

AN ACT

relating to the authority of certain counties and other entities with respect to certain transportation projects; providing penalties.

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

SECTION 1. (a) Section 223.203, Transportation Code, is amended by adding Subsection (f-1) to read as follows:

(f-1) A private entity responding to a request for detailed proposals issued under Subsection (f) 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 to 40 years or any lesser term provided in a comprehensive development agreement.

(b) Section 223.208(h), Transportation Code, is amended to read as follows:

(h) A [~~Except as provided by this section, 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 40 [~~50~~] years. The comprehensive development agreement must contain [~~may be for a term not longer than 70 years if the agreement.~~]

~~[(1) contains]~~ an explicit mechanism for setting the price for the purchase by the department of the interest of the private participant in the comprehensive development agreement and

1 related property, including any interest in a highway or other  
2 facility designed, developed, financed, constructed, operated, or  
3 maintained under the agreement [~~and~~

4  ~~(2) outlines the benefit the state will derive from~~  
5  ~~having a term longer than 50 years~~].

6 (c) Section 227.023(f), Transportation Code, is amended to  
7 read as follows:

8 (f) A contract with a private entity that includes the  
9 collection by the private entity of a fee for the use of a facility  
10 may not be for a term longer than 40 [~~50~~] years. The contract must  
11 contain an explicit mechanism for setting the price for the  
12 purchase by the department of the interest of the private  
13 participant in the contract and related property, including any  
14 interest in a highway or other facility designed, developed,  
15 financed, constructed, operated, or maintained under the contract.

16 (d) Section 370.302(i), Transportation Code, is amended to  
17 read as follows:

18 (i) An agreement with a private entity that includes the  
19 collection by the private entity of tolls for the use of a  
20 transportation project may not be for a term longer than 40 [~~50~~]  
21 years. The agreement must contain an explicit mechanism for  
22 setting the price for the purchase by the authority of the interest  
23 of the private participant in the contract and related property,  
24 including any interest in a highway or other facility designed,  
25 developed, financed, constructed, operated, or maintained under  
26 the agreement.

27 (e) The changes in law made by this section apply only to a

1 contract entered into on or after the effective date of this Act. A  
2 contract entered into before the effective date of this Act is  
3 governed by the law in effect when the contract was entered into,  
4 and the former law is continued in effect for that purpose.

5 SECTION 2. Section 223.203, Transportation Code, is amended  
6 by adding Subsections (f-2) and (f-3) to read as follows:

7 (f-2) Subsection (f-1) does not apply to a comprehensive  
8 development agreement in connection with a project:

9 (1) that includes one or more managed lane facilities  
10 to be added to an existing controlled-access highway;

11 (2) the major portion of which is located in a  
12 nonattainment or near-nonattainment air quality area as designated  
13 by the United States Environmental Protection Agency; and

14 (3) for which the department has issued a request for  
15 qualifications before the effective date of this subsection.

16 (f-3) Notwithstanding the TxDOT/NTTA Regional Protocol  
17 entered into between the department and the North Texas Tollway  
18 Authority (the authority) and approved on August 10, 2006, by the  
19 tollway authority and on August 24, 2006, by the department,  
20 Subsection (f-1) does not apply to a comprehensive development  
21 agreement:

22 (1) entered into in connection with State Highway 121  
23 if, before the commission or the department enters into a contract  
24 for the financing, construction, or operation of the project with a  
25 private participant, an authority under Chapter 366 was granted the  
26 ability to finance, construct, or operate, as applicable, the  
27 portion of the toll project located within the boundaries of the

1 authority, and the authority was granted a period of 60 days from  
2 March 26, 2007, to submit a commitment to the metropolitan planning  
3 organization which is determined to be equal to or greater than any  
4 other commitment submitted prior to March 26, 2007; if the  
5 financial value of the commitment is determined to be equal to or  
6 greater value than any other commitment submitted prior to March  
7 26, 2007, then the commission shall allow the authority to develop  
8 the project; or

9 (2) entered into in connection with State Highway 161  
10 if, before the commission or the department enters into a contract  
11 with a private participant for the financing, construction, or  
12 operation, an authority under Chapter 366 was granted the ability  
13 to finance, construct, or operate, as applicable, the portion of  
14 the toll project located within the boundaries of the authority,  
15 and the authority was granted a period of 90 days to submit a  
16 commitment to the metropolitan planning organization; if the  
17 authority makes a commitment to proceed, then the department shall  
18 allow the authority to proceed and the authority must enter into  
19 contracts to finance, construct, or operate the project within 180  
20 days.

21 SECTION 3. Section 223.208, Transportation Code, is amended  
22 by adding Subsections (i) and (i-2) to read as follows:

23 (i) A comprehensive development agreement with a private  
24 participant that includes the collection by the private participant  
25 of tolls for the use of a toll project may be for a term not longer  
26 than 50 years for a comprehensive development agreement in  
27 connection with a project:

1           (1) that includes one or more managed lane facilities  
2 to be added to an existing controlled-access highway;

3           (2) the major portion of which is located in a  
4 nonattainment or near-nonattainment air quality area as designated  
5 by the United States Environmental Protection Agency; and

6           (3) for which the department has issued a request for  
7 qualifications before the effective date of this subsection.

8           (i-2) Notwithstanding the TxDOT/NTTA Regional Protocol  
9 entered into between the department and the North Texas Tollway  
10 Authority (the authority) and approved on August 10, 2006, by the  
11 tollway authority and on August 24, 2006, by the department,  
12 Subsection (i) applies to a comprehensive development agreement:

13           (1) entered into in connection with State Highway 121  
14 if, before the commission or the department enters into a contract  
15 for the financing, construction, or operation of the project with a  
16 private participant, an authority under Chapter 366 was granted the  
17 ability to finance, construct, or operate, as applicable, the  
18 portion of the toll project located within the boundaries of the  
19 authority, and the authority was granted a period of 60 days from  
20 March 26, 2007, to submit a commitment to the metropolitan planning  
21 organization which is determined to be equal to or greater than any  
22 other commitment submitted prior to March 26, 2007; if the  
23 financial value of the commitment is determined to be equal to or  
24 greater value than any other commitment submitted prior to March  
25 26, 2007, then the commission shall allow the authority to develop  
26 the project; or

27           (2) entered into in connection with State Highway 161

1 if, before the commission or the department enters into a contract  
2 with a private participant for the financing, construction, or  
3 operation, an authority under Chapter 366 was granted the ability  
4 to finance, construct, or operate, as applicable, the portion of  
5 the toll project located within the boundaries of the authority,  
6 and the authority was granted a period of 90 days to submit a  
7 commitment to the metropolitan planning organization; if the  
8 authority makes a commitment to proceed, then the department shall  
9 allow the authority to proceed and the authority must enter into  
10 contracts to finance, construct, or operate the project within 180  
11 days.

12 SECTION 4. Section 223.203(m), Transportation Code, is  
13 amended to read as follows:

14 (m) The department may ~~shall~~ pay an unsuccessful private  
15 entity that submits a responsive proposal in response to a request  
16 for detailed proposals under Subsection (f) a stipulated amount in  
17 exchange for the work product contained in that proposal. A ~~The~~  
18 stipulated amount must be stated in the request for proposals and  
19 may not exceed the value of any work product contained in the  
20 proposal that can, as determined by the department, be used by the  
21 department in the performance of its functions. The use by the  
22 department of any design element contained in an unsuccessful  
23 proposal is at the sole risk and discretion of the department and  
24 does not confer liability on the recipient of the stipulated amount  
25 under this section. After payment of the stipulated amount:

26 (1) the department owns with the unsuccessful proposer  
27 jointly the rights to, and may make use of any work product

1 contained in, the proposal, including the technologies,  
2 techniques, methods, processes, ideas, and information contained  
3 in the project design; and

4 (2) the use by the unsuccessful proposer of any  
5 portion of the work product contained in the proposal is at the sole  
6 risk of the unsuccessful proposer and does not confer liability on  
7 the department.

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

10 Sec. 223.210. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE  
11 DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS. (a) In this  
12 section:

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

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

16 (B) is subject to the jurisdiction of the  
17 department.

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

21 (A) the department;

22 (B) a regional tollway authority;

23 (C) a regional mobility authority; or

24 (D) a county.

