

By: Nichols, et al.

S.B. No. 17

A BILL TO BE ENTITLED

AN ACT

relating to the design, development, financing, construction, and operation of certain toll projects; granting the authority to issue bonds.

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

SECTION 1. Subsections (b) and (h), Section 223.208, Transportation Code, are amended to read as follows:

(b) A comprehensive development agreement entered into under this subchapter or Section 227.023(c) must include a provision [~~may include any provision that the department considers appropriate, including provisions:~~

~~(1) providing for the purchase by the department [under terms and conditions agreed to by the parties,~~ of the interest of a private participant in the comprehensive development agreement and related property as required by Section 371.101 and may include any other provision the department considers appropriate, including a provision:

(1) [including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the comprehensive development agreement,

~~(2) establishing the purchase price for the interest of a private participant in the comprehensive development agreement and related property, which price may be determined in accordance with the methodology established by the parties in the~~

1 ~~comprehensive development agreement,~~

2 ~~[(3)]~~ providing for the payment of obligations
3 incurred pursuant to the comprehensive development agreement,
4 including any obligation to pay the purchase price for the interest
5 of a private participant in the comprehensive development
6 agreement, from any lawfully available source, including securing
7 such obligations by a pledge of revenues of the commission or the
8 department derived from the applicable project, which pledge shall
9 have such priority as the department may establish;

10 (2) ~~[(4)]~~ permitting the private participant to
11 pledge its rights under the comprehensive development agreement;

12 (3) ~~[(5)]~~ concerning the private participant's right
13 to operate and collect revenue from the project; and

14 (4) ~~[(6)]~~ restricting the right of the commission or
15 the department to terminate the private participant's right to
16 operate and collect revenue from the project unless and until any
17 applicable termination payments have been made.

18 (h) A comprehensive development agreement with a private
19 participant that includes the collection by the private participant
20 of tolls for the use of a toll project may be for a term not longer
21 than 50 years from the later of the date of final acceptance of the
22 project or the start of revenue operations by the private
23 participant, not to exceed a total term of 52 years. ~~[The~~
24 ~~comprehensive development agreement must contain an explicit~~
25 ~~mechanism for setting the price for the purchase by the department~~
26 ~~of the interest of the private participant in the comprehensive~~
27 ~~development agreement and related property, including any interest~~

1 ~~in a highway or other facility designed, developed, financed,~~
2 ~~constructed, operated, or maintained under the agreement.]~~

3 SECTION 2. Section 228.006, Transportation Code, is amended
4 by amending Subsection (a) and adding Subsection (a-1) to read as
5 follows:

6 (a) The commission shall authorize the use of surplus
7 revenue of a toll project or system to pay the costs of a
8 transportation project, highway project, or air quality project
9 within a region [~~department district~~] in which any part of the toll
10 project is located.

11 (a-1) The department shall allocate the distribution of the
12 surplus toll revenue to department districts in the region that are
13 located in the boundaries of the metropolitan planning organization
14 in which the toll project or system producing the surplus revenue is
15 located based on the percentage of toll revenue from users in each
16 department district of the project or system. To assist the
17 department in determining the allocation, each entity responsible
18 for collecting tolls for a project or system shall calculate on an
19 annual basis the percentage of toll revenue from users of the
20 project or system in each department district based on the number of
21 recorded electronic toll collections.

22 SECTION 3. Section 228.012, Transportation Code, is amended
23 to read as follows:

24 Sec. 228.012. PROJECT SUBACCOUNTS. (a) The department
25 shall create a separate account in the state highway fund to hold
26 payments received by the department under a comprehensive
27 development agreement and[~~7~~] the surplus revenue of a toll project

1 or system~~[, and payments received under Sections 228.0111(g)(2) and~~
2 ~~(i)(2)]~~. The department shall create subaccounts in the account
3 for each project, system, or region. Interest earned on money in a
4 subaccount shall be deposited to the credit of that subaccount.

5 (b) The department shall hold money in a subaccount in trust
6 for the benefit of the region in which a project or system is
7 located and may assign the responsibility for allocating money in a
8 subaccount to a metropolitan planning organization in which the
9 region is located. Money ~~[Except as provided by Subsection (c),~~
10 ~~money]~~ shall be allocated to projects authorized by Section
11 228.0055 or Section 228.006, as applicable.

