

CORRECTED

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Smith of Harris, Dutton, Hartnett,  
Creighton, Howard of Fort Bend, et al.

H.B. No. 1892

A BILL TO BE ENTITLED

AN ACT

relating to the authority of certain counties and other entities  
with respect to certain transportation projects.

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  
effective date of this subsection for the acquisition, design,

1 construction, financing, operation, or maintenance of a toll  
2 project may not contain a provision permitting the private  
3 participant to operate the toll project or collect revenue from the  
4 toll project, regardless of whether the private participant  
5 operates the toll project or collects the revenue itself or engages  
6 a subcontractor or other entity to operate the toll project or  
7 collect the revenue.

8 (c) On or after the effective date of this subsection, a  
9 toll project entity may not sell or enter into a contract to sell a  
10 toll project of the entity to a private entity.

11 (c-1) Subsections (b) and (c) do not apply to any project  
12 within the boundaries of a regional tollway authority created on  
13 September 1, 1997.

14 (c-2) To the extent that Subsection (c-1) conflicts with  
15 Section 228.012, Section 228.012 shall govern.

16 (c-3) This section does not apply to a comprehensive  
17 development agreement for a managed lane facility toll project the  
18 major portion of which is located inside the boundaries of a  
19 regional tollway authority created on September 1, 1997, and for  
20 which the department has issued a request for qualifications before  
21 the effective date of this subsection. Before the department  
22 executes a final contract for a project described by this  
23 subsection, the commissioners court for any county in which a  
24 majority of the project is located must pass a supporting  
25 resolution that:

26 (1) acknowledges that the contract may contain  
27 penalties for the construction of future competing transportation

1 projects built at any time during the life of the agreement; and

2 (2) states that the commissioners court is aware of  
3 and agrees to pay the penalties if any are rendered.

4 (d) 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 (e) 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 (f) 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 (g) On December 31, 2008, the legislative study committee  
8 created under this section is abolished.

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

10 SECTION 2. Section 228.0055, Transportation Code, is  
11 amended to read as follows:

12 Sec. 228.0055. USE OF CONTRACT PAYMENTS. (a) Payments  
13 received by the commission or the department under a comprehensive  
14 development agreement shall [~~may~~] be used by the commission or the  
15 department to finance the construction, maintenance, or operation  
16 of a transportation project or air quality project in the same  
17 department district as the project or facilities to which the  
18 payments are attributable or a department district adjacent to that  
19 district [~~region~~].

20 (b) The commission or the department may not:

21 (1) revise the formula as provided in the department's  
22 unified transportation program, or its successor document, in a  
23 manner that results in a decrease of a department district's  
24 allocation because of a payment under Subsection (a); or

25 (2) take any other action that would reduce funding  
26 allocated to a department district because of payments received  
27 under a comprehensive development agreement.

1 SECTION 3. Subchapter A, Chapter 228, Transportation Code,  
2 is amended by adding Section 228.011 to read as follows:

3 Sec. 228.011. TOLL PROJECTS IN CERTAIN COUNTIES. (a) This  
4 section applies only to a county acting under Chapter 284.

5 (b) The county is the entity that has primary responsibility  
6 for the financing, construction, and operation of a toll project  
7 located in the county.

8 (c) To the extent authorized by federal law or authorized or  
9 required by this title, the commission and the department shall  
10 assist the county in the financing, construction, and operation of  
11 a toll project in the county by allowing the county to use highway  
12 right-of-way owned by the department and to access the state  
13 highway system. In connection with the use by the county of  
14 improved state highway right-of-way, the county must enter into an  
15 agreement with the commission or the department as provided by  
16 Section 284.004(b).

17 (d) Subsections (b) and (c) do not limit the authority of  
18 the commission or the department to participate in the cost of  
19 acquiring, constructing, maintaining, or operating a turnpike  
20 project of the county under Chapter 284.

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

27 (1) on terms agreeable to the county, without the

1 requirement of any payment to the commission or the department  
2 except as provided by Section 284.004(a); and

3 (2) in a manner determined by the county to be  
4 consistent with the practices and procedures by which the county  
5 finances, constructs, or operates a project.

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

12 (g) An agreement entered into by the county and the  
13 commission or department in connection with a project under Chapter  
14 284 that is financed, constructed, or operated by the county and  
15 that is on or directly connected to a highway in the state highway  
16 system does not create a joint enterprise for liability purposes.

17 SECTION 4. Subchapter A, Chapter 228, Transportation Code,  
18 is amended by adding Section 228.012 to read as follows:

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

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

26 (c) To the extent authorized by federal law or authorized or  
27 required by this title, the commission and the department shall

1 assist the tollway authority in the financing, construction, and  
2 operation of a toll project located within the boundaries of the  
3 authority by allowing the authority to use highway right-of-way  
4 owned by the department and to access the state highway system.

5 (d) Subsections (b) and (c) do not limit the authority of  
6 the commission or the department to participate in the cost of  
7 acquiring, constructing, maintaining, or operating a turnpike  
8 project of the tollway authority under Chapter 366.

9 (e) Before the commission or the department may enter into a  
10 contract for the financing, construction, or operation of a  
11 proposed or existing toll project any part of which is located  
12 within the boundaries of a tollway authority, the commission or  
13 department shall provide the authority the first option to finance,  
14 construct, or operate, as applicable, the portion of the toll  
15 project located within the boundaries of the authority:

16 (1) on terms agreeable to the authority, without the  
17 requirement of any payment to the commission or the department; and

18 (2) in a manner determined by the authority to be  
19 consistent with the practices and procedures by which the authority  
20 finances, constructs, or operates a project.

21 (f) An agreement entered into by the tollway authority and  
22 the commission or the department in connection with a project under  
23 Chapter 366 that is financed, constructed, or operated by the  
24 authority and that is on or directly connected to the state highway  
25 system may not require the authority to make any payments to the  
26 commission or the department.

27 (g) An agreement entered into by the tollway authority and

1 the commission or department in connection with a project under  
2 Chapter 366 that is financed, constructed, or operated by the  
3 authority and that is on or directly connected to a highway in the  
4 state highway system does not create a joint enterprise for  
5 liability purposes.

6 (h) Before a final contract execution by the department for  
7 any comprehensive development agreement project, the commissioners  
8 court for any county in which a majority of the project is located  
9 must pass a supporting resolution.

10 (i) Once the authority or regional transportation council  
11 has received notice from the department relating to a toll project,  
12 the authority has 90 days to exercise the first option to finance,  
13 construct, or operate, as applicable, the toll project.

14 SECTION 5. Section 284.001(3), Transportation Code, is  
15 amended to read as follows:

16 (3) "Project" means:

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

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

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

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



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

3            SECTION 6. Section 284.002, Transportation Code, is amended  
4 to read as follows:

5            Sec. 284.002. APPLICABILITY OF CHAPTER ~~[TO CERTAIN COUNTIES~~  
6 ~~AND LOCAL GOVERNMENT CORPORATIONS]~~. (a) Except as provided by  
7 Subsection (b), this chapter applies only to a county that [+

8                    ~~[(1)]~~ has a population of 10,000 ~~[50,000]~~ or more ~~[and~~  
9  ~~borders the Gulf of Mexico or a bay or inlet opening into the gulf,~~

10                    ~~[(2)]~~ has a population of 1.5 million or more,  
11                    ~~[(3)]~~ is adjacent to a county that has a population of

12 ~~1.5 million or more, or~~  
13                    ~~[(4)]~~ borders the United Mexican States].

14            (b) A local government corporation created under Chapter  
15 431 in a county to which this chapter applies has the same powers as  
16 a county acting under this chapter, except as provided by Chapter  
17 362.

18            SECTION 7. Section 284.003, Transportation Code, is amended  
19 to read as follows:

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

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

26                            (A) exclusively in the county;

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

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

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

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

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

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

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

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

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

27 (c) A project or any portion of a project that is owned by

1 the county and licensed or leased to a private entity or operated by  
2 a private entity under this chapter to provide transportation  
3 services to the general public is public property used for a public  
4 purpose and exempt from taxation by this state or a political  
5 subdivision of this state.

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

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

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

23 SECTION 8. Subchapter A, Chapter 284, Transportation Code,  
24 is amended by adding Sections 284.0031 and 284.0032 and amending  
25 Section 284.004 to read as follows:

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

27 (a) The commissioners court of a county or a local government

1 corporation, without state approval, supervision, or regulation  
2 may:

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

7 (2) prescribe terms for the use of the surplus  
8 revenue, including the manner in which the roads, streets,  
9 highways, or other related facilities are to be studied, designed,  
10 constructed, maintained, repaired, or operated.

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

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

17 (d) Except as provided by this section, a county has the  
18 same powers and may use the same procedures with respect to the  
19 study, financing, design, construction, maintenance, repair, or  
20 operation of a road, street, highway, or other related facility  
21 under this section as are available to the county with respect to a  
22 project under this chapter.

23 (e) Notwithstanding any other law, an authority created  
24 pursuant to Chapter 451 that is located primarily in a county with a  
25 population of more than 3.3 million to which this chapter applies  
26 and in which the voters have authorized the dedication of a portion  
27 of its sales and use tax revenue for street improvements and

1 mobility projects within the authority's service area must account  
2 for the entire amount of that liability on its financial statements  
3 in accordance with generally accepted accounting principles.

4 Sec. 284.0032. TRANS-TEXAS CORRIDOR PROJECTS. If a county  
5 requests or is requested by the commission to participate in the  
6 development of a project under this chapter that has been  
7 designated as part of the Trans-Texas Corridor, in connection with  
8 the project and in addition to the other powers granted by this  
9 chapter, the county has all the powers of the department related to  
10 the development of a project that has been designated as part of the  
11 Trans-Texas Corridor.

12 Sec. 284.004. USE OF COUNTY PROPERTY AND STATE HIGHWAY  
13 ALIGNMENT, RIGHT-OF-WAY, AND ACCESS. (a) Notwithstanding any  
14 other law, under this chapter a county may use any county property,  
15 state highway right-of-way, or access to the state highway system  
16 [for a project under this chapter], regardless of when or how the  
17 property, right-of-way, or access is acquired. The department or  
18 the commission may require the county to comply with any covenant,  
19 condition, restriction, or limitation that affects state highway  
20 right-of-way, but may not:

21 (1) adopt rules or establish policies that have the  
22 effect of denying the county the use of the right-of-way or access  
23 that the county has determined to be necessary or convenient for the  
24 construction, acquisition, improvement, operation, maintenance, or  
25 pooling of a project under this chapter or the implementation of a  
26 plan under Section 284.003(d); or

27 (2) require the county to pay for the use of the

1 right-of-way or access, except to reimburse the commission or  
2 department for actual costs incurred or to be incurred by a third  
3 party, including the federal government, as a result of that use by  
4 the county.

