

1-1 By: Williams, et al. S.B. No. 792
1-2 (In the Senate - Filed February 21, 2007; March 6, 2007,
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1-6 Nays 0; April 2, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 792 By: Williams

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the authority of certain counties and other entities
1-11 with respect to certain transportation projects and to
1-12 comprehensive development agreements with regard to such projects.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 228.0055, Transportation Code, is
1-15 amended to read as follows:

1-16 Sec. 228.0055. USE OF CONTRACT PAYMENTS. (a) Payments
1-17 received by the commission or the department under a comprehensive
1-18 development agreement shall ~~[may]~~ be used by the commission or the
1-19 department to finance the construction, maintenance, or operation
1-20 of ~~[a]~~ transportation projects ~~[project]~~ or air quality projects
1-21 ~~[project]~~ in the region.

1-22 (a-1) The commission or the department shall allocate the
1-23 distribution of funds to department districts in the region under
1-24 Subsection (a) based on the percentage of toll revenue from users,
1-25 from each department district, of the project that is the subject of
1-26 the comprehensive development agreement. To assist the commission
1-27 or the department in determining the allocation, each entity
1-28 responsible for collecting tolls for a project shall calculate on
1-29 an annual basis the percentage of toll revenue from users of the
1-30 project from each department district based on the number of
1-31 recorded electronic toll collections.

1-32 (b) The commission or the department may not:

1-33 (1) revise the formula as provided in the department's
1-34 unified transportation program, or its successor document, in a
1-35 manner that results in a decrease of a department district's
1-36 allocation because of a payment under Subsection (a); or

1-37 (2) take any other action that would reduce funding
1-38 allocated to a department district because of payments received
1-39 under a comprehensive development agreement.

1-40 SECTION 2. Subchapter A, Chapter 228, Transportation Code,
1-41 is amended by adding Sections 228.011 and 228.012 to read as
1-42 follows:

1-43 Sec. 228.011. TOLL PROJECTS IN CERTAIN COUNTIES. (a) This
1-44 section applies only to a county acting under Chapter 284.

1-45 (b) The county is the entity that has primary responsibility
1-46 for the financing, construction, and operation of a toll project
1-47 located in the county.

1-48 (c) To the extent authorized by federal law or authorized or
1-49 required by this title, the commission and the department shall
1-50 assist the county in the financing, construction, and operation of
1-51 a toll project in the county by allowing the county to use highway
1-52 right-of-way owned by the department and to access the state
1-53 highway system. In connection with the use by the county of
1-54 improved state highway right-of-way, the county must enter into an
1-55 agreement with the commission or the department as provided by
1-56 Section 284.004(b).

1-57 (d) Subsections (b) and (c) do not limit the authority of
1-58 the commission or the department to participate in the cost of
1-59 acquiring, constructing, maintaining, or operating a turnpike
1-60 project of the county under Chapter 284.

1-61 (e) Before the commission or the department may enter into a
1-62 contract for the financing, construction, or operation of a
1-63 proposed or existing toll project any part of which is located in

2-1 the county, the commission or department shall provide the county
 2-2 the first option to finance, construct, or operate, as applicable,
 2-3 the portion of the toll project located in the county:

2-4 (1) on terms agreeable to the county, without the
 2-5 requirement of any payment to the commission or the department
 2-6 except as provided by Section 284.004(a); and

2-7 (2) in a manner determined by the county to be
 2-8 consistent with the practices and procedures by which the county
 2-9 finances, constructs, or operates a project.

2-10 (f) Except as provided by Section 284.004(a), an agreement
 2-11 entered into by the county and the commission or the department in
 2-12 connection with a project under Chapter 284 that is financed,
 2-13 constructed, or operated by the county and that is on or directly
 2-14 connected to the state highway system may not require the county to
 2-15 make any payments to the commission or the department.

2-16 (g) An agreement entered into by the county and the
 2-17 commission or department in connection with a project under Chapter
 2-18 284 that is financed, constructed, or operated by the county and
 2-19 that is on or directly connected to a highway in the state highway
 2-20 system does not create a joint enterprise for liability purposes.

2-21 Sec. 228.012. TOLL PROJECTS WITHIN BOUNDARIES OF REGIONAL
 2-22 TOLLWAY AUTHORITY. (a) This section applies only to a toll
 2-23 project located within the boundaries of a regional tollway
 2-24 authority under Chapter 366.

2-25 (b) The tollway authority is the entity that has primary
 2-26 responsibility for the financing, construction, and operation of a
 2-27 toll project located within the boundaries of the authority.

2-28 (c) To the extent authorized by federal law or authorized or
 2-29 required by this title, the commission and the department shall
 2-30 assist the tollway authority in the financing, construction, and
 2-31 operation of a toll project located within the boundaries of the
 2-32 authority by allowing the authority to use highway right-of-way
 2-33 owned by the department and to access the state highway system.