25 (b) A comprehensive development agreement entered into with  
26 a private participant by a toll project entity on or after the  
27 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) Subsection (b) does not apply to a comprehensive  
9 development agreement in connection with:

10 (1) a project associated with the highway designated  
11 as the Trinity Parkway in the City of Dallas; or

12 (2) a project:

13 (A) that includes one or more managed lane  
14 facilities to be added to an existing controlled-access highway;

15 (B) the major portion of which is located in a  
16 nonattainment or near nonattainment air quality area as designated  
17 by the United States Environmental Protection Agency; and

18 (C) for which the department has issued a request  
19 for qualifications before the effective date of this section.

20 (c-1) Subsection (b) does not apply to a comprehensive  
21 development agreement in connection with a project associated with  
22 any portion of the Loop 9 project that is located in a nonattainment  
23 air quality area as designated by the United States Environmental  
24 Protection Agency that includes two adjacent counties that each  
25 have a population of one million or more.

26 (c-2) Notwithstanding the TxDOT/NTTA Regional Protocol  
27 entered into between the Texas Department of Transportation and the



1 North Texas Tollway Authority (the authority) and approved on  
2 August 10, 2006, by the tollway authority and on August 24, 2006, by  
3 the department, Subsection (b) does not apply to a comprehensive  
4 development agreement:

5 (1) entered into in connection with State Highway 121  
6 if before the commission or the department enters into a contract  
7 for the financing, construction, or operation of the project with a  
8 private participant, an authority under Chapter 366 was granted the  
9 ability to finance, construct, or operate, as applicable, the  
10 portion of the toll project located within the boundaries of the  
11 authority, and the authority was granted a period of 60 days from  
12 March 26, 2007, to submit a commitment to the metropolitan planning  
13 organization which is determined to be equal to or greater than any  
14 other commitment submitted prior to March 26, 2007; and

15 (a) If the financial value of the commitment is  
16 determined to be equal to or greater value than any other commitment  
17 submitted prior to March 26, 2007, then the commission shall allow  
18 the authority to develop the project; or

19 (2) entered into in connection with State Highway 161  
20 if before the commission or the department enters into a contract  
21 with a private participant for the financing, construction, or  
22 operation, an authority under Chapter 366 was granted the ability  
23 to finance, construct, or operate, as applicable, the portion of  
24 the toll project located within the boundaries of the authority,  
25 and the authority was granted a period of 90 days to submit a  
26 commitment to the metropolitan planning organization.

27 (a) If the authority makes a commitment to proceed,

1 then the department shall allow the authority to proceed and the  
2 authority must enter into contracts to finance, construct, or  
3 operate the project within 180 days.

4 (c-3) Subsection (c) does not apply to any toll project or  
5 managed lane facility project located on any portion of U.S.  
6 Highway 281 that is located in a county with a population of more  
7 than one million in which more than 80 percent of the population  
8 lives in a single municipality.

9 (d) For purposes of Subsection (c)(2), "managed lane  
10 facility" means a facility that increases the efficiency of a  
11 controlled-access highway through various operational and design  
12 actions and that allows lane management operations to be adjusted  
13 at any time. The term includes high-occupancy vehicle lanes,  
14 single-occupant vehicle express lanes, tolled lanes, priced lanes,  
15 truck lanes, bypass lanes, dual use facilities, or any combination  
16 of those facilities.

17 (e) The department may not enter into a comprehensive  
18 development agreement in connection with a project described by  
19 Subsection (c)(2) unless the commissioners court of the county in  
20 which the majority of the project is located passes a resolution in  
21 support of the agreement that states that the commissioners court:

22 (1) acknowledges that the comprehensive development  
23 agreement may contain penalties for the construction of future  
24 competing transportation projects that are acquired or constructed  
25 during the term of the comprehensive development agreement; and

26 (2) knowing of those potential penalties, agrees that  
27 the department should execute the comprehensive development

1 agreement.

2 (f) On or after the effective date of this section, a toll  
3 project entity may not sell or enter into a contract to sell a toll  
4 project of the entity to a private entity.

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

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

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

11 (3) three members appointed by the governor.

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

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

23 (1) prepare a written report summarizing:

24 (A) any hearings conducted by the committee;

25 (B) any legislation proposed by the committee;

26 (C) the committee's recommendations for  
27 safeguards and protections of the public's interest when a contract

1 for the sale of a toll project to a private entity is entered into;  
2 and

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

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

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

10 (k) This section expires September 1, 2009.

11 (l) Subsections (b), (c), (d), and (e) do not apply to a  
12 project that is located in a county with a population of 575,000 or  
13 more and is adjacent to an international border.

14 SECTION 6. Section 223.201, Transportation Code, is amended  
15 by amending Subsection (f) and adding Subsection (g) to read as  
16 follows:

17 (f) The authority to enter into comprehensive development  
18 agreements provided by this section expires on August 31, 2009  
19 [~~2011~~].

20 (g) Subsection (f) does not apply to a comprehensive  
21 development agreement in connection with a project:

22 (1) that includes one or more managed lane facilities  
23 to be added to an existing controlled-access highway;

24 (2) the major portion of which is located in a  
25 nonattainment or near-nonattainment air quality area as designated  
26 by the United States Environmental Protection Agency; and

27 (3) for which the department has issued a request for

1 qualifications before the effective date of this subsection.

2 SECTION 7. Section 370.305, Transportation Code, is amended  
3 by amending Subsection (d) and adding Subsection (e) to read as  
4 follows:

5 (d) This section expires on August 31, 2009 [~~2011~~].

6 (e) Subsection (d) does not apply to a comprehensive  
7 development agreement in connection with a project:

8 (1) that includes one or more managed lane facilities  
9 to be added to an existing controlled-access highway;

10 (2) the major portion of which is located in a  
11 nonattainment or near-nonattainment air quality area as designated  
12 by the United States Environmental Protection Agency; and

13 (3) for which the department has issued a request for  
14 qualifications before the effective date of this subsection.

15 SECTION 8. Subchapter A, Chapter 227, Transportation Code,  
16 is amended by adding Sections 227.005 and 227.006 to read as  
17 follows:

18 Sec. 227.005. PUBLIC ACCESS TO INFORMATION. (a) The  
19 department shall:

20 (1) seek to achieve transparency in the department's  
21 functions related to the Trans-Texas Corridor by providing, to the  
22 greatest extent possible under the public information law (Chapter  
23 552, Government Code) and other statutes governing the access to  
24 records, public access to information collected, assembled, or  
25 maintained by the department relating to the Trans-Texas Corridor;

26 (2) make public in a timely manner all documents,  
27 plans, and contracts related to the Trans-Texas Corridor; and

1           (3) make public in a timely manner all updates to the  
2 master development plan for the Trans-Texas Corridor, including  
3 financial plans.

4           (b) The department shall send electronic versions of all  
5 updates to the master development plan for the Trans-Texas Corridor  
6 to the Governor's Office of Budget and Planning, the Senate Finance  
7 Committee, the House Appropriations Committee, the Legislative  
8 Budget Board, the state auditor's office, and the comptroller in a  
9 timely manner.

10           Sec. 227.006. POSTING INFORMATION RELATING TO TRANS-TEXAS  
11 CORRIDOR ON DEPARTMENT'S WEBSITE. (a) The department shall post  
12 on the department's Internet website, in a timely manner, the costs  
13 incurred by the department in connection with the financing,  
14 design, construction, maintenance, or operation of the Trans-Texas  
15 Corridor.

16           (b) Not later than the 10th day after the date the  
17 department enters into a contract relating to the Trans-Texas  
18 Corridor, the department shall post a copy of the contract on the  
19 department's Internet website.

20           SECTION 9. Section 228.0055, Transportation Code, is  
21 amended to read as follows:

22           Sec. 228.0055. USE OF CONTRACT PAYMENTS. (a) Payments  
23 received by the commission or the department under a comprehensive  
24 development agreement shall [~~may~~] be used by the commission or the  
25 department to finance the construction, maintenance, or operation  
26 of [~~a~~] transportation projects [~~project~~] or air quality projects  
27 [~~project~~] in the region.

1       (b) The commission or the department shall distribute the  
2 payments received under Subsection (a) among the department  
3 districts in which the project that is the subject of a  
4 comprehensive development agreement is located and allocate the  
5 money to each district based on the percentage of toll revenue from  
6 users in that district. To assist the commission or the department  
7 in determining the appropriate allocation of money under this  
8 subsection, each entity that collects tolls for a project shall  
9 annually calculate the percentage of toll revenue from users of the  
10 project in each department district in which the project is located  
11 based on the number of recorded electronic toll collections.