5 (b) If a project of the county under this chapter includes  
6 the proposed use of improved state highway right-of-way, the county  
7 and the commission or the department must enter into an agreement  
8 that includes reasonable terms to accommodate that use of the  
9 right-of-way by the county and to protect the interests of the  
10 commission and the department in the use of the right-of-way for  
11 operations of the department.

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

17 SECTION 9. Sections 284.008(c) and (d), Transportation  
18 Code, are amended to read as follows:

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

22 (1) all of the bonds and interest on the bonds that are  
23 payable from or secured by revenues of the project have been paid by  
24 the issuer of the bonds or another person with the consent or  
25 approval of the issuer; or

26 (2) a sufficient amount for the payment of all bonds  
27 and the interest on the bonds to maturity has been set aside by the

1 issuer of the bonds or another person with the consent or approval  
2 of the issuer in a trust fund held for the benefit of the  
3 bondholders.

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

- 9 (1) Section 362.051 does not apply to the project;  
10 (2) the project must be maintained by the county; and  
11 (3) the project will not become part of the state  
12 highway system unless the county transfers the project under  
13 Section 284.011.

14 SECTION 10. Subchapter A, Chapter 284, Transportation Code,  
15 is amended by adding Section 284.0092 to read as follows:

16 Sec. 284.0092. AUDIT BY FEDERAL HIGHWAY ADMINISTRATION.  
17 The accounts and records of a county relating to a project under  
18 this chapter located in a county that has a population of more than  
19 3.4 million and is within 100 miles of the Gulf of Mexico are  
20 subject to audit by the Federal Highway Administration as deemed  
21 necessary by that agency.

22 SECTION 11. Subchapter A, Chapter 284, Transportation Code,  
23 is amended by adding Section 284.010 to read as follows:

24 Sec. 284.010. CONTRACTOR CONTRIBUTIONS PROHIBITED. A  
25 person who enters into a contract with a county under this chapter  
26 may not make a political contribution to a person who is a  
27 commissioner or county judge of the county or who is a candidate for

1 the office of commissioner or county judge of the county.

2 SECTION 12. Sections 284.065(b) and (c), Transportation  
3 Code, are amended to read as follows:

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

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

7 SECTION 13. Subtitle G, Title 6, Transportation Code, is  
8 amended by adding Chapter 371 to read as follows:

9 CHAPTER 371. PROVISIONS APPLICABLE TO MORE THAN

10 ONE TYPE OF TOLL PROJECT

11 Sec. 371.001. VEHICLES DISPLAYING "HYBRID VEHICLE"

12 INSIGNIA. (a) In this section, "toll project" means a toll project  
13 described by Section 201.001(b), regardless of whether the toll  
14 project is:

15 (1) a part of the state highway system;

16 (2) subject to the jurisdiction of the department; or

17 (3) constructed or operated by the department or  
18 another entity authorized to construct or operate a toll project.

19 (b) A motor vehicle displaying the "hybrid vehicle"  
20 insignia authorized by Section 502.1861 in an easily readable  
21 location on the back of the vehicle may use a high occupancy vehicle  
22 lane located on a toll project regardless of the number of occupants  
23 in the vehicle unless the use would impair the receipt of federal  
24 transit funds.

25 SECTION 14. Subchapter D, Chapter 502, Transportation Code,  
26 is amended by adding Section 502.1861 to read as follows:

27 Sec. 502.1861. "HYBRID VEHICLE" INSIGNIA FOR CERTAIN MOTOR



1 VEHICLES. (a) At the time of registration or reregistration of the  
2 motor vehicle, the department shall issue a specially designed  
3 "hybrid vehicle" insignia for a motor vehicle that draws propulsion  
4 energy from both gasoline or conventional diesel fuel and from a  
5 rechargeable energy storage system.

6 (b) The department shall issue a "hybrid vehicle" insignia  
7 under this section without the payment of any additional fee to a  
8 person who:

9 (1) applies to the department on a form provided by the  
10 department; and

11 (2) submits proof that the motor vehicle being  
12 registered is a vehicle described by Subsection (a).

13 SECTION 15. Section 370.031(c), Transportation Code, is  
14 repealed.

15 SECTION 16. Notwithstanding any other provision of this Act,  
16 Section 228.012, Transportation Code, as added by this Act, takes  
17 effect immediately if this Act receives a vote of two-thirds of all  
18 the members elected to each house, as provided by Section 39,  
19 Article III, Texas Constitution. If this Act does not receive the  
20 vote necessary for immediate effect, Section 228.012,  
21 Transportation Code, takes effect September 1, 2007.

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

ADOPTED

APR 27 2007

*Leta Spaw*  
Secretary of the Senate

By: Smith

H.B. No. 1892

Substitute the following for H.B. No. 1892:

By: Williams

C.S. H.B. No. 1892

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the authority of certain counties and other entities  
3 with respect to certain transportation projects; providing  
4 penalties.

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

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

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

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

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

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

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

19 (A) the department;

20 (B) a regional tollway authority;

21 (C) a regional mobility authority; or

22 (D) a county.

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

1 effective date of this subsection 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 the toll project or collect revenue from the  
5 toll project, regardless of whether the private participant  
6 operates the toll project or collects the revenue itself or engages  
7 a subcontractor or other entity to operate the toll project or  
8 collect the revenue.

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

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

13 (2) a project:

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

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

19 (C) for which the department has issued a request  
20 for qualifications before the effective date of this section.

21 (c-2) Notwithstanding the TxDOT/NTTA Regional Protocol  
22 entered into between the Texas Department of Transportation and the  
23 North Texas Tollway Authority (the authority) and approved on  
24 August 10, 2006, by the tollway authority and on August 24, 2006, by  
25 the department, Subsection (b) does not apply to a comprehensive  
26 development 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 90 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; and

10 (a) If the financial value of the commitment is  
11 determined to be equal to or greater value than any other commitment  
12 submitted prior to March 26, 2007, then the commission shall allow  
13 the authority to develop 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.

22 (a) If the authority makes a commitment to proceed,  
23 then the department shall allow the authority to proceed and the  
24 authority must enter into contracts to finance, construct, or  
25 operate the project within 180 days.

26 (d) For purposes of Subsection (c)(2), "managed lane  
27 facility" means a facility that increases the efficiency of a

1 controlled-access highway through various operational and design  
2 actions and that allows lane management operations to be adjusted  
3 at any time. The term includes high-occupancy vehicle lanes,  
4 single-occupant vehicle express lanes, tolled lanes, priced lanes,  
5 truck lanes, bypass lanes, dual use facilities, or any combination  
6 of those facilities.

7 (e) The department may not enter into a comprehensive  
8 development agreement in connection with a project described by  
9 Subsection (c)(2) unless the commissioners court of the county in  
10 which the majority of the project is located passes a resolution in  
11 support of the agreement that states that the commissioners court:

12 (1) acknowledges that the comprehensive development  
13 agreement may contain penalties for the construction of future  
14 competing transportation projects that are acquired or constructed  
15 during the term of the comprehensive development agreement; and

16 (2) knowing of those potential penalties, agrees that  
17 the department should execute the comprehensive development  
18 agreement.

19 (f) On or after the effective date of this section, a toll  
20 project entity may not sell or enter into a contract to sell a toll  
21 project of the entity to a private entity.

22 (g) A legislative study committee is created. The committee  
23 is composed of nine members, appointed as follows:

24 (1) three members appointed by the lieutenant  
25 governor;

26 (2) three members appointed by the speaker of the  
27 house of representatives; and

1           (3) three members appointed by the governor.

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

11           (i) Not later than December 1, 2008, the legislative study  
12 committee shall:

13           (1) prepare a written report summarizing:

14                   (A) any hearings conducted by the committee;

15                   (B) any legislation proposed by the committee;

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

20                   (D) any other findings or recommendations of the  
21 committee; and

22           (2) deliver a copy of the report to the governor, the  
23 lieutenant governor, and the speaker of the house of  
24 representatives.

25           (j) On December 31, 2008, the legislative study committee  
26 created under this section is abolished.

27           (k) This section expires September 1, 2009.

1           (1) Subsections (b), (c), (d), and (e) do not apply to a  
2 project that is located in a county with a population of 575,000 or  
3 more and is adjacent to an international border.

4           SECTION 2. Section 228.0055, Transportation Code, is  
5 amended to read as follows:

6           Sec. 228.0055. USE OF CONTRACT PAYMENTS. (a) Payments  
7 received by the commission or the department under a comprehensive  
8 development agreement shall [may] be used by the commission or the  
9 department to finance the construction, maintenance, or operation  
10 of [a] transportation projects [project] or air quality projects  
11 [project] in the region.

12           (b) The commission or the department shall distribute the  
13 payments received under Subsection (a) among the department  
14 districts in which the project that is the subject of a  
15 comprehensive development agreement is located and allocate the  
16 money to each district based on the percentage of toll revenue from  
17 users in that district. To assist the commission or the department  
18 in determining the appropriate allocation of money under this  
19 subsection, each entity that collects tolls for a project shall  
20 annually calculate the percentage of toll revenue from users of the  
21 project in each department district in which the project is located  
22 based on the number of recorded electronic toll collections.

23           (c) The commission or the department may not:

24           (1) revise the formula as provided in the department's  
25 unified transportation program, or its successor document, in a  
26 manner that results in a decrease of a department district's  
27 allocation because of a payment under Subsection (a); or

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

4           SECTION 3. Subchapter A, Chapter 228, Transportation Code,  
5 is amended by adding Sections 228.011 and 228.012 to read as  
6 follows:

7           Sec. 228.011. TOLL PROJECTS IN CERTAIN COUNTIES. (a) This  
8 section applies only to a county acting under Chapter 284.

9           (b) The county is the entity that has primary responsibility  
10 for the financing, construction, and operation of a toll project  
11 located in the county.

12           (c) To the extent authorized by federal law or authorized or  
13 required by this title, the commission and the department shall  
14 assist the county in the financing, construction, and operation of  
15 a toll project in the county by allowing the county to use highway  
16 right-of-way owned by the department and to access the state  
17 highway system.

