

By: Nichols, et al.

S.B. No. 1267

A BILL TO BE ENTITLED

AN ACT

relating to a moratorium on the inclusion of certain provisions in a comprehensive development agreement or the sale of a toll project and to the creation and duties of a study committee.

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

SECTION 1. Subchapter E, Chapter 223, Transportation Code, is amended by adding Section 223.210 to read as follows:

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

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

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

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

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

(A) the department;

(B) a regional tollway authority;

(C) a regional mobility authority; or

(D) a county.

(b) A comprehensive development agreement entered into with a private participant by a toll project entity on or after the

1 effective date of this section for the acquisition, design,  
2 construction, financing, operation, or maintenance of a toll  
3 project may not contain a provision permitting the private  
4 participant to operate and collect revenue from the toll project.

5 (c) Subsection (b) does not apply to a comprehensive  
6 development agreement in connection with a project:

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

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

12 (3) for which the department has issued a request for  
13 qualifications before the effective date of this section.

14 (c-1) Subsection (b) does not apply to a comprehensive  
15 development agreement in connection with a project associated with  
16 the highway designated as the Trinity Parkway in the city of Dallas  
17 or any portion of the Loop 9 project that is located in a  
18 nonattainment air quality area as designated by the United States  
19 Environmental Protection Agency that includes two adjacent  
20 counties that each have a population of one million or more.

21 (c-2) Notwithstanding the TxDOT/NTTA Regional Protocol  
22 entered into between the department and the North Texas Tollway  
23 Authority (the authority) and approved on August 10, 2006, by the  
24 tollway authority and on August 24, 2006, by the department,  
25 Subsection (b) does not apply to a comprehensive development  
26 agreement:

27 (1) entered into in connection with State Highway 121

1 if, before the commission or the department enters into a contract  
2 for the financing, construction, or operation of the project with a  
3 private participant, an authority under Chapter 366 was granted the  
4 ability to finance, construct, or operate, as applicable, the  
5 portion of the toll project located within the boundaries of the  
6 authority, and the authority was granted a period of 60 days from  
7 March 26, 2007, to submit a commitment to the metropolitan planning  
8 organization which is determined to be equal to or greater than any  
9 other commitment submitted prior to March 26, 2007; if the  
10 financial value of the commitment is determined to be equal to or  
11 greater value than any other commitment submitted prior to March  
12 26, 2007, then the commission shall allow the authority to develop  
13 the project; or

14 (2) entered into in connection with State Highway 161  
15 if, before the commission or the department enters into a contract  
16 with a private participant for the financing, construction, or  
17 operation, an authority under Chapter 366 was granted the ability  
18 to finance, construct, or operate, as applicable, the portion of  
19 the toll project located within the boundaries of the authority,  
20 and the authority was granted a period of 90 days to submit a  
21 commitment to the metropolitan planning organization; if the  
22 authority makes a commitment to proceed, then the department shall  
23 allow the authority to proceed and the authority must enter into  
24 contracts to finance, construct, or operate the project within 180  
25 days.

26 (d) Subsection (c) does not apply to any toll project or  
27 managed lane project located on any portion of U.S. Highway 281 that

1 is located in a county with a population of more than one million in  
2 which more than 80 percent of the population lives in a single  
3 municipality.

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

12 (f) The department may not enter into a comprehensive  
13 development agreement in connection with a project described by  
14 Subsection (c) unless the commissioners court of the county in  
15 which the majority of the project is located passes a resolution in  
16 support of the agreement that states that the commissioners court:

17 (1) acknowledges that the comprehensive development  
18 agreement may contain penalties for the construction of future  
19 competing transportation projects that are acquired or constructed  
20 during the term of the comprehensive development agreement; and

21 (2) knowing of those potential penalties, agrees that  
22 the department should execute the comprehensive development  
23 agreement.

24 (g) On or after the effective date of this section, a toll  
25 project entity may not sell or enter into a contract to sell a toll  
26 project of the entity to a private entity.

27 (h) A legislative study committee is created. The committee

1 is composed of nine members, appointed as follows:

2 (1) three members appointed by the lieutenant  
3 governor;

4 (2) three members appointed by the speaker of the  
5 house of representatives; and

6 (3) three members appointed by the governor.

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

16 (j) Not later than December 1, 2008, the legislative study  
17 committee shall:

18 (1) prepare a written report summarizing:

19 (A) any hearings conducted by the committee;

20 (B) any legislation proposed by the committee;

21 (C) the committee's recommendations for

22 safeguards and protections of the public's interest when a contract

23 for the sale of a toll project to a private entity is entered into;

24 and

25 (D) any other findings or recommendations of the

26 committee; and

27 (2) deliver a copy of the report to the governor, the

1 lieutenant governor, and the speaker of the house of  
2 representatives.

3 (k) On December 31, 2008, the legislative study committee  
4 created under this section is abolished.

5 (l) This section expires September 1, 2009.

6 (m) Subsections (b), (c), (e), and (f) do not apply to a  
7 project that is located in a county with a population of 575,000 or  
8 more and is adjacent to an international border.

9 SECTION 2. This Act takes effect immediately if it receives  
10 a vote of two-thirds of all the members elected to each house, as  
11 provided by Section 39, Article III, Texas Constitution. If this  
12 Act does not receive the vote necessary for immediate effect, this  
13 Act takes effect September 1, 2007.