12 (c) ~~[Money in a subaccount received from a county or the~~
13 ~~department under Section 228.0111 in connection with a project for~~
14 ~~which a county acting under Chapter 284 has the first option shall~~
15 ~~be allocated to transportation projects located in the county and~~
16 ~~the counties contiguous to that county.~~

17 ~~[(d)]~~ Not later than January 1 of each odd-numbered year,
18 the department shall submit to the Legislative Budget Board, in the
19 format prescribed by the Legislative Budget Board, a report on cash
20 balances in the subaccounts created under this section and
21 expenditures made with money in those subaccounts.

22 (d) ~~[(e)]~~ The commission or the department may not:

23 (1) revise the formula as provided in the department's
24 unified transportation program or a successor document in a manner
25 that results in a decrease of a department district's allocation
26 because of the deposit of a payment into a project subaccount ~~[or a~~
27 ~~commitment to undertake an additional transportation project under~~

1 ~~Section 228.0111~~]; or

2 (2) take any other action that would reduce funding
3 allocated to a department district because of the deposit of a
4 payment [~~received from the department or local toll project entity~~]
5 into a project subaccount [~~or a commitment to undertake an~~
6 ~~additional transportation project under Section 228.0111~~].

7 SECTION 4. Subsection (b), Section 284.004, Transportation
8 Code, is amended to read as follows:

9 (b) In addition to authority granted by other law, a county
10 may use state highway right-of-way and may access state highway
11 right-of-way in accordance with Sections 228.011 and 373.102
12 [~~228.0111~~].

13 SECTION 5. Subsection (d), Section 284.061, Transportation
14 Code, is amended to read as follows:

15 (d) Subject to the reimbursement requirements of Section
16 373.102, a [A] county has full easements and rights-of-way through,
17 across, under, and over any property owned by this state that are
18 necessary or convenient to construct, acquire, or efficiently
19 operate a project under this chapter.

20 SECTION 6. Subsection (c), Section 366.170, Transportation
21 Code, is amended to read as follows:

22 (c) An authority has full easements and rights-of-way
23 through, across, under, and over any property owned by the state or
24 any local governmental entity that are necessary or convenient to
25 construct, acquire, or efficiently operate a turnpike project or
26 system under this chapter. This subsection does not affect the
27 obligation of the authority under other state law, including

1 Section 373.102, to compensate or reimburse the state for the use or
2 acquisition of an easement or right-of-way on property owned by or
3 on behalf of the state. An authority's use of property owned by or
4 on behalf of the state is subject to any covenants, conditions,
5 restrictions, or limitations affecting that property.

6 SECTION 7. Subsections (b) and (g), Section 366.407,
7 Transportation Code, are amended to read as follows:

8 (b) A comprehensive development agreement entered into
9 under this subchapter must [~~may~~] include [~~any provision the~~
10 ~~authority considers appropriate, including~~] a provision[~~,~~

11 [~~(1)~~] providing for the purchase by the authority[~~,~~
12 ~~under terms and conditions agreed to by the parties,~~] of the
13 interest of a private participant in the comprehensive development
14 agreement as required by Section 371.101 and may include any other
15 provision the authority considers appropriate, including a
16 provision:

17 (1) [~~and related property, including any interest in a~~
18 ~~turnpike project designed, developed, financed, constructed,~~
19 ~~operated, or maintained under the comprehensive development~~
20 ~~agreement,~~

21 [~~(2)~~] ~~establishing the purchase price, as determined in~~
22 ~~accordance with the methodology established by the parties in the~~
23 ~~comprehensive development agreement, for the interest of a private~~
24 ~~participant in the comprehensive development agreement and related~~
25 ~~property,~~

26 [(3)] providing for the payment of an obligation
27 incurred under the comprehensive development agreement, including

1 an obligation to pay the purchase price for the interest of a
2 private participant in the comprehensive development agreement,
3 from any available source, including securing the obligation by a
4 pledge of revenues of the authority derived from the applicable
5 project, which pledge shall have priority as established by the
6 authority;

7 (2) [~~(4)~~] permitting the private participant to
8 pledge its rights under the comprehensive development agreement;

9 (3) [~~(5)~~] concerning the private participant's right
10 to operate and collect revenue from the turnpike project; and

11 (4) [~~(6)~~] restricting the right of the authority to
12 terminate the private participant's right to operate and collect
13 revenue from the turnpike project unless and until any applicable
14 termination payments have been made.

