

By: Nichols, Carona, Nelson, Patrick, Dan,  
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S.B. No. 17

Substitute the following for S.B. No. 17:

By: Smith of Harris

C.S.S.B. No. 17

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the design, development, financing, construction, and  
3 operation of certain toll projects; granting the authority to issue  
4 bonds.

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

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

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

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

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

21 [~~(2)~~] ~~establishing the purchase price for the interest~~  
22 ~~of a private participant in the comprehensive development agreement~~  
23 ~~and related property, which price may be determined in accordance~~  
24 ~~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, mutually agreed on by the toll project  
12 entity and the private participant, detailing the calculation used  
13 to determine that value.

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

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

24           (h) A toll project entity must notify the private entity of  
25 the toll project entity's intention to purchase the private  
26 entity's interest under this section not less than six months  
27 before the date of the purchase [~~A toll project entity having~~

1 ~~rulemaking authority by rule and a toll project entity without~~  
2 ~~rulemaking authority by official action shall develop a formula for~~  
3 ~~making termination payments to terminate a comprehensive~~  
4 ~~development agreement under which a private participant receives~~  
5 ~~the right to operate and collect revenue from a toll project. A~~  
6 ~~formula must calculate an estimated amount of loss to the private~~  
7 ~~participant as a result of the termination for convenience.~~

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

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

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

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

27 (1) ~~[if authorized to issue bonds for that purpose,]~~

1 issue bonds or other obligations to:

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

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

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

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

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

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

27 SECTION 14. Subsections (b) and (c), Section 371.103,

1 Transportation Code, as added by Chapter 264 (S.B. 792), Acts of the  
2 80th Legislature, Regular Session, 2007, are amended to read as  
3 follows:

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

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

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

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

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

1 (4) a transportation project that provides a mode of  
2 transportation that is not included in the project that is the  
3 subject of the comprehensive development agreement; or

4 (5) a highway designated an interstate highway.

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

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

8 PROJECT ENTITY

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 373.001. DEFINITIONS. In this chapter:

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

15 (A) a regional tollway authority under Chapter  
16 366;

17 (B) a regional mobility authority under Chapter  
18 370; or

19 (C) a county acting under Chapter 284.

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

1 which the department or a toll project entity contracts with a  
2 private entity only for engineering, design, construction,  
3 finance, operation, maintenance, or other services.

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

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

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

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

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

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

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

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

25 (1) the State Highway 161 project from State Highway  
26 183 to IH 20 in Dallas County;

27 (2) the U.S. 281 project in Bexar County from Loop 1604

1 to the Comal County line;

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

4 (4) the DFW Connector project in Tarrant and Dallas  
5 Counties (State Highway 114 from State Highway 114L Business to  
6 east of International Parkway and State Highway 121 from north of FM  
7 2499 to south of State Highway 360);

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

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

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

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

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

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

24 (11) the Loop 9 project in Dallas County.

25 Sec. 373.003. PROJECT OWNED IN PERPETUITY. Unless a toll  
26 project is sold or otherwise transferred to another toll project  
27 entity in accordance with applicable law, including Sections

1 228.151, 284.011, 366.036, 366.172, and 370.171, a toll project  
2 procured by the department or a local toll project entity  
3 determined by the process under Subchapter B is owned by that entity  
4 in perpetuity.

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

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

- 21 (1) oversight of the toll project;
- 22 (2) maintenance and operations costs of the toll  
23 project;
- 24 (3) the structure and rates of tolls;
- 25 (4) economic development impacts of the toll project;
- 26 and
- 27 (5) social and environmental benefits and impacts of

1 the toll project.

2 Sec. 373.006. LEGAL CHALLENGES CONCLUDED. For the purposes  
3 of this chapter, all legal challenges to development of a toll  
4 project are considered concluded when a judgment or order of a court  
5 with jurisdiction over the challenge becomes final and  
6 unappealable.

7 [Sections 373.007-373.050 reserved for expansion]

8 SUBCHAPTER B. PROCESS TO DETERMINE ENTITY TO DEVELOP, FINANCE,

9 CONSTRUCT, AND OPERATE TOLL PROJECT

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

17 (b) The department may notify the local toll project entity  
18 in writing of the department's intent to initiate the process  
19 described in this subchapter at any time after a metropolitan  
20 planning organization has approved the inclusion of a toll project  
21 to be located in the territory of a local toll project entity in the  
22 metropolitan transportation plan and:

23 (1) the department has issued a finding of no  
24 significant impact for the project, or for a project for which an  
25 environmental impact statement is prepared, the department has  
26 approved the final environmental impact statement for the project;

27 or

1           (2) for a project subject to environmental review  
2 requirements under federal law, the United States Department of  
3 Transportation Federal Highway Administration has issued a finding  
4 of no significant impact, or for a project for which an  
5 environmental impact statement is prepared, the department has  
6 submitted a final environmental impact statement to the Federal  
7 Highway Administration for approval.

