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H.B. No. 1892

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the authority of certain counties and other entities
3 with respect to certain transportation projects.

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

5 SECTION 1. Subchapter E, Chapter 223, Transportation Code,
6 is amended by adding Section 223.210 to read as follows:

7 Sec. 223.210. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE
8 DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS. (a) In this
9 section:

10 (1) "Toll project" means a toll project described by
11 Section 201.001(b), regardless of whether the toll project:

12 (A) is a part of the state highway system; or

13 (B) is subject to the jurisdiction of the
14 department.

15 (2) "Toll project entity" means a public entity
16 authorized by law to acquire, design, construct, finance, operate,
17 or maintain a toll project, including:

18 (A) the department;

19 (B) a regional tollway authority;

20 (C) a regional mobility authority; or

21 (D) a county.

22 (b) A comprehensive development agreement entered into with
23 a private participant by a toll project entity on or after the
24 effective date of this subsection for the acquisition, design,

1 construction, financing, operation, or maintenance of a toll
2 project may not contain a provision permitting the private
3 participant to operate the toll project or collect revenue from the
4 toll project, regardless of whether the private participant
5 operates the toll project or collects the revenue itself or engages
6 a subcontractor or other entity to operate the toll project or
7 collect the revenue.

8 (c) On or after the effective date of this subsection, a
9 toll project entity may not sell or enter into a contract to sell a
10 toll project of the entity to a private entity.

11 (c-1) Subsections (b) and (c) do not apply to any project
12 within the boundaries of a regional tollway authority created on
13 September 1, 1997.

14 (c-2) To the extent that Subsection (c-1) conflicts with
15 Section 228.012, Section 228.012 shall govern.

16 (c-3) This section does not apply to a comprehensive
17 development agreement for a managed lane facility toll project the
18 major portion of which is located inside the boundaries of a
19 regional tollway authority created on September 1, 1997, and for
20 which the department has issued a request for qualifications before
21 the effective date of this subsection. Before the department
22 executes a final contract for a project described by this
23 subsection, the commissioners court for any county in which a
24 majority of the project is located must pass a supporting
25 resolution that:

26 (1) acknowledges that the contract may contain
27 penalties for the construction of future competing transportation

1 projects built at any time during the life of the agreement; and

2 (2) states that the commissioners court is aware of
3 and agrees to pay the penalties if any are rendered.

4 (d) A legislative study committee is created. The committee
5 is composed of nine members, appointed as follows:

6 (1) three members appointed by the lieutenant
7 governor;

8 (2) three members appointed by the speaker of the
9 house of representatives; and

10 (3) three members appointed by the governor.

11 (e) The legislative study committee shall select a
12 presiding officer from among its members and conduct public
13 hearings and study the public policy implications of including in a
14 comprehensive development agreement entered into by a toll project
15 entity with a private participant in connection with a toll project
16 a provision that permits the private participant to operate and
17 collect revenue from the toll project. In addition, the committee
18 shall examine the public policy implications of selling an existing
19 and operating toll project to a private entity.

20 (f) Not later than December 1, 2008, the legislative study
21 committee shall:

22 (1) prepare a written report summarizing:

23 (A) any hearings conducted by the committee;

24 (B) any legislation proposed by the committee;

25 (C) the committee's recommendations for
26 safeguards and protections of the public's interest when a contract
27 for the sale of a toll project to a private entity is entered into;

1 and

2 (D) any other findings or recommendations of the
3 committee; and

4 (2) deliver a copy of the report to the governor, the
5 lieutenant governor, and the speaker of the house of
6 representatives.

7 (g) On December 31, 2008, the legislative study committee
8 created under this section is abolished.

9 (h) This section expires September 1, 2009.

10 SECTION 2. Section 228.0055, Transportation Code, is
11 amended to read as follows:

12 Sec. 228.0055. USE OF CONTRACT PAYMENTS. (a) Payments
13 received by the commission or the department under a comprehensive
14 development agreement shall ~~may~~ be used by the commission or the
15 department to finance the construction, maintenance, or operation
16 of a transportation project or air quality project in the same
17 department district as the project or facilities to which the
18 payments are attributable or a department district adjacent to that
19 district ~~region~~.

20 (b) The commission or the department may not:

21 (1) revise the formula as provided in the department's
22 unified transportation program, or its successor document, in a
23 manner that results in a decrease of a department district's
24 allocation because of a payment under Subsection (a); or

25 (2) take any other action that would reduce funding
26 allocated to a department district because of payments received
27 under a comprehensive development agreement.

