BILL ANALYSIS

S.B. 792
By: Williams
County Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Several types of local toll authorities exist within the Transportation Code. The first type are County Toll Road Authorities operating under Chapter 284 (Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties). The Harris County Toll Road Authority has provided residents in the greater Houston area with much needed mobility solutions for the growing population in the area. Recently, Montgomery and Fort Bend County have followed suit. Subsequently, leaders in North Texas created the North Texas Turnpike Authority as a regional turnpike authority under Chapter 366, El Paso, Bexar County, Central Texas and North East Texas have created similar local authorities in the form of a Regional Mobility Authority under Chapter 370, all with the purpose of solving transportation issues locally.

Recently, some concern has been raised over the proliferation of Comprehensive Development Agreements to build and operate toll roads. Some of the major issues involve transparency of contracts and the long (50-70 years) duration of these binding contracts. Recently, the Texas Department of Transportation (TxDOT) has sought to take control of certain locally planned projects, preventing locally created tollway authorities from solving their own transportation issues. There is currently no law preventing TxDOT from requiring payment for the use of right-of-way or connection to the state highway system.

S.B. 792 establishes a statewide moratorium on comprehensive development agreements for two years, exempting certain projects in certain areas of the state, and creates a committee to study the policy implications of this transportation funding mechanism.

S.B. 792 grants county toll road authorities and regional tollway authorities the opportunity to complete pending toll projects and extensions of existing projects. For other projects it establishes a market valuation procedure, giving local toll entities with the first option to build projects within their jurisdiction. If local entities do not exercise the option, TXDOT may undertake the projects. But, in either event, the local entity or TXDOT must provide free roads with an estimated construction cost equal to the market valuation of the new toll road project. The market valuation procedure sunsets on August 31, 2011.

S.B. 792 also requires TxDOT to assist county tollway authorities in the completion of its projects by providing right-of-way owned by TxDOT and access to the state highway system by entering into an agreement with the local toll authority. The bill makes further changes to Texas code to carry out the above purposes of the bill.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 792 states a private entity responding to a request for detailed proposals issued under Section 223.203(f), Transportation Code, may submit alternative proposals based on comprehensive development agreements having different terms, with the alternative terms in multiples of 10 years, ranging from 10 years from the final acceptance of the project and start of revenue operations by the private participant to 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private participant, not to exceed a total term of 52 years or any lesser term provided in a comprehensive development agreement.

A comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project may be for a term not longer than 50 years from the final acceptance of the project and start of revenue operations by the private participant. The comprehensive development agreement must contain an explicit mechanism for setting the price for the purchase by the Texas Department of Transportation (department) of the interest of the private participant in the comprehensive development agreement and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

A contract with a private entity that includes the collection by the private entity of a fee for the use of a facility may not be for a term longer than 50 years from the later of the date of final acceptance of the project or start of revenue operations by the private entity, not to exceed a total term of 52 years. The contract must contain an explicit mechanism for setting the price for the purchase by the department of the interest of the private entity in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the contract.

An agreement with a private entity that includes the collection by the private entity of tolls for the use of a transportation project may not be for a term longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity, not to exceed a total term of 52 years. The agreement must contain an explicit mechanism for setting the price for the purchase by the authority of the interest of the private entity in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

The bill states the changes in law made by S.B. 792 apply only to a contract entered into on or after the effective date S.B. 792. A contract entered into before the effective date of S.B. 792 is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

The bill amends Section 223.203(m) and Section 370.306(m) by stating the department or an authority may pay an unsuccessful private entity that submits a responsive proposal in response to a request for detailed proposals under Section 223.203(f) a stipulated amount in exchange for the work product contained in that proposal. A stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions.

The bill states that in Section 223.210, the term "Toll project" means a toll project described by Section 201.001(b), regardless of whether the toll project is a part of the state highway system or is subject to the jurisdiction of the department. The bill also states that in Section 223.210, the term "Toll project entity" means a public entity authorized by law to acquire, design, construct, finance, operate, or maintain a toll project, including the department, a regional tollway authority, a regional mobility authority, or a county.

The bill states a comprehensive development agreement entered into with a private participant by a toll project entity on or after May 1st, 2007, for the acquisition, design, construction, financing, operation, or maintenance of a toll project may not contain a provision permitting the private participant to operate the toll project or collect revenue from the toll project, regardless of whether the private participant operates the toll project or collects the revenue itself or engages a subcontractor or other entity to operate the toll project or collect the revenue.

Section 223.210(b) does not apply to a comprehensive development agreement in connection with a project associated with the highway designated as the Trinity Parkway in the City of Dallas. Also, Section 223.210(b) does not apply to a comprehensive development agreement in connection with a project: (A) that includes one or more managed lane facilities to be added to an existing controlled-access highway; (B) the major portion of which is located in a nonattainment or near nonattainment air quality area as designated by the United States Environmental Protection Agency; and (C) for which the department has issued a request for qualifications before May 1, 2007.

Section 223.210(b) does not apply to a comprehensive development agreement in connection with a project associated with any portion of the Loop 9 project that is located in a nonattainment air quality area as designated by the United States Environmental Protection Agency that includes two adjacent counties that each have a population of one million or more. Section 223.210(b) does not apply to a comprehensive development agreement in connection with a project associated with any portion of the State Highway 99 project. Section 223.210(b) does not apply to a comprehensive development agreement in connection with a project associated with the portion of Interstate Highway 69 project south of the San Antonio River. Section 223.210(b) does not apply to a comprehensive development agreement in connection with the State Highway 161 project in Dallas County.

Notwithstanding the TxDOT/NTTA Regional Protocol entered into between the Texas Department of Transportation and the North Texas Tollway Authority and approved on August 10, 2006, by the authority and on August 24, 2006, by the department, Subsection (b) does not apply to a comprehensive development agreement entered into in connection with State Highway 121 if before the Texas Transportation Commission (commission) or the department enters into a contract for the financing, construction, or operation of the project with a private participant, an authority under Chapter 366 was granted the ability to finance, construct, or operate, as applicable, the portion of the toll project located within the boundaries of the North Texas Tollway Authority, and the authority was granted a period of 60 days from March 26, 2007, to submit a commitment to the metropolitan planning organization which is determined to be equal to or greater than any other commitment submitted prior to March 26, 2007. If the financial value of the commitment is determined to be equal to or greater value than any other commitment submitted prior to March 26, 2007, the commission shall allow the North Texas Tollway Authority to develop the project.

Notwithstanding Section 223.210(c), Section 223.210(b) applies to any toll project or managed lane facility project located on any portion of U.S. Highway 281 that is located in a county with a population of more than one million in which more than 80 percent of the population lives in a single municipality.

The bill states that for purposes of Section 223.210(c)(2), the term "managed lane facility" means a facility that increases the efficiency of a controlled-access highway through various operational and design actions and that allows lane management operations to be adjusted at any time. The term includes high-occupancy vehicle lanes, single-occupant vehicle express lanes, tolled lanes, priced lanes, truck lanes, bypass lanes, dual use facilities, or any combination of those facilities.