18           (d) Subsections (b) and (c) do not limit the authority of  
19 the commission or the department to participate in the cost of  
20 acquiring, constructing, maintaining, or operating a turnpike  
21 project of the county under Chapter 284.

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



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

4           (2) in a manner determined by the county to be  
5 consistent with the practices and procedures by which the county  
6 finances, constructs, or operates a project.

7           (f) A county's right to exercise the first option under  
8 Subsection (e) is effective for six months following the date of  
9 receipt by the county of written notification from the commission  
10 or the department meeting the requirements of Subsection (e) and  
11 describing in reasonable detail the location of the toll project, a  
12 projected cost estimate, sources and uses of funds, and a  
13 construction schedule. If a county exercises the first option with  
14 respect to a toll project, the county must enter into one or more  
15 contracts for the financing, construction, or operation of the toll  
16 project within 18 months of the date of exercising the option. A  
17 contract may include agreements for design of the project,  
18 acquisition of right-of-way, and utility relocation. If the county  
19 does not enter into a contract within the 18-month period, the  
20 commission or the department may enter into a contract for the  
21 financing, construction, or operation of the toll project with a  
22 different entity.

23           (g) Except as provided by Section 284.004(a), an agreement  
24 entered into by the county and the commission or the department in  
25 connection with a project under Chapter 284 that is financed,  
26 constructed, or operated by the county and that is on or directly  
27 connected to the state highway system may not require the county to

1 make any payments to the commission or the department.

2 (h) An agreement entered into by the county and the  
3 commission or department in connection with a project under Chapter  
4 284 that is financed, constructed, or operated by the county and  
5 that is on or directly connected to a highway in the state highway  
6 system does not create a joint enterprise for liability purposes.

7 Sec. 228.012. TOLL PROJECTS WITHIN BOUNDARIES OF REGIONAL  
8 MOBILITY AUTHORITIES. (a) This section applies only to a toll  
9 project located within the boundaries of a regional mobility  
10 authority operating under Chapter 370.

11 (b) The regional mobility authority is the entity that has  
12 primary responsibility for the financing, construction, and  
13 operation of a toll project located within the boundaries of the  
14 authority.

15 (c) To the extent authorized by federal law or authorized or  
16 required by this title, the commission and the department shall  
17 assist the authority in the financing, construction, and operation  
18 of a toll project located within the boundaries of the authority by  
19 allowing the authority to use highway right-of-way owned by the  
20 department and to access the state highway system. In connection  
21 with the use by the authority of improved state highway  
22 right-of-way, the authority must enter into an agreement with the  
23 commission or the department as provided in this chapter.

24 (d) Subsections (b) and (c) do not limit the authority of  
25 the commission or the department to participate in the cost of  
26 acquiring, constructing, maintaining, or operating a turnpike  
27 project of the authority under Chapter 370.

1           (e) Before the commission or the department may enter into a  
2 contract for the financing, construction, or operation of a  
3 proposed or existing toll project any part of which is located  
4 within the boundaries of an authority, the commission or department  
5 shall provide the authority the first option to finance, construct,  
6 or operate, as applicable, the portion of the toll project located  
7 within the boundaries of the authority:

8           (1) on terms agreeable to the authority, without the  
9 requirement of any payment to the commission or the department  
10 except to reimburse the commission or department for actual costs  
11 incurred or to be incurred by a third party, including the federal  
12 government, as a result of that use by the authority; and

13           (2) in a manner determined by the authority to be  
14 consistent with the practices and procedures by which the authority  
15 finances, constructs, or operates a project.

16           (f) An agreement entered into by the authority and the  
17 commission or the department in connection with a project under  
18 Chapter 370 that is financed, constructed, or operated by the  
19 authority and that is on or directly connected to the state highway  
20 system may not require the authority to make any payments to the  
21 commission or the department, provided that the authority and the  
22 department or the commission may enter into an agreement which  
23 provides for the repayment of all or a portion of funds advanced by  
24 the department or the commission to the authority for the specific  
25 purpose of assisting the authority in the development or  
26 construction of the project.

27           (g) An agreement entered into by the authority and the

1 commission or department in connection with a project under Chapter  
2 370 that is financed, constructed, or operated by the authority and  
3 that is on or directly connected to a highway in the state highway  
4 system does not create a joint enterprise for liability purposes.

5 (h) Once the authority or metropolitan planning  
6 organization has received notice from the department relating to a  
7 toll project, the authority has 180 days to provide the department  
8 with written notice of the authority's decision to exercise the  
9 first option to finance, construct, or operate, as applicable, the  
10 toll project. Written notice from the department shall describe in  
11 reasonable detail the location of the toll project, a projected  
12 cost estimate, sources and uses of funds, and a construction  
13 schedule. In the event the authority does not initiate work within  
14 18 months of exercising its option to develop the project, the  
15 metropolitan planning organization at its discretion may allow the  
16 department to finance, construct, or operate the project.

17 SECTION 4. Section 284.001(3), Transportation Code, is  
18 amended to read as follows:

19 (3) "Project" means:

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

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

26 (ii) ~~(B)~~ necessary administration,  
27 storage, and other buildings that have been designated as part of

1 the project by order of a county; and

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

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

6 SECTION 5. Section 284.003, Transportation Code, is amended  
7 to read as follows:

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

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

14 (A) exclusively in the county;

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

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

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

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

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

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

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

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

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

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

21          (d) If the county constructs, acquires, improves, operates,  
22 maintains, or pools a project under this chapter, before December  
23 31 of each even-numbered year the county shall submit to the  
24 department a plan for the project that includes the time schedule  
25 for the project and describes the use of project funds. The plan  
26 may provide for and permit the use of project funds and other money,  
27 including state or federal funds, available to the county for

1 roads, streets, highways, and other related facilities in the  
2 county that are not part of a project under this chapter. A plan is  
3 not subject to approval, supervision, or regulation by the  
4 commission or the department.

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

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

11 SECTION 6. Subchapter A, Chapter 284, Transportation Code,  
12 is amended by adding Sections 284.0031 and 284.0032 and amending  
13 Section 284.004 to read as follows:

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

15 (a) The commissioners court of a county or a local government  
16 corporation, without state approval, supervision, or regulation  
17 may:

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

23 (2) prescribe terms for the use of the surplus  
24 revenue, including the manner in which revenue from a project  
25 becomes surplus revenue and the manner in which the roads, streets,  
26 highways, or other related facilities are to be studied, designed,  
27 constructed, maintained, repaired, or operated.

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

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

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

14           Sec. 284.0032. TRANS-TEXAS CORRIDOR PROJECTS. If a county  
15 requests or is requested by the commission to participate in the  
16 development of a project under this chapter that has been  
17 designated as part of the Trans-Texas Corridor, in connection with  
18 the project and in addition to the other powers granted by this  
19 chapter, the county has all the powers of the department related to  
20 the development of a project that has been designated as part of the  
21 Trans-Texas Corridor.

22           Sec. 284.004. USE OF COUNTY PROPERTY AND STATE HIGHWAY  
23 ALIGNMENT, RIGHT-OF-WAY, AND ACCESS. (a) Notwithstanding any  
24 other law, under this chapter a county may use any county property,  
25 state highway right-of-way, or access to the state highway system  
26 [for a project under this chapter], regardless of when or how the  
27 property, right-of-way, or access is acquired. The department or



1 the commission may require the county to comply with any covenant,  
2 condition, restriction, or limitation that affects state highway  
3 right-of-way, but may not:

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

10 (2) require the county to pay for the use of the  
11 right-of-way or access, except to reimburse the commission or  
12 department for actual costs incurred or to be incurred by a third  
13 party, including the federal government, as a result of that use by  
14 the county.

15 (b) If a project of the county under this chapter includes  
16 the proposed use of improved state highway right-of-way, the county  
17 and the commission or the department must enter into an agreement  
18 that includes reasonable terms to accommodate that use of the  
19 right-of-way by the county and to protect the interests of the  
20 commission and the department in the use of the right-of-way for  
21 operations of the department, including public safety and  
22 congestion mitigation on the improved right-of-way.

23 (c) Notwithstanding any other law, the commission and the  
24 department are not liable for any damages that result from a  
25 county's use of state highway right-of-way or access to the state  
26 highway system under this chapter, regardless of the legal theory,  
27 statute, or cause of action under which liability is asserted.

1 SECTION 7. Sections 284.008(c) and (d), Transportation  
2 Code, are amended to read as follows:

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

6 (1) all of the bonds and interest on the bonds that are  
7 payable from or secured by revenues of the project have been paid by  
8 the issuer of the bonds or another person with the consent or  
9 approval of the issuer; or

10 (2) a sufficient amount for the payment of all bonds  
11 and the interest on the bonds to maturity has been set aside by the  
12 issuer of the bonds or another person with the consent or approval  
13 of the issuer in a trust fund held for the benefit of the  
14 bondholders.

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

20 (1) Section 362.051 does not apply to the project;  
21 (2) the project must be maintained by the county; and  
22 (3) the project will not become part of the state  
23 highway system unless the county transfers the project under  
24 Section 284.011.

25 SECTION 8. Sections 284.065(b) and (c), Transportation  
26 Code, are amended to read as follows:

27 (b) An existing project may be pooled in whole or in part

1 with a new project or another existing project.

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

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

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

12 SECTION 10. Chapter 366, Transportation Code, is amended by  
13 adding Subchapter H to read as follows:

14 SUBCHAPTER H. COMPREHENSIVE DEVELOPMENT AGREEMENTS

15 Sec. 366.401. COMPREHENSIVE DEVELOPMENT AGREEMENTS.

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

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

24 (c) An authority may negotiate provisions relating to  
25 professional and consulting services provided in connection with a  
26 comprehensive development agreement.

27 (d) An authority may authorize the investment of public and

1 private money, including debt and equity participation, to finance  
2 a function described by this section.

3 Sec. 366.402. PROCESS FOR ENTERING INTO COMPREHENSIVE  
4 DEVELOPMENT AGREEMENTS. (a) If an authority enters into a  
5 comprehensive development agreement, the authority shall use a  
6 competitive procurement process that provides the best value for  
7 the authority. An authority may accept unsolicited proposals for a  
8 proposed turnpike project or solicit proposals in accordance with  
9 this section.