15 (g) A [~~Except as provided by this subsection, a~~]
16 comprehensive development agreement with a private participant
17 that includes the collection by the private participant of tolls
18 for the use of a toll project may be for a term not longer than 50
19 years from the later of the date of final acceptance of the project
20 or the start of revenue operations by the private participant, not
21 to exceed a total term of 52 years. [~~The contract must contain an~~
22 ~~explicit mechanism for setting the price for the purchase by the~~
23 ~~department of the interest of the private participant in the~~
24 ~~contract and related property, including any interest in a highway~~
25 ~~or other facility designed, developed, financed, constructed,~~
26 ~~operated, or maintained under the contract.~~]

27 SECTION 8. Subsection (c), Section 370.169, Transportation

1 Code, is amended to read as follows:

2 (c) An authority has full easements and rights-of-way
3 through, across, under, and over any property owned by the state or
4 any local government that are necessary or convenient to construct,
5 acquire, or efficiently operate a transportation project or system
6 under this chapter. This subsection does not affect the obligation
7 of the authority under other law, including Section 373.102, to
8 compensate or reimburse this state for the use or acquisition of an
9 easement or right-of-way on property owned by or on behalf of this
10 state. An authority's use of property owned by or on behalf of this
11 state is subject to any covenants, conditions, restrictions, or
12 limitations affecting that property.

13 SECTION 9. Subsection (b), Section 370.311, Transportation
14 Code, is amended to read as follows:

15 (b) A comprehensive development agreement entered into
16 under Section 370.305 must include a provision authorizing the
17 authority to purchase, under terms agreed to by the parties, the
18 interest of a private equity investor in a transportation project
19 as required by Section 371.101.

20 SECTION 10. Section 371.002, Transportation Code, as added
21 by Chapter 264 (S.B. 792), Acts of the 80th Legislature, Regular
22 Session, 2007, is amended to read as follows:

23 Sec. 371.002. APPLICABILITY. This chapter does not apply
24 to:

25 (1) a project for which the commission selected an
26 apparent best value proposer before May 1, 2007; or

27 (2) a publicly owned and operated toll project, as

1 defined by Section 373.001.

2 SECTION 11. The heading to Section 371.052, Transportation
3 Code, as added by Chapter 264 (S.B. 792), Acts of the 80th
4 Legislature, Regular Session, 2007, is amended to read as follows:

5 Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD [~~AND~~
6 ~~STATE AUDITOR~~].

7 SECTION 12. Section 371.101, Transportation Code, as added
8 by Chapter 264 (S.B. 792), Acts of the 80th Legislature, Regular
9 Session, 2007, is amended to read as follows:

10 Sec. 371.101. TERMINATION BY PURCHASE [~~FOR CONVENIENCE~~].

11 (a) A comprehensive development agreement must contain a
12 provision authorizing the toll project entity to purchase, under
13 terms agreed to by the parties:

14 (1) the interest of a private participant in the toll
15 project that is the subject of the agreement; and

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

19 (b) The provision must include a schedule stating a specific
20 price for the purchase of the toll project at certain intervals from
21 the date the project opens, not less than one year and not to exceed
22 five years, over the term of the agreement.

23 (c) The provision must authorize the toll project entity to
24 purchase the private entity's interest at a stated interval in an
25 amount not to exceed the lesser of:

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

27 (2) the greater of:

1 (A) the then fair market value of the private
2 entity's interest; or

3 (B) an amount equal to the amount of outstanding
4 debt at that time, as specified in the comprehensive development
5 agreement.

6 (d) A toll project entity may not, under any circumstance,
7 purchase the private entity's interest for an amount higher than
8 the stated interval amount.

9 (e) A contract to purchase the private entity's interest at
10 the then fair market value as described by Subsection (c)(2)(A)
11 must contain a provision detailing the calculation used to
12 determine that value.

13 (f) The toll project entity shall request a proposed
14 termination-by-purchase schedule in each request for detailed
15 proposals and shall consider and score each schedule in each
16 evaluation of proposals.

17 (g) A private entity shall, not later than 12 months before
18 the date that a new price interval takes effect, notify the toll
19 project entity of the beginning of the price interval. The toll
20 project entity must notify the private entity as to whether it will
21 exercise the option to purchase under this section not later than
22 six months after the date it receives notice under this subsection.

