

1-1 By: Nichols, et al. S.B. No. 17
1-2 (In the Senate - Filed March 2, 2009; March 4, 2009, read
1-3 first time and referred to Committee on Transportation and Homeland
1-4 Security; March 31, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 1;
1-6 March 31, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 17 By: Nichols

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the design, development, financing, construction, and
1-11 operation of certain toll projects; granting the authority to issue
1-12 bonds.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subsections (b) and (h), Section 223.208,
1-15 Transportation Code, are amended to read as follows:

1-16 (b) A comprehensive development agreement entered into
1-17 under this subchapter or Section 227.023(c) must include a
1-18 provision [may include any provision that the department considers
1-19 appropriate, including provisions.

1-20 ~~[(1)] providing for the purchase by the department[
1-21 under terms and conditions agreed to by the parties,]~~ of the
1-22 interest of a private participant in the comprehensive development
1-23 agreement and related property as required by Section 371.101 and
1-24 may include any other provision the department considers
1-25 appropriate, including a provision:

1-26 (1) ~~[, including any interest in a highway or other
1-27 facility designed, developed, financed, constructed, operated, or
1-28 maintained under the comprehensive development agreement;~~

1-29 ~~[(2) establishing the purchase price for the interest
1-30 of a private participant in the comprehensive development agreement
1-31 and related property, which price may be determined in accordance
1-32 with the methodology established by the parties in the
1-33 comprehensive development agreement;~~

1-34 ~~[(3)] providing for the payment of obligations
1-35 incurred pursuant to the comprehensive development agreement,
1-36 including any obligation to pay the purchase price for the interest
1-37 of a private participant in the comprehensive development
1-38 agreement, from any lawfully available source, including securing
1-39 such obligations by a pledge of revenues of the commission or the
1-40 department derived from the applicable project, which pledge shall
1-41 have such priority as the department may establish;~~

1-42 (2) ~~[(4)] permitting the private participant to
1-43 pledge its rights under the comprehensive development agreement;~~

1-44 (3) ~~[(5)] concerning the private participant's right
1-45 to operate and collect revenue from the project; and~~

1-46 (4) ~~[(6)] restricting the right of the commission or
1-47 the department to terminate the private participant's right to
1-48 operate and collect revenue from the project unless and until any
1-49 applicable termination payments have been made.~~

1-50 (h) A comprehensive development agreement with a private
1-51 participant that includes the collection by the private participant
1-52 of tolls for the use of a toll project may be for a term not longer
1-53 than 50 years from the later of the date of final acceptance of the
1-54 project or the start of revenue operations by the private
1-55 participant, not to exceed a total term of 52 years. ~~[The
1-56 comprehensive development agreement must contain an explicit
1-57 mechanism for setting the price for the purchase by the department
1-58 of the interest of the private participant in the comprehensive
1-59 development agreement and related property, including any interest
1-60 in a highway or other facility designed, developed, financed,
1-61 constructed, operated, or maintained under the agreement.]~~

1-62 SECTION 2. Section 228.006, Transportation Code, is amended
1-63 by amending Subsection (a) and adding Subsection (a-1) to read as

2-1 follows:

2-2 (a) The commission shall authorize the use of surplus
2-3 revenue of a toll project or system to pay the costs of a
2-4 transportation project, highway project, or air quality project
2-5 within a region [~~department district~~] in which any part of the toll
2-6 project is located.

2-7 (a-1) The department shall allocate the distribution of the
2-8 surplus toll revenue to department districts in the region that are
2-9 located in the boundaries of the metropolitan planning organization
2-10 in which the toll project or system producing the surplus revenue is
2-11 located based on the percentage of toll revenue from users in each
2-12 department district of the project or system. To assist the
2-13 department in determining the allocation, each entity responsible
2-14 for collecting tolls for a project or system shall calculate on an
2-15 annual basis the percentage of toll revenue from users of the
2-16 project or system in each department district based on the number of
2-17 recorded electronic toll collections.

2-18 SECTION 3. Section 228.012, Transportation Code, is amended
2-19 to read as follows:

2-20 Sec. 228.012. PROJECT SUBACCOUNTS. (a) The department
2-21 shall create a separate account in the state highway fund to hold
2-22 payments received by the department under a comprehensive
2-23 development agreement and~~[,]~~ the surplus revenue of a toll project
2-24 or system~~[, and payments received under Sections 228.0111(g)(2) and~~
2-25 ~~(i)(2)]~~. The department shall create subaccounts in the account
2-26 for each project, system, or region. Interest earned on money in a
2-27 subaccount shall be deposited to the credit of that subaccount.

2-28 (b) The department shall hold money in a subaccount in trust
2-29 for the benefit of the region in which a project or system is
2-30 located and may assign the responsibility for allocating money in a
2-31 subaccount to a metropolitan planning organization in which the
2-32 region is located. Money [~~Except as provided by Subsection (c),~~
2-33 ~~money]~~ shall be allocated to projects authorized by Section
2-34 228.0055 or Section 228.006, as applicable.

