

By: Phillips

H.B. No. 3391

Substitute the following for H.B. No. 3391:

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C.S.H.B. No. 3391

A BILL TO BE ENTITLED

AN ACT

relating to comprehensive development agreements of the Texas Department of Transportation or a regional mobility authority.

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

SECTION 1. Section 223.201, Transportation Code, is amended by amending Subsections (a), (b), (f), (g), (i), (j), (k), and (l) and adding Subsection (j-1) to read as follows:

(a) Subject to Section 223.202, the department may enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a:

(1) toll project;

(2) state highway improvement project that includes both tolled and nontolled lanes and may include nontolled appurtenant facilities;

(3) state highway improvement project in which the private entity has an interest in the project; ~~or~~

(4) state highway improvement project financed wholly or partly with the proceeds of private activity bonds, as defined by Section 141(a), Internal Revenue Code of 1986; or

(5) nontolled state highway improvement project authorized by the legislature.

(b) In this subchapter, "comprehensive development agreement" means an agreement that, at a minimum, provides for the

1 design and construction, reconstruction, rehabilitation,
2 expansion, or improvement of a project described in Subsection (a)
3 and may also provide for the financing, acquisition, maintenance,
4 or operation of a project described in Subsection (a).

5 (f) The department may enter into a comprehensive
6 development agreement only for all or part of:

7 (1) the State Highway 99 (Grand Parkway) project;

8 (2) the Interstate Highway 35E managed lanes project
9 in Dallas and Denton Counties from Interstate Highway 635 to U.S.
10 Highway 380;

11 (3) the Interstate Highway 35W project in Tarrant
12 County from Interstate Highway 30 to State Highway 114 [~~North~~
13 ~~Tarrant Express project in Tarrant and Dallas Counties, including:~~

14 [~~(A) on State Highway 183 from State Highway 121~~
15 ~~to State Highway 161 (Segment 2E);~~

16 [~~(B) on Interstate Highway 35W from Interstate~~
17 ~~Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C); and~~

18 [~~(C) on Interstate Highway 820 from State Highway~~
19 ~~183 North to south of Randol Mill Road (Segment 4)];~~

20 (4) the State Highway 183 managed lanes project in
21 Tarrant and Dallas Counties [~~County~~] from State Highway 121 [~~161~~]
22 to Interstate Highway 35E;

23 (5) the Interstate Highway 35/U.S. Highway 67 Southern
24 Gateway project in Dallas County, including:

25 (A) Interstate Highway 35E from 8th Street to
26 Interstate Highway 20; and

27 (B) U.S. Highway 67 from Interstate Highway 35E

1 to Farm-to-Market Road 1382 (Belt Line Road) [State Highway 249
2 project in Harris and Montgomery Counties from Spring Cypress Road
3 to Farm-to-Market Road 1774];

4 (6) the State Highway 288 project from U.S. Highway 59
5 to south of State Highway 6 in Brazoria County and Harris County;
6 ~~[and]~~

7 (7) the U.S. Highway 290 ~~[Hempstead]~~ managed lanes
8 project in Harris County from Interstate Highway 610 to State
9 Highway 99;

10 (8) the Interstate Highway 820 project from State
11 Highway 183 to Randol Mill Road;

12 (9) the State Highway 114 project in Dallas County
13 from State Highway 121 to State Highway 183;

14 (10) the Loop 12 project in Dallas County from State
15 Highway 183 to Interstate Highway 35E;

16 (11) the Interstate Highway 35E project in Dallas
17 County from State Highway 183 to the Dallas North Tollway;

18 (12) the Loop 9 project in Dallas and Ellis Counties
19 from Interstate Highway 20 to U.S. Highway 67; and

20 (13) the U.S. Highway 181 Harbor Bridge project in
21 Nueces County between U.S. Highway 181 at Beach Avenue and
22 Interstate Highway 37.

23 (g) The department may combine in a comprehensive
24 development agreement under this subchapter:

25 (1) a toll project and a rail facility as defined by
26 Section 91.001; or

27 (2) two or more projects described by Subsection (f).