12       (c) The commission or the department may not:

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

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

20       SECTION 10. Subchapter A, Chapter 228, Transportation Code,  
21 is amended by adding Sections 228.011 and 228.012 to read as  
22 follows:

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

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

1       (c) To the extent authorized by federal law or authorized or  
2 required by this title, the commission and the department shall  
3 assist the county in the financing, construction, and operation of  
4 a toll project in the county by allowing the county to use highway  
5 right-of-way owned by the department and to access the state  
6 highway system.

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

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

17               (1) on terms agreeable to the county, without the  
18 requirement of any payment to the commission or the department  
19 except as provided by Section 284.004(a); and

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

23       (f) A county's right to exercise the first option under  
24 Subsection (e) is effective for six months following the date of  
25 receipt by the county of written notification from the commission  
26 or the department meeting the requirements of Subsection (e) and  
27 describing in reasonable detail the location of the toll project, a



1 projected cost estimate, sources and uses of funds, and a  
2 construction schedule. If a county exercises the first option with  
3 respect to a toll project, the county must enter into one or more  
4 contracts for the financing, construction, or operation of the toll  
5 project within 18 months of the date of exercising the option. A  
6 contract may include agreements for design of the project,  
7 acquisition of right-of-way, and utility relocation. If the county  
8 does not enter into a contract within the 18-month period, the  
9 commission or the department may enter into a contract for the  
10 financing, construction, or operation of the toll project with a  
11 different entity.

12 (g) Except as provided by Section 284.004(a), an agreement  
13 entered into by the county and the commission or the department in  
14 connection with a project under Chapter 284 that is financed,  
15 constructed, or operated by the county and that is on or directly  
16 connected to the state highway system may not require the county to  
17 make any payments to the commission or the department.

18 (h) An agreement entered into by the county and the  
19 commission or department in connection with a project under Chapter  
20 284 that is financed, constructed, or operated by the county and  
21 that is on or directly connected to a highway in the state highway  
22 system does not create a joint enterprise for liability purposes.

23 Sec. 228.012. TOLL PROJECTS WITHIN BOUNDARIES OF REGIONAL  
24 MOBILITY AUTHORITIES. (a) This section applies only to a toll  
25 project located within the boundaries of a regional mobility  
26 authority operating under Chapter 370.

27 (b) The regional mobility authority is the entity that has

1 primary responsibility for the financing, construction, and  
2 operation of a toll project located within the boundaries of the  
3 authority.

4 (c) To the extent authorized by federal law or authorized or  
5 required by this title, the commission and the department shall  
6 assist the authority in the financing, construction, and operation  
7 of a toll project located within the boundaries of the authority by  
8 allowing the authority to use highway right-of-way owned by the  
9 department and to access the state highway system. In connection  
10 with the use by the authority of improved state highway  
11 right-of-way, the authority must enter into an agreement with the  
12 commission or the department as provided in this chapter.

13 (d) Subsections (b) and (c) do not limit the authority of  
14 the commission or the department to participate in the cost of  
15 acquiring, constructing, maintaining, or operating a turnpike  
16 project of the authority under Chapter 370.

17 (e) Before the commission or the department may enter into a  
18 contract for the financing, construction, or operation of a  
19 proposed or existing toll project any part of which is located  
20 within the boundaries of an authority, the commission or department  
21 shall provide the authority the first option to finance, construct,  
22 or operate, as applicable, the portion of the toll project located  
23 within the boundaries of the authority:

24 (1) on terms agreeable to the authority, without the  
25 requirement of any payment to the commission or the department  
26 except to reimburse the commission or department for actual costs  
27 incurred or to be incurred by a third party, including the federal

1 government, as a result of that use by the authority; and

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

5 (f) An agreement entered into by the authority and the  
6 commission or the department in connection with a project under  
7 Chapter 370 that is financed, constructed, or operated by the  
8 authority and that is on or directly connected to the state highway  
9 system may not require the authority to make any payments to the  
10 commission or the department, provided that the authority and the  
11 department or the commission may enter into an agreement which  
12 provides for the repayment of all or a portion of funds advanced by  
13 the department or the commission to the authority for the specific  
14 purpose of assisting the authority in the development or  
15 construction of the project.

16 (g) An agreement entered into by the authority and the  
17 commission or department in connection with a project under Chapter  
18 370 that is financed, constructed, or operated by the authority and  
19 that is on or directly connected to a highway in the state highway  
20 system does not create a joint enterprise for liability purposes.

21 (h) Once the authority or metropolitan planning  
22 organization has received notice from the department relating to a  
23 toll project, the authority has 180 days to provide the department  
24 with written notice of the authority's decision to exercise the  
25 first option to finance, construct, or operate, as applicable, the  
26 toll project. Written notice from the department shall describe in  
27 reasonable detail the location of the toll project, a projected

1 cost estimate, sources and uses of funds, and a construction  
2 schedule. In the event the authority does not initiate work within  
3 18 months of exercising its option to develop the project, the  
4 metropolitan planning organization at its discretion may allow the  
5 department to finance, construct, or operate the project.

6 SECTION 11. Section 284.001(3), Transportation Code, is  
7 amended to read as follows:

8 (3) "Project" means:

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

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

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

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

20 (B) a turnpike project or system, as those terms  
21 are defined by Section 370.003.

22 SECTION 12. Section 284.003, Transportation Code, is  
23 amended to read as follows:

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

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

3 (A) exclusively in the county;

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

5 (C) in one or more counties adjacent to the  
6 county;

7 (2) issue tax bonds, revenue bonds, or combination tax  
8 and revenue bonds to pay the cost of the construction, acquisition,  
9 or improvement of a project;

10 (3) impose tolls or charges as otherwise authorized by  
11 this chapter;

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

15 (5) construct, acquire, or operate a ferry across a  
16 deepwater navigation channel;

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

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

26 (b) The county or a local government corporation may  
27 exercise a power provided by Subsection (a)(6) only in a manner

1 consistent with the other powers provided by this chapter. To the  
2 extent of a conflict between this chapter and Chapter 370, this  
3 chapter prevails.

4 (c) A project or any portion of a project that is owned by  
5 the county and licensed or leased to a private entity or operated by  
6 a private entity under this chapter to provide transportation  
7 services to the general public is public property used for a public  
8 purpose and exempt from taxation by this state or a political  
9 subdivision of this state.

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

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

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

27 (g) An action of a county taken under this chapter must

1 comply with the requirements of applicable federal law. The  
2 foregoing compliance requirement shall apply to the role of  
3 metropolitan planning organizations under federal law, including  
4 the approval of projects for conformity to the state implementation  
5 plan relating to air quality, the use of toll revenue, and the use  
6 of the right-of-way of and access to federal-aid highways.  
7 Notwithstanding an action of a county taken under this chapter, the  
8 commission or department may take any action that is necessary to  
9 comply with any federal requirement to enable the state to receive  
10 federal-aid highway funds.

11 SECTION 13. Subchapter A, Chapter 284, Transportation Code,  
12 is amended by adding Sections 284.0031 and 284.0032 and amending  
13 Section 284.004 to read as follows:

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

15 (a) The commissioners court of a county or a local government  
16 corporation, without state approval, supervision, or regulation  
17 may:

18 (1) authorize the use or pledge of surplus revenue to  
19 pay or finance the costs of a project for the study, design,  
20 construction, maintenance, repair, or operation of roads, streets,  
21 highways, or other related facilities that are not part of a project  
22 under this chapter; and

23 (2) prescribe terms for the use of the surplus  
24 revenue, including the manner in which revenue from a project  
25 becomes surplus revenue and the manner in which the roads, streets,  
26 highways, or other related facilities are to be studied, designed,  
27 constructed, maintained, repaired, or operated.

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

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

7        (d) Except as provided by this section, a county has the  
8 same powers, including the powers to finance and to encumber  
9 surplus revenue, and may use the same procedures with respect to the  
10 study, financing, design, construction, maintenance, repair, or  
11 operation of a road, street, highway, or other related facility  
12 under this section as are available to the county with respect to a  
13 project under this chapter.

14        Sec. 284.0032. TRANS-TEXAS CORRIDOR PROJECTS. If a county  
15 requests or is requested by the commission to participate in the  
16 development of a project under this chapter that has been  
17 designated as part of the Trans-Texas Corridor, in connection with  
18 the project and in addition to the other powers granted by this  
19 chapter, the county has all the powers of the department related to  
20 the development of a project that has been designated as part of the  
21 Trans-Texas Corridor.