1 SECTION 3. Subchapter A, Chapter 228, Transportation Code,
2 is amended by adding Section 228.011 to read as follows:

3 Sec. 228.011. TOLL PROJECTS IN CERTAIN COUNTIES. (a) This
4 section applies only to a county acting under Chapter 284.

5 (b) The county is the entity that has primary responsibility
6 for the financing, construction, and operation of a toll project
7 located in the county.

8 (c) To the extent authorized by federal law or authorized or
9 required by this title, the commission and the department shall
10 assist the county in the financing, construction, and operation of
11 a toll project in the county by allowing the county to use highway
12 right-of-way owned by the department and to access the state
13 highway system. In connection with the use by the county of
14 improved state highway right-of-way, the county must enter into an
15 agreement with the commission or the department as provided by
16 Section 284.004(b).

17 (d) Subsections (b) and (c) do not limit the authority of
18 the commission or the department to participate in the cost of
19 acquiring, constructing, maintaining, or operating a turnpike
20 project of the county under Chapter 284.

21 (e) Before the commission or the department may enter into a
22 contract for the financing, construction, or operation of a
23 proposed or existing toll project any part of which is located in
24 the county, the commission or department shall provide the county
25 the first option to finance, construct, or operate, as applicable,
26 the portion of the toll project located in the county:

27 (1) on terms agreeable to the county, without the

1 requirement of any payment to the commission or the department
2 except as provided by Section 284.004(a); and

3 (2) in a manner determined by the county to be
4 consistent with the practices and procedures by which the county
5 finances, constructs, or operates a project.

6 (f) Except as provided by Section 284.004(a), an agreement
7 entered into by the county and the commission or the department in
8 connection with a project under Chapter 284 that is financed,
9 constructed, or operated by the county and that is on or directly
10 connected to the state highway system may not require the county to
11 make any payments to the commission or the department.

12 (g) An agreement entered into by the county and the
13 commission or department in connection with a project under Chapter
14 284 that is financed, constructed, or operated by the county and
15 that is on or directly connected to a highway in the state highway
16 system does not create a joint enterprise for liability purposes.

17 SECTION 4. Subchapter A, Chapter 228, Transportation Code,
18 is amended by adding Section 228.012 to read as follows:

19 Sec. 228.012. TOLL PROJECTS WITHIN BOUNDARIES OF REGIONAL
20 TOLLWAY AUTHORITY. (a) This section applies only to a toll
21 project located within the boundaries of a regional tollway
22 authority under Chapter 366.

23 (b) The tollway authority is the entity that has primary
24 responsibility for the financing, construction, and operation of a
25 toll project located within the boundaries of the authority.

26 (c) To the extent authorized by federal law or authorized or
27 required by this title, the commission and the department shall

1 assist the tollway authority in the financing, construction, and
2 operation of a toll project located within the boundaries of the
3 authority by allowing the authority to use highway right-of-way
4 owned by the department and to access the state highway system.

5 (d) Subsections (b) and (c) do not limit the authority of
6 the commission or the department to participate in the cost of
7 acquiring, constructing, maintaining, or operating a turnpike
8 project of the tollway authority under Chapter 366.

9 (e) Before the commission or the department may enter into a
10 contract for the financing, construction, or operation of a
11 proposed or existing toll project any part of which is located
12 within the boundaries of a tollway authority, the commission or
13 department shall provide the authority the first option to finance,
14 construct, or operate, as applicable, the portion of the toll
15 project located within the boundaries of the authority:

16 (1) on terms agreeable to the authority, without the
17 requirement of any payment to the commission or the department; and

18 (2) in a manner determined by the authority to be
19 consistent with the practices and procedures by which the authority
20 finances, constructs, or operates a project.

21 (f) An agreement entered into by the tollway authority and
22 the commission or the department in connection with a project under
23 Chapter 366 that is financed, constructed, or operated by the
24 authority and that is on or directly connected to the state highway
25 system may not require the authority to make any payments to the
26 commission or the department.

27 (g) An agreement entered into by the tollway authority and

1 the commission or department in connection with a project under
2 Chapter 366 that is financed, constructed, or operated by the
3 authority and that is on or directly connected to a highway in the
4 state highway system does not create a joint enterprise for
5 liability purposes.

6 (h) Before a final contract execution by the department for
7 any comprehensive development agreement project, the commissioners
8 court for any county in which a majority of the project is located
9 must pass a supporting resolution.