23 (h) A toll project entity must notify the private entity of
24 the toll project entity's intention to purchase the private
25 entity's interest under this section not less than six months
26 before the date of the purchase [~~A toll project entity having~~
27 ~~rulemaking authority by rule and a toll project entity without~~

1 ~~rulemaking authority by official action shall develop a formula for~~
2 ~~making termination payments to terminate a comprehensive~~
3 ~~development agreement under which a private participant receives~~
4 ~~the right to operate and collect revenue from a toll project. A~~
5 ~~formula must calculate an estimated amount of loss to the private~~
6 ~~participant as a result of the termination for convenience.~~

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

12 ~~[(c) A formula under Subsection (b) may not include any~~
13 ~~estimate of future revenue from the project, if not included in an~~
14 ~~agreed base case financial model under Subsection (b).~~
15 ~~Compensation to the private participant upon termination for~~
16 ~~convenience may not exceed the amount determined using the formula~~
17 ~~under Subsection (b)].~~

18 SECTION 13. Section 371.102, Transportation Code, as added
19 by Chapter 264 (S.B. 792), Acts of the 80th Legislature, Regular
20 Session, 2007, is amended to read as follows:

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

26 (1) ~~[if authorized to issue bonds for that purpose,]~~
27 issue bonds or other obligations to:

1 (A) make any applicable termination payments to
2 the private participant; or

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

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

9 (b) A toll project entity has the same powers and duties
10 relating to the financing of payments under Subsection (a)(1) as
11 the toll project entity has under other applicable laws of this
12 state, including Chapters 228, 284, 366, and 370 of this code and
13 Chapter 1371, Government Code, relating to the financing of a toll
14 project of that entity, including the ability to deposit the
15 proceeds of bonds or other obligations and to pledge, encumber, and
16 expend the proceeds and revenues of a toll project as provided by
17 law.

18 (c) The powers held by the toll project entity include the
19 power to authorize the issuance of bonds or other obligations and to
20 pay all or part of the costs of a payment described in Subsection
21 (a)(1), in the amount determined by the toll project entity under
22 Section 371.101. Costs associated with a payment under Subsection
23 (a)(1) are considered a cost of the project.

24 (d) This section shall be liberally construed to effect its
25 purposes.

26 SECTION 14. Subsections (b) and (c), Section 371.103,
27 Transportation Code, as added by Chapter 264 (S.B. 792), Acts of the

1 80th Legislature, Regular Session, 2007, are amended to read as
2 follows:

3 (b) Except as provided by Subsection (c), a comprehensive
4 development agreement may contain a provision authorizing the toll
5 project entity to compensate the private participant in the
6 agreement for the loss of toll revenues attributable to the
7 construction by the entity of a limited access highway project
8 located within an area that extends up to four miles from either
9 side of the centerline of the project developed under the
10 agreement, less the private participant's decreased operating and
11 maintenance costs attributable to the highway project, if any. A
12 provision under this subsection may be effective only for a period
13 of 30 years or less from the effective date of the agreement.

14 (c) A comprehensive development agreement may not require
15 the toll project entity to provide compensation for the
16 construction of:

17 (1) a highway project contained in the state
18 transportation plan or a transportation plan of a metropolitan
19 planning organization in effect on the effective date of the
20 agreement;

21 (2) work on or improvements to a highway project
22 necessary for improved safety, or for maintenance or operational
23 purposes;

24 (3) a high occupancy vehicle exclusive lane addition
25 or other work on any highway project that is required by an
26 environmental regulatory agency; [~~or~~]

27 (4) a transportation project that provides a mode of

1 transportation that is not included in the project that is the
2 subject of the comprehensive development agreement; or

3 (5) a highway designated an interstate highway.

4 SECTION 15. Subtitle G, Title 6, Transportation Code, is
5 amended by adding Chapter 373 to read as follows:

6 CHAPTER 373. TOLL PROJECTS LOCATED IN TERRITORY OF LOCAL TOLL

7 PROJECT ENTITY

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 373.001. DEFINITIONS. In this chapter:

10 (1) "Local toll project entity" means an entity, other
11 than the department, that is authorized by law to acquire, design,
12 construct, finance, operate, and maintain a toll project,
13 including:

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

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

18 (C) a county acting under Chapter 284.

19 (2) "Privately operated or controlled toll project"
20 means a toll project that is primarily commercial in nature and is
21 designed and constructed by a private entity that holds a leasehold
22 interest in or the right to operate and retain revenues from the
23 toll project, regardless of whether the private entity operates the
24 toll project or collects the revenue itself or engages a
25 subcontractor or other entity to operate the toll project or
26 collect the revenue. The term does not include a toll project for
27 which the department or a toll project entity contracts with a

1 private entity only for engineering, design, construction,
2 finance, operation, maintenance, or other services.

3 (3) "Publicly owned and operated toll project" means a
4 toll project owned and operated by the department or a local toll
5 project entity in which a private entity does not have a leasehold
6 interest or right to operate or retain revenue from the toll
7 project. The term does not include a privately operated or
8 controlled toll project, but may include a toll project for which a
9 private entity provides:

10 (A) engineering, design, construction, finance,
11 operation, maintenance, or other services; or

12 (B) financial assistance for the toll project
13 that does not entitle the private entity to any ownership interest
14 in or the right to operate or retain revenue from the toll project.

