

Amend CSHB 300 by adding the new sections, appropriately numbered to read as follows:

SUBCHAPTER E. COMPREHENSIVE DEVELOPMENT AGREEMENTS

Sec. ~~[223.201]~~ 371.301. AUTHORITY. (a) Subject to Section ~~[223.202]~~ 371.302, ~~[the department]~~ a toll project entity may enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a:

- (1) toll project;
- (2) facility or a combination of facilities on the Trans-Texas Corridor;
- (3) state highway improvement project that includes both tolled and nontolled lanes and may include nontolled appurtenant facilities;
- (4) state highway improvement project in which the private entity has an interest in the project; or
- (5) state highway improvement project financed wholly or partly with the proceeds of private activity bonds, as defined by Section 141(a), Internal Revenue Code of 1986.

(b) In this subchapter, "comprehensive development agreement" means an agreement that, at a minimum, provides for the design and construction, rehabilitation, expansion, or improvement of a project described in Subsection (a) and may also provide for the financing, acquisition, maintenance, or operation of a project described in Subsection (a).

(c) ~~[The department]~~ A toll project entity may negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement.

(d) Money disbursed by the department under a comprehensive development agreement is not included in the amount:

- (1) required to be spent in a state fiscal biennium for engineering and design contracts under Section 223.041; or
- (2) appropriated in Strategy A.1.1. Plan/Design/Manage of the General Appropriations Act for that biennium for the purpose of making the computation under Section 223.041.

(e) ~~[The department]~~ A toll project entity may authorize the

investment of public and private money, including debt and equity participation, to finance a function described by this section.

(f) ~~[Except as provided by Subsections (h) and (i), the]~~ The authority to enter into comprehensive development agreements provided by this section expires on August 31, ~~[2009]~~2015.

(g) The department may combine in a comprehensive development agreement under this subchapter a toll project and a rail facility as defined by Section 91.001.

~~[(h) Subsection (f) does not apply to a comprehensive development agreement that does not grant a private entity a right to finance a toll project or to a comprehensive development agreement in connection with a project:~~

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

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

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

~~(i) The authority to enter into a comprehensive development agreement for a project exempted from Subsection (f) or Section 223.210(b) expires August 31, 2011.]~~

Sec. ~~[223.202]~~ 371.302. LIMITATION ON DEPARTMENT FINANCIAL PARTICIPATION. The amount of money disbursed by the department from the state highway fund and the Texas mobility fund during a federal fiscal year to pay the costs under comprehensive development agreements may not exceed 40 percent of the obligation authority under the federal-aid highway program that is distributed to this state for that fiscal year.

Sec. ~~[223.203]~~ 371.303. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) If ~~[the department]~~ a toll project entity enters into a comprehensive development agreement, ~~[the department]~~ a toll project entity shall use a competitive procurement process that provides the best value for ~~[the department. The department]~~ a toll project entity. A toll project entity may accept unsolicited proposals for a proposed project or solicit proposals in accordance with this section.

(b) [~~The department~~] A toll project entity shall establish rules and procedures for accepting unsolicited proposals that require the private entity to include in the proposal:

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

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

(3) any other information [~~the department~~] a toll project entity considers relevant or necessary.

(c) [~~The department~~] A toll project entity shall publish a notice advertising a request for competing proposals and qualifications in the Texas Register that includes the criteria to be used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which proposals must be received if:

(1) [~~the department~~] a toll project entity decides to issue a request for qualifications for a proposed project; or

(2) [~~the department~~] a toll project entity authorizes the further evaluation of an unsolicited proposal.

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

(e) [~~The department~~] A toll project entity may interview a private entity submitting an unsolicited proposal or responding to a request under Subsection (c). [~~The department~~] A toll project entity shall evaluate each proposal based on the criteria described in the request for competing proposals and qualifications and may qualify or shortlist private entities to submit detailed proposals under Subsection (f). [~~The department~~] A toll project entity must qualify or shortlist at least two private entities to submit detailed proposals for a project under Subsection (f) unless [~~the department~~] a toll project entity does not receive more than one proposal or one response to a request under Subsection (c).

(e-1) Notwithstanding the requirements of this section, [~~the department~~] a toll project entity may prequalify a private entity to submit a detailed proposal to provide services under a design-build contract. [~~The department~~] A toll project entity is

not required to publish a request under Subsection (c) for a design-build contract, and may enter into a design-build contract based solely on an evaluation of detailed proposals submitted in response to a request under Subsection (f) by prequalified private entities. The ~~[commission]~~ governing body of a toll project entity shall adopt rules establishing criteria for the prequalification of a private entity that include the precertification requirements applicable to providers of engineering services and the qualification requirements for bidders on highway construction contracts. Rules for design-build projects adopted pursuant to this subsection shall also provide for an expedited selection process that includes design innovation as a selection criterion.

(e-2) In this section, "design-build contract" means a comprehensive development agreement that includes the design and construction of a turnpike project, does not include the financing of a turnpike project, and may include the acquisition, maintenance, or operation of a turnpike project.

