

## **BILL ANALYSIS**

Senate Research Center

S.B. 3  
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Finance  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 792, Acts of the 80th Legislature, Regular Session, 2007, enacted a moratorium on most comprehensive development agreements (CDA), created a "market valuation" process by which the Texas Department of Transportation (TxDOT) could proceed with certain transportation projects, created a September 2009 sunset date on most CDAs, and created a study committee to review and make recommendations regarding whether and how Texas should proceed with CDAs.

The "market valuation process" established under S.B. 792 has proven to be unduly contentious, expensive, and time consuming. S.B. 3 repeals the market valuation process in S.B. 792 and establishes a streamlined process for project delivery. S.B. 3 creates a first right of refusal guarantee for local and state entities to build future toll projects, and ensures that all methods of public transportation finance are exhausted before a private entity can finance, build, and operate a toll project.

Additionally, S.B. 3 reauthorizes TxDOT's CDA authority to develop three specific projects until August 31, 2013, as well as CDA authority for regional mobility authorities.

S.B. 3 also establishes several provisions which must be included in any future private toll road contract. These protections will ensure the state and taxpayers are not exposed to bad and costly contracts with private entities.

As proposed, S.B. 3 relates to the design, development, financing, construction, and operation of certain toll projects and grants authority to issue bonds.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. (a) Amends Sections 223.201(f) and (h), Transportation Code, as follows:

(f) Provides that except as provided by Subsection (h), rather than Subsections (h) and (i), the authority to enter into comprehensive development agreements provided by this section expires on August 31, 2009.

(h) Provides that Subsection (f) does not apply to certain projects as set forth in this subsection, provided that the Texas Department of Transportation (TxDOT) enters into a comprehensive development agreement for the project on or before August 31, 2013.

(b) Repealer: Section 223.201(i) (relating to the authority to enter into a comprehensive development agreement for a certain project expiring August 31, 2011), Transportation Code.

SECTION 2. Amends Sections 223.208(b) and (h), Transportation Code, as follows:

(b) Requires that a comprehensive development agreement entered into under this subchapter or Section 227.023(c) (relating to authorizing TxDOT to enter into a comprehensive development agreement under this chapter that provides for the financing, development, design, construction, or operation of a facility or a combination of facilities on the Trans-Texas corridor) include a provision providing for the purchase by TxDOT of the interest of a private participant in the comprehensive development agreement and related property as required by Section 371.101 (Termination for Convenience) and authorizes a comprehensive development agreement to include any other provision TxDOT considers appropriate, including a certain provision. Deletes existing text authorizing a comprehensive development agreement entered into under this subchapter or Section 227.023(c) to include any provision that TxDOT considers appropriate, including provisions providing for the purchase by TxDOT, under terms and conditions agreed to by the parties, of the interest of a private participant in the comprehensive development agreement and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the comprehensive development agreement and establishing the purchase price for the interest of a private participant in the comprehensive development agreement and related property, which price may be determined in accordance with the methodology established by the parties in the comprehensive development agreement. Makes nonsubstantive changes.

(h) Deletes existing text requiring the comprehensive development agreement to contain an explicit mechanism for setting the price for the purchase by TxDOT of the interest of the private participant in the comprehensive development agreement and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

SECTION 3. Amends Section 228.006, Transportation Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires the Texas Transportation Commission (TTC) to authorize the use of surplus revenue of a toll project or system to pay the costs of a transportation project, highway project, or air quality project within a region, rather than within a TxDOT district, in which any part of the toll project is located.

(a-1) Requires TxDOT to allocate the distribution of the surplus toll revenue to TxDOT districts in the region that are located in the boundaries of the metropolitan planning organization in which the toll project system producing the surplus revenue is located based on the percentage of toll revenue from users in each TxDOT district of the project or system. Requires each entity responsible for collecting tolls for a project or system, to assist TxDOT in determining the allocation, to calculate on an annual basis the percentage of toll revenue from users of the project or system in each TxDOT district based on the number of recorded electronic toll collections.