22        Sec. 284.004. USE OF COUNTY PROPERTY AND STATE HIGHWAY  
23 ALIGNMENT, RIGHT-OF-WAY, AND ACCESS. (a) Notwithstanding any  
24 other law, under this chapter a county may use any county property,  
25 state highway right-of-way, or access to the state highway system  
26 [for a project under this chapter], regardless of when or how the  
27 property, right-of-way, or access is acquired. The department or



1 the commission may require the county to comply with any covenant,  
2 condition, restriction, or limitation that affects state highway  
3 right-of-way, but may not:

4 (1) adopt rules or establish policies that have the  
5 effect of denying the county the use of the right-of-way or access  
6 that the county has determined to be necessary or convenient for the  
7 construction, acquisition, improvement, operation, maintenance, or  
8 pooling of a project under this chapter or the implementation of a  
9 plan under Section 284.003(d); or

10 (2) require the county to pay for the use of the  
11 right-of-way or access, except to reimburse the commission or  
12 department for actual costs incurred or to be incurred by a third  
13 party, including the federal government, as a result of that use by  
14 the county.

15 (b) If a project of the county under this chapter includes  
16 the proposed use of improved state highway right-of-way, the county  
17 and the commission or the department must enter into an agreement  
18 that includes reasonable terms to accommodate that use of the  
19 right-of-way by the county and to protect the interests of the  
20 commission and the department in the use of the right-of-way for  
21 operations of the department, including public safety and  
22 congestion mitigation on the improved right-of-way.

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

1 SECTION 14. Sections 284.008(c) and (d), Transportation  
2 Code, are amended to read as follows:

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

6 (1) all of the bonds and interest on the bonds that are  
7 payable from or secured by revenues of the project have been paid by  
8 the issuer of the bonds or another person with the consent or  
9 approval of the issuer; or

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

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

20 (1) Section 362.051 does not apply to the project;

21 (2) the project must be maintained by the county; and

22 (3) the project will not become part of the state  
23 highway system unless the county transfers the project under  
24 Section 284.011.

25 SECTION 15. Sections 284.065(b) and (c), Transportation  
26 Code, are amended to read as follows:

27 (b) An existing project may be pooled in whole or in part

1 with a new project or another existing project.

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

3 SECTION 16. Section 366.003, Transportation Code, is  
4 amended by adding Subdivision (9-a) to read as follows:

5 (9-a) "Surplus revenue" means the revenue of a  
6 turnpike project or system remaining at the end of any fiscal year  
7 after all required payments and deposits have been made in  
8 accordance with all bond resolutions, trust agreements,  
9 indentures, credit agreements, or other instruments and  
10 contractual obligations of the authority payable from the revenue  
11 of the turnpike project or system.

12 SECTION 17. Section 366.301, Transportation Code, is  
13 amended by adding Subsection (e) to read as follows:

14 (e) An action of an authority under this chapter must comply  
15 with the requirements of applicable federal law, if any, including  
16 standards regarding the role of metropolitan planning  
17 organizations under federal law, the use of toll revenue, the  
18 planning, design, financing, construction, and operation of  
19 turnpike projects, and the use of right-of-way of and access to  
20 federal-aid highways, to the extent such standards are otherwise  
21 applicable to an authority's turnpike project. Nothing in this  
22 chapter shall impair the ability of the commission or the  
23 department to ensure compliance with any federal requirement  
24 enabling the state to receive federal highway money.

25 SECTION 18. Chapter 366, Transportation Code, is amended by  
26 adding Subchapter H to read as follows:

1           SUBCHAPTER H. COMPREHENSIVE DEVELOPMENT AGREEMENTS

2           Sec. 366.401. COMPREHENSIVE DEVELOPMENT AGREEMENTS.

3           (a) An authority may use a comprehensive development agreement  
4 with a private entity to design, develop, finance, construct,  
5 maintain, repair, operate, extend, or expand a turnpike project.

6           (b) A comprehensive development agreement is an agreement  
7 with a private entity that, at a minimum, provides for the design,  
8 construction, rehabilitation, expansion, or improvement of a  
9 turnpike project and may also provide for the financing,  
10 acquisition, maintenance, or operation of a turnpike project.

11           (c) An authority may negotiate provisions relating to  
12 professional and consulting services provided in connection with a  
13 comprehensive development agreement.

14           (d) An authority may authorize the investment of public and  
15 private money, including debt and equity participation, to finance  
16 a function described by this section.

17           Sec. 366.402. PROCESS FOR ENTERING INTO COMPREHENSIVE  
18 DEVELOPMENT AGREEMENTS. (a) If an authority enters into a

19 comprehensive development agreement, the authority shall use a  
20 competitive procurement process that provides the best value for  
21 the authority. An authority may accept unsolicited proposals for a  
22 proposed turnpike project or solicit proposals in accordance with  
23 this section.

24           (b) An authority shall establish rules and procedures for  
25 accepting unsolicited proposals that require the private entity to  
26 include in the proposal:

27           (1) information regarding the proposed project

1 location, scope, and limits;

2 (2) information regarding the private entity's  
3 qualifications, experience, technical competence, and capability  
4 to develop the project; and

5 (3) any other information the authority considers  
6 relevant or necessary.

7 (c) An authority shall publish a notice advertising a  
8 request for competing proposals and qualifications in the Texas  
9 Register that includes the criteria to be used to evaluate the  
10 proposals, the relative weight given to the criteria, and a  
11 deadline by which proposals must be received if:

12 (1) the authority decides to issue a request for  
13 qualifications for a proposed project; or

14 (2) the authority authorizes the further evaluation of  
15 an unsolicited proposal.

16 (d) A proposal submitted in response to a request published  
17 under Subsection (c) must contain, at a minimum, the information  
18 required by Subsections (b)(2) and (3).

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

1 a request under Subsection (c).

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

8 (1) the private entity's qualifications and  
9 demonstrated technical competence;

10 (2) the feasibility of developing the project as  
11 proposed;

12 (3) engineering or architectural designs;

13 (4) the private entity's ability to meet schedules; or

14 (5) a financial plan, including costing methodology  
15 and cost proposals.

16 (g) In issuing a request for proposals under Subsection (f),  
17 an authority may solicit input from entities qualified under  
18 Subsection (e) or any other person. An authority may also solicit  
19 input regarding alternative technical concepts after issuing a  
20 request under Subsection (f).

21 (h) An authority shall evaluate each proposal based on the  
22 criteria described in the request for detailed proposals and select  
23 the private entity whose proposal offers the apparent best value to  
24 the authority.

25 (i) An authority may enter into negotiations with the  
26 private entity whose proposal offers the apparent best value.

27 (j) If at any point in negotiations under Subsection (i), it

1 appears to the authority that the highest ranking proposal will not  
2 provide the authority with the overall best value, the authority  
3 may enter into negotiations with the private entity submitting the  
4 next-highest-ranking proposal.

5 (k) An authority may withdraw a request for competing  
6 proposals and qualifications or a request for detailed proposals at  
7 any time. The authority may then publish a new request for  
8 competing proposals and qualifications.

9 (l) An authority may require that an unsolicited proposal be  
10 accompanied by a nonrefundable fee sufficient to cover all or part  
11 of its cost to review the proposal.

12 (m) An authority may pay an unsuccessful private entity that  
13 submits a responsive proposal in response to a request for detailed  
14 proposals under Subsection (f) a stipulated amount in exchange for  
15 the work product contained in that proposal. A stipulated amount  
16 must be stated in the request for proposals and may not exceed the  
17 value of any work product contained in the proposal that can, as  
18 determined by the authority, be used by the authority in the  
19 performance of its functions. The use by the authority of any  
20 design element contained in an unsuccessful proposal is at the sole  
21 risk and discretion of the authority and does not confer liability  
22 on the recipient of the stipulated amount under this subsection.  
23 After payment of the stipulated amount:

24 (1) the authority, with the unsuccessful private  
25 entity, jointly owns the rights to, and may make use of any work  
26 product contained in, the proposal, including the technologies,  
27 techniques, methods, processes, ideas, and information contained

1 in the project design; and

2 (2) the use by the unsuccessful private entity of any  
3 portion of the work product contained in the proposal is at the sole  
4 risk of the unsuccessful private entity and does not confer  
5 liability on the authority.