10 (i) Once the authority or regional transportation council
11 has received notice from the department relating to a toll project,
12 the authority has 90 days to exercise the first option to finance,
13 construct, or operate, as applicable, the toll project.

14 SECTION 5. Section 284.001(3), Transportation Code, is
15 amended to read as follows:

16 (3) "Project" means:

17 (A) a causeway, bridge, tunnel, turnpike,
18 highway, ferry, or any combination of those facilities, including:

19 (i) [~~(A)~~] a necessary overpass, underpass,
20 interchange, entrance plaza, toll house, service station,
21 approach, fixture, and accessory and necessary equipment that has
22 been designated as part of the project by order of a county;

23 (ii) [~~(B)~~] necessary administration,
24 storage, and other buildings that have been designated as part of
25 the project by order of a county; and

26 (iii) [~~(C)~~] all property rights,
27 easements, and related interests acquired; or

1 (B) a turnpike project or system as those terms
2 are defined by Section 370.003.

3 SECTION 6. Section 284.002, Transportation Code, is amended
4 to read as follows:

5 Sec. 284.002. APPLICABILITY OF CHAPTER ~~[TO CERTAIN COUNTIES~~
6 ~~AND LOCAL GOVERNMENT CORPORATIONS]~~. (a) Except as provided by
7 Subsection (b), this chapter applies only to a county that ~~[+~~

8 ~~[(1)]~~ has a population of 10,000 ~~[50,000]~~ or more ~~[and~~
9 ~~borders the Gulf of Mexico or a bay or inlet opening into the gulf,~~

10 ~~[(2)]~~ has a population of 1.5 million or more,

11 ~~[(3)]~~ is adjacent to a county that has a population of
12 ~~1.5 million or more, or~~

13 ~~[(4)]~~ borders the United Mexican States].

14 (b) A local government corporation created under Chapter
15 431 in a county to which this chapter applies has the same powers as
16 a county acting under this chapter, except as provided by Chapter
17 362.

18 SECTION 7. Section 284.003, Transportation Code, is amended
19 to read as follows:

20 Sec. 284.003. PROJECT AUTHORIZED; CONSTRUCTION, OPERATION,
21 AND COST. (a) A county, acting through the commissioners court of
22 the county, or a local government corporation, without state
23 approval, supervision, or regulation, may:

24 (1) construct, acquire, improve, operate, maintain,
25 or pool a project located:

26 (A) exclusively in the county;

27 (B) in the county and outside the county; or

1 (C) in one or more counties adjacent to the
2 county;

3 (2) issue tax bonds, revenue bonds, or combination tax
4 and revenue bonds to pay the cost of the construction, acquisition,
5 or improvement of a project;

6 (3) impose tolls or charges as otherwise authorized by
7 this chapter;

8 (4) construct a bridge over a deepwater [~~deep water~~]
9 navigation channel, if the bridge does not hinder maritime
10 transportation; [~~or~~]

11 (5) construct, acquire, or operate a ferry across a
12 deepwater navigation channel;

13 (6) in connection with a project, on adoption of an
14 order exercise the powers of a regional mobility authority
15 operating under Chapter 370; or

16 (7) enter into a comprehensive development agreement
17 with a private entity to design, develop, finance, construct,
18 maintain, repair, operate, extend, or expand a proposed or existing
19 project in the county to the extent and in the manner applicable to
20 the department under Chapter 223 or to a regional tollway authority
21 under Chapter 366.

22 (b) The county or a local government corporation may
23 exercise a power provided by Subsection (a)(6) only in a manner
24 consistent with the other powers provided by this chapter. To the
25 extent of a conflict between this chapter and Chapter 370, this
26 chapter prevails.

27 (c) A project or any portion of a project that is owned by

1 the county and licensed or leased to a private entity or operated by
2 a private entity under this chapter to provide transportation
3 services to the general public is public property used for a public
4 purpose and exempt from taxation by this state or a political
5 subdivision of this state.

6 (d) If the county constructs, acquires, improves, operates,
7 maintains, or pools a project under this chapter, before December
8 31 of each even-numbered year the county shall submit to the
9 department a plan for the project that includes the time schedule
10 for the project and describes the use of project funds. The plan
11 may provide for and permit the use of project funds and other money,
12 including state or federal funds, available to the county for
13 roads, streets, highways, and other related facilities in the
14 county that are not part of a project under this chapter. A plan is
15 not subject to approval, supervision, or regulation by the
16 commission or the department.