The department may not enter into a comprehensive development agreement in connection with a project described by Section 223.210(c)(2) unless the commissioners court of the county in which the majority of the project is located passes a resolution in support of the agreement that states that the commissioners court: (1) acknowledges that the comprehensive development agreement may contain penalties for the construction of future competing transportation projects that are acquired or constructed during the term of the comprehensive development agreement; and (2) knowing of those potential penalties, agrees that the department should execute the comprehensive development agreement.

The bill states that on or after the effective date of Section 223.210, a toll project entity may not sell or enter into a contract to sell a toll project of the entity to a private entity.

The bill creates a legislative study committee. The committee is composed of nine members, appointed as follows: (1) three members appointed by the lieutenant governor; (2) three members appointed by the speaker of the house of representatives; and (3) three members appointed by the governor. The legislative study committee shall select a presiding officer from among its members and conduct public hearings and study the public policy implications of including in a comprehensive development agreement entered into by a toll project entity with a private participant in connection with a toll project a provision that permits the private participant to operate and collect revenue from the toll project. In addition, the committee shall examine the public policy implications of selling an existing and operating toll project to a private entity.

Not later than December 1, 2008, the legislative study committee shall prepare a written report summarizing any hearings conducted by the committee, any legislation proposed by the committee, the committee's recommendations for safeguards and protections of the public's interest when a contract for the sale of a toll project to a private entity is entered into, and any other

findings or recommendations of the committee. Not later than December 1, 2008, the legislative study committee shall deliver a copy of the report to the governor, the lieutenant governor, and the speaker of the house of representatives. On December 31, 2008, the legislative study committee created under this section is abolished.

The bill states Section 223.210 expires September 1, 2009.

Section 223.210(b) does not apply to a project that is located in a county with a population of 300,000 or more and is adjacent to an international border.

Except as provided by Section 223.201(g) and Section 223.201(h), the authority to enter into comprehensive development agreements provided by this section expires on August 31, 2009. Section 223.201(f) does not apply to a comprehensive development agreement that does not grant a private participate a right to finance a toll project or a comprehensive development agreement in connection with a project: (1) that includes one or more managed lane facilities to be added to an existing controlled-access highway; (2) the major portion of which is located in a nonattainment or near-nonattainment air quality area as designated by the United States Environmental Protection Agency; and (3) for which the department has issued a request for qualifications before May 1, 2007. The authority to enter into a comprehensive development agreement for a project exempted from the application of Section 223.201(f) or Section 223.210(b) expires on August 31, 2011.

Except as provided by Section 370.305(e) and Section 370.305(f) , the authority to enter into comprehensive development agreements provided by this section expires on August 31, 2009. Section 370.305(d) does not apply to a comprehensive development agreement that does not grant a private participant a right to finance a toll project or a comprehensive development agreement in connection with a project: (1) that includes one or more managed lane facilities to be added to an existing controlled-access highway; (2) the major portion of which is located in a nonattainment or near-nonattainment air quality area as designated by the United States Environmental Protection Agency; and (3) for which the department has issued a request for qualifications before the effective date of Section 370.305. The authority to enter into a comprehensive development agreement for a project exempted from the application of Section 370.305(d) or Section 223.210(b) expires on August 31, 2011.

The bill states the department shall seek to achieve transparency in the department's functions related to the Trans-Texas Corridor by providing, to the greatest extent possible under the public information law (Chapter 552, Government Code) and other statutes governing the access to records, public access to information collected, assembled, or maintained by the department relating to the Trans-Texas Corridor;

Also, the bill states the department shall make public in a timely manner all documents, plans, and contracts related to the Trans-Texas Corridor, and make public in a timely manner all updates to the master development plan for the Trans-Texas Corridor, including financial plans. The department shall send electronic versions of all updates to the master development plan for the Trans-Texas Corridor to the Governor's Office of Budget and Planning, the Senate Finance Committee, the House Appropriations Committee, the Legislative Budget Board, the state auditor's office, and the comptroller in a timely manner.

The department shall post on the department's Internet website, in a timely manner, the costs incurred by the department in connection with the financing, design, construction, maintenance, or operation of the Trans-Texas Corridor. Not later than the 10th day after the date the department enters into a contract relating to the Trans-Texas Corridor, the department shall post a copy of the contract on the department's Internet website.

The bill states payments, project savings, refinancing dividends, any other revenues received by the commission or the department under a comprehensive development agreement shall be used by the commission or the department to finance the construction, maintenance, or operation of transportation projects or air quality projects in the region. The department shall allocate the distribution of funds to department districts in the region that are located within the boundaries of the metropolitan planning organization in which the project that is the subject of the comprehensive development agreement is located based on the percentage of toll revenue from users, from each department district, of the project. To assist the department in determining the

allocation, each entity responsible for collecting tolls for a project shall calculate on an annual basis the percentage of toll revenue from users of the project from each department district based on the number of recorded electronic toll collections.

The commission or the department may not revise the formula as provided in the department's unified transportation program, or its successor document, in a manner that results in a decrease of a department district's allocation because of a payment under Section 228.0055(a), Transportation Code, or take any other action that would reduce funding allocated to a department district because of payments received under a comprehensive development agreement. A metropolitan planning organization may not take any action that would reduce distribution of funds or other resources to a department district because of the use of a payment or other revenue under Section 228.0055(a).

The bill states Section 228.011 only applies to a county acting under Chapter 284 and the development, construction and operation of the following toll projects or a component of a project, or the functional equivalent of that project: (1) Beltway 8 Tollway East, between US 59 North and US 90 East; (2) Hardy Downtown Connector, consisting of the proposed direct connection from the Hardy Toll Road southern terminus at Loop 610 to downtown Houston; (3) State Highway 288, between US 59 and Grand Parkway South (State Highway 99); (4) US 290 Toll Lanes, between IH 610 West and the Grand Parkway Northwest (State Highway 99); (5) Fairmont Parkway East, between Beltway 8 East and Grand Parkway East (State Highway 99); (6) South Post Oak Road Extension, between IH 610 South and near the intersection of Beltway 8 and Hillcroft in the vicinity of the Fort Bend Parkway Tollway; (7) Westpark Toll Road Phase II, between Grand Parkway (State Highway 99) and FM 1623; and (8) Fort Bend Parkway, between State Highway 6 and the Brazos River.

The bill states the county is the entity with the primary responsibility for the financing, construction, and operation of a toll project located in the county. A county may develop, construct, and operate the projects described in Section 228.011(a), at any time, regardless of whether it receives a first option notice from the commission or the department under Section 228.011(e).

Consistent with federal law, the department shall assist the county in the financing, construction, and operation of a toll project in the county by allowing the county to use state highway right-of-way owned by the department and to access the state highway system. The commission and the department may not require the county to pay for the use of the right-of-way or access, except to reimburse the commission or the department as provided in Section 228.011(b-1). The county shall pay an amount to reimburse the department for the department's actual costs to acquire the right-of-way. If the department cannot determine that amount, the amount shall be determined based on the average historical right-of-way acquisition values for right-of-way located in proximity to the project as of the date of original purchase of the right-of-way. All funds received by the department shall be deposited in the state highway fund and used in the department district in which the project is located.