2-34 (d) Subsections (b) and (c) do not limit the authority of
 2-35 the commission or the department to participate in the cost of
 2-36 acquiring, constructing, maintaining, or operating a turnpike
 2-37 project of the tollway authority under Chapter 366.

2-38 (e) Before the commission or the department may enter into a
 2-39 contract for the financing, construction, or operation of a
 2-40 proposed or existing toll project any part of which is located
 2-41 within the boundaries of a tollway authority, the commission or
 2-42 department shall provide the authority the first option to finance,
 2-43 construct, or operate, as applicable, the portion of the toll
 2-44 project located within the boundaries of the authority:

2-45 (1) on terms agreeable to the authority, without the
 2-46 requirement of any payment to the commission or the department; and

2-47 (2) in a manner determined by the authority to be
 2-48 consistent with the practices and procedures by which the authority
 2-49 finances, constructs, or operates a project.

2-50 (f) An agreement entered into by the tollway authority and
 2-51 the commission or the department in connection with a project under
 2-52 Chapter 366 that is financed, constructed, or operated by the
 2-53 authority and that is on or directly connected to the state highway
 2-54 system may not require the authority to make any payments to the
 2-55 commission or the department.

2-56 (g) An agreement entered into by the tollway authority and
 2-57 the commission or department in connection with a project under
 2-58 Chapter 366 that is financed, constructed, or operated by the
 2-59 authority and that is on or directly connected to a highway in the
 2-60 state highway system does not create a joint enterprise for
 2-61 liability purposes.

2-62 (h) Before a final contract execution by the department for
 2-63 any comprehensive development agreement project, the commissioners
 2-64 court for any county in which a majority of the project is located
 2-65 must pass a supporting resolution.

2-66 (i) Once the authority or regional transportation council
 2-67 has received notice from the department relating to a project, the
 2-68 authority has 90 days to exercise the first right of refusal for
 2-69 construction of a toll project.

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

(3) "Project" means:

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

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

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

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

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

SECTION 4. Section 284.003, Transportation Code, is amended to read as follows:

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

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

(A) exclusively in the county;

(B) in the county and outside the county; or

(C) in one or more counties adjacent to the county;

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

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

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

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

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

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

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

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

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

4-1 (e) Except as provided by federal law, an action of a county
 4-2 taken under this chapter is not subject to approval, supervision,
 4-3 or regulation by a metropolitan planning organization.

4-4 (f) The county may enter into a protocol or other agreement
 4-5 with the commission or the department to implement this section
 4-6 through the cooperation of the parties to the agreement.

4-7 SECTION 5. Subchapter A, Chapter 284, Transportation Code,
 4-8 is amended by adding Sections 284.0031 and 284.0032 and amending
 4-9 Section 284.004 to read as follows:

4-10 Sec. 284.0031. OTHER ROAD, STREET, OR HIGHWAY PROJECTS.

4-11 (a) The commissioners court of a county or a local government
 4-12 corporation, without state approval, supervision, or regulation
 4-13 may:

4-14 (1) authorize the use of surplus revenue of a project
 4-15 for the study, design, construction, maintenance, repair, or
 4-16 operation of roads, streets, highways, or other related facilities
 4-17 that are not part of a project under this chapter; and

4-18 (2) prescribe terms for the use of the surplus
 4-19 revenue, including the manner in which the roads, streets,
 4-20 highways, or other related facilities are to be studied, designed,
 4-21 constructed, maintained, repaired, or operated.

4-22 (b) To implement this section, a county may enter into an
 4-23 agreement with the commission, the department, a local governmental
 4-24 entity, or another political subdivision of this state.

4-25 (c) A county may not take an action under this section that
 4-26 violates or impairs a bond resolution, trust agreement, or
 4-27 indenture that governs the use of the revenue of a project.

4-28 (d) Except as provided by this section, a county has the
 4-29 same powers and may use the same procedures with respect to the
 4-30 study, financing, design, construction, maintenance, repair, or
 4-31 operation of a road, street, highway, or other related facility
 4-32 under this section as are available to the county with respect to a
 4-33 project under this chapter.

4-34 Sec. 284.0032. TRANS-TEXAS CORRIDOR PROJECTS. If a county
 4-35 requests or is requested by the commission to participate in the
 4-36 development of a project under this chapter that has been
 4-37 designated as part of the Trans-Texas Corridor, in connection with
 4-38 the project and in addition to the other powers granted by this
 4-39 chapter, the county has all the powers of the department related to
 4-40 the development of a project that has been designated as part of the
 4-41 Trans-Texas Corridor.