2-35 (c) [~~Money in a subaccount received from a county or the~~
2-36 ~~department under Section 228.0111 in connection with a project for~~
2-37 ~~which a county acting under Chapter 284 has the first option shall~~
2-38 ~~be allocated to transportation projects located in the county and~~
2-39 ~~the counties contiguous to that county.~~

2-40 [~~(d)~~] Not later than January 1 of each odd-numbered year,
2-41 the department shall submit to the Legislative Budget Board, in the
2-42 format prescribed by the Legislative Budget Board, a report on cash
2-43 balances in the subaccounts created under this section and
2-44 expenditures made with money in those subaccounts.

2-45 (d) [~~(e)~~] The commission or the department may not:

2-46 (1) revise the formula as provided in the department's
2-47 unified transportation program or a successor document in a manner
2-48 that results in a decrease of a department district's allocation
2-49 because of the deposit of a payment into a project subaccount [~~or a~~
2-50 ~~commitment to undertake an additional transportation project under~~
2-51 ~~Section 228.0111]; or~~

2-52 (2) take any other action that would reduce funding
2-53 allocated to a department district because of the deposit of a
2-54 payment [~~received from the department or local toll project entity]~~
2-55 ~~into a project subaccount [or a commitment to undertake an~~
2-56 ~~additional transportation project under Section 228.0111].~~

2-57 SECTION 4. Subsection (b), Section 284.004, Transportation
2-58 Code, is amended to read as follows:

2-59 (b) In addition to authority granted by other law, a county
2-60 may use state highway right-of-way and may access state highway
2-61 right-of-way in accordance with Sections 228.011 and 373.102
2-62 [~~228.0111~~].

2-63 SECTION 5. Subsection (d), Section 284.061, Transportation
2-64 Code, is amended to read as follows:

2-65 (d) Subject to the reimbursement requirements of Section
2-66 373.102, a [A] county has full easements and rights-of-way through,
2-67 across, under, and over any property owned by this state that are
2-68 necessary or convenient to construct, acquire, or efficiently
2-69 operate a project under this chapter.

3-1 SECTION 6. Subsection (c), Section 366.170, Transportation
3-2 Code, is amended to read as follows:

3-3 (c) An authority has full easements and rights-of-way
3-4 through, across, under, and over any property owned by the state or
3-5 any local governmental entity that are necessary or convenient to
3-6 construct, acquire, or efficiently operate a turnpike project or
3-7 system under this chapter. This subsection does not affect the
3-8 obligation of the authority under other state law, including
3-9 Section 373.102, to compensate or reimburse the state for the use or
3-10 acquisition of an easement or right-of-way on property owned by or
3-11 on behalf of the state. An authority's use of property owned by or
3-12 on behalf of the state is subject to any covenants, conditions,
3-13 restrictions, or limitations affecting that property.

3-14 SECTION 7. Subsections (b) and (g), Section 366.407,
3-15 Transportation Code, are amended to read as follows:

3-16 (b) A comprehensive development agreement entered into
3-17 under this subchapter must ~~[may]~~ include ~~[any provision the~~
3-18 ~~authority considers appropriate, including]~~ a provision~~[-~~

3-19 ~~[(1)] providing for the purchase by the authority[-,~~
3-20 ~~under terms and conditions agreed to by the parties,]~~ of the
3-21 interest of a private participant in the comprehensive development
3-22 agreement as required by Section 371.101 and may include any other
3-23 provision the authority considers appropriate, including a
3-24 provision:

3-25 (1) ~~[and related property, including any interest in a~~
3-26 ~~turnpike project designed, developed, financed, constructed,~~
3-27 ~~operated, or maintained under the comprehensive development~~
3-28 ~~agreement;~~

3-29 ~~[(2)] establishing the purchase price, as determined in~~
3-30 ~~accordance with the methodology established by the parties in the~~
3-31 ~~comprehensive development agreement, for the interest of a private~~
3-32 ~~participant in the comprehensive development agreement and related~~
3-33 ~~property;~~

3-34 ~~[(3)] providing for the payment of an obligation~~
3-35 ~~incurred under the comprehensive development agreement, including~~
3-36 ~~an obligation to pay the purchase price for the interest of a~~
3-37 ~~private participant in the comprehensive development agreement,~~
3-38 ~~from any available source, including securing the obligation by a~~
3-39 ~~pledge of revenues of the authority derived from the applicable~~
3-40 ~~project, which pledge shall have priority as established by the~~
3-41 ~~authority;~~

3-42 (2) ~~[(4)]~~ permitting the private participant to
3-43 pledge its rights under the comprehensive development agreement;

3-44 (3) ~~[(5)]~~ concerning the private participant's right
3-45 to operate and collect revenue from the turnpike project; and

3-46 (4) ~~[(6)]~~ restricting the right of the authority to
3-47 terminate the private participant's right to operate and collect
3-48 revenue from the turnpike project unless and until any applicable
3-49 termination payments have been made.

