

By: Smith of Harris

H.B. No. 3671

A BILL TO BE ENTITLED

AN ACT

relating to the development, financing, construction, and operation of toll projects.

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

SECTION 1. Subtitle G, Title 6, Transportation Code, is amended by adding Chapter 373 to read as follows:

CHAPTER 373. TOLL PROJECTS LOCATED IN TERRITORY OF LOCAL TOLL

PROJECT ENTITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 373.001. DEFINITIONS. In this chapter:

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

(A) a regional tollway authority under Chapter 366;

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

(C) a county acting under Chapter 284.

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

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

(B) subject to the jurisdiction of the department.

1       Sec. 373.002. APPLICABILITY. This chapter does not apply  
2 to:

- 3               (1) a toll project described in Section 228.011; or  
4               (2) Phase 4 extension of the Dallas North Tollway in  
5 Collin and Denton Counties from U.S. 380 to the Grayson County line  
6 to be developed by North Texas Tollway Authority.

7       Sec. 373.003. PROJECT OWNED IN PERPETUITY. Unless a toll  
8 project is leased, sold, conveyed, or otherwise transferred to  
9 another governmental entity in accordance with applicable law,  
10 including Sections 228.151, 284.011, 366.036, 366.172, and  
11 370.171, a toll project procured by the department or a local toll  
12 project entity determined by the process under Subchapter B is  
13 owned by that entity in perpetuity.

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

20       Sec. 373.005. LEGAL CHALLENGES CONCLUDED. For the purposes  
21 of this chapter, all legal challenges to development of a toll  
22 project are considered concluded when a judgment or order of a court  
23 with jurisdiction over the challenge becomes final and  
24 unappealable.

25       Sec. 373.006. TOLL PROJECT AGREEMENT. (a) Before  
26 initiating the primacy determination process under Subchapter B for  
27 a toll project, the department and the local toll project entity may

1 enter into a toll project agreement that:

2 (1) identifies the responsibilities of each party for  
3 project-related activities, which may include the performance of  
4 environmental work and traffic and revenue studies; and

5 (2) includes an agreement that the primacy  
6 determination process under Subchapter B may be initiated earlier  
7 than as provided by Section 373.051.

8 (b) A toll project agreement may provide an alternative to  
9 the primacy determination process under Subchapter B for toll  
10 project development, including an alternative timeline for the  
11 development of toll project phases.

12 Sec. 373.007. EXERCISE OF PRIMACY FOR TOLL PROJECT PHASES.  
13 Unless otherwise provided by a toll project agreement under Section  
14 373.006 or other agreement, an exercise of primacy under Subchapter  
15 B over a phase of a toll project is an exercise of primacy over the  
16 entire project, with additional phases to be developed as the  
17 entity determines the phases financially feasible.

18 [Sections 373.008-373.050 reserved for expansion]

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

21 Sec. 373.051. INITIATION OF PROCESS. (a) At any time  
22 after a metropolitan planning organization approves the inclusion  
23 in the metropolitan transportation improvement program of a toll  
24 project to be located in the territory of a local toll project  
25 entity, the local toll project entity may notify the department in  
26 writing of the local toll project entity's intent to initiate the  
27 process described in this subchapter.

1       (b) The department may notify the local toll project entity  
2 in writing of the department's intent to initiate the process  
3 described in this subchapter at any time after a metropolitan  
4 planning organization has approved the inclusion in the  
5 metropolitan transportation improvement program of a toll project  
6 to be located in the territory of a local toll project entity and:

7           (1) the department has issued a finding of no  
8 significant impact for the project, or for a project for which an  
9 environmental impact statement is prepared, the department has  
10 approved the final environmental impact statement for the project;  
11 or

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

19       Sec. 373.052. LOCAL TOLL PROJECT ENTITY OPTION. (a) The  
20 local toll project entity has the first option to develop, finance,  
21 construct, and operate a toll project. The local toll project  
22 entity must exercise its option not later than the later of:

23           (1) the 180th day after the date on which notification  
24 under Section 373.051(a) is provided or notification under Section  
25 373.051(b) is received; or

26           (2) if the United States Department of Transportation  
27 Federal Highway Administration issues a record of decision for an

1 environmental impact statement submitted by the department under  
2 Section 373.051(b)(2) more than 60 days after the date the  
3 department provides notice under Section 373.051(b), the 120th day  
4 after the date the record of decision is issued.

5 (b) The option period under Subsection (a) may be extended  
6 an additional 90 days by agreement of the department and the local  
7 toll project entity.