The department and the county must enter into an agreement that includes reasonable terms to accommodate that use of the right-of-way by the county and to protect the interests of the commission and the department in the use of the right-of-way for operations of the department, including public safety and congestion mitigation on the right-of-way. Section 228.011(b) does not limit the authority of the commission or the department to participate in the cost of acquiring, constructing, maintaining, or operating a turnpike project of the county under Chapter 284.

Before the department may enter into a contract for the financing, construction, or operation of a proposed or existing toll project any part of which is located in the county, the commission or department shall provide the county the first option to finance, construct, or operate, as applicable, the portion of the toll project located in the county on terms agreeable to the county and in a manner determined by the county to be consistent with the practices and procedures by which the county finances, constructs, or operates a project.

A county's right to exercise the first option under Section 228.011(e) is effective for six months after the date of the receipt by the county of written notification from the commission or the department meeting the requirements of Section 228.011(e) and describing in reasonable detail the location of the toll project, a projected cost estimate, sources and uses of funds, and a

construction schedule. If a county exercises the first option with respect to a toll project, the county must enter into one or more contracts for the financing, construction, or operation of the toll project within two years after the date on which all environmental requirements necessary for the development of the project are secured and all legal challenges to development are concluded. A contract may include agreements for design of the project, acquisition of right-of-way, and utility relocation. If the county does not enter into a contract within the two-year period, the commission or the department may enter into a contract for the financing, construction, or operation of the toll project with a different entity.

An agreement entered into by the county and the department in connection with a project under Chapter 284 that is financed, constructed, or operated by the county and that is on or directly connected to a highway in the state highway system does not create a joint enterprise for liability purposes. If the county approves, the commission may remove any right-of-way to be used by a county under Section 228.011 from the state highway system. If the right-of-way remains a part of the state highway system, the county must comply with department design and construction standards.

Notwithstanding an action of a county taken under Section 228.011, the commission or department may take any action that is necessary in its reasonable judgment to comply with any federal requirement to enable the state to receive federal-aid highway funds. Notwithstanding any other law, the commission and the department are not liable for any damages that result from a county's use of state highway right-of-way or access to the state highway system under this section, regardless of the legal theory, statute, or cause of action under which liability is asserted.

The bill states in Section 228.0111, the term “Toll project entity” means a regional tollway authority under Chapter 366, a regional mobility authority under Chapter 370, or a county acting under Chapter 284. In Section 228.0111, the term “Market valuation” means the valuation of a toll project that is based on the terms and conditions established mutually by a toll project entity and the department for the development, construction and operation of a toll project, including the initial toll rate and the toll rate escalation methodology, and that takes into account a traffic and revenue study of the toll project using agreed-upon assumptions, an agreed project scope, market research, the estimated cost to finance, construct, maintain, and operate the project, and other information determined appropriate by the toll project entity and the department. In Section 228.0111, the term “Region” has the meaning assigned by Section 228.001, except that the region of a county acting under Chapter 284 is composed of that county and the counties that are contiguous to that county. In Section 228.0111, the term “Toll project subaccount” means a subaccount created under Section 228.012.

Section 228.0111 does not apply to a toll project described in Section 228.011(a). A toll project entity is the entity that has primary responsibility for the financing, construction, and operation of a toll project located within its boundaries. Section 228.0111(c) does not limit the authority of the commission or the department to participate in the cost of acquiring, constructing, maintaining, or operating a toll project of a toll project entity.

Except as provided in Section 228.0111(e), if a toll project entity or the department determines that a toll project located within the boundaries of the toll project entity should be developed, constructed, and operated as a toll project, the toll project entity and the department mutually shall agree on the terms and conditions for the development, construction and operation of the toll project, including the initial toll rate and the toll rate escalation methodology. The terms and conditions for the procurement and operation of the State Highway 99 project shall be approved by the metropolitan planning organization within whose boundaries the project is located.

If the local toll project entity and the department are unable to mutually agree on the terms and conditions for the development, construction, and operation of the toll project as required by Section 228.0111(e), neither the local toll project entity or the department may develop the project as a toll project.

After agreeing on terms and conditions for a toll project under Section 228.0111(e), or after metropolitan planning organization approval of terms and conditions for the State Highway 99 project, the toll project entity and the department mutually shall determine which entity, including a third party under contract with the local toll project entity or the department, will develop a market valuation of the local toll project that is based on the terms and conditions

established under Section 228.0111(e). The department and the toll project entity have 90 days after the date of the receipt of a final draft version of the market valuation designated as "complete; subject to approval by the Texas Department of Transportation and (name of local toll project entity)" to mutually approve the market valuation included in the draft version or, in the alternative, negotiate and agree on a different market valuation. If the department and the toll project entity are unable to mutually determine which entity will develop the market valuation of the toll project under Section 228.0111(f), neither the department or the local toll project entity may develop, construct, or operate the project as a toll project.

A local toll project entity has the first option to develop, finance, construct, and operate a toll project under the terms and conditions established under Section 228.0111(e). A local toll project entity, other than a regional mobility authority under Chapter 370, has six months after the date that the market valuation is mutually approved under Section 228.0111(f) to decide whether to exercise the option. For a project proposed to be located within the boundaries of a regional mobility authority under Chapter 370, after the market valuation is final under Section 228.0111(f), the metropolitan planning organization for the region shall determine whether the toll project should be developed using the business terms incorporated in the market valuation. If the metropolitan planning organization determines that the toll project should be developed using the business terms in the market valuation, the regional mobility authority has six months after the date the metropolitan planning organization decides whether to exercise the option to develop the project.

If a local toll project entity exercises the option with respect to a toll project under this Section 228.0111(g), the toll project entity, after exercising the option and within two years after the date on which all environmental requirements necessary for the development of the toll project are secured and all legal challenges to development are concluded, must enter into a contract for the construction of the toll project and either: (A) commit to make a payment into a toll project subaccount in an amount equal to the value of the toll project as determined in the market valuation, to be used by the department to finance the construction of additional transportation projects in the region in which the toll project is located; (B) commit to construct, within the time period agreed to by the toll project entity and the department, additional transportation projects in the region in which the toll project is located with estimated construction costs equal to the market valuation of the toll project; or (C) for a toll project entity operating under Chapter 370, commit to using, for a period of time to be agreed upon by the department and the toll project entity, all surplus revenues from the toll project for the purposes defined in Section 370.174(b) in an amount equal to the valuation of the project.

If a local toll project entity exercises the option with respect to a toll project under Section 228.0111(g), and has not yet begun the environmental review of the project, the toll project entity shall begin the environmental review within six months of exercising the option.

If a local toll project entity does not exercise the option to develop, finance, construct, and operate a toll project under Section 228.0111(g), or does not enter into a contract for the construction of the project and make a commitment described in Section 228.0111(g)(2) within the two-year period prescribed in Section 228.0111(g), the department shall be given the option to develop, finance, construct, and operate the toll project under the terms and conditions agreed to under Section 228.0111(e). The department has two months after the date the toll project entity fails to exercise its option or enter into a construction contract and make a commitment described in Section 228.0111(g)(2) to decide whether to exercise the option.