3-50 (g) A ~~[Except as provided by this subsection, a]~~
3-51 ~~comprehensive development agreement with a private participant~~
3-52 ~~that includes the collection by the private participant of tolls~~
3-53 ~~for the use of a toll project may be for a term not longer than 50~~
3-54 ~~years from the later of the date of final acceptance of the project~~
3-55 ~~or the start of revenue operations by the private participant, not~~
3-56 ~~to exceed a total term of 52 years. [The contract must contain an~~
3-57 ~~explicit mechanism for setting the price for the purchase by the~~
3-58 ~~department of the interest of the private participant in the~~
3-59 ~~contract and related property, including any interest in a highway~~
3-60 ~~or other facility designed, developed, financed, constructed,~~
3-61 ~~operated, or maintained under the contract.]~~

3-62 SECTION 8. Subsection (c), Section 370.169, Transportation
3-63 Code, is amended to read as follows:

3-64 (c) An authority has full easements and rights-of-way
3-65 through, across, under, and over any property owned by the state or
3-66 any local government that are necessary or convenient to construct,
3-67 acquire, or efficiently operate a transportation project or system
3-68 under this chapter. This subsection does not affect the obligation
3-69 of the authority under other law, including Section 373.102, to

4-1 compensate or reimburse this state for the use or acquisition of an
4-2 easement or right-of-way on property owned by or on behalf of this
4-3 state. An authority's use of property owned by or on behalf of this
4-4 state is subject to any covenants, conditions, restrictions, or
4-5 limitations affecting that property.

4-6 SECTION 9. Subsection (b), Section 370.311, Transportation
4-7 Code, is amended to read as follows:

4-8 (b) A comprehensive development agreement entered into
4-9 under Section 370.305 must include a provision authorizing the
4-10 authority to purchase, under terms agreed to by the parties, the
4-11 interest of a private equity investor in a transportation project
4-12 as required by Section 371.101.

4-13 SECTION 10. Section 371.002, Transportation Code, as added
4-14 by Chapter 264 (S.B. 792), Acts of the 80th Legislature, Regular
4-15 Session, 2007, is amended to read as follows:

4-16 Sec. 371.002. APPLICABILITY. This chapter does not apply
4-17 to:

4-18 (1) a project for which the commission selected an
4-19 apparent best value proposer before May 1, 2007; or

4-20 (2) a publicly owned and operated toll project, as
4-21 defined by Section 373.001.

4-22 SECTION 11. The heading to Section 371.052, Transportation
4-23 Code, as added by Chapter 264 (S.B. 792), Acts of the 80th
4-24 Legislature, Regular Session, 2007, is amended to read as follows:

4-25 Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD [~~AND~~
4-26 ~~STATE AUDITOR~~].

4-27 SECTION 12. Section 371.101, Transportation Code, as added
4-28 by Chapter 264 (S.B. 792), Acts of the 80th Legislature, Regular
4-29 Session, 2007, is amended to read as follows:

4-30 Sec. 371.101. TERMINATION BY PURCHASE [~~FOR CONVENIENCE~~].

4-31 (a) A comprehensive development agreement must contain a
4-32 provision authorizing the toll project entity to purchase, under
4-33 terms agreed to by the parties:

4-34 (1) the interest of a private participant in the toll
4-35 project that is the subject of the agreement; and

4-36 (2) related property, including any interest in a
4-37 highway or other facility designed, developed, financed,
4-38 constructed, operated, or maintained under the agreement.

4-39 (b) The provision must include a schedule stating a specific
4-40 price for the purchase of the toll project at certain intervals from
4-41 the date the project opens, not less than one year and not to exceed
4-42 five years, over the term of the agreement.

4-43 (c) The provision must authorize the toll project entity to
4-44 purchase the private entity's interest at a stated interval in an
4-45 amount not to exceed the lesser of:

4-46 (1) the price stated for that interval; or

4-47 (2) the greater of:

4-48 (A) the then fair market value of the private
4-49 entity's interest; or

4-50 (B) an amount equal to the amount of outstanding
4-51 debt at that time, as specified in the comprehensive development
4-52 agreement.

4-53 (d) A toll project entity may not, under any circumstance,
4-54 purchase the private entity's interest for an amount higher than
4-55 the stated interval amount.

4-56 (e) A contract to purchase the private entity's interest at
4-57 the then fair market value as described by Subsection (c)(2)(A)
4-58 must contain a provision detailing the calculation used to
4-59 determine that value.

4-60 (f) The toll project entity shall request a proposed
4-61 termination-by-purchase schedule in each request for detailed
4-62 proposals and shall consider and score each schedule in each
4-63 evaluation of proposals.

4-64 (g) A private entity shall, not later than 12 months before
4-65 the date that a new price interval takes effect, notify the toll
4-66 project entity of the beginning of the price interval. The toll
4-67 project entity must notify the private entity as to whether it will
4-68 exercise the option to purchase under this section not later than
4-69 six months after the date it receives notice under this subsection.

5-1 (h) A toll project entity must notify the private entity of
 5-2 the toll project entity's intention to purchase the private
 5-3 entity's interest under this section not less than six months
 5-4 before the date of the purchase [A toll project entity having
 5-5 rulemaking authority by rule and a toll project entity without
 5-6 rulemaking authority by official action shall develop a formula for
 5-7 making termination payments to terminate a comprehensive
 5-8 development agreement under which a private participant receives
 5-9 the right to operate and collect revenue from a toll project. A
 5-10 formula must calculate an estimated amount of loss to the private
 5-11 participant as a result of the termination for convenience.