1 (i) The authority to enter into a comprehensive development
2 agreement under [~~for a project described by~~] Subsection (f) [~~, other~~
3 ~~than the State Highway 99 (Grand Parkway) project~~] expires:

4 (1) August 31, 2017; or

5 (2) August 31, 2015, for:

6 (A) the State Highway 183 managed lanes project;

7 (B) the State Highway 114 project; and

8 (C) the Loop 12 project.

9 (j) Before the department may enter into a comprehensive
10 development agreement under Subsection (f), the department must:

11 (1) obtain [~~, not later than August 31, 2013,~~] the
12 appropriate environmental clearance for the project or for the
13 initial or base scope of the project if the project agreement
14 provides for the phased construction of the project:

15 (A) not later than August 31, 2017; or

16 (B) not later than January 31, 2014, for a
17 project described by Subsection (i)(2) [~~for any project other than~~
18 the State Highway 99 (Grand Parkway) project]; and

19 (2) present to the commission a full financial plan
20 for the project, including costing methodology and cost proposals.

21 (j-1) Subsections (i) and (j) do not apply to the State
22 Highway 99 (Grand Parkway) project.

23 (k) Not later than December 1, 2014 [~~2012~~], the department
24 shall provide [~~present~~] a report to the commission on the status of
25 a project described by Subsection (f). The report must include:

26 (1) the status of the project's environmental
27 clearance;

1 (2) an explanation of any project delays; and

2 (3) if the procurement is not completed, the
3 anticipated date for the completion of the procurement.

4 (1) In this section, "environmental clearance" means:

5 (1) a finding of no significant impact has been issued
6 for the project or, as applicable, for the initial or base scope of
7 the project; or

8 (2) for a project for which an environmental impact
9 statement is prepared, a record of decision has been issued for that
10 project or, as applicable, for the initial or base scope of the
11 project.

12 SECTION 2. Sections 223.2011(a), (c), (e), and (f),
13 Transportation Code, are amended to read as follows:

14 (a) Notwithstanding Sections 223.201(f) and 370.305(c), the
15 department or an authority under Section 370.003 may enter into a
16 comprehensive development agreement relating to improvements to,
17 or construction of all or part of:

18 (1) the Loop 1 (MoPac Improvement) project from
19 Farm-to-Market Road 734 to Cesar Chavez Street;

20 (2) the U.S. 183 (Bergstrom Expressway) project from
21 Springdale Road to Patton Avenue; ~~or~~

22 (3) a project consisting of the construction of:

23 (A) the Outer Parkway Project in Cameron County
24 from U.S. Highway 77 [~~77/83~~] to Farm-to-Market Road 1847; and

25 (B) the South Padre Island Second Access Causeway
26 Project from State Highway 100 to Park Road 100;

27 (4) the Loop 1604 project in Bexar County;

1 (5) the Loop 49 project from Interstate 20 to U.S.
2 Highway 69 (Lindale Relief Route) and from State Highway 110 to U.S.
3 Highway 259 (Segments 6 and 7);

4 (6) the Loop 375 Border Highway West project in El Paso
5 County from Race Track Drive to U.S. Highway 54; and

6 (7) the Northeast Parkway project in El Paso County
7 from Loop 375 east of the Railroad Drive overpass to the Texas-New
8 Mexico border.

9 (c) Not later than December 1, 2014 [~~2012~~], the department
10 or the authority, as applicable, shall provide [~~present~~] a report
11 to the commission on the status of a project described by Subsection
12 (a). The report must include:

13 (1) the status of the project's environmental
14 clearance;

15 (2) an explanation of any project delays; and

16 (3) if the procurement is not completed, the
17 anticipated date for the completion of the procurement.

18 (e) In this section, "environmental clearance" means:

19 (1) a finding of no significant impact has been issued
20 for the project or, as applicable, for the initial or base scope of
21 the project; or

22 (2) for a project for which an environmental impact
23 statement is prepared, a record of decision has been issued for that
24 project or, as applicable, for the initial or base scope of the
25 project.