15 (4) "Toll project" means a toll project described by
16 Section 201.001(b), regardless of whether the toll project is:

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

18 (B) subject to the jurisdiction of the
19 department.

20 Sec. 373.002. APPLICABILITY. (a) This chapter does not
21 apply to a toll project described in Section 228.011.

22 (b) Except for Sections 373.003, 373.004, and 373.005, this
23 chapter does not apply to:

24 (1) the State Highway 161 project from State Highway
25 183 to IH 20 in Dallas County;

26 (2) the U.S. 281 project in Bexar County from Loop 1604
27 to the Comal County line;

1 (3) the Loop 49 project from IH 20 to State Highway 110
2 in Smith County;

3 (4) the DFW Connector project in Tarrant and Dallas
4 Counties (State Highway 114 from State Highway 114L Business to
5 east of International Parkway and State Highway 121 from north of FM
6 2499 to south of State Highway 360);

7 (5) the North Tarrant Express project in Tarrant and
8 Dallas Counties (IH 820 and State Highway 121/State Highway 183
9 from IH 35W to State Highway 161, IH 820 east from State Highway
10 121/State Highway 183 to Randol Mill Road, and IH 35W from IH 30 to
11 State Highway 170);

12 (6) the U.S. 290 project from east of U.S. 183 to east
13 of FM 973 in Travis County;

14 (7) the State Highway 99 (Grand Parkway) project;

15 (8) the IH 635 managed lanes project in Dallas County
16 (IH 635 from east of Luna Road to Greenville Avenue and IH 35E from
17 south of the Loop 12/IH 35E split to south of Valwood Parkway);

18 (9) Phase 4 extension of the Dallas North Tollway in
19 Collin and Denton Counties from U.S. 380 to the Grayson County line
20 to be developed by North Texas Tollway Authority; or

21 (10) the Southwest Parkway (State Highway 121) in
22 Tarrant County from Dirks Road/Altamesa Boulevard to IH 30.

23 Sec. 373.003. PROJECT OWNED IN PERPETUITY. Unless a toll
24 project is sold or otherwise transferred to another toll project
25 entity in accordance with applicable law, including Sections
26 228.151, 284.011, 366.036, 366.172, and 370.171, a toll project
27 procured by the department or a local toll project entity

1 determined by the process under Subchapter B is owned by that entity
2 in perpetuity.

3 Sec. 373.004. GOVERNMENTAL AND NOT COMMERCIAL
4 TRANSACTIONS. A transaction involving a local toll project entity
5 under Section 228.011 or this chapter is not primarily commercial
6 in nature but is an inherently governmental transaction whose
7 purpose is to determine governmental jurisdiction, ownership,
8 control, or other responsibilities with respect to a project.

9 Sec. 373.005. VALUATION DETERMINATION. Any determination
10 of value, including best value, under this chapter or other
11 applicable federal or state law for a comprehensive development
12 agreement or other public-private partnership arrangement
13 involving a toll project for which a local toll project entity has
14 exercised its option under this chapter and has complied with all
15 other conditions in this chapter for the development of the project
16 by the local toll project entity must take into consideration
17 factors the entity determines appropriate, including factors
18 related to:

19 (1) oversight of the toll project;
20 (2) maintenance and operations costs of the toll
21 project;

22 (3) the structure and rates of tolls;
23 (4) economic development impacts of the toll project;

24 and

25 (5) social and environmental benefits and impacts of
26 the toll project.

27 Sec. 373.006. LEGAL CHALLENGES CONCLUDED. For the purposes

1 of this chapter, all legal challenges to development of a toll
2 project are considered concluded when a judgment or order of a court
3 with jurisdiction over the challenge becomes final and
4 unappealable.

5 [Sections 373.007-373.050 reserved for expansion]

6 SUBCHAPTER B. PROCESS TO DETERMINE ENTITY TO DEVELOP, FINANCE,
7 CONSTRUCT, AND OPERATE TOLL PROJECT

8 Sec. 373.051. INITIATION OF PROCESS. (a) At any time
9 after a metropolitan planning organization approves the inclusion
10 of a toll project to be located in the territory of a local toll
11 project entity in the metropolitan transportation plan, the local
12 toll project entity may notify the department in writing of the
13 local toll project entity's intent to initiate the process
14 described in this subchapter.