5-12 ~~[(b) The formula shall be based on investments,~~
 5-13 ~~expenditures, and the internal rate of return on equity under the~~
 5-14 ~~agreed base case financial model as projected over the original~~
 5-15 ~~term of the agreement, plus an agreed percentage markup on that~~
 5-16 ~~amount.~~

5-17 ~~[(c) A formula under Subsection (b) may not include any~~
 5-18 ~~estimate of future revenue from the project, if not included in an~~
 5-19 ~~agreed base case financial model under Subsection (b).~~
 5-20 ~~Compensation to the private participant upon termination for~~
 5-21 ~~convenience may not exceed the amount determined using the formula~~
 5-22 ~~under Subsection (b)].~~

5-23 SECTION 13. Section 371.102, Transportation Code, as added
 5-24 by Chapter 264 (S.B. 792), Acts of the 80th Legislature, Regular
 5-25 Session, 2007, is amended to read as follows:

5-26 Sec. 371.102. TERMINATION OF CERTAIN COMPREHENSIVE
 5-27 DEVELOPMENT AGREEMENTS. (a) If a toll project entity elects to
 5-28 terminate a comprehensive development agreement under which a
 5-29 private participant receives the right to operate and collect
 5-30 revenue from a project, the entity may:

5-31 (1) ~~[if authorized to issue bonds for that purpose,]~~
 5-32 issue bonds or other obligations to:

5-33 (A) make any applicable termination payments to
 5-34 the private participant; or

5-35 (B) purchase the interest of the private
 5-36 participant in the comprehensive development agreement or related
 5-37 property; or

5-38 (2) provide for the payment of obligations of the
 5-39 private participant incurred pursuant to the comprehensive
 5-40 development agreement.

5-41 (b) A toll project entity has the same powers and duties
 5-42 relating to the financing of payments under Subsection (a)(1) as
 5-43 the toll project entity has under other applicable laws of this
 5-44 state, including Chapters 228, 284, 366, and 370 of this code and
 5-45 Chapter 1371, Government Code, relating to the financing of a toll
 5-46 project of that entity, including the ability to deposit the
 5-47 proceeds of bonds or other obligations and to pledge, encumber, and
 5-48 expend the proceeds and revenues of a toll project as provided by
 5-49 law.

5-50 (c) The powers held by the toll project entity include the
 5-51 power to authorize the issuance of bonds or other obligations and to
 5-52 pay all or part of the costs of a payment described in Subsection
 5-53 (a)(1), in the amount determined by the toll project entity under
 5-54 Section 371.101. Costs associated with a payment under Subsection
 5-55 (a)(1) are considered a cost of the project.

5-56 (d) This section shall be liberally construed to effect its
 5-57 purposes.

5-58 SECTION 14. Subsections (b) and (c), Section 371.103,
 5-59 Transportation Code, as added by Chapter 264 (S.B. 792), Acts of the
 5-60 80th Legislature, Regular Session, 2007, are amended to read as
 5-61 follows:

5-62 (b) Except as provided by Subsection (c), a comprehensive
 5-63 development agreement may contain a provision authorizing the toll
 5-64 project entity to compensate the private participant in the
 5-65 agreement for the loss of toll revenues attributable to the
 5-66 construction by the entity of a limited access highway project
 5-67 located within an area that extends up to four miles from either
 5-68 side of the centerline of the project developed under the
 5-69 agreement, less the private participant's decreased operating and

6-1 maintenance costs attributable to the highway project, if any. A
6-2 provision under this subsection may be effective only for a period
6-3 of 30 years or less from the effective date of the agreement.

6-4 (c) A comprehensive development agreement may not require
6-5 the toll project entity to provide compensation for the
6-6 construction of:

6-7 (1) a highway project contained in the state
6-8 transportation plan or a transportation plan of a metropolitan
6-9 planning organization in effect on the effective date of the
6-10 agreement;

6-11 (2) work on or improvements to a highway project
6-12 necessary for improved safety, or for maintenance or operational
6-13 purposes;

6-14 (3) a high occupancy vehicle exclusive lane addition
6-15 or other work on any highway project that is required by an
6-16 environmental regulatory agency; [~~or~~]

6-17 (4) a transportation project that provides a mode of
6-18 transportation that is not included in the project that is the
6-19 subject of the comprehensive development agreement; or

6-20 (5) a highway designated an interstate highway.

6-21 SECTION 15. Subtitle G, Title 6, Transportation Code, is
6-22 amended by adding Chapter 373 to read as follows:

6-23 CHAPTER 373. TOLL PROJECTS LOCATED IN TERRITORY OF LOCAL TOLL

6-24 PROJECT ENTITY

6-25 SUBCHAPTER A. GENERAL PROVISIONS

6-26 Sec. 373.001. DEFINITIONS. In this chapter:

6-27 (1) "Local toll project entity" means an entity, other
6-28 than the department, that is authorized by law to acquire, design,
6-29 construct, finance, operate, and maintain a toll project,
6-30 including:

6-31 (A) a regional tollway authority under Chapter
6-32 366;

6-33 (B) a regional mobility authority under Chapter
6-34 370; or

6-35 (C) a county acting under Chapter 284.

