

By: Williams, et al.

S.B. No. 792

A BILL TO BE ENTITLED

AN ACT

relating to the authority of certain counties and other entities with respect to certain transportation projects and to comprehensive development agreements with regard to such projects; authorizing the issuance of bonds; providing penalties.

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

ARTICLE 1. TERM OF CERTAIN TOLL OR FEE COLLECTION

CONTRACTS WITH PRIVATE ENTITIES

SECTION 1.01. Section 223.203, Transportation Code, is amended by adding Subsection (f-1) to read as follows:

(f-1) A private entity responding to a request for detailed proposals issued under Subsection (f) may submit alternative proposals based on comprehensive development agreements 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 comprehensive development agreement.

SECTION 1.02. Subsection (h), Section 223.208, Transportation Code, is amended to read as follows:

(h) A [~~Except as provided by this section, a~~] comprehensive development agreement with a private participant that includes the

1 collection by the private participant of tolls for the use of a toll
2 project may be for a term not longer than 50 years from the later of
3 the date of final acceptance of the project or the start of revenue
4 operations by the private participant, not to exceed a total term of
5 52 years. The comprehensive development agreement must contain
6 ~~[may be for a term not longer than 70 years if the agreement.~~

7 ~~[(1) contains]~~ an explicit mechanism for setting the
8 price for the purchase by the department of the interest of the
9 private participant in the comprehensive development agreement and
10 related property, including any interest in a highway or other
11 facility designed, developed, financed, constructed, operated, or
12 maintained under the agreement ~~[, and~~

13 ~~[(2) outlines the benefit the state will derive from~~
14 ~~having a term longer than 50 years].~~

15 SECTION 1.03. Subsection (f), Section 227.023,
16 Transportation Code, is amended to read as follows:

17 (f) A contract with a private entity that includes the
18 collection by the private entity of a fee for the use of a facility
19 may not be for a term longer than 50 years from the later of the date
20 of final acceptance of the project or the start of revenue
21 operations by the private entity, not to exceed a total term of 52
22 years. The contract must contain an explicit mechanism for setting
23 the price for the purchase by the department of the interest of the
24 private entity in the contract and related property, including any
25 interest in a highway or other facility designed, developed,
26 financed, constructed, operated, or maintained under the contract.

27 SECTION 1.04. Subsection (i), Section 370.302,

1 Transportation Code, is amended to read as follows:

2 (i) An agreement with a private entity that includes the
3 collection by the private entity of tolls for the use of a
4 transportation project may not be for a term longer than 50 years
5 from the later of the date of final acceptance of the project or the
6 start of revenue operations by the private entity, not to exceed a
7 total term of 52 years. The agreement must contain an explicit
8 mechanism for setting the price for the purchase by the authority of
9 the interest of the private entity in the contract and related
10 property, including any interest in a highway or other facility
11 designed, developed, financed, constructed, operated, or
12 maintained under the agreement.

13 SECTION 1.05. The changes in law made by this article apply
14 only to a contract entered into on or after the effective date of
15 this Act. A contract entered into before the effective date of this
16 Act is governed by the law in effect when the contract was entered
17 into, and the former law is continued in effect for that purpose.

18 ARTICLE 2. PAYMENTS TO UNSUCCESSFUL PROPOSERS FOR COMPREHENSIVE
19 DEVELOPMENT AGREEMENTS

20 SECTION 2.01. Subsection (m), Section 223.203,
21 Transportation Code, is amended to read as follows:

22 (m) The department may ~~shall~~ pay an unsuccessful private
23 entity that submits a responsive proposal in response to a request
24 for detailed proposals under Subsection (f) a stipulated amount in
25 exchange for the work product contained in that proposal. A ~~The~~
26 stipulated amount must be stated in the request for proposals and
27 may not exceed the value of any work product contained in the

1 proposal that can, as determined by the department, be used by the
2 department in the performance of its functions. The use by the
3 department of any design element contained in an unsuccessful
4 proposal is at the sole risk and discretion of the department and
5 does not confer liability on the recipient of the stipulated amount
6 under this section. After payment of the stipulated amount:

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

12 (2) the use by the unsuccessful proposer of any
13 portion of the work product contained in the proposal is at the sole
14 risk of the unsuccessful proposer and does not confer liability on
15 the department.

16 SECTION 2.02. Subsection (m), Section 370.306,
17 Transportation Code, is amended to read as follows:

18 (m) An authority may [~~shall~~] pay an unsuccessful private
19 entity that submits a response to a request for detailed proposals
20 under Subsection (f) a stipulated amount of the final contract
21 price for any costs incurred in preparing that proposal. A [~~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 authority, be used by the
25 authority in the performance of its functions. The use by the
26 authority of any design element contained in an unsuccessful
27 proposal is at the sole risk and discretion of the authority and

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

3 (1) the authority owns the exclusive rights to, and
4 may make use of any work product contained in, the proposal,
5 including the technologies, techniques, methods, processes, and
6 information contained in the project design; and

7 (2) the work product contained in the proposal becomes
8 the property of the authority.

9 ARTICLE 3. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE

10 DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS

11 SECTION 3.01. Subchapter E, Chapter 223, Transportation
12 Code, is amended by adding Section 223.210 to read as follows:

13 Sec. 223.210. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE
14 DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS. (a) In this
15 section:

16 (1) "Toll project" means a toll project described by
17 Section 201.001(b), regardless of whether the toll project:

18 (A) is a part of the state highway system; or

19 (B) is subject to the jurisdiction of the
20 department.

21 (2) "Toll project entity" means a public entity
22 authorized by law to acquire, design, construct, finance, operate,
23 or maintain a toll project, including:

24 (A) the department;

25 (B) a regional tollway authority;

26 (C) a regional mobility authority; or

27 (D) a county.

1 (b) A comprehensive development agreement entered into with
2 a private participant by a toll project entity on or after May 1,
3 2007, for the acquisition, design, construction, financing,
4 operation, or maintenance of a toll project may not contain a
5 provision permitting the private participant to operate the toll
6 project or collect revenue from the toll project, regardless of
7 whether the private participant operates the toll project or
8 collects the revenue itself or engages a subcontractor or other
9 entity to operate the toll project or collect the revenue.

10 (c) Subsection (b) does not apply to a comprehensive
11 development agreement in connection with:

12 (1) a project associated with the highway designated
13 as the Trinity Parkway in the City of Dallas; or

14 (2) a project:

15 (A) that includes one or more managed lane
16 facilities to be added to an existing controlled-access highway;

17 (B) the major portion of which is located in a
18 nonattainment or near-nonattainment air quality area as designated
19 by the United States Environmental Protection Agency; and

20 (C) for which the department has issued a request
21 for qualifications before May 1, 2007.

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

1 (e) Subsection (b) does not apply to a comprehensive
2 development agreement in connection with a project associated with
3 any portion of the State Highway 99 project.

4 (f) Subsection (b) does not apply to a comprehensive
5 development agreement in connection with a project associated with
6 the portion of Interstate Highway 69 project south of the San
7 Antonio River.

8 (g) Subsection (b) does not apply to a comprehensive
9 development agreement in connection with the State Highway 161
10 project in Dallas County.

11 (h) Notwithstanding the TxDOT/NTTA Regional Protocol
12 entered into between the Texas Department of Transportation and the
13 North Texas Tollway Authority and approved on August 10, 2006, by
14 the authority and on August 24, 2006, by the department, Subsection
15 (b) does not apply to a comprehensive development agreement entered
16 into in connection with State Highway 121 if before the commission
17 or the department enters into a contract for the financing,
18 construction, or operation of the project with a private
19 participant, an authority under Chapter 366 was granted the ability
20 to finance, construct, or operate, as applicable, the portion of
21 the toll project located within the boundaries of the North Texas
22 Tollway Authority, and the authority was granted a period of 60 days
23 from March 26, 2007, to submit a commitment to the metropolitan
24 planning organization which is determined to be equal to or greater
25 than any other commitment submitted prior to March 26, 2007. If the
26 financial value of the commitment is determined to be equal to or
27 greater value than any other commitment submitted prior to March

1 26, 2007, the commission shall allow the North Texas Tollway
2 Authority to develop the project.

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

8 (j) For purposes of Subsection (c)(2), "managed lane
9 facility" means a facility that increases the efficiency of a
10 controlled-access highway through various operational and design
11 actions and that allows lane management operations to be adjusted
12 at any time. The term includes high-occupancy vehicle lanes,
13 single-occupant vehicle express lanes, tolled lanes, priced lanes,
14 truck lanes, bypass lanes, dual use facilities, or any combination
15 of those facilities.

16 (k) The department may not enter into a comprehensive
17 development agreement in connection with a project described by
18 Subsection (c)(2) unless the commissioners court of the county in
19 which the majority of the project is located passes a resolution in
20 support of the agreement that states that the commissioners court:

21 (1) acknowledges that the comprehensive development
22 agreement may contain penalties for the construction of future
23 competing transportation projects that are acquired or constructed
24 during the term of the comprehensive development agreement; and

25 (2) knowing of those potential penalties, agrees that
26 the department should execute the comprehensive development
27 agreement.

1 (1) On or after the effective date of this section, a toll
2 project entity may not sell or enter into a contract to sell a toll
3 project of the entity to a private entity.

4 (m) A legislative study committee is created. The committee
5 is composed of nine members, appointed as follows:

6 (1) three members appointed by the lieutenant
7 governor;

8 (2) three members appointed by the speaker of the
9 house of representatives; and

10 (3) three members appointed by the governor.