15 (b) At any time after a metropolitan planning organization
16 approves the inclusion of a toll project to be located in the
17 territory of a local toll project entity in the metropolitan
18 transportation plan and all necessary environmental approvals for
19 the toll project have been secured, the department may notify the
20 local toll project entity in writing of the department's intent to
21 initiate the process described in this subchapter.

22 Sec. 373.052. PUBLIC PROJECT BY LOCAL TOLL PROJECT ENTITY.

23 (a) A local toll project entity has the first option to develop,
24 finance, construct, and operate a toll project as a publicly owned
25 and operated toll project. A local toll project entity has not more
26 than 180 days after the date on which notification under Section
27 373.051(a) is provided or notification under Section 373.051(b) is

1 received to decide whether to exercise the option. The option
2 period under this subsection may be extended an additional 90 days
3 by agreement of the department and the local toll project entity.

4 (b) If a local toll project entity exercises the option
5 under Subsection (a), the local toll project entity after
6 exercising the option must:

7 (1) within 180 days after the later of the date of
8 exercising its option or the date on which all environmental
9 approvals necessary for the development of the toll project are
10 secured and all legal challenges to development are concluded,
11 advertise for the initial procurement of required services,
12 including, at a minimum, design services, for the project; and

13 (2) within two years after the date on which all
14 environmental approvals necessary for the development are secured
15 and all legal challenges to development are concluded, enter into a
16 contract for the construction of the toll project.

17 Sec. 373.053. PUBLIC PROJECT BY DEPARTMENT. (a) If a
18 local toll project entity fails or declines to exercise the option
19 to develop, finance, construct, and operate a toll project under
20 Section 373.052(a), or fails or declines to advertise for
21 procurement or enter into a construction contract as required by
22 Section 373.052(b), the department has the option to develop,
23 finance, construct, and operate the toll project as a publicly
24 owned and operated project. The department has not more than 60
25 days after the date the local toll project entity fails or declines
26 to exercise its option under Section 373.052(a) or fails or
27 declines to advertise for procurement or enter into a construction

1 contract as required by Section 373.052(b) to decide whether to
2 exercise its option.

3 (b) If the department exercises its option under Subsection
4 (a), the department after exercising the option must:

5 (1) within 180 days after the later of the date of
6 exercising its option or the date on which all environmental
7 approvals necessary for the development of the toll project are
8 secured and all legal challenges to development are concluded,
9 advertise for the initial procurement of required services,
10 including, at a minimum, design services, for the project; and

11 (2) within two years after the date on which all
12 environmental approvals necessary for the development are secured
13 and all legal challenges to development are concluded, enter into a
14 contract for the construction of the toll project.

15 Sec. 373.054. PRIVATE PROJECT BY LOCAL TOLL PROJECT ENTITY.

16 (a) If the department fails or declines to exercise the option to
17 develop, finance, construct, and operate a toll project under
18 Section 373.053(a), or fails or declines to advertise for
19 procurement or enter into a construction contract as required by
20 Section 373.053(b), the local toll project entity has the option to
21 develop, finance, construct, and operate the toll project as a
22 privately operated or controlled toll project. The local toll
23 project entity has not more than 60 days after the date the
24 department fails or declines to exercise its option under Section
25 373.053(a) or fails or declines to advertise for procurement or
26 enter into a construction contract as required by Section
27 373.053(b) to decide whether to exercise its option.

1 (b) If the local toll project entity exercises its option
2 under Subsection (a), the local toll project entity after
3 exercising the option must:

4 (1) within 180 days after the later of the date of
5 exercising its option or the date on which all environmental
6 approvals necessary for the development of the toll project are
7 secured and all legal challenges to development are concluded,
8 advertise for the initial procurement of required services,
9 including, at a minimum, design services, for the project; and

10 (2) within two years after the date on which all
11 environmental approvals necessary for the development are secured
12 and all legal challenges to development are concluded, enter into a
13 contract for the construction of the toll project.

14 Sec. 373.055. PRIVATE PROJECT BY DEPARTMENT. (a) If a
15 local toll project entity fails or declines to exercise the option
16 to develop, finance, construct, and operate a toll project under
17 Section 373.054(a), or fails or declines to advertise for
18 procurement or enter into a construction contract as required by
19 Section 373.054(b), the department has the option to develop,
20 finance, construct, and operate the toll project as a privately
21 operated or controlled toll project. The department has not more
22 than 60 days after the date the local toll project entity fails or
23 declines to exercise its option under Section 373.054(a) or fails
24 or declines to advertise for procurement or enter into a
25 construction contract as required by Section 373.054(b) to decide
26 whether to exercise its option.