26 (f) The authority to enter into a comprehensive development
27 agreement under this section expires August 31, 2017 [~~2015~~].

1 SECTION 3. Subchapter G, Chapter 370, Transportation Code,
2 is amended by adding Section 370.3051 to read as follows:

3 Sec. 370.3051. LIMITED AUTHORITY FOR CERTAIN PROJECTS USING
4 COMPREHENSIVE DEVELOPMENT AGREEMENTS. Notwithstanding Section
5 370.305(c), an authority formed by a county with a population of
6 more than 700,000 that borders the United Mexican States may enter
7 into a comprehensive development agreement for:

8 (1) the Hidalgo County Loop Project;

9 (2) the International Bridge Trade Corridor
10 Project; and

11 (3) projects associated with commuter rail.

12 SECTION 4. Section 371.101, Transportation Code, is amended
13 to read as follows:

14 Sec. 371.101. TERMINATION FOR CONVENIENCE. (a) A
15 comprehensive development agreement under which a private
16 participant receives the right to operate and collect revenue from
17 a toll project must contain a provision authorizing the toll
18 project entity to terminate the agreement for convenience and to
19 purchase, under terms agreed to by the parties:

20 (1) the interest of the private participant in the
21 comprehensive development agreement; and

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

25 (b) A comprehensive development agreement described by
26 Subsection (a) must include a price breakdown stating a specific
27 price for the purchase of the private participant's interest at

1 specified intervals from the date the toll project opens, of not
2 less than two years and not more than five years, over the term of
3 the agreement.

4 (c) The provision must authorize the toll project entity to
5 terminate the comprehensive development agreement and to purchase
6 the private participant's interest at any time during a specified
7 interval at the lesser of:

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

9 (2) the greater of:

10 (A) the then fair market value of the private
11 participant's interest, plus or minus any other amounts specified
12 in the comprehensive development agreement; or

13 (B) an amount equal to the amount of outstanding
14 debt specified in the comprehensive development agreement, plus or
15 minus any other amounts specified in the comprehensive development
16 agreement.

17 (d) A toll project entity shall include in a request for
18 proposals for an agreement described by Subsection (a) a request
19 for the proposed price breakdown described by Subsection (b) and
20 shall assign points to and score each proposer's price breakdown in
21 the evaluation of proposals.

22 (e) A private participant shall, not later than 12 months
23 before the date that a new price interval takes effect, notify the
24 toll project entity of the beginning of the price interval. The
25 toll project entity must notify the private participant as to
26 whether it will exercise the option to purchase under this section
27 not later than six months after the date it receives notice under

1 this subsection.

2 (f) A toll project entity must notify the private
3 participant of the toll project entity's intention to purchase the
4 private participant's interest under this section not less than six
5 months before the date of the purchase.

6 (g) Subsections (b), (c), (d), (e), and (f) do not apply to a
7 project for which a request for proposals was issued before January
8 1, 2013.

9 (h) If a project requires expansion or reconstruction in a
10 manner that differs from the manner provided in the original
11 project scope or schedule, the price for terminating the
12 comprehensive development agreement may be adjusted to reflect the
13 changes in the agreement. [A toll project entity having rulemaking
14 authority by rule and a toll project entity without rulemaking
15 authority by official action shall develop a formula for making
16 termination payments to terminate a comprehensive development
17 agreement under which a private participant receives the right to
18 operate and collect revenue from a toll project. A formula must
19 calculate an estimated amount of loss to the private participant as
20 a result of the termination for convenience.

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

26 ~~[(c) A formula under Subsection (b) may not include any~~
27 ~~estimate of future revenue from the project, if not included in an~~

1 ~~agreed base case financial model under Subsection (b).~~
2 ~~Compensation to the private participant upon termination for~~
3 ~~convenience may not exceed the amount determined using the formula~~
4 ~~under Subsection (b).]~~

5 SECTION 5. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2013.