

By: Nichols

S.B. No. 1730

A BILL TO BE ENTITLED

1 AN ACT
2 relating to comprehensive development agreements of the Texas
3 Department of Transportation or a regional mobility authority.

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

5 SECTION 1. Subsections (a), (b), (f), (g), (i), (j), (k),
6 and (l), Section 223.201, Transportation Code, are amended to read
7 as follows:

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

12 (1) toll project;

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

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

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

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

23 (b) In this subchapter, "comprehensive development
24 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 35E/U.S. Highway 67
24 Southern 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 Loop 9 project in Dallas and Ellis Counties
17 from Interstate Highway 20 to U.S. Highway 67; and

18 (12) the U.S. Highway 181 Harbor Bridge project in
19 Nueces County between U.S. Highway 181 at Beach Avenue and
20 Interstate Highway 37.

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

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

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

26 (i) The authority to enter into a comprehensive development
27 agreement expires:

1 (1) August 31, 2017, for a project described by
2 Subsection (f), other than the State Highway 99 (Grand Parkway)
3 project and the State Highway 183 managed lanes project; and

4 (2) [~~expires~~ August 31, 2015, for the State Highway
5 183 managed lanes project.

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

8 (1) for a project other than the State Highway 99
9 (Grand Parkway) project, obtain, not later than August 31, 2017
10 [~~2013~~], the appropriate environmental clearance:

11 (A) for the project; or

12 (B) for the initial or base scope of the project
13 if the project agreement provides for the phased construction of
14 the [~~for any project other than the State Highway 99 (Grand~~
15 ~~Parkway)~~ project; and

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

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

21 (1) the status of the project's environmental
22 clearance;

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

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

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

27 (1) a finding of no significant impact has been issued

1 for the project or, as applicable, for the initial or base scope of
2 the project; or

3 (2) for a project for which an environmental impact
4 statement is prepared, a record of decision has been issued for that
5 project or, as applicable, for the initial or base scope of the
6 project.

7 SECTION 2. Subsections (a), (c), (e), and (f), Section
8 223.2011, Transportation Code, are amended to read as follows:

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

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

15 (2) the U.S. 183 (Bergstrom Expressway) project from
16 Springdale Road to Patton Avenue; ~~[or]~~

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

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

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

22 (4) the Loop 49 project from Interstate 20 to U.S.
23 Highway 69 (Lindale Relief Route) and from State Highway 110 to U.S.
24 Highway 259 (Segments 6 and 7); and

25 (5) the Loop 375 Border Highway West project in El Paso
26 County from Race Track Drive to Interstate Highway 10.

27 (c) Not later than December 1, 2014 ~~[2012]~~, the department

1 or the authority, as applicable, shall provide [~~present~~] a report
2 to the commission on the status of a project described by Subsection
3 (a). The report must include:

4 (1) the status of the project's environmental
5 clearance;

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

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

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

10 (1) a finding of no significant impact has been issued
11 for the project or, as applicable, for the initial or base scope of
12 the project; or

13 (2) for a project for which an environmental impact
14 statement is prepared, a record of decision has been issued for that
15 project or, as applicable, for the initial or base scope of the
16 project.

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

19 SECTION 3. Section 371.101, Transportation Code, is amended
20 to read as follows:

21 Sec. 371.101. TERMINATION FOR CONVENIENCE.

22 (a) A comprehensive development agreement under which a private
23 participant receives the right to operate and collect revenue from
24 a toll project must contain a provision authorizing the toll
25 project entity to terminate the agreement for convenience and to
26 purchase, under terms agreed to by the parties:

27 (1) the interest of the private participant in the

1 comprehensive development agreement; and

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

5 (b) A comprehensive development agreement described by
6 Subsection (a) must include a price breakdown stating a specific
7 price for the purchase of the private participant's interest at
8 specified intervals from the date the toll project opens, of not
9 less than two years and not more than five years, over the term of
10 the agreement.

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

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

16 (2) the greater of:

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

20 (B) an amount equal to the amount of outstanding
21 debt specified in the comprehensive development agreement, plus or
22 minus any other amounts specified in the comprehensive development
23 agreement.

24 (d) A toll project entity shall include in a request for
25 proposals for an agreement described by Subsection (a) a request
26 for the proposed price breakdown described by Subsection (b) and
27 shall assign points to and score each proposer's price breakdown in

1 the evaluation of proposals.

2 (e) A private participant shall, not later than 12 months
3 before the date that a new price interval takes effect, notify the
4 toll project entity of the beginning of the price interval. The
5 toll project entity must notify the private participant as to
6 whether it will exercise the option to purchase under this section
7 not later than six months after the date it receives notice under
8 this subsection.

9 (f) A toll project entity must notify the private
10 participant of the toll project entity's intention to purchase the
11 private participant's interest under this section not less than six
12 months before the date of the purchase.

13 (g) Subsections (b), (c), (d), (e), and (f) do not apply to a
14 project for which a request for proposals was issued before January
15 1, 2013.

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

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

6 ~~[(c) A formula under Subsection (b) may not include any~~
7 ~~estimate of future revenue from the project, if not included in an~~
8 ~~agreed base case financial model under Subsection (b).~~
9 ~~Compensation to the private participant upon termination for~~
10 ~~convenience may not exceed the amount determined using the formula~~
11 ~~under Subsection (b).]~~

12 SECTION 4. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2013.