4-42 Sec. 284.004. USE OF COUNTY PROPERTY AND STATE HIGHWAY
 4-43 ALIGNMENT, RIGHT-OF-WAY, AND ACCESS. (a) Notwithstanding any
 4-44 other law, under this chapter a county may use any county property,
 4-45 state highway right-of-way, or access to the state highway system
 4-46 [for a project under this chapter], regardless of when or how the
 4-47 property, right-of-way, or access is acquired. The department or
 4-48 the commission may require the county to comply with any covenant,
 4-49 condition, restriction, or limitation that affects state highway
 4-50 right-of-way, but may not:

4-51 (1) adopt rules or establish policies that have the
 4-52 effect of denying the county the use of the right-of-way or access
 4-53 that the county has determined to be necessary or convenient for the
 4-54 construction, acquisition, improvement, operation, maintenance, or
 4-55 pooling of a project under this chapter or the implementation of a
 4-56 plan under Section 284.003(d); or

4-57 (2) require the county to pay for the use of the
 4-58 right-of-way or access, except to reimburse the commission or
 4-59 department for actual costs incurred or to be incurred by a third
 4-60 party, including the federal government, as a result of that use by
 4-61 the county.

4-62 (b) If a project of the county under this chapter includes
 4-63 the proposed use of improved state highway right-of-way, the county
 4-64 and the commission or the department must enter into an agreement
 4-65 that includes reasonable terms to accommodate that use of the
 4-66 right-of-way by the county and to protect the interests of the
 4-67 commission and the department in the use of the right-of-way for
 4-68 operations of the department.

4-69 (c) Notwithstanding any other law, the commission and the

5-1 department are not liable for any damages that result from a
 5-2 county's use of state highway right-of-way or access to the state
 5-3 highway system under this chapter, regardless of the legal theory,
 5-4 statute, or cause of action under which liability is asserted.

5-5 SECTION 6. Subsections (c) and (d), Section 284.008,
 5-6 Transportation Code, are amended to read as follows:

5-7 (c) Except as provided by Subsection (d), a project becomes
 5-8 a part of the state highway system and the commission shall maintain
 5-9 the project without tolls when:

5-10 (1) all of the bonds and interest on the bonds that are
 5-11 payable from or secured by revenues of the project have been paid by
 5-12 the issuer of the bonds or another person with the consent or
 5-13 approval of the issuer; or

5-14 (2) a sufficient amount for the payment of all bonds
 5-15 and the interest on the bonds to maturity has been set aside by the
 5-16 issuer of the bonds or another person with the consent or approval
 5-17 of the issuer in a trust fund held for the benefit of the
 5-18 bondholders.

5-19 (d) ~~A [Before construction on a project under this chapter~~
 5-20 ~~begins, a]~~ County may request that the commission adopt an order
 5-21 stating that a ~~a [the]~~ project will not become part of the state
 5-22 highway system under Subsection (c). If the commission adopts the
 5-23 order:

5-24 (1) Section 362.051 does not apply to the project;

5-25 (2) the project must be maintained by the county; and

5-26 (3) the project will not become part of the state
 5-27 highway system unless the county transfers the project under
 5-28 Section 284.011.

5-29 SECTION 7. Subsections (b) and (c), Section 284.065,
 5-30 Transportation Code, are amended to read as follows:

5-31 (b) An existing project may be pooled in whole or in part
 5-32 with a new project or another existing project.

5-33 (c) A project may ~~[not]~~ be pooled more than once.

5-34 SECTION 8. Section 366.003, Transportation Code, is amended
 5-35 by adding Subdivision (9-a) to read as follows:

5-36 (9-a) "Surplus revenue" means the revenue of a
 5-37 turnpike project or system remaining at the end of any fiscal year
 5-38 after all required payments and deposits have been made in
 5-39 accordance with all bond resolutions, trust agreements,
 5-40 indentures, credit agreements, or other instruments and
 5-41 contractual obligations of the authority payable from the revenue
 5-42 of the turnpike project or system.

5-43 SECTION 9. Subsection (f), Section 366.033, Transportation
 5-44 Code, is amended to read as follows:

5-45 (f) An authority may rent, lease, franchise, license, or
 5-46 otherwise make portions of any property of the authority, including
 5-47 tangible or intangible property, [its properties] available for use
 5-48 by others in furtherance of its powers under this chapter by
 5-49 increasing:

5-50 (1) the feasibility or efficient operation [the
 5-51 revenue] of a turnpike project or system; or

5-52 (2) the revenue of the authority.