6-36 (2) "Privately operated or controlled toll project"
6-37 means a toll project that is primarily commercial in nature and is
6-38 designed and constructed by a private entity that holds a leasehold
6-39 interest in or the right to operate and retain revenues from the
6-40 toll project, regardless of whether the private entity operates the
6-41 toll project or collects the revenue itself or engages a
6-42 subcontractor or other entity to operate the toll project or
6-43 collect the revenue. The term does not include a toll project for
6-44 which the department or a toll project entity contracts with a
6-45 private entity only for engineering, design, construction,
6-46 finance, operation, maintenance, or other services.

6-47 (3) "Publicly owned and operated toll project" means a
6-48 toll project owned and operated by the department or a local toll
6-49 project entity in which a private entity does not have a leasehold
6-50 interest or right to operate or retain revenue from the toll
6-51 project. The term does not include a privately operated or
6-52 controlled toll project, but may include a toll project for which a
6-53 private entity provides:

6-54 (A) engineering, design, construction, finance,
6-55 operation, maintenance, or other services; or

6-56 (B) financial assistance for the toll project
6-57 that does not entitle the private entity to any ownership interest
6-58 in or the right to operate or retain revenue from the toll project.

6-59 (4) "Toll project" means a toll project described by
6-60 Section 201.001(b), regardless of whether the toll project is:

6-61 (A) a part of the state highway system; or

6-62 (B) subject to the jurisdiction of the
6-63 department.

6-64 Sec. 373.002. APPLICABILITY. (a) This chapter does not
6-65 apply to a toll project described in Section 228.011.

6-66 (b) Except for Sections 373.003, 373.004, and 373.005, this
6-67 chapter does not apply to:

6-68 (1) the State Highway 161 project from State Highway
6-69 183 to IH 20 in Dallas County;

7-1 (2) the U.S. 281 project in Bexar County from Loop 1604
7-2 to the Comal County line;

7-3 (3) the Loop 49 project from IH 20 to State Highway 110
7-4 in Smith County;

7-5 (4) the DFW Connector project in Tarrant and Dallas
7-6 Counties (State Highway 114 from State Highway 114L Business to
7-7 east of International Parkway and State Highway 121 from north of FM
7-8 2499 to south of State Highway 360);

7-9 (5) the North Tarrant Express project in Tarrant and
7-10 Dallas Counties (IH 820 and State Highway 121/State Highway 183
7-11 from IH 35W to State Highway 161, IH 820 east from State Highway
7-12 121/State Highway 183 to Randol Mill Road, and IH 35W from IH 30 to
7-13 State Highway 170);

7-14 (6) the U.S. 290 project from east of U.S. 183 to east
7-15 of FM 973 in Travis County;

7-16 (7) the State Highway 99 (Grand Parkway) project;

7-17 (8) the IH 635 managed lanes project in Dallas County
7-18 (IH 635 from east of Luna Road to Greenville Avenue and IH 35E from
7-19 south of the Loop 12/IH 35E split to south of Valwood Parkway);

7-20 (9) Phase 4 extension of the Dallas North Tollway in
7-21 Collin and Denton Counties from U.S. 380 to the Grayson County line
7-22 to be developed by North Texas Tollway Authority; or

7-23 (10) the Southwest Parkway (State Highway 121) in
7-24 Tarrant County from Dirks Road/Altamesa Boulevard to IH 30.

7-25 Sec. 373.003. PROJECT OWNED IN PERPETUITY. Unless a toll
7-26 project is sold or otherwise transferred to another toll project
7-27 entity in accordance with applicable law, including Sections
7-28 228.151, 284.011, 366.036, 366.172, and 370.171, a toll project
7-29 procured by the department or a local toll project entity
7-30 determined by the process under Subchapter B is owned by that entity
7-31 in perpetuity.

7-32 Sec. 373.004. GOVERNMENTAL AND NOT COMMERCIAL
7-33 TRANSACTIONS. A transaction involving a local toll project entity
7-34 under Section 228.011 or this chapter is not primarily commercial
7-35 in nature but is an inherently governmental transaction whose
7-36 purpose is to determine governmental jurisdiction, ownership,
7-37 control, or other responsibilities with respect to a project.

7-38 Sec. 373.005. VALUATION DETERMINATION. Any determination
7-39 of value, including best value, under this chapter or other
7-40 applicable federal or state law for a comprehensive development
7-41 agreement or other public-private partnership arrangement
7-42 involving a toll project for which a local toll project entity has
7-43 exercised its option under this chapter and has complied with all
7-44 other conditions in this chapter for the development of the project
7-45 by the local toll project entity must take into consideration
7-46 factors the entity determines appropriate, including factors
7-47 related to:

7-48 (1) oversight of the toll project;

7-49 (2) maintenance and operations costs of the toll
7-50 project;

7-51 (3) the structure and rates of tolls;

7-52 (4) economic development impacts of the toll project;

7-53 and

7-54 (5) social and environmental benefits and impacts of
7-55 the toll project.

