way or access to the state highway system under this section, regardless of the legal theory, statute, or cause of action under which liability is asserted, notwithstanding any other law.

(n) Provides that an agreement entered into by a local toll project entity and TxDOT in connection with a toll project that is financed, constructed, or operated by the local toll project entity and that is on or directly connected to a highway in the state highway system does not create a joint enterprise for liability purposes.

(o) Authorizes the commission or TxDOT to take any action that in its reasonable judgment is necessary to comply with any federal requirement to enable this state to receive federal-aid highway funds, notwithstanding an action of a local toll project entity taken under this section.

(p) Authorizes a local toll project entity and TxDOT to issue bonds, including revenue bonds and refunding bonds, or other obligations, and enter into credit agreements, to pay certain costs associated with a project under this section.

(q) Provides that the provisions of this section requiring metropolitan planning organization approval of the terms and conditions for the State Highway 99 project expire August 31, 2009.

(r) Provides that this section expires August 31, 2011.

(s) Sets forth the projects and areas to which this section does not apply.

Sec. 228.012. PROJECT SUBACCOUNTS. (a) Requires TxDOT to create a separate account in the state highway fund to hold payments received by TxDOT under a CDA, the surplus revenue of a toll project or system, and payments received under Sections 228.0111(g)(2) and (i)(2). Requires TxDOT to create subaccounts in the account for

each project, system, or region. Requires interest earned on money in a subaccount to be deposited to the credit of that subaccount.

(b) Requires TxDOT to hold money in a subaccount in trust for the benefit of the region in which a project or system is located and authorizes TxDOT to assign the responsibility for allocating money in a subaccount to a metropolitan planning organization in which the region is located. Requires money to be allocated to projects authorized by Section 228.0055 or Section 228.006, as applicable, except as provided by Subsection (c).

(c) Requires money in a subaccount received from a county or TxDOT under Section 228.0111 in connection with a project for which a county acting under Chapter 284 has the first option to be allocated to transportation projects located in the county and the counties contiguous to that county.

(d) Requires TxDOT, not later than January 1 of each odd-numbered year, to submit to the Legislative Budget Board, in the format prescribed by the Legislative Budget Board, a report on cash balances in the subaccounts created under this section and expenditures made with money in those subaccounts.

(e) Prohibits the commission or TxDOT from revising the formula as provided in TxDOT's unified transportation program or a successor document in a manner that results in a decreased of a TxDOT district's allocation because of the deposit of a payment into a project subaccount or a commitment to undertake an additional transportation project under Section 228.0111 or from taking any action that would reduce funding allocated to a TxDOT district because of the deposit of a payment received from TxDOT or a local toll project entity into a project subaccount or a commitment to undertake an additional transportation project under Section 228.0111.

SECTION 7.02. Provides that Section 228.0111, Transportation Code, as added by this article, applies to a project associated with State Highway 161 in Dallas County.

ARTICLE 8. COUNTY AUTHORITY IN CONNECTION WITH CERTAIN TOLL PROJECTS

SECTION 8.01. Amends Section 284.001(3), Transportation Code, to redefine "project."

SECTION 8.02. Amends Section 284.003, Transportation Code, as follows:

Sec. 284.003. **PROJECT AUTHORIZED; CONSTRUCTION, OPERATION, AND COST.** (a) Creates this subsection from existing text. Authorizes a county, acting through the commissioners court of the county, or a local government corporation, without state approval, supervision, or regulation, to exercise the powers of an RMA under Chapter 370 on adoption of an order and in connection with a project. Authorizes a county, acting through the commissioners court of the county, or a local government corporation, without state approval, supervision, or regulation, to enter into a CDA with a private entity to design, develop, finance, construct, maintain, repair, extend, or expand a proposed or existing project in the county to the extent and in the manner applicable to TxDOT under Chapter 223 (Bids and Contracts for Highway Projects) or to a regional tollway authority (authority) under Chapter 366. Makes nonsubstantive changes.

(b) Authorizes the county or a local government corporation to exercise a power provided by Subsection (a)(6) only in a manner consistent with the other powers provided by this chapter. Provides that this chapter prevails to the extent of a conflict between this chapter and Chapter 370.