5-53 SECTION 10. Subchapter B, Chapter 366, Transportation Code,
 5-54 is amended by adding Section 366.037 to read as follows:

5-55 Sec. 366.037. OTHER HIGHWAY PROJECTS. (a) In addition to
 5-56 the powers granted under this chapter and without supervision or
 5-57 regulation by any state agency or local governmental entity, but
 5-58 subject to an agreement entered into under Subsection (c), the
 5-59 board of an authority may by resolution, and on making the findings
 5-60 set forth in this subsection, authorize the use of surplus revenue
 5-61 of a turnpike project or system for the study, design,
 5-62 construction, maintenance, repair, and operation of a highway or
 5-63 similar facility that is not a turnpike project if the highway or
 5-64 similar facility is:

5-65 (1) situated in a county in which the authority is
 5-66 authorized to design, construct, and operate a turnpike project;

5-67 (2) anticipated to either:

5-68 (A) enhance the operation or revenue of an
 5-69 existing, or the feasibility of a proposed, turnpike project by

6-1 bringing traffic to that turnpike project or enhancing the flow of
 6-2 traffic either on that turnpike project or to or from that turnpike
 6-3 project to another facility; or

6-4 (B) ameliorate the impact of an existing or
 6-5 proposed turnpike project by enhancing the capability of another
 6-6 facility to handle traffic traveling, or anticipated to travel, to
 6-7 or from that turnpike project; and

6-8 (3) not anticipated to result in an overall reduction
 6-9 of revenue of any turnpike project or system.

6-10 (b) The board in the resolution may prescribe terms for the
 6-11 use of the surplus revenue, including the manner in which the
 6-12 highway or related facility shall be studied, designed,
 6-13 constructed, maintained, repaired, or operated.

6-14 (c) An authority shall enter into an agreement to implement
 6-15 this section with the department, the commission, a local
 6-16 governmental entity, or another political subdivision that owns a
 6-17 street, road, alley, or highway that is directly affected by the
 6-18 authority's turnpike project or related facility.

6-19 (d) An authority may not:

6-20 (1) take an action under this section that violates,
 6-21 impairs, or is inconsistent with a bond resolution, trust
 6-22 agreement, or indenture governing the use of the revenue of a
 6-23 turnpike project or system; or

6-24 (2) commit in any fiscal year expenditures under this
 6-25 section exceeding 10 percent of its surplus revenue from the
 6-26 preceding fiscal year.

6-27 (e) In authorizing expenditures under this section, the
 6-28 board shall consider:

6-29 (1) balancing throughout the counties of the authority
 6-30 the application of funds generated by its turnpike projects and
 6-31 systems, taking into account where those amounts are already
 6-32 committed or programmed as a result of this section or otherwise;
 6-33 and

6-34 (2) connectivity to an existing or proposed turnpike
 6-35 project or system.

6-36 (f) Except as provided by this section, an authority has the
 6-37 same powers and may use the same procedures with respect to the
 6-38 study, financing, design, construction, maintenance, repair, and
 6-39 operation of a highway or similar facility under this section as are
 6-40 available to the authority with respect to a turnpike project or
 6-41 system.

6-42 SECTION 11. The heading to Section 366.185, Transportation
 6-43 Code, is amended to read as follows:

6-44 Sec. 366.185. ENGINEERING, DESIGN, AND CONSTRUCTION
 6-45 SERVICES [~~COMPETITIVE BIDDING~~].

6-46 SECTION 12. Section 366.185, Transportation Code, is
 6-47 amended by amending Subsection (a) and adding Subsections (c)
 6-48 through (f) to read as follows:

6-49 (a) A contract made by an authority that requires the
 6-50 expenditures of public funds for the construction or maintenance of
 6-51 a turnpike project ~~may~~ ~~must~~ be let by a competitive bidding
 6-52 procedure in which the contract is awarded to the lowest
 6-53 responsible bidder that complies with the authority's criteria.

6-54 (c) An authority may procure a combination of engineering,
 6-55 design, and construction services in a single procurement for a
 6-56 turnpike project, provided that any contract awarded results in the
 6-57 best value to the authority.

6-58 (d) The authority shall adopt rules governing the award of
 6-59 contracts for engineering, design, construction, and maintenance
 6-60 services in a single procurement.

6-61 (e) Notwithstanding any other provision of state law, an
 6-62 authority may let a contract for the design and construction of a
 6-63 turnpike project by a construction manager-at-risk procedure under
 6-64 which the construction manager-at-risk provides consultation to
 6-65 the authority during the design of the turnpike project and is
 6-66 responsible for construction of the turnpike project in accordance
 6-67 with the authority's specifications. A construction
 6-68 manager-at-risk shall be selected on the basis of criteria
 6-69 established by the authority, which may include the construction

7-1 manager-at-risk's experience, past performance, safety record,
 7-2 proposed personnel and methodology, proposed fees, and other
 7-3 appropriate factors that demonstrate the construction
 7-4 manager-at-risk's ability to provide the best value to the
 7-5 authority and to deliver the required services in accordance with
 7-6 the authority's specifications.

7-7 (f) The authority shall adopt rules governing the award of
 7-8 contracts using construction manager-at-risk procedures under this
 7-9 section.

7-10 SECTION 13. Subchapter F, Chapter 366, Transportation Code,
 7-11 is amended by adding Section 366.2575 to read as follows:

7-12 Sec. 366.2575. BOARD VOTE ON COUNTY REQUEST. The
 7-13 commissioners court of a county of an authority may request the
 7-14 board of the authority to vote on whether to build a project that
 7-15 the county requests.