11 (n) The legislative study committee shall select a
12 presiding officer from among its members and conduct public
13 hearings and study the public policy implications of including in a
14 comprehensive development agreement entered into by a toll project
15 entity with a private participant in connection with a toll project
16 a provision that permits the private participant to operate and
17 collect revenue from the toll project. In addition, the committee
18 shall examine the public policy implications of selling an existing
19 and operating toll project to a private entity.

20 (o) Not later than December 1, 2008, the legislative study
21 committee shall:

22 (1) prepare a written report summarizing:

23 (A) any hearings conducted by the committee;

24 (B) any legislation proposed by the committee;

25 (C) the committee's recommendations for
26 safeguards and protections of the public's interest when a contract
27 for the sale of a toll project to a private entity is entered into;

1 and

2 (D) any other findings or recommendations of the
3 committee; and

4 (2) deliver a copy of the report to the governor, the
5 lieutenant governor, and the speaker of the house of
6 representatives.

7 (p) On December 31, 2008, the legislative study committee
8 created under this section is abolished.

9 (q) This section expires September 1, 2009.

10 (r) Subsection (b) does not apply to a project that is
11 located in a county with a population of 300,000 or more and
12 adjacent to an international border.

13 ARTICLE 4. COMPREHENSIVE DEVELOPMENT AGREEMENT SUNSET DATE

14 SECTION 4.01. Section 223.201, Transportation Code, is
15 amended by amending Subsection (f) and adding Subsections (h) and
16 (i) to read as follows:

17 (f) Except as provided by Subsections (h) and (i), the [The]
18 authority to enter into comprehensive development agreements
19 provided by this section expires on August 31, 2009 [2011].

20 (h) Subsection (f) does not apply to a comprehensive
21 development agreement that does not grant a private entity a right
22 to finance a toll project or to a comprehensive development
23 agreement in connection with a project:

24 (1) that includes one or more managed lane facilities
25 to be added to an existing controlled-access highway;

26 (2) the major portion of which is located in a
27 nonattainment or near-nonattainment air quality area as designated

1 by the United States Environmental Protection Agency; and

2 (3) for which the department has issued a request for
3 qualifications before May 1, 2007.

4 (i) The authority to enter into a comprehensive development
5 agreement for a project exempted from Subsection (f) or Section
6 223.210(b) expires August 31, 2011.

7 SECTION 4.02. Section 370.305, Transportation Code, is
8 amended by amending Subsection (d) and adding Subsections (e) and
9 (f) to read as follows:

10 (d) Except as provided by Subsections (e) and (f), the
11 authority to enter into comprehensive development agreements under
12 this [This] section expires on August 31, 2009 [2011].

13 (e) Subsection (d) does not apply to a comprehensive
14 development agreement that does not grant a private entity a right
15 to finance a toll project or a comprehensive development agreement
16 in connection with a project:

17 (1) that includes one or more managed lane facilities
18 to be added to an existing controlled-access highway;

19 (2) the major portion of which is located in a
20 nonattainment or near-nonattainment air quality area as designated
21 by the United States Environmental Protection Agency; and

22 (3) for which the department has issued a request for
23 qualifications before the effective date of this subsection.

24 (f) The authority to enter into a comprehensive development
25 agreement for a project exempted from Subsection (d) or Section
26 223.210(b) expires August 31, 2011.

ARTICLE 5. PUBLIC ACCESS TO TRANS-TEXAS CORRIDOR INFORMATION

SECTION 5.01. Subchapter A, Chapter 227, Transportation Code, is amended by adding Sections 227.005 and 227.006 to read as follows:

Sec. 227.005. PUBLIC ACCESS TO INFORMATION. (a) The department shall:

(1) seek to achieve transparency in the department's functions related to the Trans-Texas Corridor by providing, to the greatest extent possible under the public information law (Chapter 552, Government Code) and other statutes governing the access to records, public access to information collected, assembled, or maintained by the department relating to the Trans-Texas Corridor;

(2) make public in a timely manner all documents, plans, and contracts related to the Trans-Texas Corridor; and

(3) make public in a timely manner all updates to the master development plan for the Trans-Texas Corridor, including financial plans.

(b) The department shall send electronic versions of all updates to the master development plan for the Trans-Texas Corridor to the Governor's Office of Budget and Planning, the Senate Finance Committee, the House Appropriations Committee, the Legislative Budget Board, the state auditor's office, and the comptroller in a timely manner.

Sec. 227.006. POSTING INFORMATION RELATING TO TRANS-TEXAS CORRIDOR ON DEPARTMENT'S WEBSITE. (a) The department shall post on the department's Internet website, in a timely manner, the costs incurred by the department in connection with the financing,

1 design, construction, maintenance, or operation of the Trans-Texas
2 Corridor.

3 (b) Not later than the 10th day after the date the
4 department enters into a contract relating to the Trans-Texas
5 Corridor, the department shall post a copy of the contract on the
6 department's Internet website.

7 ARTICLE 6. USE OF CERTAIN CONTRACT PAYMENTS AND OTHER REVENUE

8 SECTION 6.01. Section 228.0055, Transportation Code, is
9 amended to read as follows:

10 Sec. 228.0055. USE OF CONTRACT PAYMENTS AND OTHER REVENUE.

11 (a) Payments, project savings, refinancing dividends, and any
12 other revenue received by the commission or the department under a
13 comprehensive development agreement shall [may] be used by the
14 commission or the department to finance the construction,
15 maintenance, or operation of [a] transportation projects [project]
16 or air quality projects [project] in the region.

17 (b) The department shall allocate the distribution of funds
18 to department districts in the region that are located in the
19 boundaries of the metropolitan planning organization in which the
20 project that is the subject of the comprehensive development
21 agreement is located based on the percentage of toll revenue from
22 users from each department district of the project. To assist the
23 department in determining the allocation, each entity responsible
24 for collecting tolls for a project shall calculate on an annual
25 basis the percentage of toll revenue from users of the project from
26 each department district based on the number of recorded electronic
27 toll collections.

1 (3) State Highway 288, between US 59 and Grand Parkway
2 South (State Highway 99);

3 (4) US 290 Toll Lanes, between IH 610 West and the
4 Grand Parkway Northwest (State Highway 99);

5 (5) Fairmont Parkway East, between Beltway 8 East and
6 Grand Parkway East (State Highway 99);

7 (6) South Post Oak Road Extension, between IH 610
8 South and near the intersection of Beltway 8 and Hillcroft in the
9 vicinity of the Fort Bend Parkway Tollway;

10 (7) Westpark Toll Road Phase II, between Grand Parkway
11 (State Highway 99) and FM 1623; and

12 (8) Fort Bend Parkway, between State Highway 6 and the
13 Brazos River.

14 (b) The county is the entity with the primary responsibility
15 for the financing, construction, and operation of a toll project
16 located in the county. A county may develop, construct, and operate
17 a project described in Subsection (a) at any time, regardless of
18 whether it receives a first option notice from the commission or the
19 department under Subsection (e).

20 (b-1) Consistent with federal law, the department shall
21 assist the county in the financing, construction, and operation of
22 a toll project in the county by allowing the county to use state
23 highway right-of-way owned by the department and to access the
24 state highway system. The commission or the department may not
25 require the county to pay for the use of the right-of-way or access,
26 except to reimburse the department as provided by this subsection.
27 The county shall pay an amount to reimburse the department for the

1 department's actual costs to acquire the right-of-way. If the
2 department cannot determine that amount, the amount shall be
3 determined based on the average historical right-of-way
4 acquisition values for right-of-way located in proximity to the
5 project on the date of original acquisition of the right-of-way.
6 Money received by the department under this subsection shall be
7 deposited in the state highway fund and used in the department
8 district in which the project is located.

9 (c) The department and the county must enter into an
10 agreement that includes reasonable terms to accommodate the use of
11 the right-of-way by the county and to protect the interests of the
12 commission and the department in the use of the right-of-way for
13 operations of the department, including public safety and
14 congestion mitigation on the right-of-way.

15 (d) Subsection (b) does not limit the authority of the
16 commission or the department to participate in the cost of
17 acquiring, constructing, maintaining, or operating a project of the
18 county under Chapter 284.

19 (e) Before the department may enter into a contract for the
20 financing, construction, or operation of a proposed or existing
21 toll project any part of which is located in the county, the
22 commission or department shall provide the county the first option
23 to finance, construct, or operate, as applicable, the portion of
24 the toll project located in the county:

25 (1) on terms agreeable to the county; and

26 (2) in a manner determined by the county to be
27 consistent with the practices and procedures by which the county

1 finances, constructs, or operates a project.

2 (f) A county's right to exercise the first option under
3 Subsection (e) is effective for six months after the date of the
4 receipt by the county of written notice from the commission or the
5 department meeting the requirements of Subsection (e) and
6 describing in reasonable detail the location of the toll project, a
7 projected cost estimate, sources and uses of funds, and a
8 construction schedule. If a county exercises the first option with
9 respect to a toll project, the county must enter into one or more
10 contracts for the financing, construction, or operation of the toll
11 project within two years after the date on which all environmental
12 requirements necessary for the development of the project are
13 secured and all legal challenges to development are concluded. A
14 contract may include agreements for design of the project,
15 acquisition of right-of-way, and utility relocation. If the county
16 does not enter into a contract during the two-year period, the
17 commission or the department may enter into a contract for the
18 financing, construction, or operation of the toll project with a
19 different entity.

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

25 (h) If the county approves, the commission may remove any
26 right-of-way to be used by a county under this section from the
27 state highway system. If the right-of-way used by a county under

1 this section remains part of the state highway system, the county
2 must comply with department design and construction standards.