6 (n) An authority may prescribe the general form of a  
7 comprehensive development agreement and may include any matter the  
8 authority considers advantageous to the authority. The authority  
9 and the private entity shall finalize the specific terms of a  
10 comprehensive development agreement.

11 (o) Section 366.185 and Subchapter A, Chapter 223, of this  
12 code and Chapter 2254, Government Code, do not apply to a  
13 comprehensive development agreement entered into under this  
14 subchapter.

15 Sec. 366.403. CONFIDENTIALITY OF INFORMATION. (a) To  
16 encourage private entities to submit proposals under this  
17 subchapter, the following information is confidential, is not  
18 subject to disclosure, inspection, or copying under Chapter 552,  
19 Government Code, and is not subject to disclosure, discovery,  
20 subpoena, or other means of legal compulsion for its release until a  
21 final contract for a proposed project is entered into:

22 (1) all or part of a proposal that is submitted by a  
23 private entity for a comprehensive development agreement, except  
24 information provided under Sections 366.402(b)(1) and (2), unless  
25 the private entity consents to the disclosure of the information;

26 (2) supplemental information or material submitted by  
27 a private entity in connection with a proposal for a comprehensive



1 development agreement unless the private entity consents to the  
2 disclosure of the information or material; and

3 (3) information created or collected by an authority  
4 or its agent during consideration of a proposal for a comprehensive  
5 development agreement or during the authority's preparation of a  
6 proposal to the department relating to a comprehensive development  
7 agreement.

8 (b) After an authority completes its final ranking of  
9 proposals under Section 366.402(h), the final rankings of each  
10 proposal under each of the published criteria are not confidential.

11 Sec. 366.404. PERFORMANCE AND PAYMENT SECURITY.

12 (a) Notwithstanding the requirements of Subchapter B, Chapter  
13 2253, Government Code, an authority shall require a private entity  
14 entering into a comprehensive development agreement under this  
15 subchapter to provide a performance and payment bond or an  
16 alternative form of security in an amount sufficient to:

17 (1) ensure the proper performance of the agreement;  
18 and

19 (2) protect:

20 (A) the authority; and

21 (B) payment bond beneficiaries who have a direct  
22 contractual relationship with the private entity or a subcontractor  
23 of the private entity to supply labor or material.

24 (b) A performance and payment bond or alternative form of  
25 security shall be in an amount equal to the cost of constructing or  
26 maintaining the project.

27 (c) If an authority determines that it is impracticable for

1 a private entity to provide security in the amount described by  
2 Subsection (b), the authority shall set the amount of the bonds or  
3 the alternative forms of security.

4 (d) A payment or performance bond or alternative form of  
5 security is not required for the portion of an agreement that  
6 includes only design or planning services, the performance of  
7 preliminary studies, or the acquisition of real property.

8 (e) The amount of the payment security must not be less than  
9 the amount of the performance security.

10 (f) In addition to, or instead of, performance and payment  
11 bonds, an authority may require the following alternative forms of  
12 security:

13 (1) a cashier's check drawn on a financial entity  
14 specified by the authority;

15 (2) a United States bond or note;

16 (3) an irrevocable bank letter of credit; or

17 (4) any other form of security determined suitable by  
18 the authority.

19 (g) An authority by rule shall prescribe requirements for  
20 alternative forms of security provided under this section.

21 Sec. 366.405. OWNERSHIP OF TURNPIKE PROJECTS. (a) A  
22 turnpike project that is the subject of a comprehensive development  
23 agreement with a private entity, including the facilities acquired  
24 or constructed on the project, is public property and is owned by  
25 the authority.

26 (b) Notwithstanding Subsection (a), an authority may enter  
27 into an agreement that provides for the lease of rights-of-way, the

1 granting of easements, the issuance of franchises, licenses, or  
2 permits, or any lawful uses to enable a private entity to construct,  
3 operate, and maintain a turnpike project, including supplemental  
4 facilities. At the termination of the agreement, the turnpike  
5 project, including the facilities, are to be in a state of proper  
6 maintenance as determined by the authority and shall be returned to  
7 the authority in satisfactory condition at no further cost.

8 Sec. 366.406. LIABILITY FOR PRIVATE OBLIGATIONS. An  
9 authority may not incur a financial obligation for a private entity  
10 that designs, develops, finances, constructs, operates, or  
11 maintains a turnpike project. The authority or a political  
12 subdivision of the state is not liable for any financial or other  
13 obligation of a turnpike project solely because a private entity  
14 constructs, finances, or operates any part of the project.

15 Sec. 366.407. TERMS OF PRIVATE PARTICIPATION. (a) An  
16 authority shall negotiate the terms of private participation in a  
17 turnpike project under this subchapter, including:

18 (1) methods to determine the applicable cost, profit,  
19 and project distribution among the private participants and the  
20 authority;

21 (2) reasonable methods to determine and classify toll  
22 rates and the responsibility for setting toll rates;

23 (3) acceptable safety and policing standards; and

24 (4) other applicable professional, consulting,  
25 construction, operation, and maintenance standards, expenses, and  
26 costs.

27 (b) A comprehensive development agreement entered into

1 under this subchapter may include any provision the authority  
2 considers appropriate, including a provision:

3 (1) providing for the purchase by the authority, under  
4 terms and conditions agreed to by the parties, of the interest of a  
5 private participant in the comprehensive development agreement and  
6 related property, including any interest in a turnpike project  
7 designed, developed, financed, constructed, operated, or  
8 maintained under the comprehensive development agreement;

9 (2) establishing the purchase price, as determined in  
10 accordance with the methodology established by the parties in the  
11 comprehensive development agreement, for the interest of a private  
12 participant in the comprehensive development agreement and related  
13 property;

14 (3) providing for the payment of an obligation  
15 incurred under the comprehensive development agreement, including  
16 an obligation to pay the purchase price for the interest of a  
17 private participant in the comprehensive development agreement,  
18 from any available source, including securing the obligation by a  
19 pledge of revenues of the authority derived from the applicable  
20 project, which pledge shall have priority as established by the  
21 authority;

22 (4) permitting the private participant to pledge its  
23 rights under the comprehensive development agreement;

24 (5) concerning the private participant's right to  
25 operate and collect revenue from the turnpike project; and

26 (6) restricting the right of the authority to  
27 terminate the private participant's right to operate and collect

1 revenue from the turnpike project unless and until any applicable  
2 termination payments have been made.

3 (c) An authority may enter into a comprehensive development  
4 agreement under this subchapter with a private participant only if  
5 the project is identified in the department's unified  
6 transportation program or is located on a transportation corridor  
7 identified in the statewide transportation plan.

8 (d) Section 366.406 does not apply to an obligation of an  
9 authority under a comprehensive development agreement, nor is an  
10 authority otherwise constrained from issuing bonds or other  
11 financial obligations for a turnpike project payable solely from  
12 revenues of that turnpike project or from amounts received under a  
13 comprehensive development agreement.

14 (e) Notwithstanding any other law, and subject to  
15 compliance with the dispute resolution procedures set out in the  
16 comprehensive development agreement, an obligation of an authority  
17 under a comprehensive development agreement entered into under this  
18 subchapter to make or secure payments to a person because of the  
19 termination of the agreement, including the purchase of the  
20 interest of a private participant or other investor in a project,  
21 may be enforced by mandamus against the authority in a district  
22 court of any county of the authority, and the sovereign immunity of  
23 the authority is waived for that purpose. The district courts of  
24 any county of the authority shall have exclusive jurisdiction and  
25 venue over and to determine and adjudicate all issues necessary to  
26 adjudicate any action brought under this subsection. The remedy  
27 provided by this subsection is in addition to any legal and

1 equitable remedies that may be available to a party to a  
2 comprehensive development agreement.

3 (f) If an authority enters into a comprehensive development  
4 agreement with a private participant that includes the collection  
5 by the private participant of tolls for the use of a toll project,  
6 the private participant shall submit to the authority for approval:

7 (1) the methodology for:

8 (A) the setting of tolls; and

9 (B) increasing the amount of the tolls;

10 (2) a plan outlining methods the private participant  
11 will use to collect the tolls, including:

12 (A) any charge to be imposed as a penalty for late  
13 payment of a toll; and

14 (B) any charge to be imposed to recover the cost  
15 of collecting a delinquent toll; and

16 (3) any proposed change in an approved methodology for  
17 the setting of a toll or a plan for collecting the toll.