7-16 SECTION 14. Subchapter G, Chapter 366, Transportation Code,
 7-17 is amended by adding Section 366.305 to read as follows:

7-18 Sec. 366.305. TRANS-TEXAS CORRIDOR PROJECTS. If an
 7-19 authority is requested by the commission to participate in the
 7-20 development of a turnpike project that has been designated as part
 7-21 of the Trans-Texas Corridor, the authority shall have, in addition
 7-22 to all powers granted in this chapter, all powers of the department
 7-23 related to the development of Trans-Texas Corridor projects.

7-24 SECTION 15. Chapter 366, Transportation Code, is amended by
 7-25 adding Subchapter H to read as follows:

7-26 SUBCHAPTER H. COMPREHENSIVE DEVELOPMENT AGREEMENTS

7-27 Sec. 366.401. COMPREHENSIVE DEVELOPMENT AGREEMENTS.
 7-28 (a) An authority may use a comprehensive development agreement
 7-29 with a private entity to design, develop, finance, construct,
 7-30 maintain, repair, operate, extend, or expand a turnpike project.

7-31 (b) A comprehensive development agreement is an agreement
 7-32 with a private entity that, at a minimum, provides for the design,
 7-33 construction, rehabilitation, expansion, or improvement of a
 7-34 turnpike project and may also provide for the financing,
 7-35 acquisition, maintenance, or operation of a turnpike project.

7-36 (c) An authority may negotiate provisions relating to
 7-37 professional and consulting services provided in connection with a
 7-38 comprehensive development agreement.

7-39 (d) An authority may authorize the investment of public and
 7-40 private money, including debt and equity participation, to finance
 7-41 a function described by this section.

7-42 Sec. 366.402. PROCESS FOR ENTERING INTO COMPREHENSIVE
 7-43 DEVELOPMENT AGREEMENTS. (a) If an authority enters into a
 7-44 comprehensive development agreement, the authority shall use a
 7-45 competitive procurement process that provides the best value for
 7-46 the authority. An authority may accept unsolicited proposals for a
 7-47 proposed turnpike project or solicit proposals in accordance with
 7-48 this section.

7-49 (b) An authority shall establish rules and procedures for
 7-50 accepting unsolicited proposals that require the private entity to
 7-51 include in the proposal:

7-52 (1) information regarding the proposed project
 7-53 location, scope, and limits;

7-54 (2) information regarding the private entity's
 7-55 qualifications, experience, technical competence, and capability
 7-56 to develop the project; and

7-57 (3) any other information the authority considers
 7-58 relevant or necessary.

7-59 (c) An authority shall publish a notice advertising a
 7-60 request for competing proposals and qualifications in the Texas
 7-61 Register that includes the criteria to be used to evaluate the
 7-62 proposals, the relative weight given to the criteria, and a
 7-63 deadline by which proposals must be received if:

7-64 (1) the authority decides to issue a request for
 7-65 qualifications for a proposed project; or

7-66 (2) the authority authorizes the further evaluation of
 7-67 an unsolicited proposal.

7-68 (d) A proposal submitted in response to a request published
 7-69 under Subsection (c) must contain, at a minimum, the information

8-1 required by Subsections (b)(2) and (3).

8-2 (e) An authority may interview a private entity submitting
8-3 an unsolicited proposal or responding to a request under Subsection
8-4 (c). The authority shall evaluate each proposal based on the
8-5 criteria described in the request for competing proposals and
8-6 qualifications and may qualify or shortlist private entities to
8-7 submit detailed proposals under Subsection (f). The authority must
8-8 qualify or shortlist at least two private entities to submit
8-9 detailed proposals for a project under Subsection (f) unless the
8-10 authority does not receive more than one proposal or one response to
8-11 a request under Subsection (c).

8-12 (f) An authority shall issue a request for detailed
8-13 proposals from all private entities qualified or shortlisted under
8-14 Subsection (e) if the authority proceeds with the further
8-15 evaluation of a proposed project. A request under this subsection
8-16 may require additional information the authority considers
8-17 relevant or necessary, including information relating to:

8-18 (1) the private entity's qualifications and
8-19 demonstrated technical competence;

8-20 (2) the feasibility of developing the project as
8-21 proposed;

8-22 (3) engineering or architectural designs;

8-23 (4) the private entity's ability to meet schedules; or

8-24 (5) a financial plan, including costing methodology
8-25 and cost proposals.

8-26 (g) In issuing a request for proposals under Subsection (f),
8-27 an authority may solicit input from entities qualified under
8-28 Subsection (e) or any other person. An authority may also solicit
8-29 input regarding alternative technical concepts after issuing a
8-30 request under Subsection (f).