If the department exercises the option with respect to a toll project under Section 228.0111(i), the department, after exercising the option and within two years after the date on which all environmental requirements necessary for the development of the project are secured and all legal challenges to such development are secured and all legal challenges to such development are concluded, must enter into a contract for the construction of the toll project and either: (A) commit to make a payment into the toll project subaccount in an amount equal to the value of the toll project as determined in the market valuation, to be used by the department to finance the construction of additional transportation projects in the region in which the toll project is located; or (B) commit to construct, within the time period agreed to by the toll project entity and the department, additional transportation projects in the region in which the toll project is located with estimated construction costs equal to the market valuation of the toll project.

If the department does not exercise the option to develop, finance, construct, and operate a toll project under Section 228.0111(i), or does not enter into a contract for the construction of the project and make a commitment described in Section 228.0111(i)(2) within the two-year period prescribed in Section 228.0111(i), the toll project entity and the department may meet again for the purpose of agreeing on revised terms and conditions for the development, construction and operation of the toll project, and the toll project entity and the department shall follow the process prescribed in Section 228.0111(f)-(i).

Consistent with federal law, the commission and the department shall assist a toll project entity in the development, financing, construction, and operation of a toll project for which the toll project entity has exercised its option to develop, finance, construct, and operate the project under Section 228.0111(g) by allowing the toll project entity to use state highway right-of-way and to access the state highway system as necessary to construct and operate the toll project. Notwithstanding any other law, the toll project entity and the commission may agree to remove the project from the state highway system and transfer ownership to the local toll project entity. The commission and the department may not require a toll project entity to pay for the use of the right-of-way or access, except to reimburse the commission or the department for actual costs incurred or to be incurred by the department that are owed to a third party, including the federal government, as a result of that use by the local toll project entity.

If a local toll project entity exercises its option to develop, construct and operate a toll project under Section 228.0111, the following shall be deducted from the amount of the toll project entity commitment under Section 228.0111(g)(2): an amount equal to the amount reimbursed under this section, if any; and with respect to a county operating under Chapter 284, an amount equal to the costs of any road, street, or highway projects undertaken by the county under Section 284.0031 before the acceptance of the market valuation, if the county requests a deduct and specifies in reasonable detail a description and cost of the project or projects and the department agrees that any such road, street, or highway project constitutes an additional transportation project under Subsection (g)(2)(B).

A local toll project entity shall enter into an agreement with the department for any project for which the entity has exercised its option to develop, finance, construct, and operate the project under Section 228.0111(g) and for which the entity intends to use state highway right-of-way. An agreement entered into under Section 228.0111(l) shall contain provisions necessary to ensure that the toll project entity's construction, maintenance, and operation of the project complies with the requirements of applicable federal and state law.

Notwithstanding any other law, the commission and the department are not liable for any damages that result from a toll project entity's use of state highway right-of-way or access to the state highway system under Section 228.0111, regardless of the legal theory, statute, or cause of action under which liability is asserted. An agreement entered into by a toll project entity and the department in connection with a toll project that is financed, constructed, or operated by the toll project entity and that is on or directly connected to a highway in the state highway system does not create a joint enterprise for liability purposes. Notwithstanding an action of a toll project entity taken under Section 228.0111, the commission or department may take any action that in its reasonable judgment is necessary to comply with any federal requirement to enable the state to receive federal-aid highway funds.

A local toll project entity and the department may issue bonds, including revenue bonds and refunding bonds, or other obligations, and enter into credit agreements, to pay any costs associated with a project under Section 228.0111, including the costs of payments into the toll project subaccount and the costs to construct, maintain, and operate additional transportation projects that either the toll project entity or the department commit to undertake in accordance with Section 228.0111, as follows: (1) the bonds or other obligations and the proceedings authorizing the bonds or other obligations shall be submitted to the attorney general for review and approval as required by Chapter 1202, Government Code; (2) the bonds or other obligations may be payable from and secured by revenues of one or more projects of the toll project entity or the department, including toll road system revenues, or such other legally available revenues or funding sources as the toll project entity or department shall determine; (3) the bonds or other obligations may mature serially or otherwise not more than 30 years from their date of issuance; (4) the bonds or other obligations are not a debt of and do not create a claim for payment against

the revenue or property of the toll road project entity or the department, other than the revenue sources pledged for which the bonds or other obligations are issued; (5) the toll project entity and the department may issue obligations and enter into credit agreements under Chapter 1371, Government Code, and for purposes of that chapter, a local toll project entity and the department shall be deemed a public utility and any cost authorized to be financed in accordance with this Section 228.0111(p), Transportation Code, is an eligible project.

The provisions in Section 228.0111 requiring metropolitan planning organization approval of terms and conditions for the State Highway 99 project expire on August 31, 2009. Section 228.0111 expires August 31, 2011.

Section 228.0111 does not apply to: (1) any project for which the department has issued a request for qualifications or request for competing proposals and qualifications prior to May 1, 2007, except for the SH 161 project in Dallas County; (2) the eastern extension of the President George Bush Turnpike from SH 78 to IH 30 in Dallas County; (3) the Phase 3 and 4 extensions of the Dallas North Tollway in Collin and Denton Counties from SH 121 to the Grayson County line, as well as a planned future extension into Grayson County; (4) the Lewisville Lake Bridge (and portions of FM 720 widening projects) in Denton County; or (5) the Southwest Parkway (SH 121) in Tarrant County from Dirks Road/Altamesa Boulevard to IH 30.

The department shall create an account in the state highway fund for the purpose of holding payments received by the department under a comprehensive development agreement, the surplus revenue of a toll project or system, and payments received under Section 228.0111(g)(2) and (i)(2). The department shall create subaccounts within the account for each project, system, or region. Interest earned on money in a subaccount shall be deposited to the credit of that subaccount. The department shall hold moneyin a subaccount in trust for the benefit of the region in which a project or system is located and may assign the responsibility for allocating money held in a subaccount to a metropolitan planning organization whose boundaries include that region. Except as provided by Section 228.012(c), money shall be allocated to projects authorized under Section 228.0055 or Section 228.006, as applicable.

Money in a subaccount received from a county or the department under Section 228.0111 in connection with a project for which a county acting under Chapter 284 has the first option shall be allocated to transportation projects located within the county and the counties contiguous to that county. Not later than January 1st of each odd numbered year, the department shall submit to the Legislative Budget Board, in the format prescribed by the Legislative Budget Board, a report on cash balances in subaccounts created under Section 228.012 and expenditures made with money in those subaccounts. The commission or the department may not revise the formula as provided in the department's unified transportation program or its successor document in a manner that results in a decrease of a department district's allocation because of a payment into a project subaccount or a commitment to undertake an additional transportation project under Section 228.0111; or take any other action that would reduce funding allocated to a department district because of the deposit of a payment received from the department or local toll project entity into a project subaccount or a commitment to undertake an additional transportation project under Section 228.0111.

The bill states Section 228.0111 applies to a project associated with State Highway 161 in Dallas County.

Under Section 284.001, the term "Project" is expanded to include a turnpike project or system, as those terms are defined by Section 370.003.