SECTION 4. Amends Section 228.012, Transportation Code, as follows:

(a) Deletes existing text requiring TxDOT to create a separate account in the state highway fund to hold payments received under Sections 228.0111(g)(2) (relating to requiring the local toll project entity to commit to make a payment into a toll project subaccount, commit to construct additional transportation projects, or commit to using all surplus revenue from the toll project for certain purposes) and (i)(2) (relating to requiring TxDOT to commit to make a payment into the toll project subaccount or commit to construct additional transportation projects in the region).

(b) Deletes existing text providing an exception under Subsection (c).

(c) Deletes existing text requiring that money in a subaccount received from a county or TxDOT under Section 228.0111 (Use of Surplus Revenue) in connection with a project for which a county acting under Chapter 284 (Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties) has the first option be allocated to

transportation projects located in the county and the counties contiguous to that county. Redesignates Subsection (d) as Subsection (c).

(d) Redesignates existing Subsection (e) as Subsection (d). Deletes existing text prohibiting TTC or TxDOT from revising the formula as provided in TxDOT's unified transportation program or a successor document that results in a commitment to undertake an additional transportation project under Section 228.0111 or taking any other action that would reduce funding allocated to a TxDOT district because of the deposit of a payment received from TxDOT or local toll project entity into a project subaccount or a commitment to undertake an additional transportation project under Section 228.0111.

SECTION 5. Amends Section 284.004(b), Transportation Code, to authorize a county, in addition to authority granted by other law, to use and access state highway right-of-way in accordance with Sections 228.011 (Toll Projects in Certain Counties) and 373.102, rather than Sections 228.011 and 228.0111 (Toll Projects of Local Toll Project Entities).

SECTION 6. Amends Section 284.061(d), Transportation Code, to provide that subject to the reimbursement requirements of Section 373.102, a county has full easements and rights-of-way through, across, under, and over any property owned by this state that are necessary or convenient to construct, acquire, or efficiently operate a project under this chapter.

SECTION 7. Amends Section 366.170(c), Transportation Code, to provide that this subsection does not affect the obligation of the regional tollway authority (authority) under other state law, including Section 373.102, to compensate or reimburse the state for the use or acquisition of an easement or right-of-way on property owned by or on behalf of the state.

SECTION 8. Amends Section 366.407(b), Transportation Code, to require that an agreement entered into under this subchapter include a provision providing for the purchase by the authority of the interest of a private participant in the agreement as required by Section 371.101 and to authorize an agreement to include any other provision the authority considers appropriate, including certain provisions. Deletes existing text authorizing an agreement entered into under this subchapter to include any provision the authority considers appropriate, including a provision providing that the purchase by the authority, under the terms and conditions agreed to by the parties, of the interest of a private participant in the agreement and related property, including any interest in a turnpike project designed, developed, financed, constructed, operated, or maintained under the agreement, and establishing the purchase price, as determined in accordance with the methodology established by the parties in the agreement, for the interest of a private participant in the agreement and related property. Makes nonsubstantive changes.

SECTION 9. Amends Section 366.407(g), Transportation Code, as amended by S.B. 882, Acts of the 81st Legislature, Regular Session, 2009, to delete existing text providing for an exception as provided by this subsection, and requiring that the contract contain an explicit mechanism for setting the price for the purchase by TxDOT of the interest of the private participant in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the contract. Makes a nonsubstantive change.

SECTION 10. Amends Section 370.169(c), Transportation Code, to provide that this subsection does not affect the obligation of the authority under other law, including Section 373.102, to compensate or reimburse this state for the use or acquisition of an easement or right-of-way on property owned by or on behalf of this state.

SECTION 11. (a) Amends Section 370.305(d), Transportation Code, to provide that the authority to enter into comprehensive development agreements under this section expire on August 31, 2013, rather than 2009, and to delete existing text providing for an exception as provided by Subsections (e) and (f).

(b) Repealers: Sections 370.305(e) (relating to Subsection (d) not applying to a comprehensive development agreement that does not grant a private entity a right to finance a toll project or a comprehensive development agreement in connection with a certain project) and (f) (relating to the authority to enter into a comprehensive

development agreement for a project exempted from certain subsections expiring on August 31, 2011), Transportation Code.