7-56 Sec. 373.006. LEGAL CHALLENGES CONCLUDED. For the purposes
7-57 of this chapter, all legal challenges to development of a toll
7-58 project are considered concluded when a judgment or order of a court
7-59 with jurisdiction over the challenge becomes final and
7-60 unappealable.

7-61 [Sections 373.007-373.050 reserved for expansion]

7-62 SUBCHAPTER B. PROCESS TO DETERMINE ENTITY TO DEVELOP, FINANCE,
7-63 CONSTRUCT, AND OPERATE TOLL PROJECT

7-64 Sec. 373.051. INITIATION OF PROCESS. (a) At any time
7-65 after a metropolitan planning organization approves the inclusion
7-66 of a toll project to be located in the territory of a local toll
7-67 project entity in the metropolitan transportation plan, the local
7-68 toll project entity may notify the department in writing of the
7-69 local toll project entity's intent to initiate the process

8-1 described in this subchapter.

8-2 (b) At any time after a metropolitan planning organization
 8-3 approves the inclusion of a toll project to be located in the
 8-4 territory of a local toll project entity in the metropolitan
 8-5 transportation plan and all necessary environmental approvals for
 8-6 the toll project have been secured, the department may notify the
 8-7 local toll project entity in writing of the department's intent to
 8-8 initiate the process described in this subchapter.

8-9 Sec. 373.052. PUBLIC PROJECT BY LOCAL TOLL PROJECT ENTITY.

8-10 (a) A local toll project entity has the first option to develop,
 8-11 finance, construct, and operate a toll project as a publicly owned
 8-12 and operated toll project. A local toll project entity has not more
 8-13 than 180 days after the date on which notification under Section
 8-14 373.051(a) is provided or notification under Section 373.051(b) is
 8-15 received to decide whether to exercise the option. The option
 8-16 period under this subsection may be extended an additional 90 days
 8-17 by agreement of the department and the local toll project entity.

8-18 (b) If a local toll project entity exercises the option
 8-19 under Subsection (a), the local toll project entity after
 8-20 exercising the option must:

8-21 (1) within 180 days after the later of the date of
 8-22 exercising its option or the date on which all environmental
 8-23 approvals necessary for the development of the toll project are
 8-24 secured and all legal challenges to development are concluded,
 8-25 advertise for the initial procurement of required services,
 8-26 including, at a minimum, design services, for the project; and

8-27 (2) within two years after the date on which all
 8-28 environmental approvals necessary for the development are secured
 8-29 and all legal challenges to development are concluded, enter into a
 8-30 contract for the construction of the toll project.

8-31 Sec. 373.053. PUBLIC PROJECT BY DEPARTMENT. (a) If a
 8-32 local toll project entity fails or declines to exercise the option
 8-33 to develop, finance, construct, and operate a toll project under
 8-34 Section 373.052(a), or fails or declines to advertise for
 8-35 procurement or enter into a construction contract as required by
 8-36 Section 373.052(b), the department has the option to develop,
 8-37 finance, construct, and operate the toll project as a publicly
 8-38 owned and operated project. The department has not more than 60
 8-39 days after the date the local toll project entity fails or declines
 8-40 to exercise its option under Section 373.052(a) or fails or
 8-41 declines to advertise for procurement or enter into a construction
 8-42 contract as required by Section 373.052(b) to decide whether to
 8-43 exercise its option.

8-44 (b) If the department exercises its option under Subsection
 8-45 (a), the department after exercising the option must:

8-46 (1) within 180 days after the later of the date of
 8-47 exercising its option or the date on which all environmental
 8-48 approvals necessary for the development of the toll project are
 8-49 secured and all legal challenges to development are concluded,
 8-50 advertise for the initial procurement of required services,
 8-51 including, at a minimum, design services, for the project; and

8-52 (2) within two years after the date on which all
 8-53 environmental approvals necessary for the development are secured
 8-54 and all legal challenges to development are concluded, enter into a
 8-55 contract for the construction of the toll project.

8-56 Sec. 373.054. PRIVATE PROJECT BY LOCAL TOLL PROJECT ENTITY.

8-57 (a) If the department fails or declines to exercise the option to
 8-58 develop, finance, construct, and operate a toll project under
 8-59 Section 373.053(a), or fails or declines to advertise for
 8-60 procurement or enter into a construction contract as required by
 8-61 Section 373.053(b), the local toll project entity has the option to
 8-62 develop, finance, construct, and operate the toll project as a
 8-63 privately operated or controlled toll project. The local toll
 8-64 project entity has not more than 60 days after the date the
 8-65 department fails or declines to exercise its option under Section
 8-66 373.053(a) or fails or declines to advertise for procurement or
 8-67 enter into a construction contract as required by Section
 8-68 373.053(b) to decide whether to exercise its option.

