

By: Nichols

S.B. No. 3

A BILL TO BE ENTITLED

AN ACT

relating to the design, development, financing, construction, and operation of certain toll projects; granting the authority to issue bonds.

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

SECTION 1. (a) Sections 223.201(f) and (h), Transportation Code, are amended to read as follows:

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

(h) Subsection (f) does not apply to any of the following projects, provided that the department enters into a comprehensive development agreement for the project on or before August 31, 2013:

(1) the IH 35E managed lanes project in Dallas and Denton Counties from IH 635 to U.S. 380;

(2) 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;

(3) the IH 30 managed lanes project from the Trinity River to Baird Farm Road in Tarrant County; and

(4) a project for which:

(A) a local toll project entity declines to exercise its option or to perform another action necessary to develop, construct, and operate the project under Chapter 373; and

1                    (B) the governing body of the local toll project  
2 entity requests the department to develop the project under a  
3 comprehensive development agreement ~~[a comprehensive development~~  
4 ~~agreement that does not grant a private entity a right to finance a~~  
5 ~~toll project or to a comprehensive development agreement in~~  
6 ~~connection with a project.]~~

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

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

12                    ~~[(3) for which the department has issued a request for~~  
13 ~~qualifications before May 1, 2007].~~

14            (b) Section 223.201(i), Transportation Code, is repealed.

15            SECTION 2. Sections 223.208(b) and (h), Transportation  
16 Code, are amended to read as follows:

17            (b) A comprehensive development agreement entered into  
18 under this subchapter or Section 227.023(c) must include a  
19 provision ~~[may include any provision that the department considers~~  
20 ~~appropriate, including provisions.]~~

21                    ~~[(1)]~~ providing for the purchase by the department~~[,~~  
22 ~~under terms and conditions agreed to by the parties,~~] of the  
23 interest of a private participant in the comprehensive development  
24 agreement and related property as required by Section 371.101 and  
25 may include any other provision the department considers  
26 appropriate, including a provision:

27                    (1) ~~[, including any interest in a highway or other~~

1 ~~facility designed, developed, financed, constructed, operated, or~~  
2 ~~maintained under the comprehensive development agreement;~~

3 ~~[(2) establishing the purchase price for the interest~~  
4 ~~of a private participant in the comprehensive development agreement~~  
5 ~~and related property, which price may be determined in accordance~~  
6 ~~with the methodology established by the parties in the~~  
7 ~~comprehensive development agreement;~~

8 ~~[(3)]~~ providing for the payment of obligations  
9 incurred pursuant to the comprehensive development agreement,  
10 including any obligation to pay the purchase price for the interest  
11 of a private participant in the comprehensive development  
12 agreement, from any lawfully available source, including securing  
13 such obligations by a pledge of revenues of the commission or the  
14 department derived from the applicable project, which pledge shall  
15 have such priority as the department may establish;

16 (2) ~~[(4)]~~ permitting the private participant to  
17 pledge its rights under the comprehensive development agreement;

18 (3) ~~[(5)]~~ concerning the private participant's right  
19 to operate and collect revenue from the project; and

20 (4) ~~[(6)]~~ restricting the right of the commission or  
21 the department to terminate the private participant's right to  
22 operate and collect revenue from the project unless and until any  
23 applicable termination payments have been made.

24 (h) A comprehensive development agreement with a private  
25 participant that includes the collection by the private participant  
26 of tolls for the use of a toll project may be for a term not longer  
27 than 50 years from the later of the date of final acceptance of the

1 project or the start of revenue operations by the private  
 2 participant, not to exceed a total term of 52 years. [~~The~~  
 3 ~~comprehensive development agreement must contain an explicit~~  
 4 ~~mechanism for setting the price for the purchase by the department~~  
 5 ~~of the interest of the private participant in the comprehensive~~  
 6 ~~development agreement and related property, including any interest~~  
 7 ~~in a highway or other facility designed, developed, financed,~~  
 8 ~~constructed, operated, or maintained under the agreement.~~]

9 SECTION 3. Section 228.006, Transportation Code, is amended  
 10 by amending Subsection (a) and adding Subsection (a-1) to read as  
 11 follows:

12 (a) The commission shall authorize the use of surplus  
 13 revenue of a toll project or system to pay the costs of a  
 14 transportation project, highway project, or air quality project  
 15 within a region [~~department district~~] in which any part of the toll  
 16 project is located.