SECTION 12. Amends Section 370.311(b), Transportation Code, to require that an agreement entered into under Section 370.305 (Comprehensive Development Agreements) include a provision authorizing the authority to purchase, under terms agreed to by the parties, the interest of a private equity investor in a transportation project as required by Section 371.101.

SECTION 13. Amends Section 371.002, Transportation Code, as added by Section 11.01, Chapter 264 (S.B. 792), Acts of the 80th Legislature, Regular Session, 2007, as follows:

Sec. 371.002. **APPLICABILITY.** Provides that this chapter does not apply to a project for which TTC selected an apparent best value proposer before May 1, 2007 or a publicly owned and operated toll project, as defined by Section 373.001.

SECTION 14. (a) Amends Subchapter B, Chapter 371, Transportation Code, as added by Chapter 264 (S.B. 792), Acts of the 80th Legislature, Regular Session, 2007, by adding Section 371.053, as follows:

Sec. 371.053. **APPROVAL AND CERTIFICATION BY COMPTROLLER.** Requires that a comprehensive development agreement of TxDOT or a regional mobility authority, including a facility agreement under a comprehensive development agreement, under which a private entity will operate a toll project or be entitled to receive revenue from the project be reviewed by the comptroller of public accounts (comptroller) for financial viability and signed and certified by the comptroller if approved.

(b) Makes application of Section 371.053, Transportation Code, as added by this Act, prospective.

SECTION 15. Amends Section 371.101, Transportation Code, as added by Section 11.01, Chapter 264 (S.B. 792), Acts of the 80th Legislature, Regular Session, 2007, as follows:

Sec. 371.101. New heading: **TERMINATION BY PURCHASE.** (a) Requires that a comprehensive development agreement contain a provision authorizing the toll project entity to purchase, under terms agreed to by the parties, the interest of a private participant in the toll project that is the subject of the agreement and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

(b) Requires that the provision include a schedule stating a specific price for the purchase of the toll project at certain intervals from the date the project opens, not less than one year and not to exceed five years, over the term of the agreement.

(c) Requires that the provision authorize the toll project entity to purchase the private entity's interest at a stated interval in an amount not to exceed the lesser of:

(1) the price stated for that interval; or

(2) the then fair market value of the private entity's interest, provided that the fair market value is not less than the private entity's outstanding debt at that time, plus reasonable costs associated with the purchase as defined in the comprehensive development agreement.

(d) Prohibits a toll project entity from, under any circumstance, purchasing the private entity's interest for an amount higher than the stated interval amount.

(e) Requires that a contract provision to purchase the private entity's interest at the then fair market value as described by Subsection (c)(2) contain a provision,

mutually agreed on by the toll project entity and the private participant, detailing the calculation used to determine that value.

(f) Requires the toll project entity to request a proposed termination-by-purchase schedule in each request for detailed proposals and is to consider and score each schedule in each evaluation of proposals.

(g) Requires a private entity, not later than 12 months before the date that the new price interval takes effect, to notify the toll project entity of the beginning of the price interval. Requires the toll project entity to notify the private entity as to whether it will exercise the option to purchase under this section not later than six months after the date it receives notice under this subsection.

(h) Requires a toll project entity to notify the private entity of the project entity's intention to purchase the private entity's interest under this section not less than six months before the date of the purchase. Deletes existing text requiring a toll project entity having rulemaking authority by rule and a toll project entity without rulemaking authority by official action to develop a formula for making termination payments to terminate an agreement under which a private participant receives the right to operate and collect revenue from a toll project, and requiring that a formula to calculate an estimated amount of loss to the private participant as a result of the termination for convenience. Deletes text of existing Subsection (b) requiring that the formula be based on investments, expenditures, and the internal rate of return on equity under the agreed base case financial model as projected over the original term of the agreement, plus an agreed percentage markup on that amount. Deletes text of existing Subsection (c) prohibiting a formula under Subsection (b) from including any estimate of future revenue from the project, if not included in an agreed base case financial model under Subsection (b) and prohibiting compensation to the private participant upon termination for convenience from exceeding the amount determined using the formula under Subsection (b).

