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(Smith of Harris)

S.B. No. 19

A BILL TO BE ENTITLED

AN ACT

relating to the development, financing, construction, and operation of certain 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;

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; or

7 (3) the North Tarrant Express project in Tarrant and
8 Dallas Counties (Interstate Highway 820 and State Highway 121/State
9 Highway 183 from Interstate Highway 35 West to State Highway 161,
10 Interstate Highway 820 East from State Highway 121/State Highway
11 183 to Randol Mill Road, and Interstate Highway 35 West from
12 Interstate Highway 30 to State Highway 170).

13 Sec. 373.003. PROJECT OWNED IN PERPETUITY. Unless a toll
14 project is leased, sold, conveyed, or otherwise transferred to
15 another governmental entity in accordance with applicable law,
16 including Sections 228.151, 284.011, 366.036, 366.172, and
17 370.171, a toll project procured by the department or a local toll
18 project entity determined by the process under Subchapter B is
19 owned by that entity in perpetuity.

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

26 Sec. 373.005. LEGAL CHALLENGES CONCLUDED. For the purposes
27 of this chapter, all legal challenges to development of a toll

1 project are considered concluded when a judgment or order of a court
2 with jurisdiction over the challenge becomes final and
3 unappealable.

4 Sec. 373.006. TOLL PROJECT AGREEMENT. (a) Before
5 initiating the primacy determination process under Subchapter B for
6 a toll project, the department and the local toll project entity may
7 enter into a toll project agreement that:

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

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

14 (b) A toll project agreement may provide an alternative to
15 the primacy determination process under Subchapter B for toll
16 project development, including an alternative timeline for the
17 development of toll project phases.

18 Sec. 373.007. EXERCISE OF PRIMACY FOR TOLL PROJECT PHASES.
19 Unless otherwise provided by a toll project agreement under Section
20 373.006 or other agreement, an exercise of primacy under Subchapter
21 B over a phase of a toll project is an exercise of primacy over the
22 entire project, with additional phases to be developed as the
23 entity determines the phases financially feasible.

24 [Sections 373.008-373.050 reserved for expansion]

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

27 Sec. 373.051. INITIATION OF PROCESS. (a) At any time

1 after a metropolitan planning organization approves the inclusion
2 in the metropolitan transportation improvement program of a toll
3 project to be located in the territory of a local toll project
4 entity, the local toll project entity may notify the department in
5 writing of the local toll project entity's intent to initiate the
6 process described in this subchapter.

7 (b) The department may notify the local toll project entity
8 in writing of the department's intent to initiate the process
9 described in this subchapter at any time after a metropolitan
10 planning organization has approved the inclusion in the
11 metropolitan transportation improvement program of a toll project
12 to be located in the territory of a local toll project entity and:

13 (1) the department has issued a finding of no
14 significant impact for the project, or for a project for which an
15 environmental impact statement is prepared, the department has
16 approved the final environmental impact statement for the project;
17 or

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

25 Sec. 373.052. LOCAL TOLL PROJECT ENTITY OPTION. (a) The
26 local toll project entity has the first option to develop, finance,
27 construct, and operate a toll project. The local toll project

1 entity must exercise its option not later than the later of:

2 (1) the 180th day after the date on which notification
3 under Section 373.051(a) is provided or notification under Section
4 373.051(b) is received; or

5 (2) if the United States Department of Transportation
6 Federal Highway Administration issues a record of decision for an
7 environmental impact statement submitted by the department under
8 Section 373.051(b)(2) more than 60 days after the date the
9 department provides notice under Section 373.051(b), the 120th day
10 after the date the record of decision is issued.

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

14 (c) If the local toll project entity exercises the option
15 under Subsection (a), the local toll project entity after
16 exercising the option must:

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

23 (2) within two years after the later of the date of
24 exercising its option or the date on which all environmental
25 approvals necessary for the development are secured and all legal
26 challenges to development are concluded, enter into a contract for
27 the construction of the toll project.

1 Sec. 373.053. DEPARTMENT OPTION. (a) If the local toll
2 project entity fails or declines to exercise the option to develop,
3 finance, construct, and operate a toll project under Section
4 373.052(a), or fails or declines to advertise for procurement or
5 enter into a construction contract as required by Section
6 373.052(c), the department has the option to develop, finance,
7 construct, and operate the toll project. The department has not
8 more than 60 days after the date the local toll project entity fails
9 or declines to exercise its option under Section 373.052(a) or
10 fails or declines to advertise for procurement or enter into a
11 construction contract as required by Section 373.052(c) to exercise
12 its option.

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

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

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

26 Sec. 373.054. REINITIATION OF PROCESS. If the process
27 described by Sections 373.051, 373.052, and 373.053 concludes

1 without the local toll project entity or the department entering
2 into a contract for the construction of the toll project, either
3 entity may reinitiate the process under this subchapter by
4 submitting notice to the other entity in the manner provided by
5 Section 373.051.