The bill states a county, acting through the commissioners court of the county, or a local government corporation, without state approval, supervision, or regulation, may: in connection with a project, on adoption of an order exercise the powers of a regional mobility authority operating under Chapter 370; or enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a proposed or existing project in the county to the extent and in the manner applicable to the department under Chapter 223 or to a regional tollway authority under Chapter 366.

The county or a local government corporation may exercise a power provided by Section 284.003(a)(6) only in a manner consistent with the other powers provided by Chapter 284. To the extent of a conflict between Chapter 284 and Chapter 370, Chapter 284 prevails.

A project or any portion of a project that is owned by the county and licensed or leased to a private entity or operated by a private entity under Chapter 284 to provide transportation services to the general public is public property used for a public purpose and exempt from taxation by this state or a political subdivision of this state. If the county constructs, acquires, improves, operates, maintains, or pools a project under Chapter 284, before December 31 of each even-numbered year the county shall submit to the department a plan for the project that includes the time schedule for the project and describes the use of project funds. The plan may provide for and permit the use of project funds and other money, including state or federal funds, available to the county for roads, streets, highways, and other related facilities in the county that are not part of a project under Chapter 284. A plan is not subject to approval, supervision, or regulation by the commission or the department, except that: any use of state or federal highway funds must be approved by the commission; any work on a highway on the state highway system must be approved by the department; and the department shall supervise and regulate work on a highway on the state highway system.

Except as provided by federal law, an action of a county taken under Chapter 284 is not subject to approval, supervision, or regulation by a metropolitan planning organization. The county may enter into a protocol or other agreement with the commission or the department to implement Section 284.003 through the cooperation of the parties to the agreement. An action of a county taken under Chapter 284 must comply with the requirements of applicable federal law. The foregoing compliance requirement shall apply to the role of metropolitan planning organizations under federal law, including the approval of projects for conformity to the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way of and access to federal-aid highways. Notwithstanding an action of a county taken under Chapter 284, the commission or department may take any action that is necessary to comply with any federal requirement to enable the state to receive federal-aid highway funds.

The commissioners court of a county or a local government corporation, without state approval, supervision, or regulation may authorize the use or pledge of surplus revenue to pay or finance the costs of a project for the study, design, construction, maintenance, repair, or operation of roads, streets, highways, or other related facilities that are not part of a project under this chapter; and prescribe terms for the use of the surplus revenue, including the manner in which revenue from a project becomes surplus revenue and the manner in which the roads, streets, highways, or other related facilities are to be studied, designed, constructed, maintained, repaired, or operated.

To implement Section 284.0031, a county may enter into an agreement with the commission, the department, a local governmental entity, or another political subdivision of this state. A county may not take an action under Section 284.0031 that violates or impairs a bond resolution, trust agreement, or indenture that governs the use of the revenue of a project. Except as provided by Section 284.0031, a county has the same powers, including the powers to finance and to encumber surplus revenue, and may use the same procedures with respect to the study, financing, design, construction, maintenance, repair, or operation of a road, street, highway, or other related facility under Section 284.0031 as are available to the county with respect to a project under Chapter 284. Notwithstanding other provisions of Section 284.0031, any work on a highway on the state highway system must be approved by the department and the department shall supervise and regulate work on a highway on the state highway system.

If a county is requested by the commission to participate in the development of a project under Chapter 284 that has been designated as part of the Trans-Texas Corridor, the county has, in addition to all powers granted in Chapter 284, all powers of the department related to the development of a project that has been designated as part of the Trans-Texas Corridor.

In addition to authority granted by other law, a county may use state highway right-of-way and may access state highway right-of-way in accordance with Sections 228.011 and 228.0111. Except as provided by Sections 284.008(d), a project becomes a part of the state highway system and the commission shall maintain the project without tolls when: (1) all of the bonds and interest on the bonds that are payable from or secured by revenues of the project have been paid by the issuer of the bonds or another person with the consent or approval of the issuer; or (2) a

sufficient amount for the payment of all bonds and the interest on the bonds to maturity has been set aside by the issuer of the bonds or another person with the consent or approval of the issuer in a trust fund held for the benefit of the bondholders.

A county may request that the commission adopt an order stating that a project will not become part of the state highway system under Sections 284.008(c). The bill states an existing project may be pooled in whole or in part with a new project or another existing project.

Under Section 366.003, the term "Surplus revenue" means the revenue of a turnpike project or system remaining at the end of any fiscal year after all required payments and deposits have been made in accordance with all bond resolutions, trust agreements, indentures, credit agreements, or other instruments and contractual obligations of the authority payable from the revenue of the turnpike project or system.

The bill states an action of an authority taken under Chapter 336 must comply with the requirements of applicable federal law. The foregoing compliance requirement shall apply to the role of metropolitan planning organizations under federal law, including the approval of projects for conformity to the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way of and access to federal-aid highways. Notwithstanding an action of an authority taken under Chapter 336, the commission or department may take any action that in its reasonable judgment is necessary to comply with any federal requirement to enable the state to receive federal-aid highway funds.

The bill states an authority may use a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a turnpike project. A comprehensive development agreement is an agreement with a private entity that, at a minimum, provides for the design, construction, rehabilitation, expansion, or improvement of a turnpike project and may also provide for the financing, acquisition, maintenance, or operation of a turnpike project. An authority may negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement. An authority may authorize the investment of public and private money, including debt and equity participation, to finance a function described by Section 366.401.

If an authority enters into a comprehensive development agreement, the authority shall use a competitive procurement process that provides the best value for the authority. An authority may accept unsolicited proposals for a proposed turnpike project or solicit proposals in accordance with Section 366.402. An authority shall establish rules and procedures for accepting unsolicited proposals that require the private entity to include in the proposal: (1) information regarding the proposed project location, scope, and limits; (2) information regarding the private entity's qualifications, experience, technical competence, and capability to develop the project; and (3) any other information the authority considers relevant or necessary.

An authority shall publish a notice advertising a request for competing proposals and qualifications in the Texas Register that includes the criteria to be used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which proposals must be received if the authority decides to issue a request for qualifications for a proposed project, or the authority authorizes the further evaluation of an unsolicited proposal. A proposal submitted in response to a request published under Section 366.402(c) must contain, at a minimum, the information required by Section 366.402(b)(2) and (3).

An authority may interview a private entity submitting an unsolicited proposal or responding to a request under Section 366.402(c). The authority shall evaluate each proposal based on the criteria described in the request for competing proposals and qualifications and may qualify or shortlist private entities to submit detailed proposals under Section 366.402(f). The authority must qualify or shortlist at least two private entities to submit detailed proposals for a project under Section 366.402(f) unless the authority does not receive more than one proposal or one response to a request under Section 366.402(c).

An authority shall issue a request for detailed proposals from all private entities qualified or shortlisted under Section 366.402(e) if the authority proceeds with the further evaluation of a proposed project. A request under this subsection may require additional information the authority considers relevant or necessary, including information relating to: (1) the private

entity's qualifications and demonstrated technical competence; (2) the feasibility of developing the project as proposed; (3) engineering or architectural designs; (4) the private entity's ability to meet schedules; or (5) a financial plan, including costing methodology and cost proposals.