SECTION 16. Amends Section 371.102, Transportation Code, as added by Chapter 264 (S.B. 792), Acts of the 80th Legislature, Regular Session, 2007, as follows:

Sec. 371.102. TERMINATION OF CERTAIN COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Creates this subsection from existing text. Authorizes the entity, if a toll project entity elects to terminate an agreement under which a private participant receives the right to operate and collect revenue from a project, to issue bonds or other obligations. Deletes existing text that authorizes the entity, if authorized to issue bonds for that purpose, to issue bonds to make any applicable termination payments to the private participant or purchase the interest of the private participant in the agreement or related property.

(b) Provides that a toll project entity has the same powers and duties relating to the financing of payments under Subsection (a)(1) (relating to issuing bonds or other obligations) as the toll project entity has under other applicable laws of this state, including Chapters 228 (State Highway Toll Projects), 284 (Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties), 366 (Regional Tollway Authorities), and 370 (Regional Mobility Authorities), of this code and Chapter 1371 (Obligations for Certain Public Improvements), Government Code, relating to the financing of a toll project of that entity, including the ability to deposit the proceeds of bonds or other obligations and to pledge, encumber, and expend the proceeds and revenues of a toll project as provided by law.

(c) Provides that the powers held by the toll project entity include the power to authorize the issuance of bonds or other obligations and to pay all or part of the costs of a payment described in Subsection (a)(1), in the amount determined by the toll project entity under Section 371.101. Provides that costs associated with a payment under Subsection (a)(1) are considered a cost of the project.

(d) Requires that this section be liberally construed to effect its purposes.

SECTION 17. Amends Sections 371.103(b) and (c), Transportation Code, as added by Chapter 264 (S.B. 792), Acts of the 80th Legislature, Regular Session, 2007, as follows:

(b) Provides that a provision under this subsection is authorized to be effective only for a period of 30 years or less from the effective date of the agreement.

(c) Prohibits a comprehensive development agreement from requiring the toll project entity to provide compensation for the construction of a highway designated an interstate highway. Makes nonsubstantive changes.

SECTION 18. Amends Subtitle G, Title 6, Transportation Code, by adding Chapter 373, as follows:

## CHAPTER 373. TOLL PROJECTS LOCATED IN TERRITORY OF LOCAL TOLL PROJECT ENTITY

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 373.001. DEFINITIONS. Defines "local toll project entity," "privately operated or controlled toll project," "publicly owned and operated toll project," and "toll project."

Sec. 373.002. APPLICABILITY. (a) Provides that this chapter does not apply to a toll project described in Section 228.011.

(b) Provides that, except for Sections 373.003, 373.004, and 373.005, this chapter does not apply to the U.S. 281 project in Bexar County from Loop 1604 to the Comal County line; the Loop 49 project from IH 20 to State Highway 110 in Smith County; the DFW Connector project in Tarrant and Dallas Counties (State Highway 114 from State Highway 114L Business to east of International Parkway and State Highway 121 from north of FM 2499 to south of State Highway 360); the North Tarrant Express project in Tarrant and Dallas Counties (IH 820 and State Highway 121/State Highway 183 from IH 35W to State Highway 161, IH 820 east from State Highway 121/State Highway 183 to Randol Mill Road, and IH 35W from IH 30 to State Highway 170); the U.S. 290 project from east of U.S. 183 to east of FM 973 in Travis County; the State Highway 99 (Grand Parkway) project; the IH 635 managed lanes project in Dallas County (IH 635 from east of Luna Road to Greenville Avenue and IH 35E from south of the Loop 12/IH 35E split to south of Valwood Parkway); Phase 4 extension of the Dallas North Tollway in Collin and Denton Counties from U.S. 380 to the Grayson County line to be developed by North Texas Tollway Authority; the Southwest Parkway (State Highway 121) in Tarrant County from IH 30 to Dirks Road/Altamesa Boulevard and the Chisholm Trail Project from Dirks Road/Altamesa Boulevard to U.S. 67 in the City of Cleburne; the Loop 9 project in Dallas County; the IH 35E managed lanes project in Dallas and Denton Counties from IH 635 to U.S. 380; the IH 30 managed lanes project from Baird Farm Road in Tarrant County to IH 35E in Dallas County; or the State Highway 183 managed lanes project in Dallas County from State Highway 161 to State Highway 114 in Irving and from State Highway 114 to IH 35E in the City of Dallas.