18 (g) Except as provided by this section, a comprehensive  
19 development agreement with a private participant that includes the  
20 collection by the private participant of tolls for the use of a toll  
21 project may be for a term not longer than 30 years.

22 Sec. 366.408. RULES, PROCEDURES, AND GUIDELINES GOVERNING  
23 SELECTION AND NEGOTIATING PROCESS. (a) To promote fairness,  
24 obtain private participants in turnpike projects, and promote  
25 confidence among those participants, an authority shall adopt  
26 rules, procedures, and other guidelines governing selection of  
27 private participants for comprehensive development agreements and

1 negotiations of comprehensive development agreements. The rules  
2 must contain criteria relating to the qualifications of the  
3 participants and the award of the contracts.

4 (b) An authority shall have up-to-date procedures for  
5 participation in negotiations under this subchapter.

6 (c) An authority has exclusive judgment to determine the  
7 terms of an agreement.

8 Sec. 366.409. USE OF CONTRACT PAYMENTS. (a) Payments  
9 received by an authority under a comprehensive development  
10 agreement shall be used by the authority to finance the  
11 construction, maintenance, or operation of a turnpike project or a  
12 highway.

13 (b) The authority shall allocate the distribution of funds  
14 received under Subsection (a) to the counties of the authority  
15 based on the percentage of toll revenue from users, from each  
16 county, of the project that is the subject of the comprehensive  
17 development agreement. To assist the authority in determining the  
18 allocation, each entity responsible for collecting tolls for a  
19 project shall calculate on an annual basis the percentage of toll  
20 revenue from users of the project from each county within the  
21 authority based on the number of recorded electronic toll  
22 collections.

23 SECTION 19. Section 366.033(f), Transportation Code, is  
24 amended to read as follows:

25 (f) An authority may rent, lease, franchise, license, or  
26 otherwise make portions of any property of the authority, including  
27 tangible or intangible property, [~~its properties~~] available for use

1 by others in furtherance of its powers under this chapter by  
2 increasing:

3 (1) the feasibility or efficient operation [the  
4 revenue] of a turnpike project or system; or

5 (2) the revenue of the authority.

6 SECTION 20. Subchapter B, Chapter 366, Transportation Code,  
7 is amended by adding Sections 366.037, 366.038, and 366.039 to read  
8 as follows:

9 Sec. 366.037. OTHER HIGHWAY PROJECTS. (a) In addition to  
10 the powers granted under this chapter and without supervision or  
11 regulation by any state agency or local governmental entity, but  
12 subject to an agreement entered into under Subsection (c), the  
13 board of an authority may by resolution, and on making the findings  
14 set forth in this subsection, authorize the use of surplus revenue  
15 of a turnpike project or system for the study, design,  
16 construction, maintenance, repair, and operation of a highway or  
17 similar facility that is not a turnpike project if the highway or  
18 similar facility is:

19 (1) situated in a county in which the authority is  
20 authorized to design, construct, and operate a turnpike project;

21 (2) anticipated to either:

22 (A) enhance the operation or revenue of an  
23 existing, or the feasibility of a proposed, turnpike project by  
24 bringing traffic to that turnpike project or enhancing the flow of  
25 traffic either on that turnpike project or to or from that turnpike  
26 project to another facility; or

27 (B) ameliorate the impact of an existing or



1 proposed turnpike project by enhancing the capability of another  
2 facility to handle traffic traveling, or anticipated to travel, to  
3 or from that turnpike project; and

4 (3) not anticipated to result in an overall reduction  
5 of revenue of any turnpike project or system.

6 (b) The board in the resolution may prescribe terms for the  
7 use of the surplus revenue, including the manner in which the  
8 highway or related facility shall be studied, designed,  
9 constructed, maintained, repaired, or operated.

10 (c) An authority shall enter into an agreement to implement  
11 this section with the department, the commission, a local  
12 governmental entity, or another political subdivision that owns a  
13 street, road, alley, or highway that is directly affected by the  
14 authority's turnpike project or related facility.

15 (d) An authority may not:

16 (1) take an action under this section that violates,  
17 impairs, or is inconsistent with a bond resolution, trust  
18 agreement, or indenture governing the use of the revenue of a  
19 turnpike project or system; or

20 (2) commit in any fiscal year expenditures under this  
21 section exceeding 10 percent of its surplus revenue from the  
22 preceding fiscal year.

23 (e) In authorizing expenditures under this section, the  
24 board shall consider:

25 (1) balancing throughout the counties of the authority  
26 the application of funds generated by its turnpike projects and  
27 systems, taking into account where those amounts are already

1 committed or programmed as a result of this section or otherwise;  
2 and

3 (2) connectivity to an existing or proposed turnpike  
4 project or system.

5 (f) Except as provided by this section, an authority has the  
6 same powers and may use the same procedures with respect to the  
7 study, financing, design, construction, maintenance, repair, and  
8 operation of a highway or similar facility under this section as are  
9 available to the authority with respect to a turnpike project or  
10 system.

11 Sec. 366.038. TOLL PROJECTS IN TERRITORY OF LOCAL OR  
12 REGIONAL TOLL PROJECT ENTITY. (a) In this section, "local toll  
13 project entity" means a regional tollway authority under this  
14 chapter.

15 (b) For each toll project located within the boundaries of a  
16 local toll project entity, after completion of the market valuation  
17 the policy board of the metropolitan planning organization shall  
18 notify the local toll project entity by mail that the entity has the  
19 first option to develop, finance, construct, and operate the  
20 project. The toll project entity must decide whether to exercise  
21 the option before the 90th day after the date the notice sent under  
22 this subsection is received by the local tool project entity.

23 (c) If the local toll project entity does not exercise the  
24 option to develop, finance, construct, and operate a toll project  
25 under Subsection (b), the metropolitan planning organization shall  
26 allow the department to develop, finance, construct, and operate  
27 the project.

1       (d) If the department determines that a toll project offered  
2 to the department under Subsection (c) should be developed,  
3 financed, constructed, and operated under a comprehensive  
4 development agreement, a request for proposal shall include the  
5 terms and conditions approved by the policy board of the  
6 metropolitan planning organization.

7       (e) If a local toll project entity does not exercise the  
8 right to first option under Subsection (b) and after five years  
9 after the date of the notice under Subsection (b) the commission or  
10 the department has not issued a request for proposal or taken any  
11 other action to begin the toll project, before taking such an action  
12 the commission or the department shall provide the toll project  
13 entity the right to first option under Subsection (b).

14       (f) A local toll project entity shall provide customer  
15 service and other toll collection and enforcement services for a  
16 toll project, regardless of whether the toll project is developed,  
17 financed, constructed, and operated under a comprehensive  
18 development agreement or an agreement with the toll project entity.

19       (g) For the purposes of this section, a notice is considered  
20 received on the third business day after the date that the notice is  
21 mailed.

22       (h) A local toll project entity that exercises the option  
23 under Subsection (b) must begin the environmental phase of the  
24 project within 18 months of the action taken by the entity under  
25 Subsection (b).

26       Sec. 366.039. USE OF STATE HIGHWAY ALIGNMENT, RIGHT-OF-WAY,  
27 AND ACCESS. (a) Notwithstanding any other law, an authority may

1 use any authority property, state highway right-of-way, or access  
2 to the state highway system, regardless of when or how the property,  
3 right-of-way, or access is acquired. The department or the  
4 commission may require the authority to comply with any covenant,  
5 condition, restriction, or limitation that affects state highway  
6 right-of-way, but may not:

7 (1) adopt rules or establish policies that have the  
8 effect of denying the authority the use of the right-of-way or  
9 access that the authority has determined to be necessary or  
10 convenient for the construction, acquisition, improvement,  
11 operation, maintenance, or pooling of a project under this chapter;  
12 or

13 (2) require the authority to pay for the use of the  
14 right-of-way or access, except to reimburse the commission or  
15 department for actual costs incurred or to be incurred by a third  
16 party, including the federal government, as a result of that use by  
17 the authority.

18 (b) If a project of an authority under this chapter includes  
19 the proposed use of improved state highway right-of-way, the  
20 authority and the commission or the department must enter into an  
21 agreement that includes reasonable terms to accommodate that use of  
22 the right-of-way by the authority and to protect the interests of  
23 the commission and the department in the use of the right-of-way for  
24 operations of the department, including public safety and  
25 congestion mitigation on the improved right-of-way.