In issuing a request for proposals under Section 366.402(f), an authority may solicit input from entities qualified under Section 366.402(e) or any other person. An authority may also solicit input regarding alternative technical concepts after issuing a request under Section 366.402(f). An authority shall evaluate each proposal based on the criteria described in the request for detailed proposals and select the private entity whose proposal offers the apparent best value to the authority. An authority may enter into negotiations with the private entity whose proposal offers the apparent best value. If at any point in negotiations under Section 366.402(i), it appears to the authority that the highest ranking proposal will not provide the authority with the overall best value, the authority may enter into negotiations with the private entity submitting the next-highest-ranking proposal. An authority may withdraw a request for competing proposals and qualifications or a request for detailed proposals at any time. The authority may then publish a new request for competing proposals and qualifications. An authority may require that an unsolicited proposal be accompanied by a nonrefundable fee sufficient to cover all or part of its cost to review the proposal.

An authority may pay an unsuccessful private entity that submits a responsive proposal in response to a request for detailed proposals under Section 366.402(f) a stipulated amount in exchange for the work product contained in that proposal. A stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the authority, be used by the authority in the performance of its functions. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipulated amount under this subsection. After payment of the stipulated amount, the authority, with the unsuccessful private entity, jointly owns the rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the project design; and the use by the unsuccessful private entity of any portion of the work product contained in the proposal is at the sole risk of the unsuccessful private entity and does not confer liability on the authority.

An authority may prescribe the general form of a comprehensive development agreement and may include any matter the authority considers advantageous to the authority. The authority and the private entity shall finalize the specific terms of a comprehensive development agreement. Section 366.185 and Subchapter A, Chapter 223, Transportation Code, and Chapter 2254, Government Code, do not apply to a comprehensive development agreement entered into under Subchapter H, Chapter 336, Transportation Code.

To encourage private entities to submit proposals under Subchapter H, Chapter 336, the following information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project is entered into: (1) all or part of a proposal that is submitted by a private entity for a comprehensive development agreement, except information provided under Sections 366.402(b)(1) and (2), Transportation Code, unless the private entity consents to the disclosure of the information; (2) supplemental information or material submitted by a private entity in connection with a proposal for a comprehensive development agreement unless the private entity consents to the disclosure of the information or material; and (3) information created or collected by an authority or its agent during consideration of a proposal for a comprehensive development agreement or during the authority's preparation of a proposal to the department relating to a comprehensive development agreement. After an authority completes its final ranking of proposals under Section 366.402(h), the final rankings of each proposal under each of the published criteria are not confidential.

Notwithstanding the requirements of Subchapter B, Chapter 2253, Government Code, an authority shall require a private entity entering into a comprehensive development agreement under Subchapter H, Chapter 336, Transportation Code, to provide a performance and payment bond or an alternative form of security in an amount sufficient to ensure the proper performance of the agreement and protect: (1) the authority; and (2) payment bond beneficiaries who have a

direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

A performance and payment bond or alternative form of security shall be in an amount equal to the cost of constructing or maintaining the project. If an authority determines that it is impracticable for a private entity to provide security in the amount described by Section 366.404(b), the authority shall set the amount of the bonds or the alternative forms of security. A payment or performance bond or alternative form of security is not required for the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property. The amount of the payment security must not be less than the amount of the performance security.

In addition to, or instead of, performance and payment bonds, an authority may require the following alternative forms of security: (1) a cashier's check drawn on a financial entity specified by the authority; (2) a United States bond or note; (3) an irrevocable bank letter of credit; or (4) any other form of security determined suitable by the authority. An authority by rule shall prescribe requirements for alternative forms of security provided under Section 366.404.

A turnpike project that is the subject of a comprehensive development agreement with a private entity, including the facilities acquired or constructed on the project, is public property and is owned by the authority. Notwithstanding Section 366.405(a), an authority may enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a turnpike project, including supplemental facilities. At the termination of the agreement, the turnpike project, including the facilities, are to be in a state of proper maintenance as determined by the authority and shall be returned to the authority in satisfactory condition at no further cost. An authority may not incur a financial obligation for a private entity that designs, develops, finances, constructs, operates, or maintains a turnpike project. The authority or a political subdivision of the state is not liable for any financial or other obligation of a turnpike project solely because a private entity constructs, finances, or operates any part of the project.

An authority shall negotiate the terms of private participation in a turnpike project under Subchapter H, Chapter 336, including: (1) methods to determine the applicable cost, profit, and project distribution among the private participants and the authority; (2) reasonable methods to determine and classify toll rates and the responsibility for setting toll rates; (3) acceptable safety and policing standards; and (4) other applicable professional, consulting, construction, operation, and maintenance standards, expenses, and costs.

A comprehensive development agreement entered into under Subchapter H, Chapter 336 may include any provision the authority considers appropriate, including a provision: (1) providing for the purchase by the authority, under terms and conditions agreed to by the parties, of the interest of a private participant in the comprehensive development agreement and related property, including any interest in a turnpike project designed, developed, financed, constructed, operated, or maintained under the comprehensive development agreement; (2) establishing the purchase price, as determined in accordance with the methodology established by the parties in the comprehensive development agreement, for the interest of a private participant in the comprehensive development agreement and related property; (3) providing for the payment of an obligation incurred under the comprehensive development agreement, including an obligation to pay the purchase price for the interest of a private participant in the comprehensive development agreement, from any available source, including securing the obligation by a pledge of revenues of the authority derived from the applicable project, which pledge shall have priority as established by the authority; (4) permitting the private participant to pledge its rights under the comprehensive development agreement; (5) concerning the private participant's right to operate and collect revenue from the turnpike project; and (6) restricting the right of the authority to terminate the private participant's right to operate and collect revenue from the turnpike project unless and until any applicable termination payments have been made.

An authority may enter into a comprehensive development agreement under Subchapter H, Chapter 336 with a private participant only if the project is identified in the department's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan. Section 366.406 does not apply to an obligation of an authority under a

comprehensive development agreement, nor is an authority otherwise constrained from issuing bonds or other financial obligations for a turnpike project payable solely from revenues of that turnpike project or from amounts received under a comprehensive development agreement.

Notwithstanding any other law, and subject to compliance with the dispute resolution procedures set out in the comprehensive development agreement, an obligation of an authority under a comprehensive development agreement entered into under Subchapter H, Chapter 336 to make or secure payments to a person because of the termination of the agreement, including the purchase of the interest of a private participant or other investor in a project, may be enforced by mandamus against the authority in a district court of any county of the authority, and the sovereign immunity of the authority is waived for that purpose. The district courts of any county of the authority shall have exclusive jurisdiction and venue over and to determine and adjudicate all issues necessary to adjudicate any action brought under Section 366.407(e). The remedy provided by Section 366.407(e) is in addition to any legal and equitable remedies that may be available to a party to a comprehensive development agreement.

If an authority enters into a comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project, the private participant shall submit to the authority for approval: (1) the methodology for the setting of tolls and increasing the amount of the tolls; (2) a plan outlining methods the private participant will use to collect the tolls, including any charge to be imposed as a penalty for late payment of a toll and any charge to be imposed to recover the cost of collecting a delinquent toll; and (3) any proposed change in an approved methodology for the setting of a toll or a plan for collecting the toll.