Sec. 373.003. PROJECT OWNED IN PERPETUITY. Provides that unless a toll project is sold or otherwise transferred to another toll project entity in accordance with applicable law, including Sections 228.151 (Lease, Sale, or Transfer of Toll Project or System), 284.011 (Transfer of Project to Department), 366.036 (Transfer of Turnpike Project or System), 366.172 (Lease, Sale, or Conveyance of Turnpike Project), and 370.171 (Lease, Sale, or Conveyance of Transportation Project), a toll project procured by TxDOT or a local toll project entity determined by the process under Subchapter B is owned by that entity in perpetuity.

Sec. 373.004. GOVERNMENTAL AND NOT COMMERCIAL TRANSACTIONS. Provides that a transaction involving a local toll project entity under Section 228.011 or this chapter is not primarily commercial in nature but is an inherently governmental transaction whose purpose is to determine governmental jurisdiction, ownership, control, or other responsibilities with respect to a project.

Sec. 373.005. VALUATION DETERMINATION. Requires that any determination of value, including best value, under this chapter or other applicable federal or state law for an agreement or other public-private partnership arrangement involving a toll project for which a local toll project entity has exercised its option under this chapter and has complied with all other conditions in this chapter for the development of the project by the local toll project entity take into consideration factors the entity determines appropriate, including factors related to oversight of the toll project, maintenance and operations costs of the toll project, the structure and rates of tolls, economic development impacts of the toll project, and social and environmental benefits and impacts of the toll project.

Sec. 373.006. LEGAL CHALLENGES CONCLUDED. Provides that, for the purposes of this chapter, all legal challenges to development of a toll project are considered concluded when a judgment or order of a court with jurisdiction over the challenge becomes final and unappealable.

[Reserves Sections 373.007-373.050 for expansion.]

#### SUBCHAPTER B. PROCESS TO DETERMINE ENTITY TO DEVELOP, FINANCE, CONSTRUCT, AND OPERATE TOLL PROJECT

Sec. 373.051. INITIATION OF PROCESS. (a) Authorizes the local toll project entity, at any time after a metropolitan planning organization approves the inclusion of a toll project to be located in the territory of a local toll project entity in the metropolitan transportation plan, to notify TxDOT in writing of the local toll project entity's intent to initiate the process described in this subchapter.

(b) Authorizes TxDOT to notify the local toll project entity in writing of TxDOT's intent to initiate the process described in this subchapter at any time after a metropolitan planning organization has approved the inclusion of a toll project to be located in the territory of a local toll project entity in the metropolitan transportation plan and:

(1) TxDOT has issued a finding of no significant impact for the project, or for a project for which an environmental impact statement is prepared, TxDOT has approved the final environmental impact statement for the project; or

(2) for a project subject to environmental review requirements under federal law, the United States Department of Transportation Federal Highway Administration has issued a finding of no significant impact, or for a project for which an environmental impact statement is prepared, TxDOT has submitted a final environmental impact state to the Federal Highway Administration for approval.

Sec. 373.052. PUBLIC PROJECT BY LOCAL TOLL PROJECT ENTITY. (a) Provides that a local toll project entity has the first option to develop, finance, construct, and operate a toll project as a publicly owned and operated toll project. Provides that a local toll project entity has not more than 180 days after the date on which notification under Section 373.051(a) is provided, or notification under Section 373.051(b) is received to decide whether to exercise the option, unless the United States Department of Transportation Federal Highway Administration issues a record of decision for an environmental impact statement submitted by TxDOT under Section 373.051(b)(2) more than 60 days after the date TxDOT provides notice under Section 373.051(b), in which event the local toll project entity has 120 days after the date the record of decision is

issued to exercise the option. Authorizes the option period under this subsection to be extended an additional 90 days by agreement of TxDOT and the local toll project entity.

(b) Requires the local toll project entity, if a local toll project entity exercises the option under Subsection (a), after exercising the option to within 180 days after the later of the date of exercising its option or the date on which all environmental approvals necessary for the development of the toll project are secured and all legal challenges to development are concluded, advertise for the initial procurement of required services, including, at a minimum, design services, for the project, and within two years after the date on which all environmental approvals necessary for the development are secured and all legal challenges to development are concluded, enter into a contract for the construction of the toll project.