3 (i) Notwithstanding an action of a county taken under this
4 section, the commission or department may take any action that is
5 necessary in its reasonable judgment to comply with any federal
6 requirement to enable this state to receive federal-aid highway
7 funds.

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

13 Sec. 228.0111. TOLL PROJECTS OF LOCAL TOLL PROJECT
14 ENTITIES. (a) In this section:

15 (1) "Local toll project entity" means:

16 (A) a regional tollway authority under Chapter
17 366;

18 (B) a regional mobility authority under Chapter
19 370; or

20 (C) a county acting under Chapter 284.

21 (2) "Market valuation" means the valuation of a toll
22 project that:

23 (A) is based on the terms and conditions
24 established mutually by a local toll project entity and the
25 department for the development, construction, and operation of a
26 toll project, including the initial toll rate and the toll rate
27 escalation methodology; and

1 (B) takes into account a traffic and revenue
2 study of the toll project using agreed-upon assumptions, an agreed
3 project scope, market research, the estimated cost to finance,
4 construct, maintain, and operate the project, and other information
5 determined appropriate by the local toll project entity and the
6 department.

7 (3) "Region" has the meaning assigned by Section
8 228.001, except that the region of a county acting under Chapter 284
9 is composed of that county and the counties that are contiguous to
10 that county.

11 (4) "Toll project subaccount" means a subaccount
12 created under Section 228.012.

13 (b) This section does not apply to a toll project described
14 in Section 228.011(a).

15 (c) A local toll project entity is the entity with primary
16 responsibility for the financing, construction, and operation of a
17 toll project located within its boundaries.

18 (d) Subsection (c) does not limit the authority of the
19 commission or the department to participate in the cost of
20 acquiring, constructing, maintaining, or operating a toll project
21 of a local toll project entity.

22 (e) Except as provided in this subsection, if a local toll
23 project entity or the department determines that a toll project
24 located within the boundaries of the local toll project entity
25 should be developed, constructed, and operated as a toll project,
26 the local toll project entity and the department mutually shall
27 agree on the terms and conditions for the development,

1 construction, and operation of the toll project, including the
2 initial toll rate and the toll rate escalation methodology. The
3 terms and conditions for the procurement and operation of the State
4 Highway 99 project shall be approved by the metropolitan planning
5 organization in which the project is located.

6 (e-1) If the local toll project entity and the department
7 are unable to mutually agree on the terms and conditions for the
8 development, construction, and operation of the toll project as
9 required by Subsection (e), neither the local toll project entity
10 nor the department may develop the project as a toll project.

11 (f) After agreeing on the terms and conditions for a toll
12 project under Subsection (e), or after metropolitan planning
13 organization approval of the terms and conditions for the State
14 Highway 99 project, the local toll project entity and the
15 department mutually shall determine which entity, including a third
16 party under contract with the local toll project entity or the
17 department, will develop a market valuation of the toll project
18 that is based on the terms and conditions established under
19 Subsection (e). The department and the local toll project entity
20 have 90 days after the date of the receipt of a final draft version
21 of the market valuation designated as "complete; subject to
22 approval by the Texas Department of Transportation and (name of
23 local toll project entity)" to mutually approve the market
24 valuation included in the draft version or, in the alternative,
25 negotiate and agree on a different market valuation. If the
26 department and the local toll project entity are unable to agree on
27 a market valuation within the 90-day period, the market valuation

1 in the draft version is considered to be final for purposes of this
2 section and mutually approved on the last day of that period.

3 (f-1) The department and a local toll project entity may
4 agree to waive the requirement to develop a market valuation under
5 this section.

6 (f-2) If the department and the local toll project entity
7 are unable to mutually determine which entity will develop the
8 market valuation of the toll project under Subsection (f), neither
9 the department nor the local toll project entity may develop,
10 construct, or operate the project as a toll project.

11 (g) A local toll project entity has the first option to
12 develop, finance, construct, and operate a toll project under the
13 terms and conditions established under Subsection (e). A local
14 toll project entity, other than a regional mobility authority under
15 Chapter 370, has six months after the date that the market valuation
16 is mutually approved under Subsection (f) to decide whether to
17 exercise the option. For a project proposed to be located within
18 the boundaries of a regional mobility authority under Chapter 370,
19 after the market valuation is final under Subsection (f), the
20 metropolitan planning organization for the region in which the
21 project is located shall determine whether the toll project should
22 be developed using the business terms incorporated in the market
23 valuation. If the metropolitan planning organization determines
24 that the toll project should be developed using the business terms
25 in the market valuation, the regional mobility authority has six
26 months after the date the metropolitan planning organization
27 decides whether to exercise the option to develop the project. If a

1 local toll project entity exercises the option with respect to a
2 toll project under this subsection, the local toll project entity,
3 after exercising the option and within two years after the date on
4 which all environmental requirements necessary for the development
5 of the toll project are secured and all legal challenges to
6 development are concluded, must:

7 (1) enter into a contract for the construction of the
8 toll project; and

9 (2) either:

10 (A) commit to make a payment into a toll project
11 subaccount in an amount equal to the value of the toll project as
12 determined by the market valuation, to be used by the department to
13 finance the construction of additional transportation projects in
14 the region in which the toll project is located;

15 (B) commit to construct, within the period agreed
16 to by the local toll project entity and the department, additional
17 transportation projects in the region in which the toll project is
18 located with estimated construction costs equal to the market
19 valuation of the toll project; or

20 (C) for a regional mobility authority under
21 Chapter 370, commit to using, for a period to be agreed upon by the
22 department and the authority, all surplus revenue from the toll
23 project for the purposes authorized by Section 370.174(b) in an
24 amount equal to the valuation of the project.

25 (h) If a local toll project entity exercises the option with
26 respect to a toll project under Subsection (g) and has not begun the
27 environmental review of the project, the local toll project entity

1 shall begin the environmental review within six months of
2 exercising the option.

3 (i) If a local toll project entity does not exercise the
4 option to develop, finance, construct, and operate a toll project
5 under Subsection (g), or does not enter into a contract for the
6 construction of the project and make a commitment described in
7 Subsection (g)(2) within the two-year period prescribed in
8 Subsection (g), the department has the option to develop, finance,
9 construct, and operate the toll project under the terms and
10 conditions agreed to under Subsection (e). The department has two
11 months after the date the local toll project entity fails to
12 exercise its option or enter into a construction contract and make a
13 commitment described in Subsection (g)(2) to decide whether to
14 exercise its option. If the department exercises its option with
15 respect to a toll project under this subsection, the department,
16 after exercising the option and within two years after the date on
17 which all environmental requirements necessary for the development
18 of the project are secured and all legal challenges to such
19 development are concluded, must:

20 (1) enter into a contract for the construction of the
21 toll project; and

22 (2) either:

23 (A) commit to make a payment into the toll
24 project subaccount in an amount equal to the value of the toll
25 project as determined by the market valuation, to be used by the
26 department to finance the construction of additional
27 transportation projects in the region in which the toll project is

1 located; or

2 (B) commit to construct, within the period agreed
3 to by the local toll project entity and the department, additional
4 transportation projects in the region in which the toll project is
5 located with estimated construction costs equal to the market
6 valuation of the toll project.

7 (j) If the department does not exercise the option to
8 develop, finance, construct, and operate a toll project under
9 Subsection (i), or does not enter into a contract for the
10 construction of the project and make a commitment described in
11 Subsection (i)(2) within the two-year period prescribed in
12 Subsection (i), the local toll project entity and the department
13 may meet again for the purpose of agreeing on revised terms and
14 conditions for the development, construction, and operation of the
15 toll project, and the local toll project entity and the department
16 shall follow the process prescribed in Subsections (f)-(i).

17 (k) Consistent with federal law, the commission and the
18 department shall assist a local toll project entity in the
19 development, financing, construction, and operation of a toll
20 project for which the local toll project entity has exercised its
21 option to develop, finance, construct, and operate the project
22 under Subsection (g) by allowing the local toll project entity to
23 use state highway right-of-way and to access the state highway
24 system as necessary to construct and operate the toll project.
25 Notwithstanding any other law, the toll project entity and the
26 commission may agree to remove the project from the state highway
27 system and transfer ownership to the local toll project entity. The

1 commission or the department may not require a local toll project
2 entity to pay for the use of the right-of-way or access, except to
3 reimburse the department for actual costs incurred or to be
4 incurred by the department that are owed to a third party, including
5 the federal government, as a result of that use by the local toll
6 project entity. If a local toll project entity exercises its option
7 to develop, construct, and operate a toll project under this
8 section, the following shall be deducted from the amount of the toll
9 project entity commitment under Subsection (g)(2):

10 (1) an amount equal to the amount reimbursed under
11 this subsection, if any; and

12 (2) with respect to a county operating under Chapter
13 284, an amount equal to the costs of any road, street, or highway
14 project undertaken by the county under Section 284.0031 before the
15 acceptance of the market valuation, if the county requests a
16 deduction and specifies in reasonable detail a description and cost
17 of the project and the department agrees that any such road, street,
18 or highway project constitutes an additional transportation
19 project under Subsection (g)(2)(B).

20 (1) A local toll project entity shall enter into an
21 agreement with the department for any project for which the entity
22 has exercised its option to develop, finance, construct, and
23 operate the project under Subsection (g) and for which the entity
24 intends to use state highway right-of-way. An agreement entered
25 into under this subsection must contain provisions necessary to
26 ensure that the local toll project entity's construction,
27 maintenance, and operation of the project complies with the

1 requirements of applicable federal and state law.