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

13 (1) information regarding the proposed project  
14 location, scope, and limits;

15 (2) information regarding the private entity's  
16 qualifications, experience, technical competence, and capability  
17 to develop the project; and

18 (3) any other information the authority considers  
19 relevant or necessary.

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

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

27 (2) the authority authorizes the further evaluation of

1 an unsolicited proposal.

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

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

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

21 (1) the private entity's qualifications and  
22 demonstrated technical competence;

23 (2) the feasibility of developing the project as  
24 proposed;

25 (3) engineering or architectural designs;

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

27 (5) a financial plan, including costing methodology

1 and cost proposals.

2 (g) In issuing a request for proposals under Subsection (f),  
3 an authority may solicit input from entities qualified under  
4 Subsection (e) or any other person. An authority may also solicit  
5 input regarding alternative technical concepts after issuing a  
6 request under Subsection (f).

7 (h) An authority shall evaluate each proposal based on the  
8 criteria described in the request for detailed proposals and select  
9 the private entity whose proposal offers the apparent best value to  
10 the authority.

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

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

18 (k) An authority may withdraw a request for competing  
19 proposals and qualifications or a request for detailed proposals at  
20 any time. The authority may then publish a new request for  
21 competing proposals and qualifications.

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

25 (m) An authority may pay an unsuccessful private entity that  
26 submits a responsive proposal in response to a request for detailed  
27 proposals under Subsection (f) a stipulated amount in exchange for

1 the work product contained in that proposal. A stipulated amount  
2 must be stated in the request for proposals and may not exceed the  
3 value of any work product contained in the proposal that can, as  
4 determined by the authority, be used by the authority in the  
5 performance of its functions. The use by the authority of any  
6 design element contained in an unsuccessful proposal is at the sole  
7 risk and discretion of the authority and does not confer liability  
8 on the recipient of the stipulated amount under this subsection.  
9 After payment of the stipulated amount:

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

15 (2) the use by the unsuccessful private entity of any  
16 portion of the work product contained in the proposal is at the sole  
17 risk of the unsuccessful private entity and does not confer  
18 liability on the authority.

19 (n) An authority may prescribe the general form of a  
20 comprehensive development agreement and may include any matter the  
21 authority considers advantageous to the authority. The authority  
22 and the private entity shall finalize the specific terms of a  
23 comprehensive development agreement.

24 (o) Section 366.185 and Subchapter A, Chapter 223, of this  
25 code and Chapter 2254, Government Code, do not apply to a  
26 comprehensive development agreement entered into under this  
27 subchapter.

1           Sec. 366.403. CONFIDENTIALITY OF INFORMATION. (a) To  
2 encourage private entities to submit proposals under this  
3 subchapter, the following information is confidential, is not  
4 subject to disclosure, inspection, or copying under Chapter 552,  
5 Government Code, and is not subject to disclosure, discovery,  
6 subpoena, or other means of legal compulsion for its release until a  
7 final contract for a proposed project is entered into:

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

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

16           (3) information created or collected by an authority  
17 or its agent during consideration of a proposal for a comprehensive  
18 development agreement or during the authority's preparation of a  
19 proposal to the department relating to a comprehensive development  
20 agreement.

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

24           Sec. 366.404. PERFORMANCE AND PAYMENT SECURITY.

25           (a) Notwithstanding the requirements of Subchapter B, Chapter  
26 2253, Government Code, an authority shall require a private entity  
27 entering into a comprehensive development agreement under this



1 subchapter to provide a performance and payment bond or an  
2 alternative form of security in an amount sufficient to:

3 (1) ensure the proper performance of the agreement;

4 and

5 (2) protect:

6 (A) the authority; and

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

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

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

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

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

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

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

1           (2) a United States bond or note;  
2           (3) an irrevocable bank letter of credit; or  
3           (4) any other form of security determined suitable by  
4 the authority.

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

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

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

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

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

4           (1) methods to determine the applicable cost, profit,  
5 and project distribution among the private participants and the  
6 authority;

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

9           (3) acceptable safety and policing standards; and

10           (4) other applicable professional, consulting,  
11 construction, operation, and maintenance standards, expenses, and  
12 costs.

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

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

22           (2) establishing the purchase price, as determined in  
23 accordance with the methodology established by the parties in the  
24 comprehensive development agreement, for the interest of a private  
25 participant in the comprehensive development agreement and related  
26 property;

27           (3) providing for the payment of an obligation

1 incurred under the comprehensive development agreement, including  
2 an obligation to pay the purchase price for the interest of a  
3 private participant in the comprehensive development agreement,  
4 from any available source, including securing the obligation by a  
5 pledge of revenues of the authority derived from the applicable  
6 project, which pledge shall have priority as established by the  
7 authority;

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

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

12 (6) restricting the right of the authority to  
13 terminate the private participant's right to operate and collect  
14 revenue from the turnpike project unless and until any applicable  
15 termination payments have been made.

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

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

27 (e) Notwithstanding any other law, and subject to

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

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

20 (1) the methodology for:

21 (A) the setting of tolls; and

22 (B) increasing the amount of the tolls;

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

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

27 (B) any charge to be imposed to recover the cost

1 of collecting a delinquent toll; and

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

4 (g) Except as provided by this section, a comprehensive  
5 development agreement with a private participant that includes the  
6 collection by the private participant of tolls for the use of a toll  
7 project may be for a term not longer than 30 years.

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

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

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

21 Sec. 366.409. USE OF CONTRACT PAYMENTS. (a) Payments  
22 received by an authority under a comprehensive development  
23 agreement shall be used by the authority to finance the  
24 construction, maintenance, or operation of a turnpike project or a  
25 highway.

26 (b) The authority shall allocate the distribution of funds  
27 received under Subsection (a) to the counties of the authority

1 based on the percentage of toll revenue from users, from each  
2 county, of the project that is the subject of the comprehensive  
3 development agreement. To assist the authority in determining the  
4 allocation, each entity responsible for collecting tolls for a  
5 project shall calculate on an annual basis the percentage of toll  
6 revenue from users of the project from each county within the  
7 authority based on the number of recorded electronic toll  
8 collections.

9 SECTION 11. Subsection (f), Section 366.033,  
10 Transportation Code, is amended to read as follows:

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

16 (1) the feasibility or efficient operation [~~the~~  
17 revenue] of a turnpike project or system; or

18 (2) the revenue of the authority.

19 SECTION 12. Subchapter B, Chapter 366, Transportation Code,  
20 is amended by adding Sections 366.037 and 366.038 to read as  
21 follows:

22 Sec. 366.037. OTHER HIGHWAY PROJECTS. (a) In addition to  
23 the powers granted under this chapter and without supervision or  
24 regulation by any state agency or local governmental entity, but  
25 subject to an agreement entered into under Subsection (c), the  
26 board of an authority may by resolution, and on making the findings  
27 set forth in this subsection, authorize the use of surplus revenue

1 of a turnpike project or system for the study, design,  
2 construction, maintenance, repair, and operation of a highway or  
3 similar facility that is not a turnpike project if the highway or  
4 similar facility is:

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

7 (2) anticipated to either:

8 (A) enhance the operation or revenue of an  
9 existing, or the feasibility of a proposed, turnpike project by  
10 bringing traffic to that turnpike project or enhancing the flow of  
11 traffic either on that turnpike project or to or from that turnpike  
12 project to another facility; or

13 (B) ameliorate the impact of an existing or  
14 proposed turnpike project by enhancing the capability of another  
15 facility to handle traffic traveling, or anticipated to travel, to  
16 or from that turnpike project; and

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

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

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



1           (d) An authority may not:

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

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

9           (e) In authorizing expenditures under this section, the  
10 board shall consider:

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

16                   (2) connectivity to an existing or proposed turnpike  
17 project or system.

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

24           Sec. 366.038. TOLL PROJECTS IN TERRITORY OF LOCAL OR  
25 REGIONAL TOLL PROJECT ENTITY. (a) In this section, "local toll  
26 project entity" means a regional tollway authority under this  
27 chapter.

1           (b) For each toll project located within the boundaries of a  
2 local toll project entity, after completion of the market valuation  
3 the policy board of the metropolitan planning organization shall  
4 notify the local toll project entity by mail that the entity has the  
5 first option to develop, finance, construct, and operate the  
6 project. The toll project entity must decide whether to exercise  
7 the option before the 90th day after the date the notice sent under  
8 this subsection is received by the local tool project entity.

9           (c) If the local toll project entity does not exercise the  
10 option to develop, finance, construct, and operate a toll project  
11 under Subsection (b), the metropolitan planning organization shall  
12 allow the department to develop, finance, construct, and operate  
13 the project.

14           (d) If the department determines that a toll project offered  
15 to the department under Subsection (c) should be developed,  
16 financed, constructed, and operated under a comprehensive  
17 development agreement, a request for proposal shall include the  
18 terms and conditions approved by the policy board of the  
19 metropolitan planning organization.

20           (e) If a local toll project entity does not exercise the  
21 right to first option under Subsection (b) and after five years  
22 after the date of the notice under Subsection (b) the commission or  
23 the department has not issued a request for proposal or taken any  
24 other action to begin the toll project, before taking such an action  
25 the commission or the department shall provide the toll project  
26 entity the right to first option under Subsection (b).

27           (f) A local toll project entity shall provide customer

1 service and other toll collection and enforcement services for a  
2 toll project, regardless of whether the toll project is developed,  
3 financed, constructed, and operated under a comprehensive  
4 development agreement or an agreement with the toll project entity.

5 (g) For the purposes of this section, a notice is considered  
6 received on the third business day after the date that the notice is  
7 mailed.

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

10 Sec. 366.185. ENGINEERING, DESIGN, AND CONSTRUCTION  
11 SERVICES [~~COMPETITIVE BIDDING~~].

12 SECTION 14. Section 366.185, Transportation Code, is  
13 amended by amending Subsection (a) and adding Subsections (c)  
14 through (f) to read as follows:

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

20 (c) An authority may procure a combination of engineering,  
21 design, and construction services in a single procurement for a  
22 turnpike project, provided that any contract awarded results in the  
23 best value to the authority.

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

27 (e) Notwithstanding any other provision of state law, an

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

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

18 SECTION 15. Subchapter F, Chapter 366, Transportation Code,  
19 is amended by adding Sections 366.2521 and 366.2522 to read as  
20 follows:

21 Sec. 366.2521. GIFTS AND CONTRIBUTIONS; OFFENSE. (a) In  
22 this section, "benefit" means anything reasonably regarded as  
23 pecuniary gain or pecuniary advantage, including benefit to any  
24 other person in whose welfare the beneficiary has a direct and  
25 substantial interest.