8 (c) If the local toll project entity exercises the option  
9 under Subsection (a), the local toll project entity after  
10 exercising the option must:

11 (1) within 180 days after the later of the date of  
12 exercising its option or the date on which all environmental  
13 approvals necessary for the development of the toll project are  
14 secured and all legal challenges to development are concluded,  
15 advertise for the initial procurement of required services,  
16 including, at a minimum, design services, for the project; and

17 (2) within two years after the later of the date of  
18 exercising its option or the date on which all environmental  
19 approvals necessary for the development are secured and all legal  
20 challenges to development are concluded, enter into a contract for  
21 the construction of the toll project.

22 Sec. 373.053. DEPARTMENT OPTION. (a) If the local toll  
23 project entity fails or declines to exercise the option to develop,  
24 finance, construct, and operate a toll project under Section  
25 373.052(a), or fails or declines to advertise for procurement or  
26 enter into a construction contract as required by Section  
27 373.052(c), the department has the option to develop, finance,

1 construct, and operate the toll project. The department has not  
2 more than 60 days after the date the local toll project entity fails  
3 or declines to exercise its option under Section 373.052(a) or  
4 fails or declines to advertise for procurement or enter into a  
5 construction contract as required by Section 373.052(c) to exercise  
6 its option.

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

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

15 (2) within two years after the later of the date of  
16 exercising its option or the date on which all environmental  
17 approvals necessary for the development are secured and all legal  
18 challenges to development are concluded, enter into a contract for  
19 the construction of the toll project.

20 Sec. 373.054. REINITIATION OF PROCESS. If the process  
21 described by Sections 373.051, 373.052, and 373.053 concludes  
22 without the local toll project entity or the department entering  
23 into a contract for the construction of the toll project, either  
24 entity may reinitiate the process under this subchapter by  
25 submitting notice to the other entity in the manner provided by  
26 Section 373.051.

27 Sec. 373.055. WAIVER OF OPTION; ALTERATION OF STEPS OR TIME

1 LIMITS. (a) The department or the local toll project entity may at  
2 any time before or during the process established by this  
3 subchapter waive or decline to exercise any option, step, or other  
4 right under this subchapter that solely benefits that entity by  
5 notifying the other entity of its decision in writing.

6 (b) The department and the local toll project entity may, by  
7 written agreement, alter any other step or time limit under this  
8 subchapter, including the timing of or conditions for initiating  
9 the process under Section 373.051.

10 Sec. 373.056. SHARING OF PROJECT-RELATED INFORMATION.

11 (a) In this section, "project-related information" includes  
12 traffic estimates, revenue estimates, plans, specifications,  
13 surveys, appraisals, environmental studies, and other work product  
14 developed for a toll project.

15 (b) On initiation of the process under Section 373.051, the  
16 department shall make its project-related information available to  
17 the local toll project entity.

18 (c) If the local toll project entity fails or declines to  
19 exercise an option or fails or declines to advertise for  
20 procurement or enter into a construction contract under Section  
21 373.052, the local toll project entity shall make its  
22 project-related information available to the department.

23 (d) On entering into a contract for the construction of the  
24 toll project, the department or the local toll project entity, as  
25 applicable, shall reimburse the other entity for shared  
26 project-related information that it uses.

27 (e) Use by an entity of project-related information

1 received by the entity under this section is at the sole risk of the  
2 receiving entity and does not confer liability on the entity that  
3 furnished the information.

4 Sec. 373.057. PROGRESS REPORTS. After the department or  
5 the local toll project entity exercises an option under this  
6 subchapter, the department or the local toll project entity, as  
7 applicable, shall issue a semiannual report on the progress of the  
8 development of the toll project. The report shall be made available  
9 to the public.

10 Sec. 373.058. ENVIRONMENTAL REVIEW. (a) The department or  
11 the local toll project entity may begin any environmental review  
12 process that may be required for a proposed toll project before  
13 initiating the process under this subchapter.

14 (b) If the local toll project entity initiates the process  
15 for development of a toll project under Section 373.051(a) and has  
16 not begun the environmental review of the project, the local toll  
17 project entity shall begin the environmental review within 180 days  
18 of exercising the option.

19 (c) The department or the local toll project entity may  
20 begin development of a toll project before the project receives  
21 environmental clearance but may not begin construction of the  
22 project before the project receives that clearance.

23 Sec. 373.059. PROJECT LOCATED IN TERRITORY OF MORE THAN ONE  
24 LOCAL TOLL PROJECT ENTITY. If a toll project is in the territory of  
25 more than one local toll project entity, only the local toll project  
26 entity that first constructed toll projects may exercise the  
27 options and other rights under this subchapter. The local toll



1 project entity exercising an option or other right under this  
2 section:

3 (1) may do so only with respect to the portion of the  
4 project located in the territory of that local toll project entity;  
5 and

6 (2) shall do so on behalf of another local toll project  
7 entity in whose territory the project will be located on request by  
8 the other entity.

