

By: Krusee

H.B. No. 3712

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the authority of regional mobility authorities,
3 including the participation of private entities in authority
4 projects.

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

6 SECTION 1. Subchapter E, Chapter 370, Transportation Code,
7 is amended by adding Section 370.194 to read as follows:

8 Sec. 370.194. MITIGATION OF ADVERSE ENVIRONMENTAL IMPACTS.

9 If authorized by an applicable regulatory authority, an authority
10 may offer to purchase a conservation easement from the owner of real
11 property to mitigate an adverse environmental impact that is a
12 direct result of a transportation project.

13 SECTION 2. Section 370.302(i), Transportation Code, is
14 amended to read as follows:

15 (i) Except as provided by this section, an [An] agreement
16 with a private entity that includes the collection by the private
17 entity of tolls for the use of a transportation project may not be
18 for a term longer than 50 years. An agreement may be for a term not
19 longer than 70 years if the agreement:

20 (1) contains an explicit mechanism for setting the
21 price for the purchase by an authority of the interest of the
22 private entity in the agreement and related property, including any
23 interest in a highway or other facility designed, developed,
24 financed, constructed, operated, or maintained under the

1 agreement; and

2 (2) outlines the benefit the state will derive from
3 having a term longer than 50 years.

4 SECTION 3. Sections 370.306(c) and (i), Transportation
5 Code, are amended to read as follows:

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

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

13 (2) the authority authorizes the further evaluation of
14 an unsolicited proposal.

15 (i) An authority may enter into discussions with the private
16 entity whose proposal offers the apparent best value. [~~The~~
17 ~~discussions shall be limited to:~~

18 [~~(1) incorporation of aspects of other proposals for~~
19 ~~the purpose of achieving the overall best value for the authority,~~

20 [~~(2) clarifications and minor adjustments in~~
21 ~~scheduling, cash flow, and similar items, and~~

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

24 SECTION 4. Section 370.307(a), Transportation Code, is
25 amended to read as follows:

26 (a) To encourage private entities to submit proposals under
27 Section 370.306, the following information is confidential, is not

1 subject to disclosure, inspection, or copying under Chapter 552,
2 Government Code, and is not subject to disclosure, discovery,
3 subpoena, or other means of legal compulsion for its release until a
4 final contract for a proposed project is entered into:

5 (1) all or part of a proposal submitted by a private
6 entity for a comprehensive development agreement, except
7 information provided under Sections 370.306(b)(1) and (2), unless
8 the private entity consents to the disclosure of the information;

9 (2) supplemental information or material submitted by
10 a private entity in connection with a proposal for a comprehensive
11 development agreement, unless the private entity consents to the
12 disclosure of the information; and

13 (3) information created or collected by an authority
14 or its agent during consideration of a proposal for a comprehensive
15 development agreement.

16 SECTION 5. Section 370.308(f), Transportation Code, is
17 amended to read as follows:

18 (f) In addition to or instead of a performance and payment
19 bond [~~bonds~~], an authority may require one or more of the following
20 alternative forms of security:

21 (1) a cashier's check drawn on a financial entity
22 specified by the authority;

23 (2) a United States bond or note;

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

25 (4) any other form of security determined suitable by
26 the authority.

27 SECTION 6. Section 370.311, Transportation Code, is amended

1 by adding Subsections (d) and (e) to read as follows:

2 (d) A comprehensive development agreement entered into
3 under Section 370.305 may include any provision that an authority
4 considers appropriate, including provisions:

5 (1) providing for the purchase by the authority, under
6 terms and conditions agreed to by the parties, of the interest of a
7 private participant in the comprehensive development agreement and
8 related property, including any interest in a highway or other
9 facility designed, developed, financed, constructed, operated, or
10 maintained under the comprehensive development agreement;

11 (2) establishing the purchase price for the interest
12 of a private participant in the comprehensive development agreement
13 and related property, which price may be determined in accordance
14 with the methodology established by the parties in the
15 comprehensive development agreement;

16 (3) providing for the payment of obligations incurred
17 under the comprehensive development agreement, including any
18 obligation to pay the purchase price for the interest of a private
19 participant in the comprehensive development agreement, from any
20 lawfully available source, including securing the obligations by a
21 pledge of revenues of the authority derived from the applicable
22 project, which pledge shall have priority as the authority may
23 establish;

24 (4) permitting the private participant to pledge its
25 rights under the comprehensive development agreement;

26 (5) concerning the private participant's right to
27 operate and collect revenue from the project; and

1 (6) restricting the right of the authority to
2 terminate the private participant's right to operate and collect
3 revenue from the project unless and until any applicable
4 termination payments have been made.

5 (e) Notwithstanding any other law and subject to compliance
6 with the dispute resolution procedures set out in the comprehensive
7 development agreement, an obligation of the authority under a
8 comprehensive development agreement entered into under Section
9 370.305 to make or secure payments to a person because of the
10 termination of the agreement, including the purchase of the
11 interest of a private participant or other investor in a project,
12 may be enforced by mandamus against the authority and the
13 comptroller in a district court of Travis County, and the sovereign
14 immunity of the state is waived for that purpose. The district
15 courts of Travis County have exclusive jurisdiction and venue over
16 all issues necessary to adjudicate any action brought under this
17 subsection and may determine and adjudicate any action brought
18 under this subsection. The remedy provided by this subsection is in
19 addition to any legal and equitable remedies that may be available
20 to a party to a comprehensive development agreement.

21 SECTION 7. Subchapter G, Chapter 370, Transportation Code,
22 is amended by adding Section 370.318 to read as follows:

23 Sec. 370.318. CONTRACT FOR ENFORCEMENT. A private entity
24 that contracts with an authority to operate a turnpike project may
25 contract with an agency of this state or a local governmental entity
26 for the services of peace officers employed by the agency or entity
27 to enforce laws related to:

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

3 (2) the payment of the proper toll on a turnpike
4 project.

5 SECTION 8. Section 11.11, Tax Code, is amended by adding
6 Subsection (k) to read as follows:

7 (k) For purposes of this section, any portion of a facility
8 leased to a private entity by a regional mobility authority under
9 Chapter 370, Transportation Code, is public property used for a
10 public purpose if the facility is operated by the private entity to
11 provide transportation or utility services. Any part of a facility
12 leased to a private entity for a commercial purpose under Chapter
13 370, Transportation Code, is not exempt from taxation.

14 SECTION 9. Section 25.07(c), Tax Code, is amended to read as
15 follows:

16 (c) Subsection (a) does not apply to:

17 (1) any portion of a facility owned by the Texas
18 Department of Transportation that is part of the Trans-Texas
19 Corridor, is a rail facility or system, or is a highway in the state
20 highway system and that is licensed or leased to a private entity by
21 that department under Chapter 91, 227, or 361, Transportation Code;
22 [~~or~~]

23 (2) a leasehold or other possessory interest granted
24 by the Texas Department of Transportation in a facility owned by
25 that department that is part of the Trans-Texas Corridor, is a rail
26 facility or system, or is a highway in the state highway system; or

27 (3) a leasehold or other possessory interest in a

1 facility granted by a regional mobility authority under Chapter
2 370, Transportation Code.

3 SECTION 10. This Act takes effect September 1, 2007.