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

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

3           (2) a person the director knows is interested in or  
4 likely to become interested in any contract, purchase, payment,  
5 claim, transaction, or matter involving the exercise of the  
6 director's discretion.

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

13           (d) This section does not apply to:

14           (1) a fee prescribed by law to be received by a  
15 director;

16           (2) a benefit to which the director is lawfully  
17 entitled; or

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

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

21           (f) If conduct that constitutes an offense under this  
22 section also constitutes an offense under Section 36.08, Penal  
23 Code, the actor may be prosecuted under this section or Section  
24 36.08.

25           Sec. 366.2522. OFFERING GIFT TO A DIRECTOR; OFFENSE. (a) A  
26 person commits an offense if the person offers, confers, or agrees  
27 to confer any benefit on a director that the person knows the

1 director is prohibited from accepting under Section 366.2521.

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

3 (c) If conduct that constitutes an offense under this  
4 section also constitutes an offense under Section 36.09, Penal  
5 Code, the actor may be prosecuted under this section or Section  
6 36.09.

7 SECTION 16. Subchapter F, Chapter 366, Transportation Code,  
8 is amended by adding Section 366.2575 to read as follows:

9 Sec. 366.2575. BOARD VOTE ON COUNTY REQUEST. The  
10 commissioners court of a county of an authority may request the  
11 board of the authority to vote on whether to build a project that  
12 the county requests.

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

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

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

# ADOPTED

APR 30 2007

FLOOR AMENDMENT NO. 1

*Atty Gen*  
Secretary of the State  
*Jim Burin*

1 Amend CS<sup>HB</sup>~~SB~~ 1892 on Third Reading as follows:

2 1. Section 223.203, Transportation Code, is amended by  
3 adding subsections (f-2) and (f-3) to read as follows:

4 (f-2) Subsection (f-1) does not apply to a comprehensive  
5 development agreement in connection with a project:

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

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

11 and

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

14 (f-3) Notwithstanding the TxDOT/NTTA Regional Protocol  
15 entered into between the department and the North Texas Tollway  
16 Authority (the authority) and approved on August 10, 2006, by  
17 the tollway authority and on August 24, 2006, by the department,  
18 Subsection (f-1) does not apply to a comprehensive development

19 agreement:

20 (1) entered into in connection with State Highway 121  
21 if, before the commission or the department enters into a  
22 contract for the financing, construction, or operation of the  
23 project with a private participant, an authority under Chapter  
24 366 was granted the ability to finance, construct, or operate,  
25 as applicable, the portion of the toll project located within  
26 the boundaries of the authority, and the authority was granted a  
27 period of 60 days from March 26, 2007, to submit a commitment to  
28 the metropolitan planning organization which is determined to be  
29 equal to or greater than any other commitment submitted prior to

1 March 26, 2007; if the financial value of the commitment is  
2 determined to be equal to or greater value than any other  
3 commitment submitted prior to March 26, 2007, then the  
4 commission shall allow the authority to develop the project; or  
5 (2) entered into in connection with State Highway 161  
6 if, before the commission or the department enters into a  
7 contract with a private participant for the financing,  
8 construction, or operation, an authority under Chapter 366 was  
9 granted the ability to finance, construct, or operate, as  
10 applicable, the portion of the toll project located within the  
11 boundaries of the authority, and the authority was granted a  
12 period of 90 days to submit a commitment to the metropolitan  
13 planning organization; if the authority makes a commitment to  
14 proceed, then the department shall allow the authority to  
15 proceed and the authority must enter into contracts to finance,  
16 construct, or operate the project within 180 days.

17  
18 2. Section 223.208, Transportation Code, is amended by  
19 adding subsections (i) and (i-2) to read as follows:

20 (i) A comprehensive development agreement with a private  
21 participant that includes the collection by the private  
22 participant of tolls for the use of a toll project may be for a  
23 term not longer than 50 years for a comprehensive development  
24 agreement in connection with a project:

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

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

31 (3) for which the department has issued a request for



1 qualifications before the effective date of this section.

2 (i-2) Notwithstanding the TxDOT/NTTA Regional Protocol  
3 entered into between the department and the North Texas Tollway  
4 Authority (the authority) and approved on August 10, 2006, by  
5 the tollway authority and on August 24, 2006, by the department,  
6 Subsection (i) applies to a comprehensive development agreement:

7 (1) entered into in connection with State Highway 121  
8 if, before the commission or the department enters into a  
9 contract for the financing, construction, or operation of the  
10 project with a private participant, an authority under Chapter  
11 366 was granted the ability to finance, construct, or operate,  
12 as applicable, the portion of the toll project located within  
13 the boundaries of the authority, and the authority was granted a  
14 period of 60 days from March 26, 2007, to submit a commitment to  
15 the metropolitan planning organization which is determined to be  
16 equal to or greater than any other commitment submitted prior to  
17 March 26, 2007; if the financial value of the commitment is  
18 determined to be equal to or greater value than any other  
19 commitment submitted prior to March 26, 2007, then the  
20 commission shall allow the authority to develop the project; or

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

1 construct, or operate the project within 180 days.

# ADOPTED

APR 27 2007

FLOOR AMENDMENT NO. 1

*Atay Law* BY: *Will*  
Secretary of the Senate

1 Amend C.S.H.B. 1892 (Senate Committee Printing) in SECTION  
2 5 by adding the following Subsection 284.003(g):  
3 (g) An action of a county taken under this chapter must  
4 comply with the requirements of applicable federal law. The  
5 foregoing compliance requirement shall apply to the role of  
6 metropolitan planning organizations under federal law, including  
7 the approval of projects for conformity to the state  
8 implementation plan relating to air quality, the use of toll  
9 revenue, and the use of the right-of-way of and access to  
10 Federal-aid highways. Notwithstanding an action of a county  
11 taken under this chapter, the commission or department may take  
12 any action that is necessary to comply with any federal  
13 requirement to enable the state to receive Federal-aid highway  
14 funds.

ADOPTED

*As amended*

APR 27 2007

*Lotay Spaw*  
Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY: *Carroll*

1 Amend C.S.H.B. No. 1892 (Senate committee printing) as  
2 follows:

3 (1) Add the following appropriately numbered SECTIONS to the  
4 bill and renumber subsequent SECTIONS accordingly:

5 SECTION \_\_\_\_ . Section 223.201(f), Transportation Code, is  
6 amended to read as follows:

7 (f) The authority to enter into comprehensive development  
8 agreements provided by this section expires on August 31, 2009  
9 [~~2011~~].

10 SECTION \_\_\_\_ . Section 370.305(d), Transportation Code, is  
11 amended to read as follows:

12 (d) This section expires on August 31, 2009 [~~2011~~].

13 SECTION \_\_\_\_ . Subtitle G, Title 6, Transportation Code, is  
14 amended by adding Chapter 371 to read as follows:

15 CHAPTER 371. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR HIGHWAY

16 TOLL PROJECTS

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Sec. 371.001. DEFINITIONS. In this chapter:

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

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

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

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

26 (A) the department, including under Chapter 227;

1                   (B) a regional tollway authority under Chapter 366;

2                   (C) a regional mobility authority under Chapter

3 370; or

4                   (D) a county under Chapter 284.

5                   [Sections 371.002-371.050 reserved for expansion]

6                   SUBCHAPTER B. OVERSIGHT

7                   Sec. 371.051. ATTORNEY GENERAL REVIEW. A toll project entity  
8 may not enter into a comprehensive development agreement unless the  
9 attorney general reviews the proposed agreement and determines that  
10 it is legally sufficient.

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

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

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

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

24                   (3) a financial forecast prepared by the toll project  
25 entity that includes:

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

28                   (B) estimated construction costs and operating  
29 expenses; and

1           (C) the amount of income the entity projects the  
2 private participant in the agreement will realize during the  
3 planned term of the agreement.

4           (c) Before entering into a comprehensive development  
5 agreement, a toll project entity shall provide the state auditor  
6 with the traffic and revenue report prepared by the toll project  
7 entity or its consultant for the project. The entity may not enter  
8 into the comprehensive development agreement before the 30th day  
9 after the date that the state auditor receives the report so that  
10 the state auditor may review and comment on the report and the  
11 methodology used to develop the report.

12           (d) Before the comprehensive development agreement is entered  
13 into, financial forecasts and traffic and revenue reports prepared  
14 by or for a toll project entity for the project are confidential  
15 and are not subject to disclosure, inspection, or copying under  
16 Chapter 552, Government Code.

17           [Sections 371.053-371.100 reserved for expansion]

18                   SUBCHAPTER C. CONTRACT PROVISIONS

19           Sec. 371.101. TERMINATION FOR CONVENIENCE. (a) A toll  
20 project entity having rulemaking authority by rule and a toll  
21 project entity without rulemaking authority by official action  
22 shall develop a formula for making termination payments to  
23 terminate a comprehensive development agreement under which a  
24 private participant receives the right to operate and collect  
25 revenue from a toll project. A formula must calculate an estimated  
26 amount of loss to the private participant as a result of the  
27 termination for convenience that is based on investments,  
28 expenditures, and rate of return associated with the project.

29           (b) A formula under Subsection (a) may not include an

1 estimate of future revenue from the project.

2 Sec. 371.102. TERMINATION OF CERTAIN COMPREHENSIVE  
3 DEVELOPMENT AGREEMENTS. If a toll project entity elects to  
4 terminate a comprehensive development agreement under which a  
5 private participant receives the right to operate and collect  
6 revenue from a project, the entity may:

7 (1) if authorized to issue bonds for that purpose, issue  
8 bonds to:

9 (A) make any applicable termination payments to the  
10 private participant; or

11 (B) purchase the interest of the private  
12 participant in the comprehensive development agreement or related  
13 property; or

14 (2) provide for the payment of obligations of the  
15 private participant incurred pursuant to the comprehensive  
16 development agreement.