8-31 (h) An authority shall evaluate each proposal based on the
8-32 criteria described in the request for detailed proposals and select
8-33 the private entity whose proposal offers the apparent best value to
8-34 the authority.

8-35 (i) An authority may enter into negotiations with the
8-36 private entity whose proposal offers the apparent best value.

8-37 (j) If at any point in negotiations under Subsection (i), it
8-38 appears to the authority that the highest ranking proposal will not
8-39 provide the authority with the overall best value, the authority
8-40 may enter into negotiations with the private entity submitting the
8-41 next-highest-ranking proposal.

8-42 (k) An authority may withdraw a request for competing
8-43 proposals and qualifications or a request for detailed proposals at
8-44 any time. The authority may then publish a new request for
8-45 competing proposals and qualifications.

8-46 (l) An authority may require that an unsolicited proposal be
8-47 accompanied by a nonrefundable fee sufficient to cover all or part
8-48 of its cost to review the proposal.

8-49 (m) An authority may pay an unsuccessful private entity that
8-50 submits a responsive proposal in response to a request for detailed
8-51 proposals under Subsection (f) a stipulated amount in exchange for
8-52 the work product contained in that proposal. A stipulated amount
8-53 must be stated in the request for proposals and may not exceed the
8-54 value of any work product contained in the proposal that can, as
8-55 determined by the authority, be used by the authority in the
8-56 performance of its functions. The use by the authority of any
8-57 design element contained in an unsuccessful proposal is at the sole
8-58 risk and discretion of the authority and does not confer liability
8-59 on the recipient of the stipulated amount under this subsection.
8-60 After payment of the stipulated amount:

8-61 (1) the authority, with the unsuccessful private
8-62 entity, jointly own the rights to, and may make use of any work
8-63 product contained in, the proposal, including the technologies,
8-64 techniques, methods, processes, ideas, and information contained
8-65 in the project design; and

8-66 (2) the use by the unsuccessful private entity of any
8-67 portion of the work product contained in the proposal is at the sole
8-68 risk of the unsuccessful private entity and does not confer
8-69 liability on the authority.

9-1 (n) An authority may prescribe the general form of a
 9-2 comprehensive development agreement and may include any matter the
 9-3 authority considers advantageous to the authority. The authority
 9-4 and the private entity shall finalize the specific terms of a
 9-5 comprehensive development agreement.

9-6 (o) Section 366.185 and Subchapter A, Chapter 223, of this
 9-7 code and Chapter 2254, Government Code, do not apply to a
 9-8 comprehensive development agreement entered into under this
 9-9 subchapter.

9-10 Sec. 366.403. CONFIDENTIALITY OF INFORMATION. (a) To
 9-11 encourage private entities to submit proposals under this
 9-12 subchapter, the following information is confidential, is not
 9-13 subject to disclosure, inspection, or copying under Chapter 552,
 9-14 Government Code, and is not subject to disclosure, discovery,
 9-15 subpoena, or other means of legal compulsion for its release until a
 9-16 final contract for a proposed project is entered into:

9-17 (1) all or part of a proposal that is submitted by a
 9-18 private entity for a comprehensive development agreement, except
 9-19 information provided under Sections 366.402(b)(1) and (2), unless
 9-20 the private entity consents to the disclosure of the information;

9-21 (2) supplemental information or material submitted by
 9-22 a private entity in connection with a proposal for a comprehensive
 9-23 development agreement unless the private entity consents to the
 9-24 disclosure of the information or material; and

9-25 (3) information created or collected by an authority
 9-26 or its agent during consideration of a proposal for a comprehensive
 9-27 development agreement or during the authority's preparation of a
 9-28 proposal to the department relating to a comprehensive development
 9-29 agreement.

9-30 (b) After an authority completes its final ranking of
 9-31 proposals under Section 366.402(h), the final rankings of each
 9-32 proposal under each of the published criteria are not confidential.

9-33 Sec. 366.404. PERFORMANCE AND PAYMENT SECURITY.
 9-34 (a) Notwithstanding the requirements of Subchapter B, Chapter
 9-35 2253, Government Code, an authority shall require a private entity
 9-36 entering into a comprehensive development agreement under this
 9-37 subchapter to provide a performance and payment bond or an
 9-38 alternative form of security in an amount sufficient to:

9-39 (1) ensure the proper performance of the agreement;
 9-40 and

9-41 (2) protect:
 9-42 (A) the authority; and
 9-43 (B) payment bond beneficiaries who have a direct
 9-44 contractual relationship with the private entity or a subcontractor
 9-45 of the private entity to supply labor or material.

9-46 (b) A performance and payment bond or alternative form of
 9-47 security shall be in an amount equal to the cost of constructing or
 9-48 maintaining the project.

9-49 (c) If an authority determines that it is impracticable for
 9-50 a private entity to provide security in the amount described by
 9-51 Subsection (b), the authority shall set the amount of the bonds or
 9-52 the alternative forms of security.