27 (b) If the department exercises its option under Subsection

1 (a), the department after exercising the option must:

2 (1) within 180 days after the later of the date of
3 exercising its option or the date on which all environmental
4 approvals necessary for the development of the toll project are
5 secured and all legal challenges to development are concluded,
6 advertise for the initial procurement of required services,
7 including, at a minimum, design services, for the project; and

8 (2) within two years after the date on which all
9 environmental approvals necessary for the development are secured
10 and all legal challenges to development are concluded, enter into a
11 contract for the construction of the toll project.

12 Sec. 373.056. RE-INITIATION OF PROCESS. If the process
13 described by Sections 373.051, 373.052, 373.053, 373.054, and
14 373.055 concludes without the local toll project entity or the
15 department entering into a contract for the construction of the
16 toll project, either entity may re-initiate the process under this
17 subchapter by submitting notice to the other entity in the manner
18 provided by Section 373.051.

19 Sec. 373.057. ALTERATION OF PROCESS. (a) The department
20 or the applicable local toll project entity may waive any step or
21 steps of the process under this subchapter.

22 (b) The department and the applicable local toll project
23 entity may, by written agreement, extend any time limit under this
24 subchapter.

25 Sec. 373.058. SHARING OF PROJECT-RELATED INFORMATION.
26 (a) If a local toll project entity or the department fails or
27 declines to exercise an option or fails or declines to advertise for

1 procurement or enter into a construction contract under Section
2 373.052, 373.053, 373.054, or 373.055, the local toll project
3 entity or the department, as applicable, must make available its
4 traffic estimates, revenue estimates, plans, specifications,
5 surveys, appraisals, and other work product developed for the toll
6 project to the other entity.

7 (b) On entering into a contract for the construction of the
8 toll project, the department or the local toll project entity, as
9 applicable, shall reimburse the other entity for shared project
10 work product that it uses.

11 Sec. 373.059. QUARTERLY PROGRESS REPORTS. After the
12 department or a local toll project entity exercises an option under
13 this subchapter, the department or local toll project entity, as
14 applicable, shall issue a quarterly report on the progress of the
15 development of the toll project. The report shall be made available
16 to the public.

17 Sec. 373.060. ENVIRONMENTAL REVIEW. (a) The department
18 or the local toll project entity may begin any environmental review
19 process that may be required for a proposed toll project before
20 initiating the process under this subchapter.

21 (b) If a local toll project entity initiates the process for
22 development of a toll project under Section 373.051(a) and has not
23 begun the environmental review of the project, the local toll
24 project entity shall begin the environmental review within 180 days
25 of exercising the option.

26 [Sections 373.061-373.100 reserved for expansion]

1 SUBCHAPTER C. USE OF RIGHT-OF-WAY BY LOCAL TOLL PROJECT ENTITY

2 Sec. 373.101. USE OF STATE HIGHWAY RIGHT-OF-WAY.

3 (a) Consistent with federal law, the commission and the department
4 shall assist a local toll project entity in the development,
5 financing, construction, and operation of a toll project for which
6 the local toll project entity has exercised its option to develop,
7 finance, construct, and operate the project under Subchapter B by
8 allowing the local toll project entity to use state highway
9 right-of-way and to access the state highway system as necessary to
10 construct and operate the toll project.

11 (b) Notwithstanding any other law, the local toll project
12 entity and the commission may agree to remove the toll project from
13 the state highway system and transfer ownership to the local toll
14 project entity.

15 Sec. 373.102. REIMBURSEMENT FOR USE OF STATE HIGHWAY
16 RIGHT-OF-WAY. (a) The commission or the department may not
17 require a local toll project entity to pay for the use of state
18 highway right-of-way or access, except:

19 (1) to reimburse the department for actual costs
20 incurred by the department that are owed to a third party, including
21 the federal government, as a result of that use by the local toll
22 project entity; and

23 (2) as required under Subsection (b).

24 (b) A local toll project entity shall reimburse the
25 department for the department's actual costs to acquire the
26 right-of-way in the manner provided in the payment schedule agreed
27 to by the department and the local toll project entity. If the

1 department cannot determine that amount, the amount must be
2 determined based on the average historical right-of-way
3 acquisition values for comparable right-of-way located in
4 proximity to the project on the date of original acquisition of the
5 right-of-way.

6 (c) In lieu of reimbursement, the local toll project entity
7 may agree to pay to the department a portion of the revenues of the
8 project, in the amount and for the period of time agreed to by the
9 local toll project entity and the department.