(f) ~~[The department]~~ A toll project entity shall issue a request for detailed proposals from all private entities qualified or shortlisted under Subsection (e) or prequalified under Subsection (e-1) if ~~[the department]~~ a toll project entity proceeds with the further evaluation of a proposed project. A request under this subsection may require additional information relating to:

- (1) the private entity's qualifications and demonstrated technical competence;
- (2) the feasibility of developing the project as proposed;
- (3) engineering or architectural designs;
- (4) the private entity's ability to meet schedules;
- (5) a financial plan, including costing methodology and cost proposals; or
- (6) any other information the department considers relevant or necessary.

(f-1) A private entity responding to a request for detailed proposals issued under Subsection (f) may submit alternative proposals based on comprehensive development agreements having different terms, with the alternative terms in multiples of 10

years, ranging from 10 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity to 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity, not to exceed a total term of 52 years or any lesser term provided in a comprehensive development agreement.

(g) In issuing a request for proposals under Subsection (f), ~~[the department]~~ a toll project entity may solicit input from entities qualified under Subsection (e) or any other person. ~~[The department]~~ A toll project entity may also solicit input regarding alternative technical concepts after issuing a request under Subsection (f).

(h) ~~[The department]~~ A toll project entity shall evaluate each proposal based on the criteria described in the request for detailed proposals and select the private entity whose proposal offers the apparent best value to ~~[the department]~~ a toll project entity.

(i) ~~[The department]~~ A toll project entity may enter into negotiations with the private entity whose proposal offers the apparent best value.

(j) If at any point in negotiations under Subsection (i) it appears to ~~[the department]~~ a toll project entity that the highest ranking proposal will not provide ~~[the department]~~ a toll project entity with the overall best value, ~~[the department]~~ a toll project entity may enter into negotiations with the private entity submitting the next highest ranking proposal.

(k) ~~[The department]~~ A toll project entity may withdraw a request for competing proposals and qualifications or a request for detailed proposals at any time. ~~[The department]~~ A toll project entity may then publish a new request for competing proposals and qualifications.

(l) ~~[The department]~~ A toll project entity may require that an unsolicited proposal be accompanied by a nonrefundable fee sufficient to cover all or part of its cost to review the proposal.

(m) ~~[The department]~~ A toll project entity may pay an unsuccessful private entity that submits a responsive proposal in response to a request for detailed proposals under Subsection (f) a

stipulated amount in exchange for the work product contained in that proposal. A stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by [~~the department~~] a toll project entity, be used by [~~the department~~] a toll project entity in the performance of its functions. The use by [~~the department~~] a toll project entity of any design element contained in an unsuccessful proposal is at the sole risk and discretion of [~~the department~~] a toll project entity and does not confer liability on the recipient of the stipulated amount under this section. After payment of the stipulated amount:

(1) [~~the department~~] a toll project entity owns with the unsuccessful proposer jointly the rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the project design; and

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

(n) [~~The department~~] A toll project entity may prescribe the general form of a comprehensive development agreement and may include any matter the department considers advantageous to the department. [~~The department~~] A toll project entity and the private entity shall finalize the specific terms of a comprehensive development agreement.

(o) Subchapter A of this chapter and Chapter 2254, Government Code, do not apply to a comprehensive development agreement entered into under this subchapter.

Sec. [~~223.204~~] 371.304. CONFIDENTIALITY OF INFORMATION. (a) To encourage private entities to submit proposals under this subchapter, the following information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project is entered into:

(1) all or part of a proposal that is submitted by a private entity for a comprehensive development agreement, except information provided under Sections 223.203(b)(1) and (2), unless the private entity consents to the disclosure of the information;

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

(3) information created or collected by the department or its agent during consideration of a proposal for a comprehensive development agreement.

(b) After [~~the department~~] a toll project entity completes its final ranking of proposals under Section [~~223.203~~] 371.303(h), the final rankings of each proposal under each of the published criteria are not confidential.

Sec. [~~223.205~~] 371.305. PERFORMANCE AND PAYMENT SECURITY. (a) Notwithstanding Section 223.006 and the requirements of Subchapter B, Chapter 2253, Government Code, [~~the department~~] a toll project entity shall require a private entity entering into a comprehensive development agreement under this subchapter to provide a performance and payment bond or an alternative form of security in an amount sufficient to:

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

(2) protect:

(A) [~~the department~~] a toll project entity; and

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

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

(c) If [~~the department~~] a toll project entity determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), [~~the department~~] a toll project entity shall set the amount of the bonds or the alternative forms of security.

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

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

(f) In addition to or instead of a performance and payment bond, the department may require one or more of the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by ~~[the department]~~ a toll project entity;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit; or

(4) any other form of security determined suitable by ~~[the department]~~ a toll project entity.

(g) ~~[The department]~~ A toll project entity by rule shall prescribe requirements for an alternative form of security provided under this section.