8-69 (b) If the local toll project entity exercises its option

9-1 under Subsection (a), the local toll project entity after
 9-2 exercising the option must:

9-3 (1) within 180 days after the later of the date of
 9-4 exercising its option or the date on which all environmental
 9-5 approvals necessary for the development of the toll project are
 9-6 secured and all legal challenges to development are concluded,
 9-7 advertise for the initial procurement of required services,
 9-8 including, at a minimum, design services, for the project; and

9-9 (2) within two years after the date on which all
 9-10 environmental approvals necessary for the development are secured
 9-11 and all legal challenges to development are concluded, enter into a
 9-12 contract for the construction of the toll project.

9-13 Sec. 373.055. PRIVATE PROJECT BY DEPARTMENT. (a) If a
 9-14 local toll project entity fails or declines to exercise the option
 9-15 to develop, finance, construct, and operate a toll project under
 9-16 Section 373.054(a), or fails or declines to advertise for
 9-17 procurement or enter into a construction contract as required by
 9-18 Section 373.054(b), the department has the option to develop,
 9-19 finance, construct, and operate the toll project as a privately
 9-20 operated or controlled toll project. The department has not more
 9-21 than 60 days after the date the local toll project entity fails or
 9-22 declines to exercise its option under Section 373.054(a) or fails
 9-23 or declines to advertise for procurement or enter into a
 9-24 construction contract as required by Section 373.054(b) to decide
 9-25 whether to exercise its option.

9-26 (b) If the department exercises its option under Subsection
 9-27 (a), the department after exercising the option must:

9-28 (1) within 180 days after the later of the date of
 9-29 exercising its option or the date on which all environmental
 9-30 approvals necessary for the development of the toll project are
 9-31 secured and all legal challenges to development are concluded,
 9-32 advertise for the initial procurement of required services,
 9-33 including, at a minimum, design services, for the project; and

9-34 (2) within two years after the date on which all
 9-35 environmental approvals necessary for the development are secured
 9-36 and all legal challenges to development are concluded, enter into a
 9-37 contract for the construction of the toll project.

9-38 Sec. 373.056. RE-INITIATION OF PROCESS. If the process
 9-39 described by Sections 373.051, 373.052, 373.053, 373.054, and
 9-40 373.055 concludes without the local toll project entity or the
 9-41 department entering into a contract for the construction of the
 9-42 toll project, either entity may re-initiate the process under this
 9-43 subchapter by submitting notice to the other entity in the manner
 9-44 provided by Section 373.051.

9-45 Sec. 373.057. ALTERATION OF PROCESS. (a) The department
 9-46 or the applicable local toll project entity may waive any step or
 9-47 steps of the process under this subchapter.

9-48 (b) The department and the applicable local toll project
 9-49 entity may, by written agreement, extend any time limit under this
 9-50 subchapter.

9-51 Sec. 373.058. SHARING OF PROJECT-RELATED INFORMATION.
 9-52 (a) If a local toll project entity or the department fails or
 9-53 declines to exercise an option or fails or declines to advertise for
 9-54 procurement or enter into a construction contract under Section
 9-55 373.052, 373.053, 373.054, or 373.055, the local toll project
 9-56 entity or the department, as applicable, must make available its
 9-57 traffic estimates, revenue estimates, plans, specifications,
 9-58 surveys, appraisals, and other work product developed for the toll
 9-59 project to the other entity.

9-60 (b) On entering into a contract for the construction of the
 9-61 toll project, the department or the local toll project entity, as
 9-62 applicable, shall reimburse the other entity for shared project
 9-63 work product that it uses.

9-64 Sec. 373.059. QUARTERLY PROGRESS REPORTS. After the
 9-65 department or a local toll project entity exercises an option under
 9-66 this subchapter, the department or local toll project entity, as
 9-67 applicable, shall issue a quarterly report on the progress of the
 9-68 development of the toll project. The report shall be made available
 9-69 to the public.

10-1 Sec. 373.060. ENVIRONMENTAL REVIEW. (a) The department
 10-2 or the local toll project entity may begin any environmental review
 10-3 process that may be required for a proposed toll project before
 10-4 initiating the process under this subchapter.

10-5 (b) If a local toll project entity initiates the process for
 10-6 development of a toll project under Section 373.051(a) and has not
 10-7 begun the environmental review of the project, the local toll
 10-8 project entity shall begin the environmental review within 180 days
 10-9 of exercising the option.

10-10 [Sections 373.061-373.100 reserved for expansion]

10-11 SUBCHAPTER C. USE OF RIGHT-OF-WAY BY LOCAL TOLL PROJECT ENTITY

10-12 Sec. 373.101. USE OF STATE HIGHWAY RIGHT-OF-WAY.

10-13 (a) Consistent with federal law, the commission and the department
 10-14 shall assist a local toll project entity in the development,
 10-15 financing, construction, and operation of a toll project for which
 10-16 the local toll project entity has exercised its option to develop,
 10-17 finance, construct, and operate the project under Subchapter B by
 10-18 allowing the local toll project entity to use state highway
 10-19 right-of-way and to access the state highway system as necessary to
 10-20 construct and operate the toll project.

10-21 (b) Notwithstanding any other law, the local toll project
 10-22 entity and the commission may agree to remove the toll project from
 10-23 the state highway system and transfer ownership to the local toll
 10-24 project entity.