6 Sec. 373.055. WAIVER OF OPTION; ALTERATION OF STEPS OR TIME
7 LIMITS. (a) The department or the local toll project entity may at
8 any time before or during the process established by this
9 subchapter waive or decline to exercise any option, step, or other
10 right under this subchapter that solely benefits that entity by
11 notifying the other entity of its decision in writing.

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

16 Sec. 373.056. SHARING OF PROJECT-RELATED INFORMATION.
17 (a) In this section, "project-related information" includes
18 traffic estimates, revenue estimates, plans, specifications,
19 surveys, appraisals, environmental studies, and other work product
20 developed for a toll project.

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

24 (c) If the local toll project entity fails or declines to
25 exercise an option or fails or declines to advertise for
26 procurement or enter into a construction contract under Section
27 373.052, the local toll project entity shall make its

1 project-related information available to the department.

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

6 (e) Use by an entity of project-related information
7 received by the entity under this section is at the sole risk of the
8 receiving entity and does not confer liability on the entity that
9 furnished the information.

10 Sec. 373.057. PROGRESS REPORTS. After the department or
11 the local toll project entity exercises an option under this
12 subchapter, the department or the local toll project entity, as
13 applicable, shall issue a semiannual report on the progress of the
14 development of the toll project. The report shall be made available
15 to the public.

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

20 (b) If the local toll project entity initiates the process
21 for development of a toll project under Section 373.051(a) and has
22 not begun the environmental review of the project, the local toll
23 project entity shall begin the environmental review within 180 days
24 of exercising the option.

25 (c) The department or the local toll project entity may
26 begin development of a toll project before the project receives
27 environmental clearance but may not begin construction of the

1 project before the project receives that clearance.

2 Sec. 373.059. PROJECT LOCATED IN TERRITORY OF MORE THAN ONE
3 LOCAL TOLL PROJECT ENTITY. If a toll project is in the territory of
4 more than one local toll project entity, only the local toll project
5 entity that first constructed toll projects may exercise the
6 options and other rights under this subchapter. The local toll
7 project entity exercising an option or other right under this
8 section:

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

11 (2) shall do so on behalf of another local toll project
12 entity in whose territory the project will be located if requested
13 by the other entity after the original entity declines to exercise
14 its option.

15 [Sections 373.060-373.100 reserved for expansion]

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

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

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

26 (b) Notwithstanding any other law, a local toll project
27 entity and the commission may agree to remove the toll project from

1 the state highway system and transfer ownership to the local toll
2 project entity.

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

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

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

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

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

20 (c) In lieu of reimbursement, and at the local toll project
21 entity's sole option, the local toll project entity may agree to pay
22 to the department a portion of the revenues of the project, in the
23 amount and for the period of time agreed to by the local toll
24 project entity and the department.

25 (d) Money received by the department under this section
26 shall be deposited in the state highway fund and, except for
27 reimbursement for costs owed to a third party, used to fund

1 additional projects in the department district in which the toll
2 project is located.

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

7 (f) The commission or department or the local toll project
8 entity may waive the requirement of reimbursement under this
9 section.

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

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

20 (2) protect the interests of the commission and the
21 department in the use of right-of-way for operations of the
22 department, including public safety and congestion mitigation on
23 the right-of-way.

24 Sec. 373.104. LIABILITY FOR DAMAGES. (a) Notwithstanding
25 any other law, the commission and the department are not liable for
26 any damages that result from a local toll project entity's use of
27 state highway right-of-way or access to the state highway system

1 under this subchapter, regardless of the legal theory, statute, or
2 cause of action under which liability is asserted.

3 (b) An agreement entered into by a local toll project entity
4 and the department in connection with a toll project that is
5 developed, financed, constructed, or operated by the local toll
6 project entity and that is on or directly connected to a highway in
7 the state highway system does not create a joint enterprise for
8 liability purposes.

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

15 SECTION 2. Section 228.006, Transportation Code, is amended
16 by amending Subsection (a) and adding Subsection (a-1) to read as
17 follows:

18 (a) The commission shall authorize the use of surplus
19 revenue of a toll project or system to pay the costs of a
20 transportation project, highway project, or air quality project
21 within a region [~~department district~~] in which any part of the toll
22 project is located.

23 (a-1) The department shall allocate the distribution of the
24 surplus toll revenue to department districts in the region that are
25 located in the boundaries of the metropolitan planning organization
26 in which the toll project or system producing the surplus revenue is
27 located based on the percentage of toll revenue from users in each

1 department district of the project or system. To assist the
2 department in determining the allocation, each entity responsible
3 for collecting tolls for a project or system shall calculate on an
4 annual basis the percentage of toll revenue from users of the
5 project or system in each department district based on the number of
6 recorded electronic toll collections.

7 SECTION 3. Subsection (a), Section 228.011, Transportation
8 Code, is amended to read as follows:

9 (a) This section applies only to a county acting under
10 Chapter 284 for:

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

13 (2) [and] the development, construction, and
14 operation of all or a portion of any of the following toll projects,
15 a component of that project, or the functional equivalent of that
16 project:

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

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

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

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

26 (E) [~~(5)~~] Fairmont Parkway East, between Beltway
27 8 East and Grand Parkway East (State Highway 99);

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

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

6 (H) [~~(8)~~] Fort Bend Parkway, between State
7 Highway 6 and the Brazos River; and

8 (I) [~~(9)~~] Montgomery County Parkway, between
9 State Highway 242 and the Grand Parkway (State Highway 99), and if
10 the Grand Parkway project has not begun construction, a nontolled
11 extension of the Montgomery County Parkway to allow a connection to
12 Interstate Highway 45.

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

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

23 (b) The department shall hold money in a subaccount in trust
24 for the benefit of the region in which a project or system is
25 located and may assign the responsibility for allocating money in a
26 subaccount to a metropolitan planning organization in which the
27 region is located. Money [~~Except as provided by Subsection (c)~~],

1 ~~money~~] shall be allocated to projects authorized by Section
2 228.0055 or Section 228.006, as applicable.

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

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

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

14 (1) revise the formula as provided in the department's
15 unified transportation program or a successor document in a manner
16 that results in a decrease of a department district's allocation
17 because of the deposit of a payment into a project subaccount ~~[or a~~
18 ~~commitment to undertake an additional transportation project under~~
19 ~~Section 228.0111]; or~~

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

25 SECTION 5. Subsection (b), Section 284.004, Transportation
26 Code, is amended to read as follows:

27 (b) In addition to authority granted by other law, a county

1 may use state highway right-of-way and may access state highway
2 right-of-way in accordance with Sections 228.011, 373.101, and
3 373.102 [~~228.0111~~].

4 SECTION 6. Subsection (d), Section 284.061, Transportation
5 Code, is amended to read as follows:

6 (d) Subject to the reimbursement requirements of Section
7 373.102, a [A] county has full easements and rights-of-way through,
8 across, under, and over any property owned by this state that are
9 necessary or convenient to construct, acquire, or efficiently
10 operate a project under this chapter.

11 SECTION 7. Subsection (c), Section 366.170, Transportation
12 Code, is amended to read as follows:

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

24 SECTION 8. Subsection (c), Section 370.169, Transportation
25 Code, is amended to read as follows:

26 (c) An authority has full easements and rights-of-way
27 through, across, under, and over any property owned by the state or

1 any local government that are necessary or convenient to construct,
2 acquire, or efficiently operate a transportation project or system
3 under this chapter. This subsection does not affect the obligation
4 of the authority under other law, including Section 373.102, to
5 compensate or reimburse this state for the use or acquisition of an
6 easement or right-of-way on property owned by or on behalf of this
7 state. An authority's use of property owned by or on behalf of this
8 state is subject to any covenants, conditions, restrictions, or
9 limitations affecting that property.

10 SECTION 9. Subchapter A, Chapter 371, Transportation Code,
11 is amended by adding Section 371.003 to read as follows:

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

- 18 (1) oversight of the toll project;
19 (2) maintenance and operations costs of the toll
20 project;
21 (3) the structure and rates of tolls;
22 (4) economic development impacts of the toll project;
23 and
24 (5) social and environmental benefits and impacts of
25 the toll project.

26 SECTION 10. The heading to Section 371.052, Transportation
27 Code, is amended to read as follows:

1 Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD [~~AND~~
2 ~~STATE AUDITOR~~].

3 SECTION 11. Section 228.0111 and Subsection (c), Section
4 371.052, Transportation Code, are repealed.

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

13 SECTION 13. The repeal of Section 228.0111, Transportation
14 Code, by this Act does not affect any project agreement, agreement
15 regarding a negotiated value, market value agreement, market
16 valuation waiver agreement, memorandum of understanding regarding
17 market valuation, letter agreement regarding market valuation
18 analysis, advance funding agreement, or other agreement entered
19 into between the Texas Department of Transportation and a local
20 toll project entity, or any resolution or minute order adopted by
21 the department or a local toll project entity, under that repealed
22 section. If a waiver of market valuation or waiver of first option
23 to develop, finance, construct, or operate a toll project is
24 withdrawn or terminated subsequent to the effective date of this
25 Act, the department and the local toll project entity have the
26 rights regarding the applicable project as exist under Chapter 373,
27 Transportation Code, as added by this Act.

1 SECTION 14. This Act takes effect immediately if it
2 receives a vote of two-thirds of all the members elected to each
3 house, as provided by Section 39, Article III, Texas Constitution.
4 If this Act does not receive the vote necessary for immediate
5 effect, this Act takes effect September 1, 2011.