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

8 (n) An agreement entered into by a local toll project entity
9 and the department in connection with a toll project that is
10 financed, constructed, or operated by the local toll project entity
11 and that is on or directly connected to a highway in the state
12 highway system does not create a joint enterprise for liability
13 purposes.

14 (o) Notwithstanding an action of a local toll project entity
15 taken under this section, the commission or department may take any
16 action that in its reasonable judgment is necessary to comply with
17 any federal requirement to enable this state to receive federal-aid
18 highway funds.

19 (p) A local toll project entity and the department may issue
20 bonds, including revenue bonds and refunding bonds, or other
21 obligations, and enter into credit agreements, to pay any costs
22 associated with a project under this section, including the
23 payments deposited to the applicable toll project subaccount, and
24 the costs to construct, maintain, and operate additional
25 transportation projects that the local toll project entity or the
26 department commits to undertake in accordance with this section, as
27 follows:

1 (1) the bonds or other obligations and the proceedings
2 authorizing the bonds or other obligations must be submitted to the
3 attorney general for review and approval as required by Chapter
4 1202, Government Code;

5 (2) the bonds or other obligations may be payable from
6 and secured by revenue of one or more projects of the local toll
7 project entity or the department, including toll road system
8 revenues, or such other legally available revenue or funding
9 sources as the local toll project entity or department shall
10 determine;

11 (3) the bonds or other obligations may mature serially
12 or otherwise not more than 30 years from their date of issuance;

13 (4) the bonds or other obligations are not a debt of
14 and do not create a claim for payment against the revenue or
15 property of the local toll project entity or the department, other
16 than the revenue sources pledged for which the bonds or other
17 obligations are issued; and

18 (5) the local toll project entity and the department
19 may issue obligations and enter into credit agreements under
20 Chapter 1371, Government Code, and for purposes of that chapter, a
21 local toll project entity and the department shall be considered a
22 public utility and any cost authorized to be financed in accordance
23 with this subsection is an eligible project.

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

27 (r) This section expires August 31, 2011.

1 (s) This section does not apply to:

2 (1) any project for which the department has issued a
3 request for qualifications or request for competing proposals and
4 qualifications before May 1, 2007, except for the State Highway 161
5 project in Dallas County;

6 (2) the eastern extension of the President George Bush
7 Turnpike from State Highway 78 to IH 30 in Dallas County;

8 (3) the Phase 3 and 4 extensions of the Dallas North
9 Tollway in Collin and Denton Counties from State Highway 121 to the
10 Grayson County line, and the planned future extension into Grayson
11 County;

12 (4) the Lewisville Lake Bridge (and portions of FM 720
13 widening projects) in Denton County; or

14 (5) the Southwest Parkway (State Highway 121) in
15 Tarrant County from Dirks Road/Altamesa Boulevard to IH 30.

16 Sec. 228.012. PROJECT SUBACCOUNTS. (a) The department
17 shall create a separate account in the state highway fund to hold
18 payments received by the department under a comprehensive
19 development agreement, the surplus revenue of a toll project or
20 system, and payments received under Sections 228.0111(g)(2) and
21 (i)(2). The department shall create subaccounts in the account for
22 each project, system, or region. Interest earned on money in a
23 subaccount shall be deposited to the credit of that subaccount.

24 (b) The department shall hold money in a subaccount in trust
25 for the benefit of the region in which a project or system is
26 located and may assign the responsibility for allocating money in a
27 subaccount to a metropolitan planning organization in which the

1 region is located. Except as provided by Subsection (c), money
2 shall be allocated to projects authorized by Section 228.0055 or
3 Section 228.006, as applicable.

4 (c) Money in a subaccount received from a county or the
5 department under Section 228.0111 in connection with a project for
6 which a county acting under Chapter 284 has the first option shall
7 be allocated to transportation projects located in the county and
8 the counties contiguous to that county.

9 (d) Not later than January 1 of each odd-numbered year, the
10 department shall submit to the Legislative Budget Board, in the
11 format prescribed by the Legislative Budget Board, a report on cash
12 balances in the subaccounts created under this section and
13 expenditures made with money in those subaccounts.

14 (e) The commission or the department may not:

15 (1) revise the formula as provided in the department's
16 unified transportation program or a successor document in a manner
17 that results in a decrease of a department district's allocation
18 because of the deposit of a payment into a project subaccount or a
19 commitment to undertake an additional transportation project under
20 Section 228.0111; or

21 (2) take any other action that would reduce funding
22 allocated to a department district because of the deposit of a
23 payment received from the department or local toll project entity
24 into a project subaccount or a commitment to undertake an
25 additional transportation project under Section 228.0111.

26 SECTION 7.02. Section 228.0111, Transportation Code, as
27 added by this article, applies to a project associated with State

1 Highway 161 in Dallas County.

2 ARTICLE 8. COUNTY AUTHORITY IN CONNECTION WITH CERTAIN TOLL
3 PROJECTS

4 SECTION 8.01. Subdivision (3), Section 284.001,
5 Transportation Code, is amended to read as follows:

6 (3) "Project" means:

7 (A) a causeway, bridge, tunnel, turnpike,
8 highway, ferry, or any combination of those facilities, including:

9 (i) [~~(A)~~] a necessary overpass, underpass,
10 interchange, entrance plaza, toll house, service station,
11 approach, fixture, and accessory and necessary equipment that has
12 been designated as part of the project by order of a county;

13 (ii) [~~(B)~~] necessary administration,
14 storage, and other buildings that have been designated as part of
15 the project by order of a county; and

16 (iii) [~~(C)~~] all property rights,
17 easements, and related interests acquired; or

18 (B) a turnpike project or system, as those terms
19 are defined by Section 370.003.

20 SECTION 8.02. Section 284.003, Transportation Code, is
21 amended to read as follows:

22 Sec. 284.003. PROJECT AUTHORIZED; CONSTRUCTION, OPERATION,
23 AND COST. (a) A county, acting through the commissioners court of
24 the county, or a local government corporation, without state
25 approval, supervision, or regulation, may:

26 (1) construct, acquire, improve, operate, maintain,
27 or pool a project located:

- 1 (A) exclusively in the county;
2 (B) in the county and outside the county; or
3 (C) in one or more counties adjacent to the
4 county;

5 (2) issue tax bonds, revenue bonds, or combination tax
6 and revenue bonds to pay the cost of the construction, acquisition,
7 or improvement of a project;

8 (3) impose tolls or charges as otherwise authorized by
9 this chapter;

10 (4) construct a bridge over a deepwater [~~deep water~~]
11 navigation channel, if the bridge does not hinder maritime
12 transportation; [~~or~~]

13 (5) construct, acquire, or operate a ferry across a
14 deepwater navigation channel;

15 (6) in connection with a project, on adoption of an
16 order exercise the powers of a regional mobility authority
17 operating under Chapter 370; or

18 (7) enter into a comprehensive development agreement
19 with a private entity to design, develop, finance, construct,
20 maintain, repair, operate, extend, or expand a proposed or existing
21 project in the county to the extent and in the manner applicable to
22 the department under Chapter 223 or to a regional tollway authority
23 under Chapter 366.

24 (b) The county or a local government corporation may
25 exercise a power provided by Subsection (a)(6) only in a manner
26 consistent with the other powers provided by this chapter. To the
27 extent of a conflict between this chapter and Chapter 370, this

1 chapter prevails.

2 (c) A project or any portion of a project that is owned by
3 the county and licensed or leased to a private entity or operated by
4 a private entity under this chapter to provide transportation
5 services to the general public is public property used for a public
6 purpose and exempt from taxation by this state or a political
7 subdivision of this state.

8 (d) If the county constructs, acquires, improves, operates,
9 maintains, or pools a project under this chapter, before December
10 31 of each even-numbered year the county shall submit to the
11 department a plan for the project that includes the time schedule
12 for the project and describes the use of project funds. The plan
13 may provide for and permit the use of project funds and other money,
14 including state or federal funds, available to the county for
15 roads, streets, highways, and other related facilities in the
16 county that are not part of a project under this chapter. A plan is
17 not subject to approval, supervision, or regulation by the
18 commission or the department, except that:

19 (1) any use of state or federal highway funds must be
20 approved by the commission;

21 (2) any work on a highway in the state highway system
22 must be approved by the department; and

23 (3) the department shall supervise and regulate work
24 on a highway in the state highway system.

25 (e) Except as provided by federal law, an action of a county
26 taken under this chapter is not subject to approval, supervision,
27 or regulation by a metropolitan planning organization.

1 (f) The county may enter into a protocol or other agreement
2 with the commission or the department to implement this section
3 through the cooperation of the parties to the agreement.

4 (g) An action of a county taken under this chapter must
5 comply with the requirements of applicable federal law. The
6 foregoing compliance requirement shall apply to the role of
7 metropolitan planning organizations under federal law, including
8 the approval of projects for conformity to the state implementation
9 plan relating to air quality, the use of toll revenue, and the use
10 of the right-of-way of and access to federal-aid highways.
11 Notwithstanding an action of a county taken under this chapter, the
12 commission or department may take any action that is necessary in
13 its reasonable judgment to comply with any federal requirement to
14 enable the state to receive federal-aid highway funds.