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

26 (b) Except as provided by Subsection (c), a comprehensive  
27 development agreement may contain a provision authorizing the toll  
28 project entity to compensate the private participant in the  
29 agreement for the loss of toll revenues attributable to the

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

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

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

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

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

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

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

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



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

4 [Sections 371.104-371.150 reserved for expansion]

5 SUBCHAPTER D. DISCLOSURE OF INFORMATION

6 Sec. 371.151. DISCLOSURE OF FINANCIAL INFORMATION. (a)

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

10 (1) project financing, including:

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

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

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

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

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

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

25 (5) a description of any terms in the contract relating  
26 to a termination for convenience provision, including any  
27 information regarding how the value of the project will be  
28 calculated for the purposes of making termination payments;

29 (6) the initial toll rates, the methodology for

1 increasing toll rates, and the projected toll rates at the end of  
2 the term of the contract; and

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

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

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

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

18 (c) If a newspaper is not published in the county in which  
19 the toll project is to be constructed, notice shall be published in  
20 a newspaper published in the county:

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

23 (2) in which a newspaper is published.

24 Sec. 371.153. HEARING. (a) A toll project entity shall hold  
25 a public hearing on the information published under Section 371.152  
26 not later than the 10th day after the date the information is first  
27 published and not less than 10 days before the entity enters into  
28 the contract.

29 (b) A hearing under this section must be held in the county

1 seat of the county in which the toll project is located.

2 (c) A hearing under this section must include a formal  
3 presentation and a mechanism for responding to comments and  
4 questions.

5 SECTION \_\_\_\_ . (a) Section 223.203, Transportation Code, is  
6 amended by adding Subsection (f-1) to read as follows:

7 (f-1) A private entity responding to a request for detailed  
8 proposals issued under Subsection (f) may submit alternative  
9 proposals based on comprehensive development agreements having  
10 different terms, with the alternative terms in multiples of 10  
11 years, ranging from 10 years to 40 years or any lesser term  
12 provided in a comprehensive development agreement.

13 (b) Section 223.208(h), Transportation Code, is amended to  
14 read as follows:

15 (h) A [~~Except as provided by this section, a~~] comprehensive  
16 development agreement with a private participant that includes the  
17 collection by the private participant of tolls for the use of a  
18 toll project may be for a term not longer than 40 [~~50~~] years. The  
19 comprehensive development agreement must contain [~~may be for a term~~  
20 ~~not longer than 70 years if the agreement:~~

21 [~~(1) contains~~] an explicit mechanism for setting the  
22 price for the purchase by the department of the interest of the  
23 private participant in the comprehensive development agreement and  
24 related property, including any interest in a highway or other  
25 facility designed, developed, financed, constructed, operated, or  
26 maintained under the agreement [~~and~~

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

29 (c) Section 227.023(f), Transportation Code, is amended to

1 read as follows:

2 (f) A contract with a private entity that includes the  
3 collection by the private entity of a fee for the use of a facility  
4 may not be for a term longer than 40 [~~50~~] years. The contract must  
5 contain an explicit mechanism for setting the price for the  
6 purchase by the department of the interest of the private  
7 participant in the contract and related property, including any  
8 interest in a highway or other facility designed, developed,  
9 financed, constructed, operated, or maintained under the contract.

10 (d) Section 370.302(i), Transportation Code, is amended to  
11 read as follows:

12 (i) An agreement with a private entity that includes the  
13 collection by the private entity of tolls for the use of a  
14 transportation project may not be for a term longer than 40 [~~50~~]  
15 years. The agreement must contain an explicit mechanism for  
16 setting the price for the purchase by the authority of the interest  
17 of the private participant in the contract and related property,  
18 including any interest in a highway or other facility designed,  
19 developed, financed, constructed, operated, or maintained under the  
20 agreement.

21 (e) The changes in law made by this section apply only to a  
22 contract entered into on or after the effective date of this Act.  
23 A contract entered into before the effective date of this Act is  
24 governed by the law in effect when the contract was entered into,  
25 and the former law is continued in effect for that purpose.

26 SECTION \_\_\_\_\_. Subchapter A, Chapter 227, Transportation Code,  
27 is amended by adding Sections 227.005, 227.006, 227.007, and  
28 227.008 to read as follows:

29 Sec. 227.005. PUBLIC ACCESS TO INFORMATION. (a) The

1 department shall:

2 (1) seek to achieve transparency in the department's  
3 functions related to the Trans-Texas Corridor by providing, to the  
4 greatest extent possible under the public information law (Chapter  
5 552, Government Code) and other statutes governing the access to  
6 records, public access to information collected, assembled, or  
7 maintained by the department relating to the Trans-Texas Corridor;

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

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

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

19 Sec. 227.006. POSTING INFORMATION RELATING TO TRANS-TEXAS  
20 CORRIDOR ON DEPARTMENT'S WEBSITE. (a) The department shall post  
21 on the department's Internet website, in a timely manner, the costs  
22 incurred by the department in connection with the financing,  
23 design, construction, maintenance, or operation of the Trans-Texas  
24 Corridor.

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

29 SECTION \_\_\_\_ . Section 223.203(m), Transportation Code, is

1 amended to read as follows:

2 (m) The department may [~~shall~~] pay an unsuccessful private  
3 entity that submits a responsive proposal in response to a request  
4 for detailed proposals under Subsection (f) a stipulated amount in  
5 exchange for the work product contained in that proposal. A [~~The~~]  
6 stipulated amount must be stated in the request for proposals and  
7 may not exceed the value of any work product contained in the  
8 proposal that can, as determined by the department, be used by the  
9 department in the performance of its functions. The use by the  
10 department of any design element contained in an unsuccessful  
11 proposal is at the sole risk and discretion of the department and  
12 does not confer liability on the recipient of the stipulated amount  
13 under this section. After payment of the stipulated amount:

14 (1) the department owns with the unsuccessful proposer  
15 jointly the rights to, and may make use of any work product  
16 contained in, the proposal, including the technologies, techniques,  
17 methods, processes, ideas, and information contained in the project  
18 design; and

19 (2) the use by the unsuccessful proposer of any portion  
20 of the work product contained in the proposal is at the sole risk  
21 of the unsuccessful proposer and does not confer liability on the  
22 department.

23 SECTION \_\_\_\_ . Section 370.306(m), Transportation Code, is  
24 amended to read as follows:

25 (m) An authority may [~~shall~~] pay an unsuccessful private  
26 entity that submits a response to a request for detailed proposals  
27 under Subsection (f) a stipulated amount of the final contract  
28 price for any costs incurred in preparing that proposal. A [~~The~~]  
29 stipulated amount must be stated in the request for proposals and

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

8 (1) the authority owns the exclusive rights to, and may  
9 make use of any work product contained in, the proposal, including  
10 the technologies, techniques, methods, processes, and information  
11 contained in the project design; and

12 (2) the work product contained in the proposal becomes  
13 the property of the authority.

14 (2) In SECTION 1 of the bill, in proposed Section 223.210,  
15 Transportation Code (page 1, between lines 53 and 54), insert the  
16 following:

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

23 (3) In SECTION 1 of the bill, in proposed Section 223.210,  
24 Transportation Code (page 2, between lines 22 and 23), insert the  
25 following:

26 (c-3) Subsection (c) does not apply to any toll project or  
27 managed lane facility project located on any portion of U.S.  
28 Highway 281 that is located in a county with a population of more  
29 than one million in which more than 80 percent of the population

1 lives in a single municipality.

2 (4) In SECTION 12 of the bill, in the introductory language  
3 (page 12, line 56), strike "366.037 and 366.038" and substitute  
4 "366.037, 366.038, and 366.039".

5 (5) In SECTION 12 of the bill, at the end of proposed Section  
6 366.038, Transportation Code (page 14, between lines 13 and 14),  
7 insert the following:

8 (h) A local toll project entity that exercises the option  
9 under Subsection (b) must begin the environmental phase of the  
10 project within 18 months of the action taken by the entity under  
11 Subsection (b).

12 Sec. 366.039. USE OF STATE HIGHWAY ALIGNMENT, RIGHT-OF-WAY,  
13 AND ACCESS. (a) Notwithstanding any other law, an authority may  
14 use any authority property, state highway right-of-way, or access  
15 to the state highway system, regardless of when or how the  
16 property, right-of-way, or access is acquired. The department or  
17 the commission may require the authority to comply with any  
18 covenant, condition, restriction, or limitation that affects state  
19 highway right-of-way, but may not:

20 (1) adopt rules or establish policies that have the  
21 effect of denying the authority the use of the right-of-way or  
22 access that the authority has determined to be necessary or  
23 convenient for the construction, acquisition, improvement,  
24 operation, maintenance, or pooling of a project under this chapter;  
25 or

26 (2) require the authority to pay for the use of the  
27 right-of-way or access, except to reimburse the commission or  
28 department for actual costs incurred or to be incurred by a third  
29 party, including the federal government, as a result of that use by



1 the authority.

2 (b) If a project of an authority under this chapter includes  
3 the proposed use of improved state highway right-of-way, the  
4 authority and the commission or the department must enter into an  
5 agreement that includes reasonable terms to accommodate that use of  
6 the right-of-way by the authority and to protect the interests of  
7 the commission and the department in the use of the right-of-way  
8 for operations of the department, including public safety and  
9 congestion mitigation on the improved right-of-way.

10 (c) Notwithstanding any other law, the commission and the  
11 department are not liable for any damages that result from an  
12 authority's use of state highway right-of-way or access to the  
13 state highway system under this chapter, regardless of the legal  
14 theory, statute, or cause of action under which liability is  
15 asserted.

# ADOPTED

APR 27 2007

FLOOR AMENDMENT NO. 3

*Antony Spaw*  
Secretary of the Senate

BY:

*Brinner*

1 Amend Floor Amendment 2 by Carona as follows:

2  
3 1. page 1, between lines 9 and 10, insert the following:

4 Section 223.201 (f), Transportation Code does not apply to  
5 a comprehensive development agreement in connection with a  
6 project that:

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

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

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

14  
15 2. page 1, between lines 12 and 13, insert the following:

16 Section 370.305(d), Transportation Code does not apply to a  
17 comprehensive development agreement in connection with a project  
18 that:

19 (a) that includes one or more managed lane facilities to be  
20 added to an existing controlled-access highway;

21 (b) the major portion of which is located in a  
22 nonattainment or near nonattainment air quality area as designed  
23 by the United States Environmental Protection Agency; and

24 (c) for which the department has issued a request for  
25 qualifications before the effective date of this section.

**ADOPTED**

APR 27 2007

*Leta Spaw*  
Secretary of the Senate

FLOOR AMENDMENT NO. 5

BY: *Chris Harris*

1 Amend the C.S.H.B. No. 1892 as follows:

2 (1) On page 2, line 3, strike "90" and substitute "60".