10-25 Sec. 373.102. REIMBURSEMENT FOR USE OF STATE HIGHWAY
 10-26 RIGHT-OF-WAY. (a) The commission or the department may not

10-27 require a local toll project entity to pay for the use of state
 10-28 highway right-of-way or access, except:

10-29 (1) to reimburse the department for actual costs
 10-30 incurred by the department that are owed to a third party, including
 10-31 the federal government, as a result of that use by the local toll
 10-32 project entity; and

10-33 (2) as required under Subsection (b).

10-34 (b) A local toll project entity shall reimburse the
 10-35 department for the department's actual costs to acquire the
 10-36 right-of-way in the manner provided in the payment schedule agreed
 10-37 to by the department and the local toll project entity. If the
 10-38 department cannot determine that amount, the amount must be
 10-39 determined based on the average historical right-of-way
 10-40 acquisition values for comparable right-of-way located in
 10-41 proximity to the project on the date of original acquisition of the
 10-42 right-of-way.

10-43 (c) In lieu of reimbursement, the local toll project entity
 10-44 may agree to pay to the department a portion of the revenues of the
 10-45 project, in the amount and for the period of time agreed to by the
 10-46 local toll project entity and the department.

10-47 (d) Money received by the department under this section
 10-48 shall be deposited in the state highway fund and, except for
 10-49 reimbursement for costs owed to a third party, used to fund
 10-50 additional projects in the department district in which the toll
 10-51 project is located.

10-52 (e) The commission or department may waive the requirement
 10-53 of reimbursement under this section.

10-54 Sec. 373.103. AGREEMENT FOR USE OF RIGHT-OF-WAY. A local

10-55 toll project entity shall enter into an agreement with the
 10-56 department for any project for which the entity has exercised its
 10-57 option to develop, finance, construct, and operate the project
 10-58 under Subchapter B and for which the entity intends to use state
 10-59 highway right-of-way. The agreement must contain provisions
 10-60 necessary to ensure that the local toll project entity's
 10-61 construction, maintenance, and operation of the project complies
 10-62 with the requirements of applicable state and federal law.

10-63 Sec. 373.104. LIABILITY FOR DAMAGES. (a) Notwithstanding

10-64 any other law, the commission and the department are not liable for
 10-65 any damages that result from a local toll project entity's use of
 10-66 state highway right-of-way or access to the state highway system
 10-67 under this subchapter, regardless of the legal theory, statute, or
 10-68 cause of action under which liability is asserted.

10-69 (b) An agreement entered into by a local toll project entity

11-1 and the department in connection with a toll project that is
11-2 financed, constructed, or operated by the local toll project entity
11-3 and that is on or directly connected to a highway in the state
11-4 highway system does not create a joint enterprise for liability
11-5 purposes.

11-6 Sec. 373.105. COMPLIANCE WITH FEDERAL LAW. Notwithstanding
11-7 an action taken by a local toll project entity under this
11-8 subchapter, the commission or department may take any action that
11-9 in its reasonable judgment is necessary to comply with any federal
11-10 requirement to enable this state to receive federal-aid highway
11-11 funds.

11-12 SECTION 16. Section 228.012, Transportation Code, as
11-13 amended by this Act, applies only to payments received by the Texas
11-14 Department of Transportation under that section on or after
11-15 September 1, 2009. Payments received by the department under
11-16 Section 228.012, Transportation Code, before that date are governed
11-17 by the law in effect immediately before the effective date of this
11-18 Act, and that law is continued in effect for that purpose.

11-19 SECTION 17. The change in law made by this Act to Section
11-20 371.102, Transportation Code, shall apply to the projects described
11-21 in Subdivisions (1), (4), (5), and (8), Subsection (b), Section
11-22 373.002, Transportation Code, as amended by this Act. Such
11-23 projects are governed by the remaining provisions of Chapter 371,
11-24 Transportation Code, as it existed immediately before the effective
11-25 date of this Act.

11-26 SECTION 18. The change in law made by this Act to Section
11-27 223.208, Transportation Code, does not apply to any project
11-28 described in Subdivisions (1), (4), (5), and (8), Subsection (b),
11-29 Section 373.002, Transportation Code, as amended by this Act. Such
11-30 a project is governed by Section 223.208, Transportation Code, as
11-31 it existed immediately before the effective date of this Act, and
11-32 that law is continued in effect for that purpose.

11-33 SECTION 19. The repeal of Section 228.0111, Transportation
11-34 Code, by this Act does not apply to any project described in
11-35 Subsection (b), Section 373.002, Transportation Code, as added by
11-36 this Act. Such a project is governed by Section 228.0111,
11-37 Transportation Code, as it existed immediately before the effective
11-38 date of this Act, and that law is continued in effect for that
11-39 purpose.

11-40 SECTION 20. The following sections are repealed:
11-41 (1) Section 228.0111, Transportation Code; and
11-42 (2) Subsection (c), Section 371.052, Transportation
11-43 Code, as added by Chapter 264 (S.B. 792), Acts of the 80th
11-44 Legislature, Regular Session, 2007.

11-45 SECTION 21. This Act takes effect September 1, 2009.

11-46 * * * * *