15 SECTION 8.03. Subchapter A, Chapter 284, Transportation
16 Code, is amended by adding Sections 284.0031 and 284.0032 and
17 amending Section 284.004 to read as follows:

18 Sec. 284.0031. OTHER ROAD, STREET, OR HIGHWAY PROJECTS.

19 (a) The commissioners court of a county or a local government
20 corporation, without state approval, supervision, or regulation
21 may:

22 (1) authorize the use or pledge of surplus revenue to
23 pay or finance the costs of a project for the study, design,
24 construction, maintenance, repair, or operation of roads, streets,
25 highways, or other related facilities that are not part of a project
26 under this chapter; and

27 (2) prescribe terms for the use of the surplus

1 revenue, including the manner in which revenue from a project
2 becomes surplus revenue and the manner in which the roads, streets,
3 highways, or other related facilities are to be studied, designed,
4 constructed, maintained, repaired, or operated.

5 (b) To implement this section, a county may enter into an
6 agreement with the commission, the department, a local governmental
7 entity, or another political subdivision of this state.

8 (c) A county may not take an action under this section that
9 violates or impairs a bond resolution, trust agreement, or
10 indenture that governs the use of the revenue of a project.

11 (d) Except as provided by this section, a county has the
12 same powers, including the powers to finance and to encumber
13 surplus revenue, and may use the same procedures with respect to the
14 study, financing, design, construction, maintenance, repair, or
15 operation of a road, street, highway, or other related facility
16 under this section as are available to the county with respect to a
17 project under this chapter.

18 (e) Notwithstanding other provisions of this section:

19 (1) any work on the state highway system must be
20 approved by the department; and

21 (2) the department shall supervise and regulate any
22 work on a highway in the state highway system.

23 Sec. 284.0032. TRANS-TEXAS CORRIDOR PROJECTS. If a county
24 is requested by the commission to participate in the development of
25 a project under this chapter that has been designated as part of the
26 Trans-Texas Corridor, the county has, in addition to all powers
27 granted by this chapter, all powers of the department related to the

1 development of a project that has been designated as part of the
2 Trans-Texas Corridor.

3 Sec. 284.004. USE OF COUNTY PROPERTY. (a) Notwithstanding
4 any other law, a county may use any county property for a project
5 under this chapter, regardless of when or how the property is
6 acquired.

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

10 SECTION 8.04. Subsections (c) and (d), Section 284.008,
11 Transportation Code, are amended to read as follows:

12 (c) Except as provided by Subsection (d), a project becomes
13 a part of the state highway system and the commission shall maintain
14 the project without tolls when:

15 (1) all of the bonds and interest on the bonds that are
16 payable from or secured by revenues of the project have been paid by
17 the issuer of the bonds or another person with the consent or
18 approval of the issuer; or

19 (2) a sufficient amount for the payment of all bonds
20 and the interest on the bonds to maturity has been set aside by the
21 issuer of the bonds or another person with the consent or approval
22 of the issuer in a trust fund held for the benefit of the
23 bondholders.

24 (d) A [~~Before construction on a project under this chapter~~
25 ~~begins, a~~] county may request that the commission adopt an order
26 stating that a [~~the~~] project will not become part of the state
27 highway system under Subsection (c). If the commission adopts the

1 order:

2 (1) Section 362.051 does not apply to the project;

3 (2) the project must be maintained by the county; and

4 (3) the project will not become part of the state
5 highway system unless the county transfers the project under
6 Section 284.011.

7 SECTION 8.05. Subsections (b) and (c), Section 284.065,
8 Transportation Code, are amended to read as follows:

9 (b) An existing project may be pooled in whole or in part
10 with a new project or another existing project.

11 (c) A project may [~~not~~] be pooled more than once.

12 ARTICLE 9. REGIONAL TOLLWAY AUTHORITIES

13 SECTION 9.01. Section 366.003, Transportation Code, is
14 amended by adding Subdivision (9-a) to read as follows:

15 (9-a) "Surplus revenue" means the revenue of a
16 turnpike project or system remaining at the end of any fiscal year
17 after all required payments and deposits have been made in
18 accordance with all bond resolutions, trust agreements,
19 indentures, credit agreements, or other instruments and
20 contractual obligations of the authority payable from the revenue
21 of the turnpike project or system.

22 SECTION 9.02. Section 366.301, Transportation Code, is
23 amended by adding Subsection (e) to read as follows:

24 (e) An action of an authority taken under this chapter must
25 comply with the requirements of applicable federal law, including
26 provisions relating to the role of metropolitan planning
27 organizations under federal law and the approval of projects for

1 conformity with the state implementation plan relating to air
2 quality, the use of toll revenue, and the use of the right-of-way of
3 and access to federal-aid highways. Notwithstanding an action of
4 an authority taken under this chapter, the commission or the
5 department may take any action that in its reasonable judgment is
6 necessary to comply with any federal requirement to enable this
7 state to receive federal-aid highway funds.

8 SECTION 9.03. Chapter 366, Transportation Code, is amended
9 by adding Subchapter H to read as follows:

10 SUBCHAPTER H. COMPREHENSIVE DEVELOPMENT AGREEMENTS

11 Sec. 366.401. COMPREHENSIVE DEVELOPMENT AGREEMENTS.

12 (a) An authority may use a comprehensive development agreement
13 with a private entity to design, develop, finance, construct,
14 maintain, repair, operate, extend, or expand a turnpike project.

15 (b) A comprehensive development agreement is an agreement
16 with a private entity that, at a minimum, provides for the design,
17 construction, rehabilitation, expansion, or improvement of a
18 turnpike project and may also provide for the financing,
19 acquisition, maintenance, or operation of a turnpike project.

20 (c) An authority may negotiate provisions relating to
21 professional and consulting services provided in connection with a
22 comprehensive development agreement.

23 (d) An authority may authorize the investment of public and
24 private money, including debt and equity participation, to finance
25 a function described by this section.

26 Sec. 366.402. PROCESS FOR ENTERING INTO COMPREHENSIVE
27 DEVELOPMENT AGREEMENTS. (a) If an authority enters into a

1 comprehensive development agreement, the authority shall use a
2 competitive procurement process that provides the best value for
3 the authority. An authority may accept unsolicited proposals for a
4 proposed turnpike project or solicit proposals in accordance with
5 this section.

6 (b) An authority shall establish rules and procedures for
7 accepting unsolicited proposals that require the private entity to
8 include in the proposal:

9 (1) information regarding the proposed project
10 location, scope, and limits;

11 (2) information regarding the private entity's
12 qualifications, experience, technical competence, and capability
13 to develop the project; and

14 (3) any other information the authority considers
15 relevant or necessary.

16 (c) An authority shall publish a notice advertising a
17 request for competing proposals and qualifications in the Texas
18 Register that includes the criteria to be used to evaluate the
19 proposals, the relative weight given to the criteria, and a
20 deadline by which proposals must be received if:

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

23 (2) the authority authorizes the further evaluation of
24 an unsolicited proposal.

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

1 (e) An authority may interview a private entity submitting
2 an unsolicited proposal or responding to a request under Subsection
3 (c). The authority shall evaluate each proposal based on the
4 criteria described in the request for competing proposals and
5 qualifications and may qualify or shortlist private entities to
6 submit detailed proposals under Subsection (f). The authority must
7 qualify or shortlist at least two private entities to submit
8 detailed proposals for a project under Subsection (f) unless the
9 authority does not receive more than one proposal or one response to
10 a request under Subsection (c).

11 (f) An authority shall issue a request for detailed
12 proposals from all private entities qualified or shortlisted under
13 Subsection (e) if the authority proceeds with the further
14 evaluation of a proposed project. A request under this subsection
15 may require additional information the authority considers
16 relevant or necessary, including information relating to:

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

19 (2) the feasibility of developing the project as
20 proposed;

21 (3) engineering or architectural designs;

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

23 (5) a financial plan, including costing methodology
24 and cost proposals.

25 (g) In issuing a request for proposals under Subsection (f),
26 an authority may solicit input from entities qualified under
27 Subsection (e) or any other person. An authority may also solicit

1 input regarding alternative technical concepts after issuing a
2 request under Subsection (f).

3 (h) An authority shall evaluate each proposal based on the
4 criteria described in the request for detailed proposals and select
5 the private entity whose proposal offers the apparent best value to
6 the authority.

7 (i) An authority may enter into negotiations with the
8 private entity whose proposal offers the apparent best value.

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

14 (k) An authority may withdraw a request for competing
15 proposals and qualifications or a request for detailed proposals at
16 any time. The authority may then publish a new request for
17 competing proposals and qualifications.

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

21 (m) An authority may pay an unsuccessful private entity that
22 submits a responsive proposal in response to a request for detailed
23 proposals under Subsection (f) a stipulated amount in exchange for
24 the work product contained in that proposal. A stipulated amount
25 must be stated in the request for proposals and may not exceed the
26 value of any work product contained in the proposal that can, as
27 determined by the authority, be used by the authority in the

1 performance of its functions. The use by the authority of any
2 design element contained in an unsuccessful proposal is at the sole
3 risk and discretion of the authority and does not confer liability
4 on the recipient of the stipulated amount under this subsection.

5 After payment of the stipulated amount:

6 (1) the authority, with the unsuccessful private
7 entity, jointly owns the rights to, and may make use of any work
8 product contained in, the proposal, including the technologies,
9 techniques, methods, processes, ideas, and information contained
10 in the project design; and

11 (2) the use by the unsuccessful private entity of any
12 portion of the work product contained in the proposal is at the sole
13 risk of the unsuccessful private entity and does not confer
14 liability on the authority.

15 (n) An authority may prescribe the general form of a
16 comprehensive development agreement and may include any matter the
17 authority considers advantageous to the authority. The authority
18 and the private entity shall finalize the specific terms of a
19 comprehensive development agreement.