17 (e) Except as provided by federal law, an action of a county
18 taken under this chapter is not subject to approval, supervision,
19 or regulation by a metropolitan planning organization.

20 (f) The county may enter into a protocol or other agreement
21 with the commission or the department to implement this section
22 through the cooperation of the parties to the agreement.

23 SECTION 8. Subchapter A, Chapter 284, Transportation Code,
24 is amended by adding Sections 284.0031 and 284.0032 and amending
25 Section 284.004 to read as follows:

26 Sec. 284.0031. OTHER ROAD, STREET, OR HIGHWAY PROJECTS.

27 (a) The commissioners court of a county or a local government

1 corporation, without state approval, supervision, or regulation
2 may:

3 (1) authorize the use of surplus revenue of a project
4 for the study, design, construction, maintenance, repair, or
5 operation of roads, streets, highways, or other related facilities
6 that are not part of a project under this chapter; and

7 (2) prescribe terms for the use of the surplus
8 revenue, including the manner in which the roads, streets,
9 highways, or other related facilities are to be studied, designed,
10 constructed, maintained, repaired, or operated.

11 (b) To implement this section, a county may enter into an
12 agreement with the commission, the department, a local governmental
13 entity, or another political subdivision of this state.

14 (c) A county may not take an action under this section that
15 violates or impairs a bond resolution, trust agreement, or
16 indenture that governs the use of the revenue of a project.

17 (d) Except as provided by this section, a county has the
18 same powers and may use the same procedures with respect to the
19 study, financing, design, construction, maintenance, repair, or
20 operation of a road, street, highway, or other related facility
21 under this section as are available to the county with respect to a
22 project under this chapter.

23 (e) Notwithstanding any other law, an authority created
24 pursuant to Chapter 451 that is located primarily in a county with a
25 population of more than 3.3 million to which this chapter applies
26 and in which the voters have authorized the dedication of a portion
27 of its sales and use tax revenue for street improvements and

1 mobility projects within the authority's service area must account
2 for the entire amount of that liability on its financial statements
3 in accordance with generally accepted accounting principles.

4 Sec. 284.0032. TRANS-TEXAS CORRIDOR PROJECTS. If a county
5 requests or is requested by the commission to participate in the
6 development of a project under this chapter that has been
7 designated as part of the Trans-Texas Corridor, in connection with
8 the project and in addition to the other powers granted by this
9 chapter, the county has all the powers of the department related to
10 the development of a project that has been designated as part of the
11 Trans-Texas Corridor.

12 Sec. 284.004. USE OF COUNTY PROPERTY AND STATE HIGHWAY
13 ALIGNMENT, RIGHT-OF-WAY, AND ACCESS. (a) Notwithstanding any
14 other law, under this chapter a county may use any county property,
15 state highway right-of-way, or access to the state highway system
16 [for a project under this chapter], regardless of when or how the
17 property, right-of-way, or access is acquired. The department or
18 the commission may require the county to comply with any covenant,
19 condition, restriction, or limitation that affects state highway
20 right-of-way, but may not:

21 (1) adopt rules or establish policies that have the
22 effect of denying the county the use of the right-of-way or access
23 that the county has determined to be necessary or convenient for the
24 construction, acquisition, improvement, operation, maintenance, or
25 pooling of a project under this chapter or the implementation of a
26 plan under Section 284.003(d); or

27 (2) require the county to pay for the use of the

1 right-of-way or access, except to reimburse the commission or
2 department for actual costs incurred or to be incurred by a third
3 party, including the federal government, as a result of that use by
4 the county.

5 (b) If a project of the county under this chapter includes
6 the proposed use of improved state highway right-of-way, the county
7 and the commission or the department must enter into an agreement
8 that includes reasonable terms to accommodate that use of the
9 right-of-way by the county and to protect the interests of the
10 commission and the department in the use of the right-of-way for
11 operations of the department.

12 (c) Notwithstanding any other law, the commission and the
13 department are not liable for any damages that result from a
14 county's use of state highway right-of-way or access to the state
15 highway system under this chapter, regardless of the legal theory,
16 statute, or cause of action under which liability is asserted.

17 SECTION 9. Sections 284.008(c) and (d), Transportation
18 Code, are amended to read as follows:

19 (c) Except as provided by Subsection (d), a project becomes
20 a part of the state highway system and the commission shall maintain
21 the project without tolls when:

22 (1) all of the bonds and interest on the bonds that are
23 payable from or secured by revenues of the project have been paid by
24 the issuer of the bonds or another person with the consent or
25 approval of the issuer; or

26 (2) a sufficient amount for the payment of all bonds
27 and the interest on the bonds to maturity has been set aside by the

1 issuer of the bonds or another person with the consent or approval
2 of the issuer in a trust fund held for the benefit of the
3 bondholders.