17 (a-1) The department shall allocate the distribution of the  
 18 surplus toll revenue to department districts in the region that are  
 19 located in the boundaries of the metropolitan planning organization  
 20 in which the toll project or system producing the surplus revenue is  
 21 located based on the percentage of toll revenue from users in each  
 22 department district of the project or system. To assist the  
 23 department in determining the allocation, each entity responsible  
 24 for collecting tolls for a project or system shall calculate on an  
 25 annual basis the percentage of toll revenue from users of the  
 26 project or system in each department district based on the number of  
 27 recorded electronic toll collections.

SECTION 4. Section 228.012, Transportation Code, is amended to read as follows:

Sec. 228.012. PROJECT SUBACCOUNTS. (a) The department shall create a separate account in the state highway fund to hold payments received by the department under a comprehensive development agreement and~~[7]~~ the surplus revenue of a toll project or system~~[7, and payments received under Sections 228.0111(g)(2) and (i)(2)]~~. The department shall create subaccounts in the account for each project, system, or region. Interest earned on money in a subaccount shall be deposited to the credit of that subaccount.

(b) The department shall hold money in a subaccount in trust for the benefit of the region in which a project or system is located and may assign the responsibility for allocating money in a subaccount to a metropolitan planning organization in which the region is located. Money ~~[Except as provided by Subsection (c), money]~~ shall be allocated to projects authorized by Section 228.0055 or Section 228.006, as applicable.

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

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

1        (d) [~~(e)~~] The commission or the department may not:

2            (1) revise the formula as provided in the department's  
3 unified transportation program or a successor document in a manner  
4 that results in a decrease of a department district's allocation  
5 because of the deposit of a payment into a project subaccount [~~or a~~  
6 ~~commitment to undertake an additional transportation project under~~  
7 ~~Section 228.0111~~]; or

8            (2) take any other action that would reduce funding  
9 allocated to a department district because of the deposit of a  
10 payment [~~received from the department or local toll project entity~~]  
11 into a project subaccount [~~or a commitment to undertake an~~  
12 ~~additional transportation project under Section 228.0111~~].

13        SECTION 5. Section 284.004(b), Transportation Code, is  
14 amended to read as follows:

15        (b) In addition to authority granted by other law, a county  
16 may use state highway right-of-way and may access state highway  
17 right-of-way in accordance with Sections 228.011 and 373.102  
18 [~~228.0111~~].

19        SECTION 6. Section 284.061(d), Transportation Code, is  
20 amended to read as follows:

21        (d) Subject to the reimbursement requirements of Section  
22 373.102, a [~~A~~] county has full easements and rights-of-way through,  
23 across, under, and over any property owned by this state that are  
24 necessary or convenient to construct, acquire, or efficiently  
25 operate a project under this chapter.

26        SECTION 7. Section 366.170(c), Transportation Code, is  
27 amended to read as follows:

1 (c) An authority has full easements and rights-of-way  
 2 through, across, under, and over any property owned by the state or  
 3 any local governmental entity that are necessary or convenient to  
 4 construct, acquire, or efficiently operate a turnpike project or  
 5 system under this chapter. This subsection does not affect the  
 6 obligation of the authority under other state law, including  
 7 Section 373.102, to compensate or reimburse the state for the use or  
 8 acquisition of an easement or right-of-way on property owned by or  
 9 on behalf of the state. An authority's use of property owned by or  
 10 on behalf of the state is subject to any covenants, conditions,  
 11 restrictions, or limitations affecting that property.