10 (d) Money received by the department under this section
11 shall be deposited in the state highway fund and, except for
12 reimbursement for costs owed to a third party, used to fund
13 additional projects in the department district in which the toll
14 project is located.

15 (e) The commission or department may waive the requirement
16 of reimbursement under this section.

17 Sec. 373.103. AGREEMENT FOR USE OF RIGHT-OF-WAY. A local
18 toll project entity shall enter into an agreement with the
19 department for any project for which the entity has exercised its
20 option to develop, finance, construct, and operate the project
21 under Subchapter B and for which the entity intends to use state
22 highway right-of-way. The agreement must contain provisions
23 necessary to ensure that the local toll project entity's
24 construction, maintenance, and operation of the project complies
25 with the requirements of applicable state and federal law.

26 Sec. 373.104. LIABILITY FOR DAMAGES. (a) Notwithstanding
27 any other law, the commission and the department are not liable for

1 any damages that result from a local toll project entity's use of
2 state highway right-of-way or access to the state highway system
3 under this subchapter, regardless of the legal theory, statute, or
4 cause of action under which liability is asserted.

5 (b) An agreement entered into by a local toll project entity
6 and the department in connection with a toll project that is
7 financed, constructed, or operated by the local toll project entity
8 and that is on or directly connected to a highway in the state
9 highway system does not create a joint enterprise for liability
10 purposes.

11 Sec. 373.105. COMPLIANCE WITH FEDERAL LAW. Notwithstanding
12 an action taken by a local toll project entity under this
13 subchapter, the commission or department may take any action that
14 in its reasonable judgment is necessary to comply with any federal
15 requirement to enable this state to receive federal-aid highway
16 funds.

17 SECTION 16. Section 228.012, Transportation Code, as
18 amended by this Act, applies only to payments received by the Texas
19 Department of Transportation under that section on or after
20 September 1, 2009. Payments received by the department under
21 Section 228.012, Transportation Code, before that date are governed
22 by the law in effect immediately before the effective date of this
23 Act, and that law is continued in effect for that purpose.

24 SECTION 17. The change in law made by this Act to Section
25 371.102, Transportation Code, shall apply to the projects described
26 in Subdivisions (1), (4), (5), and (8), Subsection (b), Section
27 373.002, Transportation Code, as amended by this Act. Such

1 projects are governed by the remaining provisions of Chapter 371,
2 Transportation Code, as it existed immediately before the effective
3 date of this Act.

4 SECTION 18. The change in law made by this Act to Section
5 223.208, Transportation Code, does not apply to any project
6 described in Subdivisions (1), (4), (5), and (8), Subsection (b),
7 Section 373.002, Transportation Code, as amended by this Act. Such
8 a project is governed by Section 223.208, Transportation Code, as
9 it existed immediately before the effective date of this Act, and
10 that law is continued in effect for that purpose.

11 SECTION 19. (a) The repeal of Section 228.0111,
12 Transportation Code, by this Act does not apply to any project
13 described in Subsection (b), Section 373.002, Transportation Code,
14 as added by this Act. Such a project is governed by Section
15 228.0111, Transportation Code, as it existed immediately before the
16 effective date of this Act, and that law is continued in effect for
17 that purpose.

18 (b) For the purposes of the application of Subdivision (1),
19 Subsection (g), Section 228.0111, Transportation Code, or
20 Subdivision (1), Subsection (i), Section 228.0111, Transportation
21 Code, under Subsection (a) of this section to the State Highway 99
22 (Grand Parkway) project, the local toll project entity or the
23 department, as applicable, must enter into a contract for the
24 construction of at least one segment of the project in the two-year
25 period described by Subdivision (1), Subsection (g), Section
26 228.0111, or Subdivision (1), Subsection (i), Section 228.0111.
27 For each of the remaining segments, if the department and a local

1 toll project entity have entered into an agreement for the advance
2 funding of the initial segment, a local toll project entity or the
3 department, as applicable, is not required to enter into a
4 construction contract for any remaining segment before the second
5 anniversary of the date a construction contract for a segment
6 contiguous to that remaining segment has been entered into.

7 SECTION 20. The following sections are repealed:

8 (1) Section 228.0111, Transportation Code; and

9 (2) Subsection (c), Section 371.052, Transportation
10 Code, as added by Chapter 264 (S.B. 792), Acts of the 80th
11 Legislature, Regular Session, 2007.

12 SECTION 21. This Act takes effect September 1, 2009.