9 [Sections 373.060-373.100 reserved for expansion]

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

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

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

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

24 Sec. 373.102. REIMBURSEMENT FOR USE OF RIGHT-OF-WAY.

25 (a) The commission or the department may not require a local toll  
26 project entity to pay for the use of state highway right-of-way or  
27 access, except:

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

5           (2) as required under Subsection (b).

6           (b) A local toll project entity shall reimburse the  
7 department for the department's actual costs to acquire a  
8 right-of-way transferred to the local toll project entity. If the  
9 department is not able to determine that amount, the reimbursement  
10 must be in an amount equal to the average actual historical  
11 right-of-way acquisition values for comparable right-of-way  
12 located in proximity to the project on the date of original  
13 acquisition of the right-of-way.

14           (c) In lieu of reimbursement, and at the local toll project  
15 entity's sole option, the local toll project entity may agree to pay  
16 to the department a portion of the revenues of the project, in the  
17 amount and for the period of time agreed to by the local toll  
18 project entity and the department.

19           (d) Money received by the department under this section  
20 shall be deposited in the state highway fund and, except for  
21 reimbursement for costs owed to a third party, used to fund  
22 additional projects in the department district in which the toll  
23 project is located.

24           (e) The department shall reimburse a local toll project  
25 entity for any cost of right-of-way acquired by the entity for a  
26 toll project that will be developed, financed, constructed, and  
27 operated by the department.

1       (f) The commission or department or the local toll project  
2 entity may waive the requirement of reimbursement under this  
3 section.

4       Sec. 373.103. AGREEMENT FOR USE OF RIGHT-OF-WAY. A local  
5 toll project entity and the department shall enter into an  
6 agreement for any toll project for which the entity has exercised  
7 its option to develop, finance, construct, and operate the project  
8 under Subchapter B and for which the entity intends to use state  
9 highway right-of-way. The agreement must contain provisions  
10 necessary to:

11           (1) ensure that the local toll project entity's  
12 construction, maintenance, and operation of the project complies  
13 with the requirements of applicable state and federal law; and

14           (2) protect the interests of the commission and the  
15 department in the use of right-of-way for operations of the  
16 department, including public safety and congestion mitigation on  
17 the right-of-way.

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

24           (b) An agreement entered into by a local toll project entity  
25 and the department in connection with a toll project that is  
26 developed, financed, constructed, or operated by the local toll  
27 project entity and that is on or directly connected to a highway in

1 the state highway system does not create a joint enterprise for  
2 liability purposes.

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

9 SECTION 2. 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.

1 SECTION 3. Section 228.011(a), Transportation Code, is  
2 amended to read as follows:

3 (a) This section applies only to a county acting under  
4 Chapter 284 for:

5 (1) the widening, expansion, reconstruction, and  
6 continued operation of existing toll projects of the county; or

7 (2) [~~and~~] the development, construction, and  
8 operation of all or a portion of any of the following toll projects,  
9 a component of that project, or the functional equivalent of that  
10 project:

11 (A) [~~(1)~~] Beltway 8 Tollway East, between US 59  
12 North and US 90 East;

13 (B) [~~(2)~~] Hardy Downtown Connector, consisting  
14 of the proposed direct connection from the Hardy Toll Road southern  
15 terminus at Loop 610 to downtown Houston;

16 (C) [~~(3)~~] State Highway 288, between US 59 and  
17 Grand Parkway South (State Highway 99);

18 (D) [~~(4)~~] US 290 Toll Lanes, between IH 610 West  
19 and the Grand Parkway Northwest (State Highway 99);

20 (E) [~~(5)~~] Fairmont Parkway East, between Beltway  
21 8 East and Grand Parkway East (State Highway 99);

22 (F) [~~(6)~~] South Post Oak Road Extension, between  
23 IH 610 South and near the intersection of Beltway 8 and Hillcroft in  
24 the vicinity of the Fort Bend Parkway Tollway;

25 (G) [~~(7)~~] Westpark Toll Road Phase II, between  
26 Grand Parkway (State Highway 99) and FM 1463;

27 (H) [~~(8)~~] Fort Bend Parkway, between State

1 Highway 6 and the Brazos River; and

2 (I) [~~(9)~~] Montgomery County Parkway, between  
3 State Highway 242 and the Grand Parkway (State Highway 99), and if  
4 the Grand Parkway project has not begun construction, a nontolled  
5 extension of the Montgomery County Parkway to allow a connection to  
6 Interstate Highway 45.