12 SECTION 8. Section 366.407(b), Transportation Code, is  
 13 amended to read as follows:

14 (b) A comprehensive development agreement entered into  
 15 under this subchapter must ~~[may]~~ include ~~[any provision the~~  
 16 ~~authority considers appropriate, including]~~ a provision~~[+~~

17 ~~[(1)]~~ providing for the purchase by the authority~~[,~~  
 18 ~~under terms and conditions agreed to by the parties,~~] of the  
 19 interest of a private participant in the comprehensive development  
 20 agreement as required by Section 371.101 and may include any other  
 21 provision the authority considers appropriate, including a  
 22 provision:

23 (1) ~~[and related property, including any interest in a~~  
 24 ~~turnpike project designed, developed, financed, constructed,~~  
 25 ~~operated, or maintained under the comprehensive development~~  
 26 ~~agreement,~~

27 ~~[(2)] establishing the purchase price, as determined in~~

~~accordance with the methodology established by the parties in the comprehensive development agreement, for the interest of a private participant in the comprehensive development agreement and related property;~~

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

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

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

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

SECTION 9. Section 366.407(g), Transportation Code, as amended by S.B. No. 882, Acts of the 81st Legislature, Regular Session, 2009, is amended to read as follows:

(g) A ~~[Except as provided by this subsection, a]~~ comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project may be for a term not longer than 50



1 years from the later of the date of final acceptance of the project  
 2 or the start of revenue operations by the private participant, not  
 3 to exceed a total term of 52 years. [~~The contract must contain an~~  
 4 ~~explicit mechanism for setting the price for the purchase by the~~  
 5 ~~authority of the interest of the private participant in the~~  
 6 ~~contract and related property, including any interest in a highway~~  
 7 ~~or other facility designed, developed, financed, constructed,~~  
 8 ~~operated, or maintained under the contract.~~]

9 SECTION 10. Section 370.169(c), Transportation Code, is  
 10 amended to read as follows:

11 (c) An authority has full easements and rights-of-way  
 12 through, across, under, and over any property owned by the state or  
 13 any local government that are necessary or convenient to construct,  
 14 acquire, or efficiently operate a transportation project or system  
 15 under this chapter. This subsection does not affect the obligation  
 16 of the authority under other law, including Section 373.102, to  
 17 compensate or reimburse this state for the use or acquisition of an  
 18 easement or right-of-way on property owned by or on behalf of this  
 19 state. An authority's use of property owned by or on behalf of this  
 20 state is subject to any covenants, conditions, restrictions, or  
 21 limitations affecting that property.

22 SECTION 11. (a) Section 370.305(d) Transportation Code, is  
 23 amended to read as follows:

24 (d) The [~~Except as provided by Subsections (e) and (f), the~~]  
 25 authority to enter into comprehensive development agreements under  
 26 this section expires on August 31, 2013 [~~2009~~].

27 (b) Sections 370.305(e) and (f), Transportation Code, are

1 repealed.

2       SECTION 12. Section 370.311(b), Transportation Code, is  
3 amended to read as follows:

4       (b) A comprehensive development agreement entered into  
5 under Section 370.305 must include a provision authorizing the  
6 authority to purchase, under terms agreed to by the parties, the  
7 interest of a private equity investor in a transportation project  
8 as required by Section 371.101.

9       SECTION 13. Section 371.002, Transportation Code, as added  
10 by Chapter 264 (S.B. 792), Acts of the 80th Legislature, Regular  
11 Session, 2007, is amended to read as follows:

12       Sec. 371.002. APPLICABILITY. This chapter does not apply  
13 to:

14             (1) a project for which the commission selected an  
15 apparent best value proposer before May 1, 2007; or

16             (2) a publicly owned and operated toll project, as  
17 defined by Section 373.001.

18       SECTION 14. (a) Subchapter B, Chapter 371, Transportation  
19 Code, as added by Chapter 264 (S.B. 792), Acts of the 80th  
20 Legislature, Regular Session, 2007, is amended by adding Section  
21 371.053 to read as follows:

22       Sec. 371.053. APPROVAL AND CERTIFICATION BY COMPTROLLER. A  
23 comprehensive development agreement of the department or a regional  
24 mobility authority, including a facility agreement under a  
25 comprehensive development agreement, under which a private entity  
26 will operate a toll project or be entitled to receive revenue from  
27 the project must be reviewed by the comptroller for financial

1 viability and signed and certified by the comptroller if approved.