Except as provided by Section 366.407, a comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project may be for a term not longer than 50 years from the final acceptance of the project and start of revenue operations by the private entity, not to exceed a total term of 52 years. The contract must contain an explicit mechanism for setting the price for the purchase by the department of the interest of the private entity in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the contract.

To promote fairness, obtain private participants in turnpike projects, and promote confidence among those participants, an authority shall adopt rules, procedures, and other guidelines governing selection of private participants for comprehensive development agreements and negotiations of comprehensive development agreements. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts. An authority shall have up-to-date procedures for participation in negotiations under Subchapter H, Chapter 336. An authority has exclusive judgment to determine the terms of an agreement.

Payments received by an authority under a comprehensive development agreement shall be used by the authority to finance the construction, maintenance, or operation of a turnpike project or a highway. The authority shall allocate the distribution of funds received under Section 366.409(a) to the counties of the authority based on the percentage of toll revenue from users, from each county, of the project that is the subject of the comprehensive development agreement. To assist the authority in determining the allocation, each entity responsible for collecting tolls for a project shall calculate on an annual basis the percentage of toll revenue from users of the project from each county within the authority based on the number of recorded electronic toll collections.

The bill states an authority may rent, lease, franchise, license, or otherwise make portions of any property of the authority, including tangible or intangible property, available for use by others in furtherance of its powers under this chapter by increasing the feasibility or efficient operation of a turnpike project or system or the revenue of the authority.

In addition to the powers granted under Chapter 336 and without supervision or regulation by any state agency or local governmental entity, but subject to an agreement entered into under Section 366.037(c), the board of an authority may by resolution, and on making the findings set forth in this Section 366.037(a), authorize the use of surplus revenue of a turnpike project or system for the study, design, construction, maintenance, repair, and operation of a highway or

similar facility that is not a turnpike project if the highway or similar facility is: (1) situated in a county in which the authority is authorized to design, construct, and operate a turnpike project; (2) anticipated to either: (A) enhance the operation or revenue of an existing, or the feasibility of a proposed, turnpike project by bringing traffic to that turnpike project or enhancing the flow of traffic either on that turnpike project or to or from that turnpike project to another facility; or (B) ameliorate the impact of an existing or proposed turnpike project by enhancing the capability of another facility to handle traffic traveling, or anticipated to travel, to or from that turnpike project; and (3) not anticipated to result in an overall reduction of revenue of any turnpike project or system.

The board in the resolution may prescribe terms for the use of the surplus revenue, including the manner in which the highway or related facility shall be studied, designed, constructed, maintained, repaired, or operated. An authority shall enter into an agreement to implement Section 366.037 with the department, the commission, a local governmental entity, or another political subdivision that owns a street, road, alley, or highway that is directly affected by the authority's turnpike project or related facility. An authority may not take an action under this section that violates, impairs, or is inconsistent with a bond resolution, trust agreement, or indenture governing the use of the revenue of a turnpike project or system; or commit in any fiscal year expenditures under Section 366.037 exceeding 10 percent of its surplus revenue from the preceding fiscal year.

In authorizing expenditures under Section 366.037, the board shall consider balancing throughout the counties of the authority the application of funds generated by its turnpike projects and systems, taking into account where those amounts are already committed or programmed as a result of this section or otherwise; and connectivity to an existing or proposed turnpike project or system. Except as provided by Section 366.037, an authority has the same powers and may use the same procedures with respect to the study, financing, design, construction, maintenance, repair, and operation of a highway or similar facility under Section 366.037 as are available to the authority with respect to a turnpike project or system. Notwithstanding other provisions of Section 366.037, any work on a highway on the state highway system must be approved by the department and the department shall supervise and regulate work on a highway on the state highway system.

An authority shall provide, for reasonable compensation, customer service and other toll collection and enforcement services for a toll project in the boundaries of the authority, regardless of whether the toll project is developed, financed, constructed, and operated under an agreement, including a comprehensive development agreement, with the authority or another entity.

The bill amends the heading to Section 366.185 to read <u>ENGINEERING, DESIGN, AND CONSTRUCTION SERVICES.</u>

A contract made by an authority that requires the expenditures of public funds for the construction or maintenance of a turnpike project may be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the authority's criteria. An authority may procure a combination of engineering, design, and construction services in a single procurement for a turnpike project, provided that any contract awarded results in the best value to the authority. The authority shall adopt rules governing the award of contracts for engineering, design, construction, and maintenance services in a single procurement.

Notwithstanding any other provision of state law, an authority may let a contract for the design and construction of a turnpike project by a construction manager-at-risk procedure under which the construction manager-at-risk provides consultation to the authority during the design of the turnpike project and is responsible for construction of the turnpike project in accordance with the authority's specifications. A construction manager-at-risk shall be selected on the basis of criteria established by the authority, which may include the construction manager-at-risk's experience, past performance, safety record, proposed personnel and methodology, proposed fees, and other appropriate factors that demonstrate the construction manager-at-risk's ability to provide the best value to the authority and to deliver the required services in accordance with the authority's specifications. The authority shall adopt rules governing the award of contracts using construction manager-at-risk procedures under Section 366.185.

In Section 366.2521, the term "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest. A director commits an offense if the person solicits, accepts, or agrees to accept any benefit from a person the director knows to be subject to regulation, inspection, or investigation by the authority; or a person the director knows is interested in or likely to become interested in any contract, purchase, payment, claim, transaction, or matter involving the exercise of the director's discretion. A director who receives an unsolicited benefit that the director is prohibited from accepting under Sections 366.2521 may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

Sections 366.2521 does not apply to: (1) a fee prescribed by law to be received by a director; (2) a benefit to which the director is lawfully entitled; or (3) a benefit for which the director gives legitimate consideration in a capacity other than as a director. An offense under Sections 366.2521 is a Class A misdemeanor. If conduct that constitutes an offense under Sections 366.2521 also constitutes an offense under Section 36.08, Penal Code, the actor may be prosecuted under Sections 366.2521, Transportation Code, or Section 36.08, Penal Code.

A person commits an offense if the person offers, confers, or agrees to confer any benefit on a director that the person knows the director is prohibited from accepting under Section 366.2521, Transportation Code. An offense under Section 366.2522 is a Class A misdemeanor. If conduct that constitutes an offense under Section 366.2522 also constitutes an offense under Section 36.09, Penal Code, the actor may be prosecuted under Section 366.2522, Transportation Code, or Section 36.09, Penal Code.

The bill states the commissioners court of a county of an authority may request the board of the authority to vote on whether to build a project that the county requests. If an authority is requested by the commission to participate in the development of a turnpike project that has been designated as part of the Trans-Texas Corridor, the authority shall have, in addition to all powers granted in Chapter 366, Transportation Code, all powers of the department related to the development of Trans-Texas Corridor projects.

The bill states the TxDOT/NTTA Regional Protocol entered into between the Texas Department of Transportation and the North Texas Tollway Authority and approved on August 10, 2006, by the tollway authority and on August 24, 2006, by the department is void.