20 (o) Section 366.185 and Subchapter A, Chapter 223, of this
21 code and Chapter 2254, Government Code, do not apply to a
22 comprehensive development agreement entered into under this
23 subchapter.

24 Sec. 366.403. CONFIDENTIALITY OF INFORMATION. (a) To
25 encourage private entities to submit proposals under this
26 subchapter, the following information is confidential, is not
27 subject to disclosure, inspection, or copying under Chapter 552,

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

4 (1) all or part of a proposal that is submitted by a
5 private entity for a comprehensive development agreement, except
6 information provided under Sections 366.402(b)(1) and (2), unless
7 the private entity consents to the disclosure of the information;

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

12 (3) information created or collected by an authority
13 or its agent during consideration of a proposal for a comprehensive
14 development agreement or during the authority's preparation of a
15 proposal to the department relating to a comprehensive development
16 agreement.

17 (b) After an authority completes its final ranking of
18 proposals under Section 366.402(h), the final rankings of each
19 proposal under each of the published criteria are not confidential.

20 Sec. 366.404. PERFORMANCE AND PAYMENT SECURITY.

21 (a) Notwithstanding the requirements of Subchapter B, Chapter
22 2253, Government Code, an authority shall require a private entity
23 entering into a comprehensive development agreement under this
24 subchapter to provide a performance and payment bond or an
25 alternative form of security in an amount sufficient to:

26 (1) ensure the proper performance of the agreement;
27 and

1 (2) protect:

2 (A) the authority; and

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

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

9 (c) If an authority determines that it is impracticable for
10 a private entity to provide security in the amount described by
11 Subsection (b), the authority shall set the amount of the bonds or
12 the alternative forms of security.

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

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

19 (f) In addition to, or instead of, performance and payment
20 bonds, an authority may require the following alternative forms of
21 security:

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

24 (2) a United States bond or note;

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

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

1 (g) An authority by rule shall prescribe requirements for
2 alternative forms of security provided under this section.

3 Sec. 366.405. OWNERSHIP OF TURNPIKE PROJECTS. (a) A
4 turnpike project that is the subject of a comprehensive development
5 agreement with a private entity, including the facilities acquired
6 or constructed on the project, is public property and is owned by
7 the authority.

8 (b) Notwithstanding Subsection (a), an authority may enter
9 into an agreement that provides for the lease of rights-of-way, the
10 granting of easements, the issuance of franchises, licenses, or
11 permits, or any lawful uses to enable a private entity to construct,
12 operate, and maintain a turnpike project, including supplemental
13 facilities. At the termination of the agreement, the turnpike
14 project, including the facilities, are to be in a state of proper
15 maintenance as determined by the authority and shall be returned to
16 the authority in satisfactory condition at no further cost.

17 Sec. 366.406. LIABILITY FOR PRIVATE OBLIGATIONS. An
18 authority may not incur a financial obligation for a private entity
19 that designs, develops, finances, constructs, operates, or
20 maintains a turnpike project. The authority or a political
21 subdivision of the state is not liable for any financial or other
22 obligation of a turnpike project solely because a private entity
23 constructs, finances, or operates any part of the project.

24 Sec. 366.407. TERMS OF PRIVATE PARTICIPATION. (a) An
25 authority shall negotiate the terms of private participation in a
26 turnpike project under this subchapter, including:

27 (1) methods to determine the applicable cost, profit,

1 and project distribution among the private participants and the
2 authority;

3 (2) reasonable methods to determine and classify toll
4 rates and the responsibility for setting toll rates;

5 (3) acceptable safety and policing standards; and

6 (4) other applicable professional, consulting,
7 construction, operation, and maintenance standards, expenses, and
8 costs.

9 (b) A comprehensive development agreement entered into
10 under this subchapter may include any provision the authority
11 considers appropriate, including a provision:

12 (1) providing for the purchase by the authority, under
13 terms and conditions agreed to by the parties, of the interest of a
14 private participant in the comprehensive development agreement and
15 related property, including any interest in a turnpike project
16 designed, developed, financed, constructed, operated, or
17 maintained under the comprehensive development agreement;

18 (2) establishing the purchase price, as determined in
19 accordance with the methodology established by the parties in the
20 comprehensive development agreement, for the interest of a private
21 participant in the comprehensive development agreement and related
22 property;

23 (3) providing for the payment of an obligation
24 incurred under the comprehensive development agreement, including
25 an obligation to pay the purchase price for the interest of a
26 private participant in the comprehensive development agreement,
27 from any available source, including securing the obligation by a

1 pledge of revenues of the authority derived from the applicable
2 project, which pledge shall have priority as established by the
3 authority;

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

6 (5) concerning the private participant's right to
7 operate and collect revenue from the turnpike project; and

8 (6) restricting the right of the authority to
9 terminate the private participant's right to operate and collect
10 revenue from the turnpike project unless and until any applicable
11 termination payments have been made.

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

17 (d) Section 366.406 does not apply to an obligation of an
18 authority under a comprehensive development agreement, nor is an
19 authority otherwise constrained from issuing bonds or other
20 financial obligations for a turnpike project payable solely from
21 revenues of that turnpike project or from amounts received under a
22 comprehensive development agreement.

23 (e) Notwithstanding any other law, and subject to
24 compliance with the dispute resolution procedures set out in the
25 comprehensive development agreement, an obligation of an authority
26 under a comprehensive development agreement entered into under this
27 subchapter to make or secure payments to a person because of the

1 termination of the agreement, including the purchase of the
2 interest of a private participant or other investor in a project,
3 may be enforced by mandamus against the authority in a district
4 court of any county of the authority, and the sovereign immunity of
5 the authority is waived for that purpose. The district courts of
6 any county of the authority shall have exclusive jurisdiction and
7 venue over and to determine and adjudicate all issues necessary to
8 adjudicate any action brought under this subsection. The remedy
9 provided by this subsection is in addition to any legal and
10 equitable remedies that may be available to a party to a
11 comprehensive development agreement.

12 (f) If an authority enters into a comprehensive development
13 agreement with a private participant that includes the collection
14 by the private participant of tolls for the use of a toll project,
15 the private participant shall submit to the authority for approval:

16 (1) the methodology for:

17 (A) the setting of tolls; and

18 (B) increasing the amount of the tolls;

19 (2) a plan outlining methods the private participant
20 will use to collect the tolls, including:

21 (A) any charge to be imposed as a penalty for late
22 payment of a toll; and

23 (B) any charge to be imposed to recover the cost
24 of collecting a delinquent toll; and

25 (3) any proposed change in an approved methodology for
26 the setting of a toll or a plan for collecting the toll.

27 (g) Except as provided by this subsection, a comprehensive

1 development agreement with a private participant that includes the
2 collection by the private participant of tolls for the use of a toll
3 project may be for a term not longer than 50 years from the later of
4 the date of final acceptance of the project or the start of revenue
5 operations by the private participant, not to exceed a total term of
6 52 years. The contract must contain an explicit mechanism for
7 setting the price for the purchase by the department of the interest
8 of the private participant in the contract and related property,
9 including any interest in a highway or other facility designed,
10 developed, financed, constructed, operated, or maintained under
11 the contract.

12 Sec. 366.408. RULES, PROCEDURES, AND GUIDELINES GOVERNING
13 SELECTION AND NEGOTIATING PROCESS. (a) To promote fairness,
14 obtain private participants in turnpike projects, and promote
15 confidence among those participants, an authority shall adopt
16 rules, procedures, and other guidelines governing selection of
17 private participants for comprehensive development agreements and
18 negotiations of comprehensive development agreements. The rules
19 must contain criteria relating to the qualifications of the
20 participants and the award of the contracts.

21 (b) An authority shall have up-to-date procedures for
22 participation in negotiations under this subchapter.

23 (c) An authority has exclusive judgment to determine the
24 terms of an agreement.

25 Sec. 366.409. USE OF CONTRACT PAYMENTS. (a) Payments
26 received by an authority under a comprehensive development
27 agreement shall be used by the authority to finance the

1 construction, maintenance, or operation of a turnpike project or a
2 highway.

3 (b) The authority shall allocate the distribution of funds
4 received under Subsection (a) to the counties of the authority
5 based on the percentage of toll revenue from users, from each
6 county, of the project that is the subject of the comprehensive
7 development agreement. To assist the authority in determining the
8 allocation, each entity responsible for collecting tolls for a
9 project shall calculate on an annual basis the percentage of toll
10 revenue from users of the project from each county within the
11 authority based on the number of recorded electronic toll
12 collections.

13 SECTION 9.04. Subsection (f), Section 366.033,
14 Transportation Code, is amended to read as follows:

15 (f) An authority may rent, lease, franchise, license, or
16 otherwise make portions of any property of the authority, including
17 tangible or intangible property, [~~its properties~~] available for use
18 by others in furtherance of its powers under this chapter by
19 increasing:

20 (1) the feasibility or efficient operation [the
21 revenue] of a turnpike project or system; or

22 (2) the revenue of the authority.