2 (b) The change in law made by Section 371.053,  
3 Transportation Code, as added by this section, applies only to a  
4 comprehensive development agreement entered into on or after the  
5 effective date of this Act.

6 SECTION 15. Section 371.101, Transportation Code, as added  
7 by Chapter 264 (S.B. 792), Acts of the 80th Legislature, Regular  
8 Session, 2007, is amended to read as follows:

9 Sec. 371.101. TERMINATION BY PURCHASE [~~FOR CONVENIENCE~~].

10 (a) A comprehensive development agreement must contain a  
11 provision authorizing the toll project entity to purchase, under  
12 terms agreed to by the parties:

13 (1) the interest of a private participant in the toll  
14 project that is the subject of the agreement; and

15 (2) related property, including any interest in a  
16 highway or other facility designed, developed, financed,  
17 constructed, operated, or maintained under the agreement.

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

22 (c) The provision must authorize the toll project entity to  
23 purchase the private entity's interest at a stated interval in an  
24 amount not to exceed the lesser of:

25 (1) the price stated for that interval; or

26 (2) the then fair market value of the private entity's  
27 interest, provided that the fair market value is not less than the

1 private entity's outstanding debt at that time, plus reasonable  
2 costs associated with the purchase as defined in the comprehensive  
3 development agreement.

4 (d) A toll project entity may not, under any circumstance,  
5 purchase the private entity's interest for an amount higher than  
6 the stated interval amount.

7 (e) A contract provision to purchase the private entity's  
8 interest at the then fair market value as described by Subsection  
9 (c)(2) must contain a provision, mutually agreed on by the toll  
10 project entity and the private participant, detailing the  
11 calculation used to determine that value.

12 (f) The toll project entity shall request a proposed  
13 termination-by-purchase schedule in each request for detailed  
14 proposals and shall consider and score each schedule in each  
15 evaluation of proposals.

16 (g) A private entity shall, not later than 12 months before  
17 the date that a new price interval takes effect, notify the toll  
18 project entity of the beginning of the price interval. The toll  
19 project entity must notify the private entity as to whether it will  
20 exercise the option to purchase under this section not later than  
21 six months after the date it receives notice under this subsection.

22 (h) A toll project entity must notify the private entity of  
23 the toll project entity's intention to purchase the private  
24 entity's interest under this section not less than six months  
25 before the date of the purchase ~~[A toll project entity having~~  
26 ~~rulemaking authority by rule and a toll project entity without~~  
27 ~~rulemaking authority by official action shall develop a formula for~~

~~making termination payments to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project. A formula must calculate an estimated amount of loss to the private participant as a result of the termination for convenience.~~

~~[(b) The formula shall 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.~~

~~[(c) A formula under Subsection (b) may not include any estimate of future revenue from the project, if not included in an agreed base case financial model under Subsection (b). Compensation to the private participant upon termination for convenience may not exceed the amount determined using the formula under Subsection (b)].~~

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

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

(1) ~~[if authorized to issue bonds for that purpose,]~~  
issue bonds or other obligations to:

(A) make any applicable termination payments to

1 the private participant; or

2 (B) purchase the interest of the private  
3 participant in the comprehensive development agreement or related  
4 property; or

5 (2) provide for the payment of obligations of the  
6 private participant incurred pursuant to the comprehensive  
7 development agreement.

8 (b) A toll project entity has the same powers and duties  
9 relating to the financing of payments under Subsection (a)(1) as  
10 the toll project entity has under other applicable laws of this  
11 state, including Chapters 228, 284, 366, and 370 of this code and  
12 Chapter 1371, Government Code, relating to the financing of a toll  
13 project of that entity, including the ability to deposit the  
14 proceeds of bonds or other obligations and to pledge, encumber, and  
15 expend the proceeds and revenues of a toll project as provided by  
16 law.

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

23 (d) This section shall be liberally construed to effect its  
24 purposes.