An action of an authority taken under Chapter 370 must comply with the requirements of applicable federal law. The foregoing compliance requirement shall apply to the role of metropolitan planning organizations under federal law, including the approval of projects for conformity to the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way of and access to federal-aid highways. Notwithstanding an action of an authority taken under Chapter 370, the commission or department may take any action that is necessary to comply with any federal requirement to enable the state to receive federal-aid highway funds.

In Chapter 371, the term "Toll project" means a toll project described by Section 201.001(b), regardless of whether the toll project is a part of the state highway system or subject to the jurisdiction of the department. In Chapter 371, the term "Toll project entity" means an entity authorized by law to acquire, design, construct, operate, and maintain a toll project, including the department, including under Chapter 227; a regional tollway authority under Chapter 366; a regional mobility authority under Chapter 370; or a county under Chapter 284. Chapter 371 does not apply to a project for which the commission has selected an apparent best value proposal prior to the effective date of Chapter 371.

A toll project entity may not enter into a comprehensive development agreement unless the attorney general reviews the proposed agreement and determines that it is legally sufficient. Not later than the 10th day after the date of qualifying or shortlisting private entities to submit detailed proposals for a toll project, a toll project entity shall provide the Legislative Budget Board with the names of qualifying or shortlisted proposers and their team members. At least 30 days before entering into a comprehensive development agreement, a toll project entity shall

provide the Legislative Budget Board with a copy of the version of the proposed comprehensive development agreement to be executed; a copy of the proposal submitted by the apparent best value proposer; and a financial forecast prepared by the toll project entity that includes: (1) toll revenue the entity projects will be derived from the project during the planned term of the agreement; (2) estimated construction costs and operating expenses; and (3) the amount of income the entity projects the private participant in the agreement will realize during the planned term of the agreement.

Before entering into a comprehensive development agreement, a toll project entity shall provide the state auditor with the traffic and revenue report prepared by the toll project entity or its consultant for the project. The entity may not enter into the comprehensive development agreement before the 30th day after the date that the state auditor receives the report so that the state auditor may review and comment on the report and the methodology used to develop the report. Before the comprehensive development agreement is entered into, financial forecasts and traffic and revenue reports prepared by or for a toll project entity for the project are confidential and are not subject to disclosure, inspection, or copying under Chapter 552, Government Code. On or after the date the comprehensive development agreement is entered into, the financial forecasts and traffic revenue reports are public information under Chapter 552, Government Code.

A toll project entity having rulemaking authority by rule and a toll project entity without rulemaking authority by official action shall develop a formula for making termination payments to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project. A formula must calculate an estimated amount of loss to the private participant as a result of the termination for convenience. The formula shall be based on investments, expenditures, and the internal rate of return on equity under the agreed base case financial model as projected over the original term of the agreement, plus an agreed percentage markup on that amount. A formula under Section 371.101(b), Transportation Code, may not include any new estimate of future revenue from the project. Compensation to the private participant upon termination for convenience may not exceed the amount determined pursuant to the formula set forth in Section 371.101(b).

If a toll project entity elects to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a project, the entity may, if authorized to issue bonds for that purpose, issue bonds to make any applicable termination payments to the private participant; or purchase the interest of the private participant in the comprehensive development agreement or related property. The entity may also issue bonds to provide for the payment of obligations of the private participant incurred pursuant to the comprehensive development agreement.

A comprehensive development agreement may not contain a provision that limits or prohibits the construction, reconstruction, expansion, rehabilitation, operation, or maintenance of a highway or other transportation project, as that term is defined by Section 370.003, by the toll project entity or other governmental entity, or by a private entity under a contract with the toll project entity or other governmental entity. Except as provided by Section 371.103(c), a comprehensive development agreement may contain a provision authorizing the toll project entity to compensate the private participant in the agreement for the loss of toll revenues attributable to the construction by the entity of a limited access highway project located within an area that extends up to four miles from either side of the centerline of the project developed under the agreement, less the private participant's decreased operating and maintenance costs attributable to the highway project, if any.

A comprehensive development agreement may not require the toll project entity to provide compensation for the construction of: (1) a highway project contained in the state transportation plan or a transportation plan of a metropolitan planning organization in effect on the effective date of the agreement; (2) work on or improvements to a highway project necessary for improved safety, or for maintenance or operational purposes; (3) a high occupancy vehicle exclusive lane addition or other work on any highway project that is required by an environmental regulatory agency; or (4) a transportation project that provides a mode of transportation that is not included in the project that is the subject of the comprehensive development agreement.

The private participant has the burden of proving any loss of toll revenue resulting from the construction of a highway project described by Section 371.103(b). A comprehensive development agreement that contains a provision described by Section 371.103(b) must require the private participant to provide compensation to the toll project entity in the amount of any increase in toll revenues received by the private participant that is attributable to the construction of a highway project described by Section 371.103(b), less the private participant's increased operation and maintenance costs attributable to the highway project, if any.

Before a toll project entity enters into a contract for the construction of a toll project, the entity shall publish in the manner provided by Section 371.152 information regarding: (1) project financing, including: (A) the total amount of debt that has been and will be assumed to acquire, design, construct, operate, and maintain the toll project; (B) a description of how the debt will be repaid, including a projected timeline for repaying the debt; and (C) the projected amount of interest that will be paid on the debt. The entity shall publish in the manner provided by Section 371.152 information regarding: (2) whether the toll project will continue to be tolled after the debt has been repaid; (3) a description of the method that will be used to set toll rates; (4) description of any terms in the contract relating to competing facilities, including any penalties associated with the construction of a competing facility; (5) a description of any terms in the contract relating to a termination for convenience provision, including any information regarding how the value of the project will be calculated for the purposes of making termination payments; (6) the initial toll rates, the methodology for increasing toll rates, and the projected toll rates at the end of the term of the contract; and (7) the projected total amount of concession payments. A toll project entity may not enter into a contract for the construction of a toll project before the 30th day after the date the information is first published under Section 371.152.

Information under Section 371.151 must be published in a newspaper published in the county in which the toll project is to be constructed once a week for at least two weeks before the time set for entering into the contract and in two other newspapers that the toll project entity may designate. Instead of the notice required by Section 371.152(a), if the toll project entity estimates that the contract involves an amount less than $300,000, the information may be published in two successive issues of a newspaper published in the county in which the project is to be constructed. If a newspaper is not published in the county in which the toll project is to be constructed, notice shall be published in a newspaper published in the county nearest the county seat of the county in which the improvement is to be made and in which a newspaper is published.

A toll project entity shall hold a public hearing on the information published under Section 371.152 not later than the 10th day after the date the information is first published and not less than 10 days before the entity enters into the contract. A hearing under Sec. 371.153 must be held in the county seat of the county in which the toll project is located. A hearing under Section 371.153 must include a formal presentation and a mechanism for responding to comments and questions.

The bill amends Section 222.003, Transportation Code, to state the aggregate principal amount of the bonds and other public securities that are issued may not exceed $6 billion. The commission may only issue bonds or other public securities in an aggregate principal amount of not more than $1.5 billion each year. Of the aggregate principal amount of bonds and other public securities that may be issued under Section 222.003, the commission shall issue bonds or other public securities in an aggregate principal amount of $1.2 billion to fund projects that reduce accidents or correct or improve hazardous locations on the state highway system.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.