23 SECTION 9.05. Subchapter B, Chapter 366, Transportation
24 Code, is amended by adding Sections 366.037 and 366.038 to read as
25 follows:

26 Sec. 366.037. OTHER HIGHWAY PROJECTS. (a) In addition to
27 the powers granted under this chapter and without supervision or

1 regulation by any state agency or local governmental entity, but
2 subject to an agreement entered into under Subsection (c), the
3 board of an authority may by resolution, and on making the findings
4 set forth in this subsection, authorize the use of surplus revenue
5 of a turnpike project or system for the study, design,
6 construction, maintenance, repair, and operation of a highway or
7 similar facility that is not a turnpike project if the highway or
8 similar facility is:

9 (1) situated in a county in which the authority is
10 authorized to design, construct, and operate a turnpike project;

11 (2) anticipated to either:

12 (A) enhance the operation or revenue of an
13 existing, or the feasibility of a proposed, turnpike project by
14 bringing traffic to that turnpike project or enhancing the flow of
15 traffic either on that turnpike project or to or from that turnpike
16 project to another facility; or

17 (B) ameliorate the impact of an existing or
18 proposed turnpike project by enhancing the capability of another
19 facility to handle traffic traveling, or anticipated to travel, to
20 or from that turnpike project; and

21 (3) not anticipated to result in an overall reduction
22 of revenue of any turnpike project or system.

23 (b) The board in the resolution may prescribe terms for the
24 use of the surplus revenue, including the manner in which the
25 highway or related facility shall be studied, designed,
26 constructed, maintained, repaired, or operated.

27 (c) An authority shall enter into an agreement to implement

1 this section with the department, the commission, a local
2 governmental entity, or another political subdivision that owns a
3 street, road, alley, or highway that is directly affected by the
4 authority's turnpike project or related facility.

5 (d) An authority may not:

6 (1) take an action under this section that violates,
7 impairs, or is inconsistent with a bond resolution, trust
8 agreement, or indenture governing the use of the revenue of a
9 turnpike project or system; or

10 (2) commit in any fiscal year expenditures under this
11 section exceeding 10 percent of its surplus revenue from the
12 preceding fiscal year.

13 (e) In authorizing expenditures under this section, the
14 board shall consider:

15 (1) balancing throughout the counties of the authority
16 the application of funds generated by its turnpike projects and
17 systems, taking into account where those amounts are already
18 committed or programmed as a result of this section or otherwise;
19 and

20 (2) connectivity to an existing or proposed turnpike
21 project or system.

22 (f) Except as provided by this section, an authority has the
23 same powers and may use the same procedures with respect to the
24 study, financing, design, construction, maintenance, repair, and
25 operation of a highway or similar facility under this section as are
26 available to the authority with respect to a turnpike project or
27 system.

1 (g) Notwithstanding other provisions of this section:

2 (1) any work on a highway in the state highway system
3 must be approved by the department; and

4 (2) the department shall supervise and regulate any
5 work on a highway in the state highway system.

6 Sec. 366.038. TOLL COLLECTION. An authority shall provide,
7 for reasonable compensation, customer service and other toll
8 collection and enforcement services for a toll project in the
9 boundaries of the authority, regardless of whether the toll project
10 is developed, financed, constructed, and operated under an
11 agreement, including a comprehensive development agreement, with
12 the authority or another entity.

13 SECTION 9.06. The heading to Section 366.185,
14 Transportation Code, is amended to read as follows:

15 Sec. 366.185. ENGINEERING, DESIGN, AND CONSTRUCTION
16 SERVICES [~~COMPETITIVE BIDDING~~].

17 SECTION 9.07. Section 366.185, Transportation Code, is
18 amended by amending Subsection (a) and adding Subsections (c)
19 through (f) to read as follows:

20 (a) A contract made by an authority that requires the
21 expenditures of public funds for the construction or maintenance of
22 a turnpike project may [~~must~~] be let by a competitive bidding
23 procedure in which the contract is awarded to the lowest
24 responsible bidder that complies with the authority's criteria.

25 (c) An authority may procure a combination of engineering,
26 design, and construction services in a single procurement for a
27 turnpike project, provided that any contract awarded results in the

1 best value to the authority.

2 (d) The authority shall adopt rules governing the award of
3 contracts for engineering, design, construction, and maintenance
4 services in a single procurement.

5 (e) Notwithstanding any other provision of state law, an
6 authority may let a contract for the design and construction of a
7 turnpike project by a construction manager-at-risk procedure under
8 which the construction manager-at-risk provides consultation to
9 the authority during the design of the turnpike project and is
10 responsible for construction of the turnpike project in accordance
11 with the authority's specifications. A construction
12 manager-at-risk shall be selected on the basis of criteria
13 established by the authority, which may include the construction
14 manager-at-risk's experience, past performance, safety record,
15 proposed personnel and methodology, proposed fees, and other
16 appropriate factors that demonstrate the construction
17 manager-at-risk's ability to provide the best value to the
18 authority and to deliver the required services in accordance with
19 the authority's specifications.

20 (f) The authority shall adopt rules governing the award of
21 contracts using construction manager-at-risk procedures under this
22 section.

23 SECTION 9.08. Subchapter F, Chapter 366, Transportation
24 Code, is amended by adding Sections 366.2521 and 366.2522 to read as
25 follows:

26 Sec. 366.2521. GIFTS AND CONTRIBUTIONS; OFFENSE. (a) In
27 this section, "benefit" means anything reasonably regarded as

1 pecuniary gain or pecuniary advantage, including benefit to any
2 other person in whose welfare the beneficiary has a direct and
3 substantial interest.

4 (b) A director commits an offense if the person solicits,
5 accepts, or agrees to accept any benefit from:

6 (1) a person the director knows to be subject to
7 regulation, inspection, or investigation by the authority; or

8 (2) a person the director knows is interested in or
9 likely to become interested in any contract, purchase, payment,
10 claim, transaction, or matter involving the exercise of the
11 director's discretion.

12 (c) A director who receives an unsolicited benefit that the
13 director is prohibited from accepting under this section may donate
14 the benefit to a governmental entity that has the authority to
15 accept the gift or may donate the benefit to a recognized tax-exempt
16 charitable organization formed for educational, religious, or
17 scientific purposes.

18 (d) This section does not apply to:

19 (1) a fee prescribed by law to be received by a
20 director;

21 (2) a benefit to which the director is lawfully
22 entitled; or

23 (3) a benefit for which the director gives legitimate
24 consideration in a capacity other than as a director.

25 (e) An offense under this section is a Class A misdemeanor.

26 (f) If conduct that constitutes an offense under this
27 section also constitutes an offense under Section 36.08, Penal

1 Code, the actor may be prosecuted under this section or Section
2 36.08.

3 Sec. 366.2522. OFFERING GIFT TO A DIRECTOR; OFFENSE.

4 (a) A person commits an offense if the person offers, confers, or
5 agrees to confer any benefit on a director that the person knows the
6 director is prohibited from accepting under Section 366.2521.

7 (b) An offense under this section is a Class A misdemeanor.

8 (c) If conduct that constitutes an offense under this
9 section also constitutes an offense under Section 36.09, Penal
10 Code, the actor may be prosecuted under this section or Section
11 36.09.

12 SECTION 9.09. Subchapter F, Chapter 366, Transportation
13 Code, is amended by adding Section 366.2575 to read as follows:

14 Sec. 366.2575. BOARD VOTE ON COUNTY REQUEST. The
15 commissioners court of a county of an authority may request the
16 board of the authority to vote on whether to build a project that
17 the county requests.

18 SECTION 9.10. Subchapter G, Chapter 366, Transportation
19 Code, is amended by adding Section 366.305 to read as follows:

20 Sec. 366.305. TRANS-TEXAS CORRIDOR PROJECTS. If an
21 authority is requested by the commission to participate in the
22 development of a turnpike project that has been designated as part
23 of the Trans-Texas Corridor, the authority shall have, in addition
24 to all powers granted in this chapter, all powers of the department
25 related to the development of Trans-Texas Corridor projects.

26 SECTION 9.11. The TxDOT/NTTA Regional Protocol entered into
27 between the Texas Department of Transportation and the North Texas

1 Tollway Authority and approved on August 10, 2006, by the tollway
2 authority and on August 24, 2006, by the department is invalidated.

3 ARTICLE 10. REGIONAL MOBILITY AUTHORITIES

4 SECTION 10.01. Subsection (d), Section 370.301,
5 Transportation Code, is amended to read as follows:

6 (d) The commission or department may use federal money for
7 any purpose described by this chapter. An action of an authority
8 taken under this chapter must comply with the requirements of
9 applicable federal law, including provisions relating to the role
10 of metropolitan planning organizations under federal law and the
11 approval of projects for conformity with the state implementation
12 plan relating to air quality, the use of toll revenue, and the use
13 of the right-of-way of and access to federal-aid highways.
14 Notwithstanding an action of an authority taken under this chapter,
15 the commission or the department may take any action that in its
16 reasonable judgment is necessary to comply with any federal
17 requirement to enable this state to receive federal-aid highway
18 funds.

19 ARTICLE 11. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR TOLL PROJECTS

20 SECTION 11.01. Subtitle G, Title 6, Transportation Code, is
21 amended by adding Chapter 371 to read as follows:

22 CHAPTER 371. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR HIGHWAY TOLL

23 PROJECTS

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Sec. 371.001. DEFINITIONS. In this chapter:

26 (1) "Toll project" means a toll project described by
27 Section 201.001(b), regardless of whether the toll project is:

1 (A) a part of the state highway system; or
2 (B) subject to the jurisdiction of the
3 department.

4 (2) "Toll project entity" means an entity authorized
5 by law to acquire, design, construct, operate, and maintain a toll
6 project, including:

- 7 (A) the department, including under Chapter 227;
8 (B) a regional tollway authority under Chapter
9 366;
10 (C) a regional mobility authority under Chapter
11 370; or
12 (D) a county under Chapter 284.