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

1           (b) Except as provided by Subsection (c), a comprehensive  
2 development agreement may contain a provision authorizing the toll  
3 project entity to compensate the private participant in the  
4 agreement for the loss of toll revenues attributable to the  
5 construction by the entity of a limited access highway project  
6 located within an area that extends up to four miles from either  
7 side of the centerline of the project developed under the  
8 agreement, less the private participant's decreased operating and  
9 maintenance costs attributable to the highway project, if any. A  
10 provision under this subsection may be effective only for a period  
11 of 30 years or less from the effective date of the agreement.

12           (c) A comprehensive development agreement may not require  
13 the toll project entity to provide compensation for the  
14 construction of:

15               (1) a highway project contained in the state  
16 transportation plan or a transportation plan of a metropolitan  
17 planning organization in effect on the effective date of the  
18 agreement;

19               (2) work on or improvements to a highway project  
20 necessary for improved safety, or for maintenance or operational  
21 purposes;

22               (3) a high occupancy vehicle exclusive lane addition  
23 or other work on any highway project that is required by an  
24 environmental regulatory agency; ~~[or]~~

25               (4) a transportation project that provides a mode of  
26 transportation that is not included in the project that is the  
27 subject of the comprehensive development agreement; or

1           (5) a highway designated an interstate highway.

2           SECTION 18. Subtitle G, Title 6, Transportation Code, is  
3 amended by adding Chapter 373 to read as follows:

4           CHAPTER 373. TOLL PROJECTS LOCATED IN TERRITORY OF LOCAL TOLL

5                   PROJECT ENTITY

6                           SUBCHAPTER A. GENERAL PROVISIONS

7           Sec. 373.001. DEFINITIONS. In this chapter:

8           (1) "Local toll project entity" means an entity, other  
9 than the department, that is authorized by law to acquire, design,  
10 construct, finance, operate, and maintain a toll project,  
11 including:

12                   (A) a regional tollway authority under Chapter  
13 366;

14                   (B) a regional mobility authority under Chapter  
15 370; or

16                   (C) a county acting under Chapter 284.

17           (2) "Privately operated or controlled toll project"  
18 means a toll project that is primarily commercial in nature and is  
19 designed and constructed by a private entity that holds a leasehold  
20 interest in or the right to operate and retain revenues from the  
21 toll project, regardless of whether the private entity operates the  
22 toll project or collects the revenue itself or engages a  
23 subcontractor or other entity to operate the toll project or  
24 collect the revenue. The term does not include a toll project for  
25 which the department or a toll project entity contracts with a  
26 private entity only for engineering, design, construction,  
27 finance, operation, maintenance, or other services.



1           (3) "Publicly owned and operated toll project" means a  
2 toll project owned and operated by the department or a local toll  
3 project entity in which a private entity does not have a leasehold  
4 interest or right to operate or retain revenue from the toll  
5 project. The term does not include a privately operated or  
6 controlled toll project, but may include a toll project for which a  
7 private entity provides:

8                   (A) engineering, design, construction, finance,  
9 operation, maintenance, or other services; or

10                   (B) financial assistance for the toll project  
11 that does not entitle the private entity to any ownership interest  
12 in or the right to operate or retain revenue from the toll project.

13           (4) "Toll project" means a toll project described by  
14 Section 201.001(b), regardless of whether the toll project is:

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

16                   (B) subject to the jurisdiction of the  
17 department.

18           Sec. 373.002. APPLICABILITY. (a) This chapter does not  
19 apply to a toll project described in Section 228.011.

20           (b) Except for Sections 373.003, 373.004, and 373.005, this  
21 chapter does not apply to:

22                   (1) the U.S. 281 project in Bexar County from Loop 1604  
23 to the Comal County line;

24                   (2) the Loop 49 project from IH 20 to State Highway 110  
25 in Smith County;

26                   (3) the DFW Connector project in Tarrant and Dallas  
27 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);

(4) 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);

(5) the U.S. 290 project from east of U.S. 183 to east of FM 973 in Travis County;

(6) the State Highway 99 (Grand Parkway) project;

(7) 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);

(8) 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;

(9) 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;

(10) the Loop 9 project in Dallas County;

(11) the IH 35E managed lanes project in Dallas and Denton Counties from IH 635 to U.S. 380;

(12) the IH 30 managed lanes project from Baird Farm Road in Tarrant County to IH 35E in Dallas County; or

(13) the State Highway 183 managed lanes project in Dallas County from State Highway 161 to State Highway 114 in Irving

1 and from State Highway 114 to IH 35E in the City of Dallas.