26 (c) Notwithstanding any other law, the commission and the  
27 department are not liable for any damages that result from an

1 authority's use of state highway right-of-way or access to the  
2 state highway system under this chapter, regardless of the legal  
3 theory, statute, or cause of action under which liability is  
4 asserted.

5 SECTION 21. The heading to Section 366.185, Transportation  
6 Code, is amended to read as follows:

7 Sec. 366.185. ENGINEERING, DESIGN, AND CONSTRUCTION  
8 SERVICES [~~COMPETITIVE BIDDING~~].

9 SECTION 22. Section 366.185, Transportation Code, is  
10 amended by amending Subsection (a) and adding Subsections (c)  
11 through (f) to read as follows:

12 (a) A contract made by an authority that requires the  
13 expenditures of public funds for the construction or maintenance of  
14 a turnpike project may [~~must~~] be let by a competitive bidding  
15 procedure in which the contract is awarded to the lowest  
16 responsible bidder that complies with the authority's criteria.

17 (c) An authority may procure a combination of engineering,  
18 design, and construction services in a single procurement for a  
19 turnpike project, provided that any contract awarded results in the  
20 best value to the authority.

21 (d) The authority shall adopt rules governing the award of  
22 contracts for engineering, design, construction, and maintenance  
23 services in a single procurement.

24 (e) Notwithstanding any other provision of state law, an  
25 authority may let a contract for the design and construction of a  
26 turnpike project by a construction manager-at-risk procedure under  
27 which the construction manager-at-risk provides consultation to

1 the authority during the design of the turnpike project and is  
2 responsible for construction of the turnpike project in accordance  
3 with the authority's specifications. A construction  
4 manager-at-risk shall be selected on the basis of criteria  
5 established by the authority, which may include the construction  
6 manager-at-risk's experience, past performance, safety record,  
7 proposed personnel and methodology, proposed fees, and other  
8 appropriate factors that demonstrate the construction  
9 manager-at-risk's ability to provide the best value to the  
10 authority and to deliver the required services in accordance with  
11 the authority's specifications.

12 (f) The authority shall adopt rules governing the award of  
13 contracts using construction manager-at-risk procedures under this  
14 section.

15 SECTION 23. Subchapter F, Chapter 366, Transportation Code,  
16 is amended by adding Sections 366.2521 and 366.2522 to read as  
17 follows:

18 Sec. 366.2521. GIFTS AND CONTRIBUTIONS; OFFENSE. (a) In  
19 this section, "benefit" means anything reasonably regarded as  
20 pecuniary gain or pecuniary advantage, including benefit to any  
21 other person in whose welfare the beneficiary has a direct and  
22 substantial interest.

23 (b) A director commits an offense if the person solicits,  
24 accepts, or agrees to accept any benefit from:

25 (1) a person the director knows to be subject to  
26 regulation, inspection, or investigation by the authority; or

27 (2) a person the director knows is interested in or

1 likely to become interested in any contract, purchase, payment,  
2 claim, transaction, or matter involving the exercise of the  
3 director's discretion.

4 (c) A director who receives an unsolicited benefit that the  
5 director is prohibited from accepting under this section may donate  
6 the benefit to a governmental entity that has the authority to  
7 accept the gift or may donate the benefit to a recognized tax-exempt  
8 charitable organization formed for educational, religious, or  
9 scientific purposes.

10 (d) This section does not apply to:

11 (1) a fee prescribed by law to be received by a  
12 director;

13 (2) a benefit to which the director is lawfully  
14 entitled; or

15 (3) a benefit for which the director gives legitimate  
16 consideration in a capacity other than as a director.

17 (e) An offense under this section is a Class A misdemeanor.

18 (f) If conduct that constitutes an offense under this  
19 section also constitutes an offense under Section 36.08, Penal  
20 Code, the actor may be prosecuted under this section or Section  
21 36.08.

22 Sec. 366.2522. OFFERING GIFT TO A DIRECTOR; OFFENSE. (a) A  
23 person commits an offense if the person offers, confers, or agrees  
24 to confer any benefit on a director that the person knows the  
25 director is prohibited from accepting under Section 366.2521.

26 (b) An offense under this section is a Class A misdemeanor.

27 (c) If conduct that constitutes an offense under this

1 section also constitutes an offense under Section 36.09, Penal  
2 Code, the actor may be prosecuted under this section or Section  
3 36.09.

4 SECTION 24. Subchapter F, Chapter 366, Transportation Code,  
5 is amended by adding Section 366.2575 to read as follows:

6 Sec. 366.2575. BOARD VOTE ON COUNTY REQUEST. The  
7 commissioners court of a county of an authority may request the  
8 board of the authority to vote on whether to build a project that  
9 the county requests.

10 SECTION 25. Subchapter G, Chapter 366, Transportation Code,  
11 is amended by adding Section 366.305 to read as follows:

12 Sec. 366.305. TRANS-TEXAS CORRIDOR PROJECTS. If an  
13 authority is requested by the commission to participate in the  
14 development of a turnpike project that has been designated as part  
15 of the Trans-Texas Corridor, the authority shall have, in addition  
16 to all powers granted in this chapter, all powers of the department  
17 related to the development of Trans-Texas Corridor projects.

18 SECTION 26. Section 370.301(d), Transportation Code, is  
19 amended to read as follows:

20 (d) The commission or department may use federal money for  
21 any purpose described by this chapter. An action of an authority  
22 under this chapter or Chapter 228 must comply with the requirements  
23 of applicable federal law, if any, including standards regarding  
24 the role of metropolitan planning organizations under federal law,  
25 the use of toll revenue, the planning, design, financing,  
26 construction, and operation of turnpike projects, and the use of  
27 right-of-way of and access to federal-aid highways, to the extent



1 such standards are otherwise applicable to an authority's turnpike  
2 project. Nothing in this chapter or Chapter 228 shall impair the  
3 ability of the commission or the department to ensure compliance  
4 with any federal requirement enabling the state to receive federal  
5 highway money.

6 SECTION 27. Section 370.306(m), Transportation Code, is  
7 amended to read as follows:

8 (m) An authority may [~~shall~~] pay an unsuccessful private  
9 entity that submits a response to a request for detailed proposals  
10 under Subsection (f) a stipulated amount of the final contract  
11 price for any costs incurred in preparing that proposal. A [~~The~~]  
12 stipulated amount must be stated in the request for proposals and  
13 may not exceed the value of any work product contained in the  
14 proposal that can, as determined by the authority, be used by the  
15 authority in the performance of its functions. The use by the  
16 authority of any design element contained in an unsuccessful  
17 proposal is at the sole risk and discretion of the authority and  
18 does not confer liability on the recipient of the stipulated amount  
19 under this subsection. After payment of the stipulated amount:

20 (1) the authority owns the exclusive rights to, and  
21 may make use of any work product contained in, the proposal,  
22 including the technologies, techniques, methods, processes, and  
23 information contained in the project design; and

24 (2) the work product contained in the proposal becomes  
25 the property of the authority.

26 SECTION 28. Subtitle G, Title 6, Transportation Code, is  
27 amended by adding Chapter 371 to read as follows:

1 CHAPTER 371. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR HIGHWAY

2 TOLL PROJECTS

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 371.001. DEFINITIONS. In this chapter:

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

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

8 (B) subject to the jurisdiction of the  
9 department.

10 (2) "Toll project entity" means an entity authorized  
11 by law to acquire, design, construct, operate, and maintain a toll  
12 project, including:

13 (A) the department, including under Chapter 227;

14 (B) a regional tollway authority under Chapter  
15 366;

16 (C) a regional mobility authority under Chapter  
17 370; or

18 (D) a county under Chapter 284.

19 [Sections 371.002-371.050 reserved for expansion]

20 SUBCHAPTER B. OVERSIGHT

21 Sec. 371.051. ATTORNEY GENERAL REVIEW. A toll project  
22 entity may not enter into a comprehensive development agreement  
23 unless the attorney general reviews the proposed agreement and  
24 determines that it is legally sufficient.

25 Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD AND  
26 STATE AUDITOR. (a) Not later than the 10th day after the date of  
27 qualifying or shortlisting private entities to submit detailed

1 proposals for a toll project, a toll project entity shall provide  
2 the Legislative Budget Board with the names of qualifying or  
3 shortlisted proposers and their team members.