13 Sec. 371.002. APPLICABILITY. This chapter does not apply
14 to a project for which the commission selected an apparent best
15 value proposer before May 1, 2007.

16 [Sections 371.003-371.050 reserved for expansion]

17 SUBCHAPTER B. OVERSIGHT

18 Sec. 371.051. ATTORNEY GENERAL REVIEW. A toll project
19 entity may not enter into a comprehensive development agreement
20 unless the attorney general reviews the proposed agreement and
21 determines that it is legally sufficient.

22 Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD AND
23 STATE AUDITOR. (a) Not later than the 10th day after the date of
24 qualifying or shortlisting private entities to submit detailed
25 proposals for a toll project, a toll project entity shall provide
26 the Legislative Budget Board with the names of qualifying or
27 shortlisted proposers and their team members.

1 (b) At least 30 days before entering into a comprehensive
2 development agreement, a toll project entity shall provide the
3 Legislative Budget Board with:

4 (1) a copy of the version of the proposed
5 comprehensive development agreement to be executed;

6 (2) a copy of the proposal submitted by the apparent
7 best value proposer; and

8 (3) a financial forecast prepared by the toll project
9 entity that includes:

10 (A) toll revenue the entity projects will be
11 derived from the project during the planned term of the agreement;

12 (B) estimated construction costs and operating
13 expenses; and

14 (C) the amount of income the entity projects the
15 private participant in the agreement will realize during the
16 planned term of the agreement.

17 (c) Before entering into a comprehensive development
18 agreement, a toll project entity shall provide the state auditor
19 with the traffic and revenue report prepared by the toll project
20 entity or its consultant for the project. The entity may not enter
21 into the comprehensive development agreement before the 30th day
22 after the date that the state auditor receives the report so that
23 the state auditor may review and comment on the report and the
24 methodology used to develop the report.

25 (d) Before the comprehensive development agreement is
26 entered into, financial forecasts and traffic and revenue reports
27 prepared by or for a toll project entity for the project are

1 confidential and are not subject to disclosure, inspection, or
2 copying under Chapter 552, Government Code. On or after the date
3 the comprehensive development agreement is entered into, the
4 financial forecasts and traffic revenue reports are public
5 information under Chapter 552, Government Code.

6 [Sections 371.053-371.100 reserved for expansion]

7 SUBCHAPTER C. CONTRACT PROVISIONS

8 Sec. 371.101. TERMINATION FOR CONVENIENCE. (a) A toll
9 project entity having rulemaking authority by rule and a toll
10 project entity without rulemaking authority by official action
11 shall develop a formula for making termination payments to
12 terminate a comprehensive development agreement under which a
13 private participant receives the right to operate and collect
14 revenue from a toll project. A formula must calculate an estimated
15 amount of loss to the private participant as a result of the
16 termination for convenience.

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

22 (c) A formula under Subsection (b) may not include any new
23 estimate of future revenue from the project. Compensation to the
24 private participant upon termination for convenience may not exceed
25 the amount determined using the formula under Subsection (b).

26 Sec. 371.102. TERMINATION OF CERTAIN COMPREHENSIVE
27 DEVELOPMENT AGREEMENTS. If a toll project entity elects to

1 terminate a comprehensive development agreement under which a
2 private participant receives the right to operate and collect
3 revenue from a project, the entity may:

4 (1) if authorized to issue bonds for that purpose,
5 issue bonds to:

6 (A) make any applicable termination payments to
7 the private participant; or

8 (B) purchase the interest of the private
9 participant in the comprehensive development agreement or related
10 property; or

11 (2) provide for the payment of obligations of the
12 private participant incurred pursuant to the comprehensive
13 development agreement.

14 Sec. 371.103. PROHIBITION AGAINST LIMITING OR PROHIBITING
15 CONSTRUCTION OF TRANSPORTATION PROJECTS. (a) A comprehensive
16 development agreement may not contain a provision that limits or
17 prohibits the construction, reconstruction, expansion,
18 rehabilitation, operation, or maintenance of a highway or other
19 transportation project, as that term is defined by Section 370.003,
20 by the toll project entity or other governmental entity, or by a
21 private entity under a contract with the toll project entity or
22 other governmental entity.

23 (b) Except as provided by Subsection (c), a comprehensive
24 development agreement may contain a provision authorizing the toll
25 project entity to compensate the private participant in the
26 agreement for the loss of toll revenues attributable to the
27 construction by the entity of a limited access highway project

1 located within an area that extends up to four miles from either
2 side of the centerline of the project developed under the
3 agreement, less the private participant's decreased operating and
4 maintenance costs attributable to the highway project, if any.

5 (c) A comprehensive development agreement may not require
6 the toll project entity to provide compensation for the
7 construction of:

8 (1) a highway project contained in the state
9 transportation plan or a transportation plan of a metropolitan
10 planning organization in effect on the effective date of the
11 agreement;

12 (2) work on or improvements to a highway project
13 necessary for improved safety, or for maintenance or operational
14 purposes;

15 (3) a high occupancy vehicle exclusive lane addition
16 or other work on any highway project that is required by an
17 environmental regulatory agency; or

18 (4) a transportation project that provides a mode of
19 transportation that is not included in the project that is the
20 subject of the comprehensive development agreement.

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

24 (e) A comprehensive development agreement that contains a
25 provision described by Subsection (b) must require the private
26 participant to provide compensation to the toll project entity in
27 the amount of any increase in toll revenues received by the private

1 participant that is attributable to the construction of a highway
2 project described by Subsection (b), less the private participant's
3 increased operation and maintenance costs attributable to the
4 highway project, if any.

5 [Sections 371.104-371.150 reserved for expansion]

6 SUBCHAPTER D. DISCLOSURE OF INFORMATION

7 Sec. 371.151. DISCLOSURE OF FINANCIAL INFORMATION.

8 (a) Before a toll project entity enters into a contract for the
9 construction of a toll project, the entity shall publish in the
10 manner provided by Section 371.152 information regarding:

11 (1) project financing, including:

12 (A) the total amount of debt that has been and
13 will be assumed to acquire, design, construct, operate, and
14 maintain the toll project;

15 (B) a description of how the debt will be repaid,
16 including a projected timeline for repaying the debt; and

17 (C) the projected amount of interest that will be
18 paid on the debt;

19 (2) whether the toll project will continue to be
20 tolled after the debt has been repaid;

21 (3) a description of the method that will be used to
22 set toll rates;

23 (4) a description of any terms in the contract
24 relating to competing facilities, including any penalties
25 associated with the construction of a competing facility;

26 (5) a description of any terms in the contract
27 relating to a termination for convenience provision, including any

1 information regarding how the value of the project will be
2 calculated for the purposes of making termination payments;

3 (6) the initial toll rates, the methodology for
4 increasing toll rates, and the projected toll rates at the end of
5 the term of the contract; and

6 (7) the projected total amount of concession payments.

7 (b) A toll project entity may not enter into a contract for
8 the construction of a toll project before the 30th day after the
9 date the information is first published under Section 371.152.

10 Sec. 371.152. DISCLOSURE BY PUBLICATION. (a) Information
11 under Section 371.151 must be published in a newspaper published in
12 the county in which the toll project is to be constructed once a
13 week for at least two weeks before the time set for entering into
14 the contract and in two other newspapers that the toll project
15 entity may designate.

16 (b) Instead of the notice required by Subsection (a), if the
17 toll project entity estimates that the contract involves an amount
18 less than \$300,000, the information may be published in two
19 successive issues of a newspaper published in the county in which
20 the project is to be constructed.

21 (c) If a newspaper is not published in the county in which
22 the toll project is to be constructed, notice shall be published in
23 a newspaper published in the county:

24 (1) nearest the county seat of the county in which the
25 improvement is to be made; and

26 (2) in which a newspaper is published.

27 Sec. 371.153. HEARING. (a) A toll project entity shall

1 hold a public hearing on the information published under Section
2 371.152 not later than the 10th day after the date the information
3 is first published and not less than 10 days before the entity
4 enters into the contract.

5 (b) A hearing under this section must be held in the county
6 seat of the county in which the toll project is located.

7 (c) A hearing under this section must include a formal
8 presentation and a mechanism for responding to comments and
9 questions.

10 ARTICLE 12. ISSUANCE OF BONDS

11 SECTION 12.01. Subsections (b) and (d), Section 222.003,
12 Transportation Code, are amended to read as follows:

13 (b) The aggregate principal amount of the bonds and other
14 public securities that are issued may not exceed \$6 [~~\$3~~] billion.
15 The commission may only issue bonds or other public securities in an
16 aggregate principal amount of not more than \$1.5 [~~\$1~~] billion each
17 year.

18 (d) Of the aggregate principal amount of bonds and other
19 public securities that may be issued under this section, the
20 commission shall issue bonds or other public securities in an
21 aggregate principal amount of \$1.2 billion [~~\$600 million~~] to fund
22 projects that reduce accidents or correct or improve hazardous
23 locations on the state highway system. The commission by rule shall
24 prescribe criteria for selecting projects eligible for funding
25 under this section. In establishing criteria for the projects, the
26 commission shall consider accident data, traffic volume, pavement
27 geometry, and other conditions that can create or exacerbate

1 hazardous roadway conditions.

2 ARTICLE 13. EFFECTIVE DATE

3 SECTION 13.01. This Act takes effect immediately if it
4 receives a vote of two-thirds of all the members elected to each
5 house, as provided by Section 39, Article III, Texas Constitution.
6 If this Act does not receive the vote necessary for immediate
7 effect, this Act takes effect September 1, 2007.