Sec. 373.053. PUBLIC PROJECT BY DEPARTMENT. (a) Provides that if a local toll project entity fails or declines to exercise the option to develop, finance, construct, and operate a toll project under Section 373.052(a), or fails or declines to advertise for procurement or enter into a construction contract as required by Section 373.052(b), TxDOT has the option to develop, finance, construct, and operate the toll project as a publicly owned and operated project. Provides that TxDOT has not more than 60 days after the date the local toll project entity fails or declines to exercise its option under Section 373.052(a) or fails or declines to advertise for procurement or enter into a construction contract as required by Section 373.052(b) to decide whether to exercise its option.

(b) Requires TxDOT, if TxDOT exercises its option under Subsection (a), after exercising the option to within 180 days after the later of the date of exercising its option or the date on which all environmental approvals necessary for the development of the toll project are secured and all legal challenges to development are concluded, to advertise for the initial procurement of required services, including, at a minimum, design services, for the project, and within two years after the date on which all environmental approvals necessary for the development are secured and all legal challenges to development are concluded, to enter into a contract for the construction of the toll project.

Sec. 373.054. PRIVATE PROJECT BY LOCAL TOLL PROJECT ENTITY. (a) Provides that if TxDOT fails or declines to exercise the option to develop, finance, construct, and operate a toll project under Section 373.053(a), or fails or declines to advertise for procurement or enter into a construction contract as required by Section 373.053(b), the local toll project entity has the option to develop, finance, construct, and operate the toll project as a privately operated or controlled toll project. Provides that except as provided by Section 373.057(b), the local toll project entity has not more than 60 days after the date TxDOT fails to exercise its option under Section 373.053(a) or fails or declines to advertise for procurement or enter into a construction contract as required by Section 373.053(b) to decide whether to exercise its option.

(b) Requires the local toll project entity, if the local toll project entity exercises its option under Subsection (a), after exercising the option to within 180 days after the later of the date of exercising its option or the date on which all environmental approvals necessary for the development of the toll project are secured and all legal challenges to development are concluded, advertise for the initial procurement of required services, including, at a minimum, design services, for the project, and within two years after the date on which all environmental approvals necessary for the development are secured and all legal challenges to development are concluded, enter into a contract for the construction of the toll project.

Sec. 373.055. PRIVATE PROJECT BY DEPARTMENT. (a) Provides that if a local toll project entity fails or declines to exercise the option to develop, finance, construct, and operate a toll project under Section 373.054(a), or fails or declines to advertise for procurement or enter into a construction contract as required by Section 373.054(b),



TxDOT has the option to develop, finance, construct, and operate the toll project as a privately operated or controlled toll project. Provides that TxDOT has not more than 60 days after the date the local toll project entity fails or declines to exercise its option under Section 373.054(a) or fails or declines to advertise for procurement or enter into a construction contract as required by Section 373.054(b) to decide whether to exercise its option.

(b) Requires TxDOT, if TxDOT exercises its option under Subsection (a), after exercising the option to within 180 days after the later of the date of exercising its option or the date on which all environmental approvals necessary for the development of the toll project are secured and all legal challenges to development are concluded, to advertise for the initial procurement of required services, including, at a minimum, design services, for the project, and within two years after the date on which all environmental approvals necessary for the development are secured and all legal challenges to development are concluded, to enter into a contract for the construction of the toll project.

Sec. 373.056. RE-INITIATION OF PROCESS. Authorizes either entity, if the process described by Sections 373.051, 373.052, 373.053, 373.054, and 373.055 concludes without the local toll project entity or TxDOT entering into a contract for the construction of the toll project, to re-initiate the process under this subchapter by submitting notice to the other entity in the manner provided by Section 373.051.

Sec. 373.057. WAIVER OF OPTION; ALTERATION OF TIMELINES. (a) Authorizes TxDOT or local toll project entity at any time during the process established by this subchapter, including when the process is initiated under Section 373.051, to decline to exercise an option of that entity under this subchapter.

(b) Requires the local toll project entity, if TxDOT declines to exercise its option under Section 373.053 before the 120th day after the date on which notification under Section 373.051(a) is provided by the local toll project entity or notification under Section 373.051(b) is received by the toll project entity, in addition to deciding whether to exercise its option under Section 373.052, to decide whether to exercise its option under Section 373.054 not later than the later of the 180th day after the date notice is provided or received, or the end of the option period as extended under Section 373.052.

(c) Authorizes TxDOT and the applicable toll project entity, by written agreement, to extend any time limit under this subchapter.

Sec. 373.058. SHARING OF PROJECT-RELATED INFORMATION. (a) Requires the local toll project entity or TxDOT, as applicable, if a local toll project entity or TxDOT fails or declines to exercise an option or fails or declines to advertise for procurement or enter into a construction contract under Section 373.052, 373.053, 373.054, or 373.055, to make available its traffic estimates, revenue estimates, plans, specifications, surveys, appraisals, and other work product developed for the toll project to the other entity.

(b) Requires TxDOT or the local toll project entity, as applicable, on entering into a contract for the construction of the toll project, to reimburse the other entity for shared project work product that it uses.

Sec. 373.059. QUARTERLY PROGRESS REPORTS. Requires TxDOT or the local toll project entity, as applicable, after TxDOT or the local toll project entity exercises an option under this subchapter, as applicable, to issue a quarterly report on the progress of the development of the toll project. Requires that the report be made available to the public.

Sec. 373.060. ENVIRONMENTAL REVIEW. (a) Authorizes TxDOT or the local toll project entity to begin any environmental review process that may be required for a proposed toll project before initiating the process under this subchapter.

(b) Requires the local toll project entity, if a local toll project entity initiates the process for development of a toll project under Section 373.051(a) and has not begun the environmental review of the project, to begin the environmental review within 180 days of exercising the option.

Sec. 373.061. PROJECT LOCATED IN TERRITORY OF MORE THAN ONE LOCAL TOLL PROJECT ENTITY. Authorizes only the local toll project entity that was first to be authorized by law to construct toll projects in that territory, if a toll project is in the territory of more than one local toll project entity, to exercise the options and other rights under this subchapter. Authorizes a local toll project entity exercising an option or other right under this section to do so only with respect to the portion of the project located in the territory of that local toll project entity and on behalf of another toll project entity in whose territory the project will be located.

[Reserves Sections 373.062-373.100 for expansion.]

#### SUBCHAPTER C. USE OF RIGHT-OF-WAY BY LOCAL TOLL PROJECT ENTITY

Sec. 373.101. USE OF STATE HIGHWAY RIGHT-OF-WAY. (a) Requires TTC and TxDOT, consistent with federal law, to assist a local toll project entity in the development, financing, construction, and operation of a toll project for which the local toll project entity has exercised its option to develop, finance, construct, and operate the project under Subchapter B by allowing the local toll project entity to use state highway right-of-way and to access the state highway system as necessary to construct and operate the toll project.

(b) Authorizes the local toll project entity and TTC, notwithstanding any other law, to agree to remove the toll project from the state highway system and transfer ownership to the local toll project entity.

Sec. 373.102. REIMBURSEMENT FOR USE OF STATE HIGHWAY RIGHT-OF-WAY. (a) Prohibits TTC or TxDOT from requiring a local toll project entity to pay for the use of state highway right-of-way or access, except to reimburse TxDOT for actual costs incurred by TxDOT that are owed to a third party, including the federal government, as a result of that use by the local toll project entity and as required under Subsection (b).

(b) Requires a local toll project entity to reimburse TxDOT for TxDOT's actual costs to acquire the right-of-way in the manner provided in the payment schedule agreed to by TxDOT and the local toll project entity. Requires that the amount, if TxDOT cannot determine that amount, be determined based on the average historical right-of-way acquisition values for comparable right-of-way located in proximity to the project on the date of original acquisition of the right-of-way.

(c) Authorizes the local toll project entity, in lieu of reimbursement, to agree to pay to TxDOT a portion of the revenues of the project, in the amount and for the period of time agreed to by the local toll project entity and TxDOT.

(d) Requires that the money received by TxDOT under this section be deposited in the state highway fund and, except for reimbursement for costs owed to a third party, be used to fund additional projects in the TxDOT district in which the toll project is located.

(e) Authorizes TTC or TxDOT to waive the requirement of reimbursement under this section.

Sec. 373.103. AGREEMENT FOR USE OF RIGHT-OF-WAY. Requires a local toll project entity to enter into an agreement with TxDOT for any project for which the entity has exercised its opinion to develop, finance, construct, and operate the project under Subchapter B and for which the entity intends to use state highway right-of-way. Requires that the agreement contain provisions necessary to ensure that the local toll

project entity's construction, maintenance, and operation of the project complies with the requirements of applicable state and federal law.

Sec. 373.104. **LIABILITY FOR DAMAGES.** (a) Provides that TTC and TxDOT, notwithstanding any other law, are not liable for any damages that result from a local toll project entity's use of state highway right-of-way or access to the state highway system under this subchapter, regardless of the legal theory, statute, or cause of action under which liability is asserted.

(b) Provides that an agreement entered into by a local toll project entity and TxDOT in connection with a toll project that is financed, constructed, or operated by the local toll project entity and that is on or directly connected to a highway in the state highway system does not create a joint enterprise for liability purposes.

Sec. 373.105. **COMPLIANCE WITH FEDERAL LAW.** Authorizes TTC or TxDOT, notwithstanding an action taken by a local toll project entity under this subchapter, to take action that in its reasonable judgment is necessary to comply with any federal requirement to enable this state to receive federal-aid highway funds.

**SECTION 19.** (a) Repealer: Section 228.0111 (Toll Projects of Local Toll Project Entities), Transportation Code.

(b) Provides that the repeal of Section 288.0111, Transportation Code, by this section does not affect any project described in Sections 373.002(b)(1)-(10), Transportation Code, as added by this Act. Provides that except as otherwise provided by this section, those projects are governed by Section 228.0111, Transportation Code, as that section existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(c) Requires the local toll project entity or TxDOT, as applicable, for the purposes of the application of Section 228.0111(g)(1) (relating to requiring the local toll project entity to enter into a contract for the construction of the toll project if the local toll project entity exercises the option with respect to a toll project under this subsection), Transportation Code, or Section 228.0111(i)(1) (relating to requiring TxDOT to enter into a contract for the construction of the toll project if TxDOT exercises the option with respect to a toll project under this subsection), Transportation Code, under Subsection (b) of this section to the State Highway 99 (Grand Parkway) project, to enter into a contract for the construction of at least one segment of the project in the two-year period described by Section 228.0111(g)(1), Transportation Code, or Section 228.0111(i)(1), Transportation Code. Provides that for each of the remaining segments, if TxDOT and a local toll project entity have entered into an agreement for the advance funding of the initial segment, a local toll project entity or TxDOT, as applicable, is not required to enter into a construction contract for any remaining segment before the second anniversary of the date a construction contract for a segment contiguous to that remaining segment has been entered into.

(d) Authorizes bonds or other obligation issued under former Section 228.0111(p) (relating to authorizing a local toll project entity and TxDOT to issue certain bonds or other obligations to pay any costs associated with a project under this section), Transportation Code, as continued in effect by Subsection (b) of this section, to mature serially or otherwise not more than 40 years from their date of issuance.

**SECTION 20.** Provides that the change in law made by this Act to Section 223.208, Transportation Code, does not apply to a project described in Section 373.002(b)(3), (4), or (7), Transportation Code, as added by this Act. Provides that a project described in those subdivisions is governed by Section 223.208, Transportation Code, as that section existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

**SECTION 21.** Makes application of Section 228.012, Transportation Code, as amended by this Act prospective.

SECTION 22. Provides that the change in law made by this Act to Sections 371.101 and 371.103, Transportation Code, do not apply to a project described in Section 373.002(b)(3), (4), or (7), Transportation Code, as added by this Act. Provides that a project described in those subdivisions is governed by Sections 371.101 and 371.103, Transportation Code, as those sections existed immediately before the effective date of this Act, and the former laws are continued in effect for that purpose.

SECTION 23. Effective date: upon passage or the 91st day after the last day of the legislative session.