9-53 (d) A payment or performance bond or alternative form of
 9-54 security is not required for the portion of an agreement that
 9-55 includes only design or planning services, the performance of
 9-56 preliminary studies, or the acquisition of real property.

9-57 (e) The amount of the payment security must not be less than
 9-58 the amount of the performance security.

9-59 (f) In addition to, or instead of, performance and payment
 9-60 bonds, an authority may require the following alternative forms of
 9-61 security:

9-62 (1) a cashier's check drawn on a financial entity
 9-63 specified by the authority;

9-64 (2) a United States bond or note;

9-65 (3) an irrevocable bank letter of credit; or

9-66 (4) any other form of security determined suitable by
 9-67 the authority.

9-68 (g) An authority by rule shall prescribe requirements for
 9-69 alternative forms of security provided under this section.

10-1 Sec. 366.405. OWNERSHIP OF TURNPIKE PROJECTS. (a) A
 10-2 turnpike project that is the subject of a comprehensive development
 10-3 agreement with a private entity, including the facilities acquired
 10-4 or constructed on the project, is public property and is owned by
 10-5 the authority.

10-6 (b) Notwithstanding Subsection (a), an authority may enter
 10-7 into an agreement that provides for the lease of rights-of-way, the
 10-8 granting of easements, the issuance of franchises, licenses, or
 10-9 permits, or any lawful uses to enable a private entity to construct,
 10-10 operate, and maintain a turnpike project, including supplemental
 10-11 facilities. At the termination of the agreement, the turnpike
 10-12 project, including the facilities, are to be in a state of proper
 10-13 maintenance as determined by the authority and shall be returned to
 10-14 the authority in satisfactory condition at no further cost.

10-15 Sec. 366.406. LIABILITY FOR PRIVATE OBLIGATIONS. An
 10-16 authority may not incur a financial obligation for a private entity
 10-17 that designs, develops, finances, constructs, operates, or
 10-18 maintains a turnpike project. The authority or a political
 10-19 subdivision of the state is not liable for any financial or other
 10-20 obligation of a turnpike project solely because a private entity
 10-21 constructs, finances, or operates any part of the project.

10-22 Sec. 366.407. TERMS OF PRIVATE PARTICIPATION. (a) An
 10-23 authority shall negotiate the terms of private participation in a
 10-24 turnpike project under this subchapter, including:

10-25 (1) methods to determine the applicable cost, profit,
 10-26 and project distribution among the private participants and the
 10-27 authority;

10-28 (2) reasonable methods to determine and classify toll
 10-29 rates and the responsibility for setting toll rates;

10-30 (3) acceptable safety and policing standards; and

10-31 (4) other applicable professional, consulting,
 10-32 construction, operation, and maintenance standards, expenses, and
 10-33 costs.

10-34 (b) A comprehensive development agreement entered into
 10-35 under this subchapter may include any provision the authority
 10-36 considers appropriate, including a provision:

10-37 (1) providing for the purchase by the authority, under
 10-38 terms and conditions agreed to by the parties, of the interest of a
 10-39 private participant in the comprehensive development agreement and
 10-40 related property, including any interest in a turnpike project
 10-41 designed, developed, financed, constructed, operated, or
 10-42 maintained under the comprehensive development agreement;

10-43 (2) establishing the purchase price, as determined in
 10-44 accordance with the methodology established by the parties in the
 10-45 comprehensive development agreement, for the interest of a private
 10-46 participant in the comprehensive development agreement and related
 10-47 property;

10-48 (3) providing for the payment of an obligation
 10-49 incurred under the comprehensive development agreement, including
 10-50 an obligation to pay the purchase price for the interest of a
 10-51 private participant in the comprehensive development agreement,
 10-52 from any available source, including securing the obligation by a
 10-53 pledge of revenues of the authority derived from the applicable
 10-54 project, which pledge shall have priority as established by the
 10-55 authority;

10-56 (4) permitting the private participant to pledge its
 10-57 rights under the comprehensive development agreement;

10-58 (5) concerning the private participant's right to
 10-59 operate and collect revenue from the turnpike project; and

10-60 (6) restricting the right of the authority to
 10-61 terminate the private participant's right to operate and collect
 10-62 revenue from the turnpike project unless and until any applicable
 10-63 termination payments have been made.

10-64 (c) An authority may enter into a comprehensive development
 10-65 agreement under this subchapter with a private participant only if
 10-66 the project is identified in the department's unified
 10-67 transportation program or is located on a transportation corridor
 10-68 identified in the statewide transportation plan.

10-69 (d) Section 366.406 does not apply to an obligation of an

11-1 authority under a comprehensive development agreement, nor is an
 11-2 authority otherwise constrained from issuing bonds or other
 11-3 financial obligations for a turnpike project payable solely from
 11-4 revenues of that turnpike project or from amounts received under a
 11-5 comprehensive development agreement.