*4*  
*75*

# ADOPTED

FLOOR AMENDMENT NO. 6

APR 27 2007

BY: Erzino

*Latey Spaw*  
Secretary of the Senate

1 Amend C.S.H.B. 1892 (Senate Committee Printing) as follows:

2 (1) Add a new SECTION 10 to read as follows and renumber  
3 subsequent sections appropriately:

4 SECTION 10. Section 366.301, Transportation Code, is  
5 amended by adding the following new Subsection 366.301(e):

6 (e) An action of an authority under this chapter must  
7 comply with the requirements of applicable federal law, if any,  
8 including standards regarding the role of metropolitan planning  
9 organizations under federal law, the use of toll revenue, the  
10 planning, design, financing, construction, and operation of  
11 turnpike projects, and the use of right-of-way of and access to  
12 federal-aid highways, to the extent such standards are otherwise  
13 applicable to an authority's turnpike project. Nothing in this  
14 chapter shall impair the ability of the commission or the  
15 department to ensure compliance with any federal requirement  
16 enabling the state to receive federal highway money.

FLOOR AMENDMENT NO. 7

BY: Thul Nator

Amend C.S.H.B. 1892 (Senate committee printing) as follows:

(1) Add a new SECTION \_\_\_\_ to read as follows and renumber subsequent sections appropriately:

SECTION \_\_\_\_ . Section 370.301(d), Transportation Code, is amended as follows:

(d) The commission or department may use federal money for any purpose described by this chapter. An action of an authority under this chapter or chapter 228 must comply with the requirements of applicable federal law, if any, including standards regarding the role of metropolitan planning organizations under federal law, the use of toll revenue, the planning, design, financing, construction, and operation of turnpike projects, and the use of right-of-way of and access to federal-aid highways, to the extent such standards are otherwise applicable to an authority's turnpike project. Nothing in this chapter or chapter 228 shall impair the ability of the commission or the department to ensure compliance with any federal requirement enabling the state to receive federal highway money.

**ADOPTED**

APR 27 2007

*Leta Spaw*  
Secretary of the Senate

77



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 30, 2007**

**TO:** Honorable Tom Craddick, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** **HB1892** by Smith, Wayne (Relating to the authority of certain counties and other entities with respect to certain transportation projects; providing penalties.), **As Passed 2nd House**

<b>The fiscal implications to the State cannot be determined.</b>
---

The bill would amend the Transportation Code to impose a two-year moratorium on certain provisions in contracts between a private entity and a toll project entity, including the Texas Department of Transportation (TxDOT), a regional tollway authority (RTA), a regional mobility authority (RMA), or a county. The bill would specify that a toll project entity could not enter into a comprehensive development agreement (CDA) containing a provision permitting a private participant to operate and collect revenue from a toll project or enter into a contract to sell a toll project to a private entity. The bill would provide certain exemptions and conditions under which such CDA's are authorized. The bill would create a legislative study committee to study the public policy implications of such agreements with private participants and submit a written report of the committee's findings to the Governor, Lieutenant Governor, and the Speaker of the House of Representatives. The committee would be abolished on December 31, 2008. The moratorium on the applicable CDAs would expire on September 1, 2009.

The bill would require the Texas Transportation Commission (TTC) and TxDOT to allow an RMA or a county toll road authority (CTRA) to use TxDOT-owned highway right of way and to access the state highway system for certain projects. The bill would specify that TxDOT or the Commission may not require payment for the right-of-way or access, except to reimburse TxDOT or TTC for costs incurred or to be incurred by a third-party, including the federal government, as a result of the use by the county. The bill would require TTC or TxDOT to provide a CTRA and RMA the first option to finance, construct, or operate a portion of a toll project in the county before TTC or TxDOT could enter into a contract for those purposes. The bill would grant a county or RTA all powers of TxDOT related to the development of a Trans-Texas Corridor project if a county requests or a county or RTA is requested by TxDOT to participate in the project. The bill would authorize a county or RTA to enter into CDAs with private entities to design, develop, finance, construct, maintain, repair, operate, extend, or expand a turnpike project. The bill would require actions taken by an RMA, RTA, or CTRA under the authority of the Transportation Code to comply with the requirements of applicable federal law and would authorize TxDOT and TTC to take any action necessary to ensure that the state remains eligible to receive federal funds.

The bill would establish general provisions regarding CDAs for highway toll projects that are applicable to toll project entities, including TxDOT, RTAs, RMAs, and county toll road authorities (CTRA). The bill would prohibit a toll project entity from entering into a CDA unless the Attorney General reviews the proposed agreement and determines that it is legally sufficient. The bill would require toll project entities to submit to the Legislative Budget Board and the State Auditor certain information regarding proposed CDAs before entering into a CDA contract. The bill would require a toll project entity to provide the State Auditor with the traffic and revenue report for a project and would prohibit the toll project entity from entering into a CDA before the 30<sup>th</sup> day after the date the State Auditor receives the report for review and comment. The bill would establish guidelines for CDA contract provisions relating to the termination of certain CDAs and prohibitions against contract





provisions that would limit or prohibit the construction of transportation projects by a toll project entity or other governmental entity.

TxDOT indicates that the bill would delay the development and procurement of several proposed CDA projects and delay the receipt of any associated concession fees to the state until fiscal year 2010 or later. Based on the information provided by TxDOT, it is assumed any fiscal implications to the state would depend on the number of potential CDA projects and concession agreements that could be implemented under current law but would be delayed or prohibited as a result of the enactment of the bill and, therefore, cannot be determined.

Based on the analysis of the State Auditor's Office (SAO), it is assumed the costs to review and comment traffic and revenue reports for proposed CDAs would be approximately \$45,000 per year. It is assumed the costs could be absorbed within the SAO's existing budget and would be reimbursed by TxDOT or by private sector developers.

Based on the analysis of the Office of the Attorney General (OAG), it is assumed the CDA contract reviews would require three additional staff positions and approximately \$350,000 for salaries, employee benefits, and general operating expenses. It is assumed the costs could be absorbed within the agency's existing resources.

The bill would take effect immediately upon receiving a vote of two-thirds of all members elected to each house or otherwise on September 1, 2007.

#### **Local Government Impact**

It is assumed that a county or a regional tollway authority would enter into a contract to finance, construct, and operate a toll project only if sufficient funds were available. These entities could see savings for these projects from not having to pay TxDOT or TTC for use of state highway right-of-way or access to the state highway system, but the savings, if any, would depend on the size of the local body and the size of the project.

It is assumed that a local tolling authority would use a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend or expand a turnpike project only if sufficient funding were available.

**Source Agencies:** 302 Office of the Attorney General, 308 State Auditor's Office, 601 Department of Transportation

**LBB Staff:** JOB, SD, MW, KJG, TG



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 25, 2007**

**TO:** Honorable John Carona, Chair, Senate Committee on Transportation & Homeland Security

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1892** by Smith, Wayne (Relating to the authority of certain counties and other entities with respect to certain transportation projects; providing penalties.), **Committee Report 2nd House, Substituted**

**The fiscal implications to the State cannot be determined.**

The bill would amend the Transportation Code to impose a two-year moratorium on certain provisions in contracts between a private entity and a toll project entity, including the Texas Department of Transportation (TxDOT), a regional tollway authority (RTA), a regional mobility authority (RMA), or a county. The bill would specify that a toll project entity could not enter into a comprehensive development agreement (CDA) containing a provision permitting a private participant to operate and collect revenue from a toll project or enter into a contract to sell a toll project to a private entity. The bill would provide certain exemptions and conditions under which such CDA's are authorized. The bill would create a legislative study committee to study the public policy implications of such agreements with private participants and submit a written report of the committee's findings to the Governor, Lieutenant Governor, and the Speaker of the House of Representatives. The committee would be abolished on December 31, 2008. The moratorium on the applicable CDAs would expire on September 1, 2009.

The bill would require the Texas Transportation Commission (TTC) and TxDOT to allow an RMA or a county toll road authority (CTRA) to use TxDOT-owned highway right of way and to access the state highway system for certain projects. The bill would specify that TxDOT or the Commission may not require payment for the right-of-way or access, except to reimburse TxDOT or TTC for costs incurred or to be incurred by a third-party, including the federal government, as a result of the use by the county. The bill would require TTC or TxDOT to provide a CTRA and RMA the first option to finance, construct, or operate a portion of a toll project in the county before TTC or TxDOT could enter into a contract for those purposes. The bill would grant a county or RTA all powers of TxDOT related to the development of a Trans-Texas Corridor project if a county requests or a county or RTA is requested by TxDOT to participate in the project. The bill would authorize a county or RTA to enter into CDAs with private entities to design, develop, finance, construct, maintain, repair, operate, extend, or expand a turnpike project.

TxDOT indicates that the bill would delay the development and procurement of several proposed CDA projects totaling \$2.5 billion and delay the receipt of any associated concession fees to the state until fiscal year 2010 or later. Based on the information provided by TxDOT, it is assumed any fiscal implications to the state would depend on the number of potential CDA projects and concession agreements that could be implemented under current law but would be delayed or prohibited as a result of the enactment of the bill and, therefore, cannot be determined.

TxDOT indicates that the state's federal highway funding could be jeopardized under certain provisions of the bill, and it is assumed federal penalties could accrue depending on the number and scope of projects in violation of federal requirements. Currently, TxDOT is the state administrative entity granted authority by the federal government to oversee or conduct environmental and design and build reviews for any major roadway receiving federal aid or intersecting a federal-aid highway or a transit system subsidized by the federal government.



The bill would take effect immediately upon receiving a vote of two-thirds of all members elected to each house or otherwise on September 1, 2007.

**Local Government Impact**

It is assumed that a county or a regional tollway authority would enter into a contract to finance, construct, and operate a toll project only if sufficient funds were available. These entities could see savings for these projects from not having to pay TxDOT or TTC for use of state highway right-of-way or access to the state highway system, but the savings, if any, would depend on the size of the local body and the size of the project.

It is assumed that a local tolling authority would use a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend or expand a turnpike project only if sufficient funding were available.