(c) Provides that a project or any portion of a project that is owned by the county and licensed or leased to a private entity or operated by a private entity under this chapter to provide transportation services to the general public is public property

used for a public purpose and exempt from taxation by this state or a political subdivision of this state.

(d) Requires the county, if it constructs, acquires, improves, operates, maintains, or pools a project under this chapter, to submit to TxDOT, before December 31 of each even-numbered year, a plan for the project that includes the time schedule for the project and described the use of project funds. Authorizes the plan to provide for and permit the use of project funds and other money, including state and federal funds, available to the county for roads, streets, highways, and other related facilities in the county that are not part of a project under this chapter. Provides that a plan is not subject to approval, supervision, or regulation by the commission or TxDOT and provides exceptions.

(e) Provides that an action taken under this chapter is not subject to approval, supervision, or regulation by an MPO, except as provided by federal law.

(f) Authorizes the county to enter into a protocol or other agreement with the commission or TxDOT to implement this section through the cooperation of the parties to the agreement.

(g) Requires an action of a county taken under this chapter to comply with the requirements of applicable federal law. Requires the foregoing compliance requirement to apply to the role of MPOs under federal law, including the approval of projects for conformity to the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way and access to federal-aid highways. Authorizes the commission or TxDOT to take any action that is necessary in its reasonable judgment to comply with any federal requirement to enable the state to receive federal-aid highway funds, notwithstanding an action of a county taken under this chapter.

SECTION 8.03. Amends Subchapter A, Chapter 284, Transportation Code, by adding Sections 284.0031 and 284.0032 and amending Section 284.004, as follows:

Sec. 284.0031. OTHER ROAD, STREET, OR HIGHWAY PROJECTS. (a) Authorizes the commissioners court of a county or a local government cooperation, without state approval, supervision, or regulation, to authorize the use or pledge of surplus revenue to pay or finance the costs of a project for certain purposes that are not part of a project under this chapter and to prescribe certain terms of the use of the surplus revenue.

(b) Authorizes a county to enter into an agreement with the commission, TxDOT, a local government entity, or another political subdivision of this state in order to implement this section.

(c) Prohibits a county from taking an action under this section that violates or impairs a bond resolution, trust agreement, or indenture that governs the use of the revenue of a project.

(d) Provides that a county has the same powers, including the powers to finance and to encumber surplus revenue, and is authorized to use the same procedures with respect to certain activities as are available to the county with respect to a project under this chapter, except as provided by this section.

(e) Requires any work on the state highway system to be approved by TxDOT and requires TxDOT to supervise and regulate any work on a highway in the state highway system, notwithstanding other provisions of this section.

Sec. 284.0032. TRANS-TEXAS CORRIDOR PROJECTS. Provides that if a county is requested by the commission to participate in the development of a project under this chapter that has been designated as part of TTC, the county has, in addition to all powers granted by this chapter, all powers of TxDOT related to the development of a project that has been designated as part of TTC.

Sec. 284.004. USE OF COUNTY PROPERTY. (a) Creates this subsection from existing text.

(b) Authorizes a county to use state highway right-of-way and to access state highway right-of-way in accordance with Sections 228.011 and 228.0111, in addition to authority granted by other law.

SECTION 8.04. Amends Sections 284.008(c) and (d), Transportation Code, as follows:

(c) Includes that, when all of the bonds and interest on the bonds that are payable from or secured by revenues of the project by the issuer of the bonds or another person with the consent or approval of the issuer or a sufficient amount for the payment of all bonds and the interest on the bonds to maturity has been set aside by the issuer of the bonds or another person with the consent or approval of the insurer in a trust fund held for the benefit of the bondholders, a project becomes a part of the state highway system and the commission is required to maintain the project without tolls, except as provided by Subsection (d).

(d) Deletes existing text authorizing a county to request that the commission adopt an order stating that a project will not become part of the state highway system under Subsection (c) only before construction on a project under this chapter begins.

SECTION 8.05. Amends Sections 284.065(b) and (c), Transportation Code, as follows:

(b) Authorizes an existing project to be pooled in whole or in part with a new project or another existing project.

(c) Authorizes a project to be pooled more than once, rather than prohibiting a project from being pooled more than once.

ARTICLE 9. REGIONAL TOLLWAY AUTHORITIES

SECTION 9.01. Amends Section 366.003, Transportation Code, by adding Subdivision (9-a) to define "surplus revenue."