11-6 (e) Notwithstanding any other law, and subject to
 11-7 compliance with the dispute resolution procedures set out in the
 11-8 comprehensive development agreement, an obligation of an authority
 11-9 under a comprehensive development agreement entered into under this
 11-10 subchapter to make or secure payments to a person because of the
 11-11 termination of the agreement, including the purchase of the
 11-12 interest of a private participant or other investor in a project,
 11-13 may be enforced by mandamus against the authority in a district
 11-14 court of any county of the authority, and the sovereign immunity of
 11-15 the authority is waived for that purpose. The district courts of
 11-16 any county of the authority shall have exclusive jurisdiction and
 11-17 venue over and to determine and adjudicate all issues necessary to
 11-18 adjudicate any action brought under this subsection. The remedy
 11-19 provided by this subsection is in addition to any legal and
 11-20 equitable remedies that may be available to a party to a
 11-21 comprehensive development agreement.

11-22 (f) If an authority enters into a comprehensive development
 11-23 agreement with a private participant that includes the collection
 11-24 by the private participant of tolls for the use of a toll project,
 11-25 the private participant shall submit to the authority for approval:

- 11-26 (1) the methodology for:
- 11-27 (A) the setting of tolls; and
 - 11-28 (B) increasing the amount of the tolls;
- 11-29 (2) a plan outlining methods the private participant
 11-30 will use to collect the tolls, including:
- 11-31 (A) any charge to be imposed as a penalty for late
 11-32 payment of a toll; and
 - 11-33 (B) any charge to be imposed to recover the cost
 11-34 of collecting a delinquent toll; and
 - 11-35 (3) any proposed change in an approved methodology for
 11-36 the setting of a toll or a plan for collecting the toll.

11-37 (g) Except as provided by this section, a comprehensive
 11-38 development agreement with a private participant that includes the
 11-39 collection by the private participant of tolls for the use of a toll
 11-40 project may be for a term not longer than 30 years.

11-41 Sec. 366.408. RULES, PROCEDURES, AND GUIDELINES GOVERNING
 11-42 SELECTION AND NEGOTIATING PROCESS. (a) To promote fairness,
 11-43 obtain private participants in turnpike projects, and promote
 11-44 confidence among those participants, an authority shall adopt
 11-45 rules, procedures, and other guidelines governing selection of
 11-46 private participants for comprehensive development agreements and
 11-47 negotiations of comprehensive development agreements. The rules
 11-48 must contain criteria relating to the qualifications of the
 11-49 participants and the award of the contracts.

11-50 (b) An authority shall have up-to-date procedures for
 11-51 participation in negotiations under this subchapter.

11-52 (c) An authority has exclusive judgment to determine the
 11-53 terms of an agreement.

11-54 Sec. 366.409. USE OF CONTRACT PAYMENTS. (a) Payments
 11-55 received by an authority under a comprehensive development
 11-56 agreement shall be used by the authority to finance the
 11-57 construction, maintenance, or operation of a turnpike project or a
 11-58 highway.

11-59 (b) The authority shall allocate the distribution of funds
 11-60 received under Subsection (a) to the counties of the authority
 11-61 based on the percentage of toll revenue from users, from each
 11-62 county, of the project that is the subject of the comprehensive
 11-63 development agreement. To assist the authority in determining the
 11-64 allocation, each entity responsible for collecting tolls for a
 11-65 project shall calculate on an annual basis the percentage of toll
 11-66 revenue from users of the project from each county within the
 11-67 authority based on the number of recorded electronic toll
 11-68 collections.

11-69 SECTION 16. (a) The Proposed TxDOT/NTTA Regional Protocol

12-1 entered into between the Texas Department of Transportation and the
12-2 North Texas Tollway Authority and approved on August 10, 2006, by
12-3 the tollway authority and on August 24, 2006, by the department is
12-4 void.

12-5 (b) On dissolution of the protocol under Subsection (a) of
12-6 this section, the North Texas Tollway Authority will remain the
12-7 operator for all turnpike projects within the service area of the
12-8 authority.

12-9 (c) This section does not apply to a comprehensive
12-10 development agreement for a managed lane facility toll project the
12-11 major portion of which is located inside the boundaries of a county
12-12 in which two or more municipalities each with a population of more
12-13 than 300,000 are located and for which the Texas Department of
12-14 Transportation has issued a request for qualifications before the
12-15 effective date of this section.

12-16 SECTION 17. This Act takes effect immediately if it
12-17 receives a vote of two-thirds of all the members elected to each
12-18 house, as provided by Section 39, Article III, Texas Constitution.
12-19 If this Act does not receive the vote necessary for immediate
12-20 effect, this Act takes effect September 1, 2007.

12-21 * * * * *