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

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

17 (b) The department shall hold money in a subaccount in trust  
18 for the benefit of the region in which a project or system is  
19 located and may assign the responsibility for allocating money in a  
20 subaccount to a metropolitan planning organization in which the  
21 region is located. Money [~~Except as provided by Subsection (c),~~  
22 ~~money~~] shall be allocated to projects authorized by Section  
23 228.0055 or Section 228.006, as applicable.

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

1 ~~the counties contiguous to that county.~~

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

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

8           (1) revise the formula as provided in the department's  
9 unified transportation program or a successor document in a manner  
10 that results in a decrease of a department district's allocation  
11 because of the deposit of a payment into a project subaccount ~~[or a~~  
12 ~~commitment to undertake an additional transportation project under~~  
13 ~~Section 228.0111]~~; or

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

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

21           (b) In addition to authority granted by other law, a county  
22 may use state highway right-of-way and may access state highway  
23 right-of-way in accordance with Sections 228.011, 373.101, and  
24 373.102 ~~[228.0111]~~.

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

27           (d) Subject to the reimbursement requirements of Section

1 373.102, a [A] county has full easements and rights-of-way through,  
2 across, under, and over any property owned by this state that are  
3 necessary or convenient to construct, acquire, or efficiently  
4 operate a project under this chapter.

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

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

18 SECTION 8. Section 370.169(c), Transportation Code, is  
19 amended to read as follows:

20 (c) An authority has full easements and rights-of-way  
21 through, across, under, and over any property owned by the state or  
22 any local government that are necessary or convenient to construct,  
23 acquire, or efficiently operate a transportation project or system  
24 under this chapter. This subsection does not affect the obligation  
25 of the authority under other law, including Section 373.102, to  
26 compensate or reimburse this state for the use or acquisition of an  
27 easement or right-of-way on property owned by or on behalf of this



1 state. An authority's use of property owned by or on behalf of this  
2 state is subject to any covenants, conditions, restrictions, or  
3 limitations affecting that property.

4 SECTION 9. Section 371.002, Transportation Code, is amended  
5 to read as follows:

6 Sec. 371.002. APPLICABILITY. This chapter does not apply  
7 to:

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

10 (2) a publicly owned and operated toll project in  
11 which a private entity does not have a leasehold interest or right  
12 to operate and retain revenue from the toll project.

13 SECTION 10. Subchapter A, Chapter 371, Transportation Code,  
14 is amended by adding Section 371.003 to read as follows:

15 Sec. 371.003. VALUATION DETERMINATION. Any determination  
16 of value, including best value, under applicable federal or state  
17 law for a comprehensive development agreement or other  
18 public-private partnership arrangement involving a toll project  
19 must take into consideration any factors the toll project entity  
20 determines appropriate, including factors related to:

21 (1) oversight of the toll project;

22 (2) maintenance and operations costs of the toll  
23 project;

24 (3) the structure and rates of tolls;

25 (4) economic development impacts of the toll project;

26 and

27 (5) social and environmental benefits and impacts of

1 the toll project.

2 SECTION 11. The heading to Section 371.052, Transportation  
3 Code, is amended to read as follows:

4 Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD [~~AND~~  
5 ~~STATE AUDITOR~~].

6 SECTION 12. Sections 228.0111 and 371.052(c),  
7 Transportation Code, are repealed.

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

16 SECTION 14. The repeal of Section 228.0111, Transportation  
17 Code, by this Act does not affect any project agreement, agreement  
18 regarding a negotiated value, market value agreement, market  
19 valuation waiver agreement, memorandum of understanding regarding  
20 market valuation, letter agreement regarding market valuation  
21 analysis, advance funding agreement, or other agreement entered  
22 into between the Texas Department of Transportation and a local  
23 toll project entity, or any resolution or minute order adopted by  
24 the department or a local toll project entity, under that repealed  
25 section. If a waiver of market valuation or waiver of first option  
26 to develop, finance, construct, or operate a toll project is  
27 withdrawn or terminated subsequent to the effective date of this

1 Act, the department and the local toll project entity have the  
2 rights regarding the applicable project as exist under Chapter 373,  
3 Transportation Code, as added by this Act.

4 SECTION 15. This Act takes effect immediately if it  
5 receives a vote of two-thirds of all the members elected to each  
6 house, as provided by Section 39, Article III, Texas Constitution.  
7 If this Act does not receive the vote necessary for immediate  
8 effect, this Act takes effect September 1, 2011.