SECTION 9.02. Amends Section 366.301, Transportation Code, by adding Subsection (e), as follows:

(e) Requires an action of an authority taken under this chapter to comply with the requirements of applicable federal law, including provisions relating to the role of MPOs under federal law and the approval of projects for conformity with the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way of and access to federal-aid highways. Authorizes the commission or TxDOT, notwithstanding any action of an authority taken under this chapter, to take any action that in its reasonable judgment is necessary to comply with any federal requirement to enable this state to receive federal-aid highway funds.

SECTION 9.03. Amends Chapter 366, Transportation Code, by adding Subchapter H, as follows:

SUBCHAPTER H. COMPREHENSIVE DEVELOPMENT AGREEMENTS

Sec. 366.401. COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Authorizes an authority to use a CDA with a private entity for certain purposes related to a turnpike project.

(b) Provides that a CDA is an agreement with a private entity that, at a minimum, provides for the design, construction, rehabilitation, expansion, or improvement of a turnpike project and may also provide for the financing, acquisition, maintenance, or operation of a turnpike project.

(c) Authorizes an authority to negotiate provisions relating to professional and consulting services provided in connection with a CDA.

(d) Authorizes an authority to authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

Sec. 366.402. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Require an authority that enters into a CDA to use a competitive procurement process that provides the best value for the authority. Authorizes an authority to accept unsolicited proposals for a proposed turnpike project or solicit proposals in accordance with this section.

(b) Requires an authority to establish rules and procedures for accepting unsolicited proposals that require the private entity to include certain information in the proposal.

(c) Requires an authority to publish a notice advertising a request for competing proposals and qualifications in the Texas Register that includes the criteria to be used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which proposals must be received if the authority takes certain actions.

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

(e) Authorizes an authority to interview a private entity submitting an unsolicited proposal or responding to a request under Subsection (c). Requires the authority to evaluate each proposal based on the criteria described in the request for competing proposals and qualifications and authorizes the authority to qualify or shortlist private entities to submit detailed proposals under Subsection (f). Requires the authority to qualify or shortlist at least two private entities to submit detailed proposals for a project under Subsection (f) unless the authority does not receive more than one proposal or one response to a request under Subsection (c).

(f) Requires an authority to issue a request for detailed proposals from all private entities qualified or shortlisted under Subsection (e) if the authority proceeds with the further evaluation of a proposed project. Authorizes a request under this subsection to require certain additional information the authority considers relevant or necessary.

(g) Authorizes an authority, in issuing a request for proposals under Subsection (f), to solicit input from entities qualified under Subsection (e) or any other person. Authorizes an authority to also solicit input regarding alternative technical concepts after issuing a request under Subsection (f).

(h) Requires an authority to evaluate each proposal based on the criteria described in the request for detailed proposals and select the private entity whose proposal offers the apparent best value to the authority.

(i) Authorizes an authority to enter into negotiations with the private entity whose proposal offers the apparent best value.

(j) Authorizes an authority, if at any point in negotiations under Subsection (i) it appears to the authority that the highest ranking proposal will not provide the authority with the overall best value, to enter into negotiations with the private entity submitting the next-highest ranking proposal.

(k) Authorizes an authority to withdraw a request for competing proposals and qualifications or request for detailed proposals at any time, and to then publish a new request for competing proposals and qualifications.

(l) Authorizes an authority to require that an unsolicited proposal be accompanied by a nonrefundable fee sufficient to cover all or part of its cost to review the proposal.

(m) Authorizes an authority to pay an unsuccessful private entity that submits a responsive proposal in response to a request for detailed proposals under Subsection (f) a stipulated amount in exchange for the work product contained in that proposal. Requires a stipulated amount to be stated in the request for proposals and prohibits it from exceeding the value of any work product contained in the proposal that can, as determined by the authority, be used by the authority in the performance of its functions. Provides that the use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the receipt of the stipulated amount. Sets forth certain effects resulting after payment of the stipulated amount.