Sec. ~~[223.206]~~ 371.306. OWNERSHIP OF HIGHWAY. (a) A state highway or another facility described by Section ~~[223.201]~~ 371.301(a) that is the subject of a comprehensive development agreement with a private entity, including the facilities acquired or constructed on the project, is public property and shall be owned by ~~[the department]~~ a toll project entity.

(b) Notwithstanding Subsection (a), ~~[the department]~~ a toll project entity may enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a project, including supplemental facilities. At the termination of the agreement, the highway or other facilities are to be in a state of proper maintenance as determined by ~~[the department]~~ a toll project entity and shall be returned to ~~[the department]~~ a toll project entity in satisfactory condition at no further cost.

(c) A highway asset or toll project that is used or leased by a private entity under Section 202.052 or 228.053 for a commercial purpose is not exempt from ad valorem taxation and is subject to

local zoning regulations and building standards.

(d) ~~[The department]~~ A toll project entity may not enter into a comprehensive development agreement with a private entity under this subchapter or Section 227.023 that provides for the lease, license, or other use of rights-of-way or related property by the private entity for the purpose of constructing, operating, or maintaining an ancillary facility that is used for commercial purposes.

Sec. ~~[223.207]~~ 371.307. LIABILITY FOR PRIVATE OBLIGATIONS. ~~[The department]~~ A toll project entity may not incur a financial obligation for a private entity that designs, develops, finances, constructs, maintains, or operates a state highway or other facility under this subchapter. The state or a political subdivision of the state is not liable for any financial or other obligations of a project solely because a private entity constructs, finances, or operates any part of the project.

Sec. ~~[223.208]~~ 371.308. TERMS OF PRIVATE PARTICIPATION. (a) ~~[The department]~~ A toll project entity shall negotiate the terms of private participation under this subchapter, including:

(1) methods to determine the applicable cost, profit, and project distribution among the private participants and the department;

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

(3) acceptable safety and policing standards; and

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

(b) A comprehensive development agreement entered into under this subchapter or Section 227.023(c) may include any provision that ~~[the department]~~ a toll project entity considers appropriate, including provisions:

(1) providing for the purchase by ~~[the department]~~ a toll project entity, 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;

(2) 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;

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

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

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

(6) restricting the right of the [~~commission~~] governing body of the toll project entity or the department a toll project entity to terminate the private participant's right to operate and collect revenue from the project unless and until any applicable termination payments have been made.

(c) The department may enter into a comprehensive development agreement under this subchapter or under Section 227.023(c) with a private participant only if the project is identified in the department's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan.

(d) Section [~~223.207~~] 371.307 does not apply to the obligations of the department under a comprehensive development agreement.

(e) Notwithstanding anything in Section 201.112 or other law to the contrary, and subject to compliance with the dispute

resolution procedures set out in the comprehensive development agreement, an obligation of the [~~commission~~] governing body of the toll project entity or [~~the department~~] a toll project entity under a comprehensive development agreement entered into under this subchapter or Section 227.023(c) to make or secure payments to a person because of the termination of the agreement, including the purchase of the interest of a private participant or other investor in a project, may be enforced by mandamus against [~~the commission, the department~~] the governing body of a toll project entity, a toll project entity, and the comptroller in a district court of Travis County, and the sovereign immunity of the state is waived for that purpose. The district courts of Travis County shall have exclusive jurisdiction and venue over and to determine and adjudicate all issues necessary to adjudicate any action brought under this subsection. The remedy provided by this subsection is in addition to any legal and equitable remedies that may be available to a party to a comprehensive development agreement.

(f) A comprehensive development agreement entered into under this subchapter or Section 227.023(c) and any obligations incurred, issued, or owed under the agreement does not constitute a state security under Chapter 1231, Government Code.

(g) If [~~the department~~] a toll project entity enters into 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, the private participant shall submit to [~~the department~~] a toll project entity for approval:

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

(h) 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 years from the later of the date of final acceptance of the project or the start of revenue operations by the private participant, not to exceed a total term of 52 years. The comprehensive development agreement must contain an explicit mechanism for setting the price for the purchase by [~~the department~~] a toll project entity 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.

Sec. [~~223.209~~] 371.309. RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATING PROCESS. (a) The [~~commission~~] governing body of a toll project entity shall adopt rules, procedures, and guidelines governing selection of a developer for a comprehensive development agreement and negotiations to promote fairness, obtain private participants in projects, and promote confidence among those participants. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts.

(b) [~~The department~~] A toll project entity shall have up-to-date procedures for participation in negotiations under this subchapter.

(c) [~~The department~~] A toll project entity has exclusive judgment to determine the terms of an agreement.

SECTION____. The following provisions of the Transportation Code are repealed:

- (1) Sections 366.401-366.408;
 - (2) Sections 370.305-370.312; and
 - (3) Sections 284.003(a)(7).
- (2) Renumber SECTIONS of the bill appropriately.