

By: Smith of Harris, Dutton, Hartnett,
Creighton, Howard of Fort Bend, et al.

H.B. No. 1892

Substitute the following for H.B. No. 1892:

By: Harless

C.S.H.B. No. 1892

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 228.0055, Transportation Code, is
amended to read as follows:

Sec. 228.0055. USE OF CONTRACT PAYMENTS. (a) Payments received by the commission or the department under a comprehensive development agreement shall [may] be used by the commission or the department to finance the construction, maintenance, or operation of a transportation project or air quality project in the same department district as the project or facilities to which the payments are attributable [region].

(b) The commission or the department may not:

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

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

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

Sec. 228.011. TOLL PROJECTS IN CERTAIN COUNTIES. (a) This

1 section applies only to a county acting under Chapter 284.

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

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

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

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

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

27 (2) in a manner determined by the county to be

1 consistent with the practices and procedures by which the county
2 finances, constructs, or operates a project.

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

9 (g) An agreement entered into by the county and the
10 commission or department in connection with a project under Chapter
11 284 that is financed, constructed, or operated by the county and
12 that is on or directly connected to a highway in the state highway
13 system does not create a joint enterprise for liability purposes.

14 SECTION 3. 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 4. Section 284.003, Transportation Code, is amended
4 to read as follows:

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

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

11 (A) exclusively in the county;

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

13 (C) in one or more counties adjacent to the
14 county;

15 (2) issue tax bonds, revenue bonds, or combination tax
16 and revenue bonds to pay the cost of the construction, acquisition,
17 or improvement of a project;

18 (3) impose tolls or charges as otherwise authorized by
19 this chapter;

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

23 (5) construct, acquire, or operate a ferry across a
24 deepwater navigation channel;

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

1 (7) enter into a comprehensive development agreement
2 with a private entity to design, develop, finance, construct,
3 maintain, repair, operate, extend, or expand a proposed or existing
4 project in the county to the extent and in the manner applicable to
5 the department under Chapter 223 or to a regional tollway authority
6 under Chapter 366.

7 (b) The county or a local government corporation may
8 exercise a power provided by Subsection (a)(6) only in a manner
9 consistent with the other powers provided by this chapter. To the
10 extent of a conflict between this chapter and Chapter 370, this
11 chapter prevails.

12 (c) A project or any portion of a project that is owned by
13 the county and licensed or leased to a private entity or operated by
14 a private entity under this chapter to provide transportation
15 services to the general public is public property used for a public
16 purpose and exempt from taxation by this state or a political
17 subdivision of this state.

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

1 commission or the department.

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

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

8 SECTION 5. Subchapter A, Chapter 284, Transportation Code,
9 is amended by adding Sections 284.0031 and 284.0032 and amending
10 Section 284.004 to read as follows:

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

12 (a) The commissioners court of a county or a local government
13 corporation, without state approval, supervision, or regulation
14 may:

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

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

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

26 (c) A county may not take an action under this section that
27 violates or impairs a bond resolution, trust agreement, or

1 indenture that governs the use of the revenue of a project.

2 (d) Except as provided by this section, a county has the
3 same powers and may use the same procedures with respect to the
4 study, financing, design, construction, maintenance, repair, or
5 operation of a road, street, highway, or other related facility
6 under this section as are available to the county with respect to a
7 project under this chapter.

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

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

25 (1) adopt rules or establish policies that have the
26 effect of denying the county the use of the right-of-way or access
27 that the county has determined to be necessary or convenient for the

1 construction, acquisition, improvement, operation, maintenance, or
2 pooling of a project under this chapter or the implementation of a
3 plan under Section 284.003(d); or

4 (2) require the county to pay for the use of the
5 right-of-way or access, except to reimburse the commission or
6 department for actual costs incurred or to be incurred by a third
7 party, including the federal government, as a result of that use by
8 the county.

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

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

21 SECTION 6. Sections 284.008(c) and (d), Transportation
22 Code, are amended to read as follows:

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

26 (1) all of the bonds and interest on the bonds that are
27 payable from or secured by revenues of the project have been paid by

1 the issuer of the bonds or another person with the consent or
2 approval of the issuer; or

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

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

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

18 SECTION 7. Sections 284.065(b) and (c), Transportation
19 Code, are amended to read as follows:

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

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

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