(n) Authorizes an authority to prescribe the general form of a CDA and include any matter the authority considers advantageous to the authority. Requires the authority and the private entity to finalize the specific terms of a CDA,

(o) Provides that Section 366.185 (Competitive Bidding) and Subchapter A (Competitive Bids), Chapter 223, of this code, and Chapter 2254 (Professional and Consulting Services), Government Code, do not apply to a CDA entered into under this subchapter.

Sec. 366.403. CONFIDENTIALITY OF INFORMATION. (a) Provides that, to encourage private entities to submit proposals under this subchapter, certain information is confidential, not subject to disclosure, inspection, or copying under Chapter 552 (Public Information), Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract is entered into for a proposed project.

(b) Provides that, after an authority completes its final ranking of proposals under Section 366.402(h), the final rankings of each proposal under each of the published criteria are not confidential.

Sec. 366.404. PERFORMANCE AND PAYMENT SECURITY. (a) Requires an authority to require a private entity entering into a CDA under this subchapter to provide a performance and payment bond or an alternative form of security in a certain amount, notwithstanding the requirements of Subchapter B (General Requirements; Liability), Chapter 2253, Government Code.

(b) Requires a performance and payment bond or alternative form of security to be in an amount equal to the cost of constructing or maintaining the project.

(c) Requires an authority to set the amount of the bonds or the alternative forms of security if the authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b).

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

(e) Prohibits the amount of the payment security from being less than the amount of the performance security.

(f) Authorizes the authority to require certain alternative forms of security, in addition to, or instead of, performance and payment bonds.

(g) Requires an authority by rule to prescribe requirements for alternative forms of security provided under this section.

Sec. 366.405. OWNERSHIP OF TURNPIKE PROJECTS. (a) Provides that a turnpike project that is the subject of a CDA with a private entity, including the facilities acquired or constructed on the project, is public property and is owned by the authority.

(b) Authorizes an authority, notwithstanding Subsection (a), to enter into an agreement that provides the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a turnpike project, including supplemental facilities. Provides that at the termination of the agreement, the turnpike project, including the facilities, are to be in a state of proper maintenance as determined by the authority and are required to be returned to the authority in satisfactory condition at no further cost.

Sec. 366.406. LIABILITY FOR PRIVATE OBLIGATIONS. Prohibits an authority from incurring a financial obligation for a private entity that designs, develops, finances, constructs, operates, or maintains a turnpike project. Provides that the authority or a political subdivision of the state is not liable for any financial or other obligation of a turnpike project solely because a private entity constructs, finances, or operates any part of the project.

Sec. 366.407. TERMS OF PRIVATE PARTICIPATION. (a) Requires an authority to negotiate certain terms of private participation in a turnpike project under this subchapter.

(b) Authorizes a CDA entered into under this subchapter to include any provision the authority considers appropriate, including certain provisions.

(c) Authorizes an authority to enter into a CDA under this subchapter with a private participant only if the project is identified in TxDOT's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan.

(d) Provides that Section 366.406 does not apply to an obligation of an authority under a CDA, nor is an authority otherwise constrained from issuing bonds or other financial obligations of a turnpike project payable solely from revenues of that turnpike or from amounts received under a CDA.

(e) Authorizes an obligation of an authority under a CDA entered into under this subchapter, notwithstanding any other law, and subject to compliance with the dispute resolution procedure set out in the CDA, to make or secure payments to a person because of the termination of the agreement, including the purchase of the interest of a private participant or other investor in a project to be enforced by mandamus against the authority in a district court of any county of the authority, and waives the sovereign immunity of the authority for that purpose. Requires the district courts of any county of the authority to have exclusive jurisdiction and venue over and to determine and adjudicate all issues necessary to adjudicate any action brought under this subsection. Provides that the remedy provided by this subsection is in addition to any legal and equitable remedies that may be available to a party to a CDA.

(f) Requires the private participant to submit certain information for approval to an authority that enters into a CDA with a private participant that includes the collection by the private participant of tolls for the use of a toll project.

(g) Authorizes a CDA with a private participant that includes the collection by the private participant of tolls for the use of a toll project to be for a term not

longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private participant, not to exceed a total term of 52 years, except as provided by this subsection. Requires the contract to contain an explicit mechanism for setting the price for the purchase by TxDOT of the interest of the private participant in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the contract.

Sec. 366.408. **RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATING PROCESS.** (a) Requires an authority, for certain purposes, to adopt rules, procedures, and other guidelines governing selection of private participants for CDAs and negotiations of CDAs. Requires the rules to contain criteria relating to the qualifications of the participants and the award of the contracts.

(b) Requires an authority to have up-to-date procedures for participation in negotiations under this subchapter.

(c) Provides that an authority has exclusive judgment to determine the terms of the agreement.

Sec. 366.409. **USE OF CONTRACT PAYMENTS.** (a) Requires payments received by an authority under a CDA to be used by the authority to finance the construction, maintenance, or operation of a turnpike project or a highway.

(b) Requires the authority to allocate the distribution of funds received under Subsection (a) to the counties of the authority based on the percentage of toll revenue from users, from each county, of the project that is the subject of the CDA. Requires each entity responsible for collecting tolls for a project, to assist the authority in determining the allocation, to calculate on an annual basis the percentage of toll revenue from users of the project from each county within the authority based on the number of recorded electronic toll collections.

SECTION 9.04. Amends Section 366.033(f), Transportation Code, to authorize an authority to rent, lease, franchise, license, or otherwise make portions of any property of the authority, including tangible or intangible property, rather than its properties, available for use by others in furtherance of its powers under this chapter by increasing the feasibility or efficient operation, rather than revenue, of a turnpike project or system or the revenue of the authority.

SECTION 9.05. Amends Subchapter B, Chapter 366, Transportation Code, by adding Sections 366.037 and 366.038, as follows:

Sec. 366.037. **OTHER HIGHWAY PROJECTS.** (a) Authorizes the board of an authority (board), by resolution, in addition to the powers granted under this chapter and without supervision or regulation by any state agency or local governmental entity, but subject to an agreement entered into under Subsection (c), and on making the findings set forth in this subsection, to authorize the use of surplus revenue of a turnpike project or system for the study, design, construction, maintenance, repair, and operation of a highway or similar facility that is not a turnpike project if the highway or similar facility meets certain criteria.

(b) Authorizes the board in the resolution to prescribe terms for the use of the surplus revenue, including the manner in which the highway or related facility is required to be studied, designed, constructed, maintained, repaired, or operated.

(c) Requires an authority to enter into an agreement to implement this section with TxDOT, the commission, a local governmental entity, or another political subdivision that owns a street, road, alley, or highway that is directly affected by the authority's turnpike project or related facility.

(d) Prohibits an authority from taking certain actions.

(e) Requires the board to make certain considerations in authorizing expenditures under this section.

(f) Provides that an authority has the same powers and is authorized to use the same procedures with respect to certain actions under this section as are available to the authority with respect to a turnpike project or system, except as provided by this section.

(g) Requires any work on the state highway system to be approved by TxDOT and requires TxDOT to supervise and regulate any work on a highway in the state highway system, notwithstanding other provisions of this section.

Sec. 366.038. TOLL COLLECTION. Requires an authority to provide, for reasonable compensation, customer service and other toll collection and enforcement services for a toll project in the boundaries of the authority, regardless of whether the toll project is developed, financed, constructed, and operated under an agreement, including a CDA, with the authority of another entity.

SECTION 9.06. Amends the heading to Section 366.185, Transportation Code, to read as follows:

Sec. 366.185. ENGINEERING, DESIGN, AND CONSTRUCTION SERVICES.

SECTION 9.07. (a) Amends Section 366.185, Transportation Code, by amending Subsection (a) and adding Subsections (c)-(f), as follows:

(a) Authorizes, rather than requires, a contract made by an authority that requires the expenditure of public funds for the construction or maintenance of a turnpike project, to be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the authority's criteria.

(c) Authorizes an authority to procure a combination of engineering, design, and construction services in a single procurement for a turnpike project, provided that any contract awarded results in the best value to the authority.

(d) Requires the authority to adopt rules governing the award of contracts for engineering, design, construction, and maintenance services in a single procurement.

(d-1) Prohibits the rules adopted under Subsection (d) from materially conflicting with the design-build procedures provided by Subchapter J (Design-Build Procedures for Certain Civil Works Projects), Chapter 271, Local Government Code, and requires these rules to provide materially similar injunctive and declaratory action enforcement rights regarding the improper disclosure or use of unique or nonordinary information as provided in that subchapter.

(e) Authorizes an authority, notwithstanding any other law requiring a competitive bidding procedure, to let a contract for the construction of a turnpike project by a construction manager-at-risk procedure under which the construction manager-at-risk provides consultation to the authority during the design of the turnpike project and is responsible for construction of the turnpike project in accordance with the authority's specifications. Requires a construction manager-at-risk to be selected on the basis of certain criteria established by the authority.

(f) Requires the authority to adopt rules governing the award of contracts using construction manager-at-risk procedures under this section.

(b) Makes application of Section 366.185(d-1), Transportation Code, as added by this section, contingent upon the passage of H.B. No. 1886, Acts of the 80th Legislature, Regular Session, 2007.

SECTION 9.08. Amends Subchapter F, Chapter 366, Transportation Code, by adding Sections 366.2521 and 366.2522, as follows:

Sec. 366.2521. GIFTS AND CONTRIBUTIONS; OFFENSE. (a) Defines "benefit."

(b) Provides that a director of the board of directors of any regional tollway authority (director) commits an offense if the person solicits, accepts, or agrees to accept any benefit from certain persons.

(c) Authorizes a director who receives an unsolicited benefit that the director is prohibited from accepting under this section to donate the benefit to certain governmental entities.

(d) Sets forth specific fees and benefits to which this section does not apply.

(e) Provides that an offense under this section is a Class A misdemeanor.

(f) Provides that if conduct that constitutes an offense under this section also constitutes an offense under Section 36.08 (Gift to Public Servant By Person Subject To His Jurisdiction), Penal Code, the actor is authorized to be prosecuted under either section.

Sec. 366.2522. OFFERING GIFT TO A DIRECTOR; OFFENSE. Establishes that a person commits Class A misdemeanor if the person offers, confers, or agrees to confer any benefit on a director that the person knows the director is prohibited from accepting under Section 366.2521. Provides that if conduct that constitutes an offense under this section also constitutes an offense under Section 36.09 (Offering Gift to Public Servant), Penal Code, the actor is authorized to be prosecuted under either section.

SECTION 9.09. Amends Subchapter F, Chapter 366, Transportation Code, by adding Section 366.2575, as follows:

Sec. 366.2575. BOARD VOTE ON COUNTY REQUEST. Authorizes the board to vote on whether to build a project that the county requests on request of the commissioners court of a county of an authority.

SECTION 9.10. Amends Subchapter G, Chapter 366, Transportation Code, by adding Section 366.305, as follows:

Sec. 366.305. TRANS-TEXAS CORRIDOR PROJECTS. Requires an authority to have, in addition to all powers granted in this chapter, all powers of TxDOT related to the development of TTC projects if the authority is requested by the commission to participate in the development of a turnpike project that has been designated as part of the TTC.

SECTION 9.11. Invalidates the TxDOT/NTTA Regional Protocol entered into between TxDOT and the North Texas Tollway Authority and approved on August 10, 2006, by the tollway authority and on August 24, 2006, by TxDOT.

ARTICLE 10. REGIONAL MOBILITY AUTHORITIES

SECTION 10.01. Amends Section 370.251, Transportation Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Provides an exception as provided by Subsection (a-1).

(a-1) Authorizes an individual to be a representative of an entity that also has representation on an MPO in the region where the municipality is located is required to be a resident of Texas regardless of whether the MPO's geographic area includes territory

in another state in order to be eligible to serve as director of an RMA created by a municipality.

SECTION 10.02. Amends Section 370.301(d), Transportation Code, as follows:

(d) Requires an action of an RMA taken under this chapter to comply with the requirements of applicable federal law, including provisions relating to the role of MPOs under federal law and the approval of projects for conformity with the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way of an access to federal-aid highways. Authorizes the commission or TxDOT to take any action that in its reasonable judgment is necessary to comply with any federal requirement to enable this state to receive federal-aid highway funds, notwithstanding an action of an RMA taken under this chapter.

SECTION 10.03. (a) Amends Section 370.314, Transportation Code, as follows:

Sec. 370.314. New heading: DESIGN-BUILD PROCEDURES. (a) Creates this subsection from existing text.

(b) Prohibits procedures adopted under Subsection (a) from materially conflicting with the design-build procedures provided by Subchapter J, Chapter 271, Local Government Code.

(b) Makes application of Subsection (a) of this section contingent upon passage of H.B. No. 1886, Acts of the 80th Legislature, Regular Session, 2007.

ARTICLE 11. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR TOLL PROJECTS

SECTION 11.01. Amends Subtitle G, Title 6, Transportation Code, by adding Chapter 371, as follows:

CHAPTER 371. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR HIGHWAY TOLL PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 371.001. DEFINITIONS. Defines “toll project” and “toll project entity.”

Sec. 371.002. APPLICABILITY. Provides that this chapter does not apply to a project for which the commission selected an apparent best value proposer before May 1, 2007.

[Reserves Sections 371.003-371.050 for expansion.]

SUBCHAPTER B. OVERSIGHT

Sec. 371.051. ATTORNEY GENERAL REVIEW. Prohibits a toll project entity from entering into a CDA unless the attorney general reviews the proposed agreement and determines that it is legally sufficient.

Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD AND STATE AUDITOR. (a) Requires a toll project entity, not later than the 10th day after the date of qualifying or shortlisting private entities to submit detailed proposals for a toll project, to provide the Legislative Budget Board (LBB) with the name of qualifying or shortlisted proposers and their team members.

(b) Requires a toll project entity to provide the LBB with certain information at least 30 days before entering into a CDA.

(c) Requires a toll project entity, before entering into a CDA, to provide the state auditor with the traffic and revenue report prepared by the toll project entity or its

consultant for the project. Prohibits the entity from entering into the CDA before the 30th day after the date that the state auditor receives the report so that the state auditor may review and comment on the report and the methodology used to develop the report.

(d) Provides that before the CDA is entered into, financial forecasts and traffic and revenue reports prepared by or for a toll project entity for the project are confidential and are not subject to disclosure, inspection, or copying under Chapter 552, Government Code. Provides that on or after the date the CDA is entered into, the financial forecasts and traffic revenue reports are public information under Chapter 552, Government Code.

[Reserves Sections 371.053-371.100 for expansion.]

SUBCHAPTER C. CONTRACT PROVISIONS

Sec. 371.101. **TERMINATION FOR CONVENIENCE.** (a) Requires a toll project entity having rulemaking authority by rule and a toll project entity without rulemaking authority by official action to develop a formula for making termination payments to terminate a CDA under which a private participant receives the right to operate and collect revenue from a toll project. Requires a formula to calculate an estimated amount of loss to the private participant as a result of the termination for convenience.

(b) Requires the formula to be based on investments, expenditures, and the internal rate of return on equity under the agreed base case financial model as projected over the original term of the agreement, plus an agreed percentage markup on that amount.

(c) Prohibits a formula under Subsection (b) from including any estimate of future revenue from the project, if not included in an agreed base case financial model under Subsection (b). Prohibits compensation to the private participant upon termination for convenience from exceeding the amount determined using the formula under Subsection (b).

Sec. 371.102. **TERMINATION OF CERTAIN COMPREHENSIVE DEVELOPMENT AGREEMENTS.** Authorizes a toll project entity, if the entity elects to terminate a CDA under which a private participant receives the right to operate and collect revenue from a project, to issue bonds to make any applicable termination payments to the private participant or to purchase the interest of the private participant in the CDA or related property if authorized to issue bonds for that purpose, or to provide for the payment of obligations of the private participant incurred pursuant to the CDA.

Sec. 371.103. **PROHIBITION AGAINST LIMITING OR PROHIBITING CONSTRUCTION OF TRANSPORTATION PROJECTS.** (a) Prohibits a CDA from containing a provision that limits or prohibits the construction, reconstruction, expansion, rehabilitation, operation, or maintenance of a highway or other transportation project, as that term is defined by Section 370.003 (Definitions), by the toll project entity or other governmental entity, or by a private entity under a contract with the toll project entity or other governmental entity.

(b) Authorizes a CDA, except as provided by Subsection (c), to contain a provision authorizing the toll project entity to compensate the private participant in the CDA for the loss of toll revenues attributable to the construction by the entity of certain limited access highway projects, less the private participant's decreased operating and maintenance costs attributable to the highway project, if any.

(c) Prohibits a CDA from requiring the toll project entity to provide compensation for construction of certain projects.

(d) Provides that the private participant has the burden of proving any loss of toll revenue resulting from the construction of a highway project described by Subsection (b).

(e) Requires a CDA that contains a provision described by Subsection (b) to require the private participant to provide compensation to the toll project entity in the amount of any increase in toll revenues received by the private participant that is attributable to the construction of a highway project described by Subsection (b), less the private participant's increased operation and maintenance costs attributable to the highway project, if any.

[Reserves Sections 371.104-371.150 for expansion.]

SUBCHAPTER D. DISCLOSURE OF INFORMATION

Sec. 371.151. DISCLOSURE OF FINANCIAL INFORMATION. (a) Requires a toll project entity, before the entity enters into a contract for the construction of a toll project, to publish, in the manner provided by Section 371.152, certain information regarding the financing of a toll project, whether the toll project will continue to be tolled after the debt is repaid, a description of the method used to set toll rates, a description of any contract terms relating to termination for convenience provisions, the initial toll rates, the methodology for increasing toll rates, the projected toll rates at the end of the contract, and the projected total amount of concession payments.

(b) Prohibits a toll project entity from entering into a contract for the construction of a toll project before the 30th day after the date of publication of the information under Section 371.152.

Sec. 371.152. DISCLOSURE BY PUBLICATION. (a) Requires the information under Section 371.151 to be published in a newspaper published in the county in which the toll project is to be constructed once a week for at least two weeks before entering into the contract and in two other newspapers the entity may designate.

(b) Authorizes the information to be published in two successive issues of a newspaper published in the county in which the project is to be constructed, rather than as required by Subsection (a), if the toll project entity estimates the contract to involve an amount less than \$300,000.

(c) Requires notice to be published in a newspaper published in a certain county if a newspaper is not published in the county in which the improvement is to be made.

Sec. 371.153. HEARING. (a) Requires a toll project entity to hold a public hearing on the information published under Section 371.152 not later than the 10th day after its publication and not less than 10 days before it enters into the contract.

(b) Requires a hearing under this section to be held in the county seat of the county in which the toll project is located.

(c) Requires a hearing under this section to include a formal presentation and a mechanism for responding to comments and questions.

ARTICLE 12. METROPOLITAN PLANNING ORGANIZATIONS

SECTION 12.01. Amends Subchapter D, Chapter 472, Transportation Code, by adding Section 472.034, as follows:

Sec. 472.034. ETHICS POLICY. Requires each policy board to adopt bylaws establishing an ethics policy to prevent a policy board member from having a conflict of interest in business before the MPO.

ARTICLE 13. TOLL COLLECTION.

SECTION 13.01. Amends Subchapter B, Chapter 228, Transportation Code, by adding Section 228.059, as follows:

Sec. 228.059. TOLL COLLECTION AND ENFORCEMENT BY OTHER ENTITY; OFFENSE. Provides that an entity operating a toll lane pursuant to Section 228.007(b), has, with regard to toll collection and enforcement of that toll lane, the same powers and duties as TxDOT under this chapter. Provides that a person who fails to pay a toll or administrative fee imposed by the entity commits an offense. Provides that each failure to pay a toll or administrative fee imposed by the entity is a separate offense. Provides that an offense under this section is a misdemeanor punishable by a fine not to exceed \$250, and the provisions of Section 228.056 apply to the prosecution of the offense under this section. Authorizes the entity to use revenues for improvement, extension, expansion, or maintenance of the toll lane.

ARTICLE 14. ISSUANCE OF BONDS

SECTION 14.01. Amends Sections 222.003(b) and (d), Transportation Code, as follows:

(b) Prohibits the aggregate principal amount of the bonds and other public securities that are issued from exceeding \$6 billion, rather than \$3 billion. Authorizes the commission to only issue bonds or other public securities in an aggregate principal amount of not more than \$1.5 billion, rather than \$1 billion, each year.

(d) Requires the commission, of the aggregate principal amount of bonds and other public securities that may be issued under this section, to issue bonds or other public securities in an aggregate principal amount of \$1.2 billion, rather than \$600 million, to fund projects that reduce accidents or correct or improve hazardous locations on the state highway system.

ARTICLE 15. EFFECTIVE DATE

SECTION 15.01. Effective date: upon passage or September 1, 2007.