2 Sec. 373.003. PROJECT OWNED IN PERPETUITY. Unless a toll  
3 project is sold or otherwise transferred to another toll project  
4 entity in accordance with applicable law, including Sections  
5 228.151, 284.011, 366.036, 366.172, and 370.171, a toll project  
6 procured by the department or a local toll project entity  
7 determined by the process under Subchapter B is owned by that entity  
8 in perpetuity.

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

15 Sec. 373.005. VALUATION DETERMINATION. Any determination  
16 of value, including best value, under this chapter or other  
17 applicable federal or state law for a comprehensive development  
18 agreement or other public-private partnership arrangement  
19 involving a toll project for which a local toll project entity has  
20 exercised its option under this chapter and has complied with all  
21 other conditions in this chapter for the development of the project  
22 by the local toll project entity must take into consideration  
23 factors the entity determines appropriate, including factors  
24 related to:

- 25 (1) oversight of the toll project;  
26 (2) maintenance and operations costs of the toll  
27 project;

1           (3) the structure and rates of tolls;  
2           (4) economic development impacts of the toll project;  
3 and  
4           (5) social and environmental benefits and impacts of  
5 the toll project.

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

11       [Sections 373.007-373.050 reserved for expansion]

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

14       Sec. 373.051. INITIATION OF PROCESS. (a) At any time  
15 after a metropolitan planning organization approves the inclusion  
16 of a toll project to be located in the territory of a local toll  
17 project entity in the metropolitan transportation plan, the local  
18 toll project entity may notify the department in writing of the  
19 local toll project entity's intent to initiate the process  
20 described in this subchapter.

21       (b) The department may notify the local toll project entity  
22 in writing of the department's intent to initiate the process  
23 described in this subchapter at any time after a metropolitan  
24 planning organization has approved the inclusion of a toll project  
25 to be located in the territory of a local toll project entity in the  
26 metropolitan transportation plan and:

27       (1) the department has issued a finding of no

significant impact for the project, or for a project for which an environmental impact statement is prepared, the department 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, the department has submitted a final environmental impact statement to the Federal Highway Administration for approval.

Sec. 373.052. PUBLIC PROJECT BY LOCAL TOLL PROJECT ENTITY.

(a) 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. 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 the department under Section 373.051(b)(2) more than 60 days after the date the department 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. The option period under this subsection may be extended an additional 90 days by agreement of the department and the local toll project entity.

1        (b) If a local toll project entity exercises the option  
2 under Subsection (a), the local toll project entity after  
3 exercising the option must:

4            (1) within 180 days after the later of the date of  
5 exercising its option or the date on which all environmental  
6 approvals necessary for the development of the toll project are  
7 secured and all legal challenges to development are concluded,  
8 advertise for the initial procurement of required services,  
9 including, at a minimum, design services, for the project; and

10           (2) within two years after the date on which all  
11 environmental approvals necessary for the development are secured  
12 and all legal challenges to development are concluded, enter into a  
13 contract for the construction of the toll project.

14        Sec. 373.053. PUBLIC PROJECT BY DEPARTMENT. (a) If a  
15 local toll project entity fails or declines to exercise the option  
16 to develop, finance, construct, and operate a toll project under  
17 Section 373.052(a), or fails or declines to advertise for  
18 procurement or enter into a construction contract as required by  
19 Section 373.052(b), the department has the option to develop,  
20 finance, construct, and operate the toll project as a publicly  
21 owned and operated project. The department has not more than 60  
22 days after the date the local toll project entity fails or declines  
23 to exercise its option under Section 373.052(a) or fails or  
24 declines to advertise for procurement or enter into a construction  
25 contract as required by Section 373.052(b) to decide whether to  
26 exercise its option.