4 (d) A [~~Before construction on a project under this chapter~~
5 ~~begins, a~~] county may request that the commission adopt an order
6 stating that a [~~the~~] project will not become part of the state
7 highway system under Subsection (c). If the commission adopts the
8 order:

- 9 (1) Section 362.051 does not apply to the project;
10 (2) the project must be maintained by the county; and
11 (3) the project will not become part of the state
12 highway system unless the county transfers the project under
13 Section 284.011.

14 SECTION 10. Subchapter A, Chapter 284, Transportation Code,
15 is amended by adding Section 284.0092 to read as follows:

16 Sec. 284.0092. AUDIT BY FEDERAL HIGHWAY ADMINISTRATION.
17 The accounts and records of a county relating to a project under
18 this chapter located in a county that has a population of more than
19 3.4 million and is within 100 miles of the Gulf of Mexico are
20 subject to audit by the Federal Highway Administration as deemed
21 necessary by that agency.

22 SECTION 11. Subchapter A, Chapter 284, Transportation Code,
23 is amended by adding Section 284.010 to read as follows:

24 Sec. 284.010. CONTRACTOR CONTRIBUTIONS PROHIBITED. A
25 person who enters into a contract with a county under this chapter
26 may not make a political contribution to a person who is a
27 commissioner or county judge of the county or who is a candidate for

1 the office of commissioner or county judge of the county.

2 SECTION 12. Sections 284.065(b) and (c), Transportation
3 Code, are amended to read as follows:

4 (b) An existing project may be pooled in whole or in part
5 with a new project or another existing project.

6 (c) A project may [~~not~~] be pooled more than once.

7 SECTION 13. Subtitle G, Title 6, Transportation Code, is
8 amended by adding Chapter 371 to read as follows:

9 CHAPTER 371. PROVISIONS APPLICABLE TO MORE THAN

10 ONE TYPE OF TOLL PROJECT

11 Sec. 371.001. VEHICLES DISPLAYING "HYBRID VEHICLE"

12 INSIGNIA. (a) In this section, "toll project" means a toll project
13 described by Section 201.001(b), regardless of whether the toll
14 project is:

15 (1) a part of the state highway system;

16 (2) subject to the jurisdiction of the department; or

17 (3) constructed or operated by the department or
18 another entity authorized to construct or operate a toll project.

19 (b) A motor vehicle displaying the "hybrid vehicle"
20 insignia authorized by Section 502.1861 in an easily readable
21 location on the back of the vehicle may use a high occupancy vehicle
22 lane located on a toll project regardless of the number of occupants
23 in the vehicle unless the use would impair the receipt of federal
24 transit funds.

25 SECTION 14. Subchapter D, Chapter 502, Transportation Code,
26 is amended by adding Section 502.1861 to read as follows:

27 Sec. 502.1861. "HYBRID VEHICLE" INSIGNIA FOR CERTAIN MOTOR

1 VEHICLES. (a) At the time of registration or reregistration of the
2 motor vehicle, the department shall issue a specially designed
3 "hybrid vehicle" insignia for a motor vehicle that draws propulsion
4 energy from both gasoline or conventional diesel fuel and from a
5 rechargeable energy storage system.

6 (b) The department shall issue a "hybrid vehicle" insignia
7 under this section without the payment of any additional fee to a
8 person who:

9 (1) applies to the department on a form provided by the
10 department; and

11 (2) submits proof that the motor vehicle being
12 registered is a vehicle described by Subsection (a).

13 SECTION 15. Section 370.031(c), Transportation Code, is
14 repealed.

15 SECTION 16. Notwithstanding any other provision of this Act,
16 Section 228.012, Transportation Code, as added by this Act, takes
17 effect immediately if this Act receives a vote of two-thirds of all
18 the members elected to each house, as provided by Section 39,
19 Article III, Texas Constitution. If this Act does not receive the
20 vote necessary for immediate effect, Section 228.012,
21 Transportation Code, takes effect September 1, 2007.

22 SECTION 17. This Act takes effect immediately if it
23 receives a vote of two-thirds of all the members elected to each
24 house, as provided by Section 39, Article III, Texas Constitution.
25 If this Act does not receive the vote necessary for immediate
26 effect, this Act takes effect September 1, 2007.