**Source Agencies:** 601 Department of Transportation

**LBB Staff:** JOB, KJG, TG



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 17, 2007**

**TO:** Honorable John Carona, Chair, Senate Committee on Transportation & Homeland Security

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1892** by Smith, Wayne (Relating to the authority of certain counties and other entities with respect to certain transportation projects.), **As Engrossed**

<p><b>The fiscal implications to the state cannot be determined.</b></p>
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The bill would make various changes to the Transportation Code. This analysis discusses only those SECTIONS of the bill and issues within the SECTIONS that would have a fiscal impact.

SECTION 1 of the bill would add Section 223.210 to impose a two-year moratorium on certain provisions in contracts between a private entity and a toll project entity, including the Texas Department of Transportation (TxDOT), a regional tollway authority, a regional mobility authority, or a county. The new section would specify that a toll project entity could not enter into a comprehensive development agreement (CDA) containing a provision permitting a private participant to operate and collect revenue from a toll project or enter into a contract to sell a toll project to a private entity. The provisions of SECTION 1 would expire on September 1, 2009.

SECTION 3 would add Section 228.011 to require the Texas Transportation Commission (TTC) or TxDOT to provide a county the first option to finance, construct, or operate a portion of a toll project in the county before TTC or TxDOT could enter into a contract for those purposes. Except as otherwise provided by statute, an agreement entered into by the county and the TTC or TxDOT may not require payment by a county to the TTC or TxDOT for a project that is financed, constructed, or operated by the county and that is on or directly connected to the state highway system.

SECTION 4 would add Section 228.012 to require the Texas Transportation Commission (TTC) or TxDOT to provide a regional tollway authority (RTA) the first option to finance, construct, or operate a portion of a toll project in the boundaries of the RTA before TTC or TxDOT could enter into a contract for those purposes. Except as otherwise provided by statute, an agreement entered into by the RTA and the TTC or TxDOT may not require payment by a RTA to the TTC or TxDOT for a project that is financed, constructed, or operated by the RTA and that is on or directly connected to the state highway system.

SECTION 6 would amend Section 284.002 to change the population and geographical brackets to authorize counties with a population of 10,000 or more to form a County Toll Road Authority under Chapter 284 Transportation Code.

SECTION 7 would amend Section 284.003 to authorize a county to exercise the powers of a regional mobility authority in connection with certain projects and would give a county the same authority granted to TxDOT to enter into a comprehensive development agreement. The bill would authorize a county's plans for certain transportation projects to provide for and permit the use of state and federal funds and specifies that a plan is not subject to approval, supervision, or regulation by TTC or TxDOT.

SECTION 8 would amend Subchapter A, Chapter 284, to grant a county all powers of TxDOT related to the development of a Trans-Texas Corridor project if a county requests or is requested by TxDOT to participate in the project. The bill would authorize a county to use state highway right-of-way or





access to the state highway system regardless of when or how the right-of-way or access was acquired. The bill would specify that TxDOT or the TTC may not require payment for the right-of-way or access, except to reimburse TxDOT or TTC for costs incurred or to be incurred by a third-party, including the federal government, as a result of the use by the county.

SECTION 12 would amend Section 284.065 to allow a county toll road authority (CTRA) to pool financing for projects.

SECTION 13 would add Chapter 371 to allow any hybrid vehicle displaying a "hybrid vehicle" insignia to use a high occupancy vehicle lane on a toll road without passenger restrictions unless the use would impair the receipt of federal transit funds.

SECTION 14 would add Section 502.1861 to require the state to issue a specially designed hybrid vehicle insignia to hybrid owners who apply without the payment of any additional fee.

TxDOT indicates that the bill would delay the development and procurement of several proposed CDA projects totaling \$7.97 billion and delay the receipt of any associated concession fees to the state until fiscal year 2010 or later. Based on the information provided by TxDOT, it is assumed any fiscal implications to the state would depend on the number of potential CDA projects and concession agreements that could be implemented under current law but would be delayed or prohibited as a result of the enactment of the bill and, therefore, cannot be determined.

In addition, TxDOT indicates that the state's federal highway funding could be jeopardized under certain provisions of the bill, and it is assumed federal penalties could accrue depending on the number and scope of projects in violation of federal requirements. Currently, TxDOT is the state administrative entity granted authority by the federal government to oversee or conduct environmental and design and build reviews for any major roadway receiving federal aid or intersecting a federal-aid highway or a transit system subsidized by the federal government.

In addition, TxDOT assumes that since any county over 10,000 would have the ability to form a CTRA through a simple act of the county commissioner's court, and could therefore begin to seize state right-of-way/transportation projects at any stage of development, the provisions of the bill could be taken into consideration in a risk analysis related to the issuance of bonds. TxDOT assumes that bond holders would require higher interest rates on all bonds issued to finance state toll projects in order to account for the risk that a project could be taken over at any time.

Based on the analysis of TxDOT, it is assumed any costs associated with implementing a system to register hybrid vehicles could be absorbed within existing resources. TxDOT indicates that the implementation of the bill would result in a loss of toll revenue depending on the number of state toll projects in operation and the number of registered hybrid vehicles using toll projects in each fiscal year. However, it is assumed the bill would not result in a significant impact to state revenue.

### **Local Government Impact**

It is assumed that a county or local government corporation would participate in the acquisition, creation, administration, financing, construction, improvement, maintenance, and/or operation of a toll project only if sufficient funds were available. Counties would see savings for these projects from not having to pay TxDOT for use of state highway right-of-way or access to the state highway system, but the savings, if any, would depend on the size of the local body, the size and type of projects constructed, and the nature of the any agreements entered into with TxDOT.

A regional tollway authority, regional mobility authority, or a county that implements the provisions of the bill may have additional costs to construct a toll project if the ability to contract with private participants is restricted. However, these costs would depend on the size of the constructing entity and the size and type of the projects that are constructed.

### **Source Agencies:**

**LBB Staff:** JOB, KJG, MW, TG, DB



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**March 23, 2007**

**TO:** Honorable Wayne Smith, Chair, House Committee on County Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1892** by Smith, Wayne (Relating to the authority of certain counties and other entities with respect to certain transportation projects.), **Committee Report 1st House, Substituted**

It is assumed the fiscal implications to the state would depend on the number of counties and the number of projects that would use state right-of-way owned by TxDOT without payment and, therefore, cannot be determined at this time.

The bill would amend the Transportation Code to clarify that payments received by the Texas Department of Transportation (TxDOT) or the Texas Transportation Commission (TTC) under a comprehensive development agreement shall be expended on certain projects in the same department district as the project or facilities to which the payments are attributable. The bill would specify that a county is the entity that has the primary responsibility for the financing, construction, and operation of a toll project located in the county.

The bill would require TTC or TxDOT to provide a county the first option to finance, construct, or operate a portion of a toll project in the county before TTC or TxDOT could enter into a contract for those purposes. The bill would authorize a county to exercise the powers of a regional mobility authority in connection with certain projects and would give a county the same authority granted to TxDOT to enter into a comprehensive development agreement. The bill would authorize a county's plans for certain transportation projects to provide for and permit the use of state and federal funds and specifies that a plan is not subject to approval, supervision, or regulation by TTC or TxDOT.

The bill would grant a county all powers of TxDOT related to the development of a Trans-Texas Corridor project if a county requests or is requested by TxDOT to participate in the project. The bill would authorize a county to use state highway right-of-way or access to the state highway system regardless of when or how the right-of-way or access was acquired. The bill would specify that TxDOT or the TTC may not require payment for the right-of-way or access, except to reimburse TxDOT or TTC for costs incurred or to be incurred by a third-party, including the federal government, as a result of the use by the county.

TxDOT indicates that the state's federal highway funding could be jeopardized under certain provisions of the bill, and it is assumed federal penalties could accrue depending on the number and scope of projects in violation of federal requirements. Currently, TxDOT is the state administrative entity granted authority by the federal government to oversee or conduct environmental and design and build reviews for any major roadway receiving federal aid or intersecting a federal-aid highway or a transit system subsidized by the federal government.

The bill would take effect immediately upon receiving a vote of two-thirds of all members elected to each house; otherwise it would take effect September 1, 2007.



## **Local Government Impact**

It is assumed that a county or local government corporation would participate in the acquisition, creation, administration, financing, construction, improvement, maintenance, and/or operation of a toll project only if sufficient funds were available. Counties would see savings for these projects from not having to pay TxDOT for use of state highway right-of-way or access to the state highway system, but the savings, if any, would depend on the size of the local body, the size and type of projects constructed, and the nature of the any agreements entered into with TxDOT.

**Source Agencies:** 601 Department of Transportation

**LBB Staff:** JOB, SD, DB, MW, TG, KJG



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**March 20, 2007**

**TO:** Honorable Wayne Smith, Chair, House Committee on County Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1892** by Smith, Wayne (Relating to the power of counties and certain other public entities with respect to certain transportation projects.), **As Introduced**

The fiscal implications to the State cannot be determined.

The bill would amend the Transportation Code to authorize certain counties to exercise the powers of a regional mobility authority under Chapter 370 of the Transportation Code. The bill would authorize certain counties, regional tollway authorities, and regional mobility authorities to use state highway right-of-way and access to the state highway system owned by the Texas Department of Transportation (TxDOT) for certain transportation projects. The bill specifies that TxDOT may not require any payment for such use of right-of-way or access to the state highway system.

Based on the analysis by TxDOT, it is assumed the fiscal implications to the state would depend on the number of local toll project-building entities and the number of projects that would use state highway right-of-way owned by TxDOT without payment and, therefore, cannot be determined.

TxDOT indicates that the state's federal highway funding could be jeopardized if a tolling entity were to take control of a federal-aid highway and convert it to a toll project. Federal penalties could accrue depending on the number or scope of projects in violation of federal requirements.

Any major roadway intersecting with a federally funded highway or transit system subsidized by the federal government must undergo environmental and design and build reviews conducted by TxDOT, which must subsequently be approved by the Federal Highway Administration. Currently TxDOT is the only state administrative entity granted authority by the federal government to conduct those activities as they relate to federal-aid highways or projects that intersect with federal-aid highways.

The bill would take effect immediately upon receiving a vote of two-thirds of all members elected to each house or otherwise on September 1, 2007.

**Local Government Impact**

It is assumed that a county or local government corporation would exercise the powers of a regional mobility authority for a turnpike project only if sufficient funds were available. These entities would see savings for these projects from not having to pay TxDOT for use of state highway right-of-way or access to the state highway system, but the savings, if any, would depend on the size of the local body and the size of the project.

**Source Agencies:** 601 Department of Transportation

**LBB Staff:** JOB, DB, MW, TG, KJG