27        (b) If the department exercises its option under Subsection

1 (a), the department after exercising the option must:

2 (1) within 180 days after the later of the date of  
3 exercising its option or the date on which all environmental  
4 approvals necessary for the development of the toll project are  
5 secured and all legal challenges to development are concluded,  
6 advertise for the initial procurement of required services,  
7 including, at a minimum, design services, for the project; and

8 (2) within two years after the date on which all  
9 environmental approvals necessary for the development are secured  
10 and all legal challenges to development are concluded, enter into a  
11 contract for the construction of the toll project.

12 Sec. 373.054. PRIVATE PROJECT BY LOCAL TOLL PROJECT ENTITY.

13 (a) If the department fails or declines to exercise the option to  
14 develop, finance, construct, and operate a toll project under  
15 Section 373.053(a), or fails or declines to advertise for  
16 procurement or enter into a construction contract as required by  
17 Section 373.053(b), the local toll project entity has the option to  
18 develop, finance, construct, and operate the toll project as a  
19 privately operated or controlled toll project. Except as provided  
20 by Section 373.057(b), the local toll project entity has not more  
21 than 60 days after the date the department fails or declines to  
22 exercise its option under Section 373.053(a) or fails or declines  
23 to advertise for procurement or enter into a construction contract  
24 as required by Section 373.053(b) to decide whether to exercise its  
25 option.

26 (b) If the local toll project entity exercises its option  
27 under Subsection (a), the local toll project entity after

exercising the option must:

(1) 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

(2) 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) 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), the department has the option to develop, finance, construct, and operate the toll project as a privately operated or controlled toll project. The department 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) If the department exercises its option under Subsection (a), the department after exercising the option must:

(1) 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

(2) 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. 373.056. RE-INITIATION OF PROCESS. 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 the department entering into a contract for the construction of the toll project, either entity may 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) The department or local toll project entity may at any time during the process established by this subchapter, including when the process is initiated under Section 373.051, decline to exercise an option of that entity under this subchapter.

(b) If the department 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, the local toll project entity must, in addition to deciding whether to exercise its option under Section

1 373.052, decide whether to exercise its option under Section  
2 373.054 not later than the later of:

3 (1) the 180th day after the date notice is provided or  
4 received; or

5 (2) the end of the option period as extended under  
6 Section 373.052.

7 (c) The department and the applicable local toll project  
8 entity may, by written agreement, extend any time limit under this  
9 subchapter.

10 Sec. 373.058. SHARING OF PROJECT-RELATED INFORMATION.

11 (a) If a local toll project entity or the department fails or  
12 declines to exercise an option or fails or declines to advertise for  
13 procurement or enter into a construction contract under Section  
14 373.052, 373.053, 373.054, or 373.055, the local toll project  
15 entity or the department, as applicable, must make available its  
16 traffic estimates, revenue estimates, plans, specifications,  
17 surveys, appraisals, and other work product developed for the toll  
18 project to the other entity.

19 (b) On entering into a contract for the construction of the  
20 toll project, the department or the local toll project entity, as  
21 applicable, shall reimburse the other entity for shared project  
22 work product that it uses.

23 Sec. 373.059. QUARTERLY PROGRESS REPORTS. After the  
24 department or a local toll project entity exercises an option under  
25 this subchapter, the department or local toll project entity, as  
26 applicable, shall issue a quarterly report on the progress of the  
27 development of the toll project. The report shall be made available

1 to the public.

2 Sec. 373.060. ENVIRONMENTAL REVIEW. (a) The department or  
3 the local toll project entity may begin any environmental review  
4 process that may be required for a proposed toll project before  
5 initiating the process under this subchapter.

6 (b) If a local toll project entity initiates the process for  
7 development of a toll project under Section 373.051(a) and has not  
8 begun the environmental review of the project, the local toll  
9 project entity shall begin the environmental review within 180 days  
10 of exercising the option.