4 (b) At least 30 days before entering into a comprehensive  
5 development agreement, a toll project entity shall provide the  
6 Legislative Budget Board with:

7 (1) a copy of the version of the proposed  
8 comprehensive development agreement to be executed;

9 (2) a copy of the proposal submitted by the apparent  
10 best value proposer; and

11 (3) a financial forecast prepared by the toll project  
12 entity that includes:

13 (A) toll revenue the entity projects will be  
14 derived from the project during the planned term of the agreement;

15 (B) estimated construction costs and operating  
16 expenses; and

17 (C) the amount of income the entity projects the  
18 private participant in the agreement will realize during the  
19 planned term of the agreement.

20 (c) Before entering into a comprehensive development  
21 agreement, a toll project entity shall provide the state auditor  
22 with the traffic and revenue report prepared by the toll project  
23 entity or its consultant for the project. The entity may not enter  
24 into the comprehensive development agreement before the 30th day  
25 after the date that the state auditor receives the report so that  
26 the state auditor may review and comment on the report and the  
27 methodology used to develop the report.

1 (d) Before the comprehensive development agreement is  
2 entered into, financial forecasts and traffic and revenue reports  
3 prepared by or for a toll project entity for the project are  
4 confidential and are not subject to disclosure, inspection, or  
5 copying under Chapter 552, Government Code.

6 [Sections 371.053-371.100 reserved for expansion]

7 SUBCHAPTER C. CONTRACT PROVISIONS

8 Sec. 371.101. TERMINATION FOR CONVENIENCE. (a) A toll  
9 project entity having rulemaking authority by rule and a toll  
10 project entity without rulemaking authority by official action  
11 shall develop a formula for making termination payments to  
12 terminate a comprehensive development agreement under which a  
13 private participant receives the right to operate and collect  
14 revenue from a toll project. A formula must calculate an estimated  
15 amount of loss to the private participant as a result of the  
16 termination for convenience that is based on investments,  
17 expenditures, and rate of return associated with the project.

18 (b) A formula under Subsection (a) may not include an  
19 estimate of future revenue from the project.

20 Sec. 371.102. TERMINATION OF CERTAIN COMPREHENSIVE  
21 DEVELOPMENT AGREEMENTS. If a toll project entity elects to  
22 terminate a comprehensive development agreement under which a  
23 private participant receives the right to operate and collect  
24 revenue from a project, the entity may:

25 (1) if authorized to issue bonds for that purpose,  
26 issue bonds to:

27 (A) make any applicable termination payments to

1 the private participant; or

2 (B) purchase the interest of the private  
3 participant in the comprehensive development agreement or related  
4 property; or

5 (2) provide for the payment of obligations of the  
6 private participant incurred pursuant to the comprehensive  
7 development agreement.

8 Sec. 371.103. PROHIBITION AGAINST LIMITING OR PROHIBITING  
9 CONSTRUCTION OF TRANSPORTATION PROJECTS. (a) A comprehensive  
10 development agreement may not contain a provision that limits or  
11 prohibits the construction, reconstruction, expansion,  
12 rehabilitation, operation, or maintenance of a highway or other  
13 transportation project, as that term is defined by Section 370.003,  
14 by the toll project entity or other governmental entity, or by a  
15 private entity under a contract with the toll project entity or  
16 other governmental entity.

17 (b) Except as provided by Subsection (c), a comprehensive  
18 development agreement may contain a provision authorizing the toll  
19 project entity to compensate the private participant in the  
20 agreement for the loss of toll revenues attributable to the  
21 construction by the entity of a limited access highway project  
22 located within an area that extends up to four miles from either  
23 side of the centerline of the project developed under the  
24 agreement, less the private participant's decreased operating and  
25 maintenance costs attributable to the highway project, if any.

26 (c) A comprehensive development agreement may not require  
27 the toll project entity to provide compensation for the

1 construction of:

2 (1) a highway project contained in the state  
3 transportation plan or a transportation plan of a metropolitan  
4 planning organization in effect on the effective date of the  
5 agreement;

6 (2) work on or improvements to a highway project  
7 necessary for improved safety, or for maintenance or operational  
8 purposes;

9 (3) a high occupancy vehicle exclusive lane addition  
10 or other work on any highway project that is required by an  
11 environmental regulatory agency; or

12 (4) a transportation project that provides a mode of  
13 transportation that is not included in the project that is the  
14 subject of the comprehensive development agreement.

15 (d) The private participant has the burden of proving any  
16 loss of toll revenue resulting from the construction of a highway  
17 project described by Subsection (b).

18 (e) A comprehensive development agreement that contains a  
19 provision described by Subsection (b) must require the private  
20 participant to provide compensation to the toll project entity in  
21 the amount of any increase in toll revenues received by the private  
22 participant that is attributable to the construction of a highway  
23 project described by Subsection (b), less the private participant's  
24 increased operation and maintenance costs attributable to the  
25 highway project, if any.

26 [Sections 371.104-371.150 reserved for expansion]

1                   SUBCHAPTER D. DISCLOSURE OF INFORMATION

2                   Sec. 371.151. DISCLOSURE OF FINANCIAL INFORMATION. (a)

3 Before a toll project entity enters into a contract for the  
4 construction of a toll project, the entity shall publish in the  
5 manner provided by Section 371.152 information regarding:

6                   (1) project financing, including:

7                   (A) the total amount of debt that has been and  
8 will be assumed to acquire, design, construct, operate, and  
9 maintain the toll project;

10                   (B) a description of how the debt will be repaid,  
11 including a projected timeline for repaying the debt; and

12                   (C) the projected amount of interest that will be  
13 paid on the debt;

14                   (2) whether the toll project will continue to be  
15 tolled after the debt has been repaid;

16                   (3) a description of the method that will be used to  
17 set toll rates;

18                   (4) a description of any terms in the contract  
19 relating to competing facilities, including any penalties  
20 associated with the construction of a competing facility;

21                   (5) a description of any terms in the contract  
22 relating to a termination for convenience provision, including any  
23 information regarding how the value of the project will be  
24 calculated for the purposes of making termination payments;

25                   (6) the initial toll rates, the methodology for  
26 increasing toll rates, and the projected toll rates at the end of  
27 the term of the contract; and

1           (7) the projected total amount of concession payments.

2           (b) A toll project entity may not enter into a contract for  
3 the construction of a toll project before the 30th day after the  
4 date the information is first published under Section 371.152.

5           Sec. 371.152. DISCLOSURE BY PUBLICATION. (a) Information  
6 under Section 371.151 must be published in a newspaper published in  
7 the county in which the toll project is to be constructed once a  
8 week for at least two weeks before the time set for entering into  
9 the contract and in two other newspapers that the toll project  
10 entity may designate.

11           (b) Instead of the notice required by Subsection (a), if the  
12 toll project entity estimates that the contract involves an amount  
13 less than \$300,000, the information may be published in two  
14 successive issues of a newspaper published in the county in which  
15 the project is to be constructed.

16           (c) If a newspaper is not published in the county in which  
17 the toll project is to be constructed, notice shall be published in  
18 a newspaper published in the county:

19                   (1) nearest the county seat of the county in which the  
20 improvement is to be made; and

21                   (2) in which a newspaper is published.

22           Sec. 371.153. HEARING. (a) A toll project entity shall  
23 hold a public hearing on the information published under Section  
24 371.152 not later than the 10th day after the date the information  
25 is first published and not less than 10 days before the entity  
26 enters into the contract.

27           (b) A hearing under this section must be held in the county



1 seat of the county in which the toll project is located.

2 (c) A hearing under this section must include a formal  
3 presentation and a mechanism for responding to comments and  
4 questions.

5 SECTION 29. This Act takes effect immediately if it  
6 receives a vote of two-thirds of all the members elected to each  
7 house, as provided by Section 39, Article III, Texas Constitution.  
8 If this Act does not receive the vote necessary for immediate  
9 effect, this Act takes effect September 1, 2007.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1892 was passed by the House on April 11, 2007, by the following vote: Yeas 137, Nays 2, 3 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1892 on May 2, 2007, by the following vote: Yeas 139, Nays 1, 1 present, not voting; and that the House adopted H.C.R. No. 230 authorizing certain corrections in H.B. No. 1892 on May 3, 2007, by a non-record vote.

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Chief Clerk of the House

I certify that H.B. No. 1892 was passed by the Senate, with amendments, on April 30, 2007, by the following vote: Yeas 27, Nays 4; and that the Senate adopted H.C.R. No. 230 authorizing certain corrections in H.B. No. 1892 on May 3, 2007, by a viva-voce vote.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor