

By: Shapiro, Harris, Nelson

S.B. No. 1144

A BILL TO BE ENTITLED

AN ACT

relating to comprehensive development agreements.

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

SECTION 1. Subchapter E, Chapter 223, Transportation Code, is amended by adding Section 223.2011 to read as follows:

Sec. 223.2011. LIMITED AUTHORITY FOR CERTAIN PROJECTS USING COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Notwithstanding Sections 223.201(f) and (i), the department may enter into a comprehensive development agreement relating to managed lane improvements to Interstate Highway 35E between Interstate Highway 635 and United States Highway 380.

(b) This section expires August 31, 2013.

SECTION 2. Section 371.101, Transportation Code, is amended to read as follows:

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

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

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

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

(b) The provision must include a schedule stating a specific

1 price for the purchase of the toll project at certain intervals from
2 the date the project opens, not less than one year and not to exceed
3 five years, over the term of the agreement.

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

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

8 (2) the greater of:

9 (A) the then fair market value of the private
10 entity's interest; or

11 (B) an amount equal to the amount of outstanding
12 debt at that time, as specified in the comprehensive development
13 agreement.

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

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

22 (f) The toll project entity shall request a proposed
23 termination-by-purchase schedule in each request for detailed
24 proposals and shall consider and score each schedule in each
25 evaluation of proposals.

26 (g) A private entity shall, not later than 12 months before
27 the date that a new price interval takes effect, notify the toll

1 project entity of the beginning of the price interval. The toll
2 project entity must notify the private entity as to whether it will
3 exercise the option to purchase under this section not later than
4 six months after the date it receives notice under this subsection.

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

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

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

27 SECTION 3. Sections 371.103(b) and (c), Transportation

1 Code, are amended to read as follows:

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

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

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

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

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

26 (4) a transportation project that provides a mode of
27 transportation that is not included in the project that is the

1 subject of the comprehensive development agreement; or
2 (5) a highway designated an interstate highway.

3 SECTION 4. Sections 371.101 and 371.103, Transportation
4 Code, as amended by this Act, apply only to a comprehensive
5 development agreement entered into on or after the effective date
6 of this Act. A comprehensive development agreement entered into
7 before the effective date of this Act is governed by the law in
8 effect on the date the agreement was entered into, and the former
9 law is continued in effect for that purpose.

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