11 Sec. 373.061. PROJECT LOCATED IN TERRITORY OF MORE THAN ONE  
12 LOCAL TOLL PROJECT ENTITY. If a toll project is in the territory of  
13 more than one local toll project entity, only the local toll project  
14 entity that was first to be authorized by law to construct toll  
15 projects in that territory may exercise the options and other  
16 rights under this subchapter. A local toll project entity  
17 exercising an option or other right under this section:

18 (1) may do so only with respect to the portion of the  
19 project located in the territory of that local toll project entity;  
20 and

21 (2) may do so on behalf of another toll project entity  
22 in whose territory the project will be located.

23 [Sections 373.062-373.100 reserved for expansion]

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

25 Sec. 373.101. USE OF STATE HIGHWAY RIGHT-OF-WAY.

26 (a) Consistent with federal law, the commission and the department  
27 shall 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) Notwithstanding any other law, the local toll project entity and the commission may 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) The commission or the department may not require a local toll project entity to pay for the use of state highway right-of-way or access, except:

(1) to reimburse the department for actual costs incurred by the department that are owed to a third party, including the federal government, as a result of that use by the local toll project entity; and

(2) as required under Subsection (b).

(b) A local toll project entity shall reimburse the department for the department's actual costs to acquire the right-of-way in the manner provided in the payment schedule agreed to by the department and the local toll project entity. If the department cannot determine that amount, the amount must 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

1 right-of-way.

2 (c) In lieu of reimbursement, the local toll project entity  
3 may agree to pay to the department a portion of the revenues of the  
4 project, in the amount and for the period of time agreed to by the  
5 local toll project entity and the department.

6 (d) Money received by the department under this section  
7 shall be deposited in the state highway fund and, except for  
8 reimbursement for costs owed to a third party, used to fund  
9 additional projects in the department district in which the toll  
10 project is located.

11 (e) The commission or department may waive the requirement  
12 of reimbursement under this section.

13 Sec. 373.103. AGREEMENT FOR USE OF RIGHT-OF-WAY. A local  
14 toll project entity shall enter into an agreement with the  
15 department for any project for which the entity has exercised its  
16 option to develop, finance, construct, and operate the project  
17 under Subchapter B and for which the entity intends to use state  
18 highway right-of-way. The agreement must contain provisions  
19 necessary to ensure that the local toll project entity's  
20 construction, maintenance, and operation of the project complies  
21 with the requirements of applicable state and federal law.

22 Sec. 373.104. LIABILITY FOR DAMAGES. (a) Notwithstanding  
23 any other law, the commission and the department are not liable for  
24 any damages that result from a local toll project entity's use of  
25 state highway right-of-way or access to the state highway system  
26 under this subchapter, regardless of the legal theory, statute, or  
27 cause of action under which liability is asserted.

(b) An agreement entered into by a local toll project entity and the department 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. Notwithstanding an action taken by a local toll project entity under this subchapter, the commission or department may take any 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) Section 228.0111, Transportation Code, is repealed.

(b) The repeal of Section 228.0111, 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. 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) For the purposes of the application of Section 228.0111(g)(1), Transportation Code, or Section 228.0111(i)(1), Transportation Code, under Subsection (b) of this section to the State Highway 99 (Grand Parkway) project, the local toll project entity or the department, as applicable, must 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. For each of the remaining segments, if the department 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 the department, 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) Bonds or other obligations issued under former Section 228.0111(p), Transportation Code, as continued in effect by Subsection (b) of this section, may mature serially or otherwise not more than 40 years from their date of issuance.

SECTION 20. 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. 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. Section 228.012, Transportation Code, as amended by this Act, applies only to payments received by the Texas Department of Transportation under that section on or after the effective date of this Act. Payments received by the department under Section 228.012, Transportation Code, before the effective date of this Act are governed by the law in effect immediately before the effective date of this Act, and the former law is

1 continued in effect for that purpose.

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

10       SECTION 23. This Act takes effect immediately if it  
11 receives a vote of two-thirds of all the members elected to each  
12 house, as provided by Section 39, Article III, Texas Constitution.  
13 If this Act does not receive the vote necessary for immediate  
14 effect, this Act takes effect on the 91st day after the last day of  
15 the legislative session.