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

9 (a) A local toll project entity has the first option to develop,  
10 finance, construct, and operate a toll project as a publicly owned  
11 and operated toll project. A local toll project entity has not more  
12 than 180 days after the date on which notification under Section  
13 373.051(a) is provided or notification under Section 373.051(b) is  
14 received to decide whether to exercise the option, unless the  
15 United States Department of Transportation Federal Highway  
16 Administration issues a record of decision for an environmental  
17 impact statement submitted by the department under Section  
18 373.051(b)(2) more than 60 days after the date the department  
19 provides notice under Section 373.051(b), in which event the local  
20 toll project entity has 120 days after the date the record of  
21 decision is issued to exercise the option. The option period under  
22 this subsection may be extended an additional 90 days by agreement  
23 of the department and the local toll project entity.

24           (b) If a local toll project entity exercises the option  
25 under Subsection (a), the local toll project entity after  
26 exercising the option must:

27           (1) within 180 days after the later of the date of

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

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

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

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

25 (1) within 180 days after the later of the date of  
26 exercising its option or the date on which all environmental  
27 approvals necessary for the development of the toll project are

1 secured and all legal challenges to development are concluded,  
2 advertise for the initial procurement of required services,  
3 including, at a minimum, design services, for the project; and  
4 (2) within two years after the date on which all  
5 environmental approvals necessary for the development are secured  
6 and all legal challenges to development are concluded, enter into a  
7 contract for the construction of the toll project.

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

9 (a) If the department fails or declines to exercise the option to  
10 develop, finance, construct, and operate a toll project under  
11 Section 373.053(a), or fails or declines to advertise for  
12 procurement or enter into a construction contract as required by  
13 Section 373.053(b), the local toll project entity has the option to  
14 develop, finance, construct, and operate the toll project as a  
15 privately operated or controlled toll project. Except as provided  
16 by Section 373.057(b), the local toll project entity has not more  
17 than 60 days after the date the department fails or declines to  
18 exercise its option under Section 373.053(a) or fails or declines  
19 to advertise for procurement or enter into a construction contract  
20 as required by Section 373.053(b) to decide whether to exercise its  
21 option.

22 (b) If the local toll project entity exercises its option  
23 under Subsection (a), the local toll project entity after  
24 exercising the option must:

25 (1) within 180 days after the later of the date of  
26 exercising its option or the date on which all environmental  
27 approvals necessary for the development of the toll project are

1 secured and all legal challenges to development are concluded,  
2 advertise for the initial procurement of required services,  
3 including, at a minimum, design services, for the project; and  
4 (2) within two years after the date on which all  
5 environmental approvals necessary for the development are secured  
6 and all legal challenges to development are concluded, enter into a  
7 contract for the construction of the toll project.

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

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

23 (1) within 180 days after the later of the date of  
24 exercising its option or the date on which all environmental  
25 approvals necessary for the development of the toll project are  
26 secured and all legal challenges to development are concluded,  
27 advertise for the initial procurement of required services,

1 including, at a minimum, design services, for the project; and

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

6 Sec. 373.056. RE-INITIATION OF PROCESS. If the process  
7 described by Sections 373.051, 373.052, 373.053, 373.054, and  
8 373.055 concludes without the local toll project entity or the  
9 department entering into a contract for the construction of the  
10 toll project, either entity may re-initiate the process under this  
11 subchapter by submitting notice to the other entity in the manner  
12 provided by Section 373.051.

13 Sec. 373.057. WAIVER OF OPTION; ALTERATION OF TIMELINES.  
14 (a) The department or local toll project entity may at any time  
15 during the process established by this subchapter, including when  
16 the process is initiated under Section 373.051, decline to exercise  
17 an option of that entity under this subchapter.

18 (b) If the department declines to exercise its option under  
19 Section 373.053 before the 120th day after the date on which  
20 notification under Section 373.051(a) is provided to the local toll  
21 project entity or notification under Section 373.051(b) is received  
22 by the toll project entity, the local toll project entity must, in  
23 addition to deciding whether to exercise its option under Section  
24 373.052, decide whether to exercise its option under Section  
25 373.054 not later than the later of:

26 (1) the 180th day after the date notice is provided or  
27 received; or

1           (2) the end of the option period as extended under  
2 Section 373.052.

3           (c) The department and the applicable local toll project  
4 entity may, by written agreement, extend any time limit under this  
5 subchapter.

6           Sec. 373.058. SHARING OF PROJECT-RELATED INFORMATION.

7           (a) If a local toll project entity or the department fails or  
8 declines to exercise an option or fails or declines to advertise for  
9 procurement or enter into a construction contract under Section  
10 373.052, 373.053, 373.054, or 373.055, the local toll project  
11 entity or the department, as applicable, must make available its  
12 traffic estimates, revenue estimates, plans, specifications,  
13 surveys, appraisals, and other work product developed for the toll  
14 project to the other entity.

15           (b) On entering into a contract for the construction of the  
16 toll project, the department or the local toll project entity, as  
17 applicable, shall reimburse the other entity for shared project  
18 work product that it uses.

19           Sec. 373.059. QUARTERLY PROGRESS REPORTS. After the  
20 department or a local toll project entity exercises an option under  
21 this subchapter, the department or local toll project entity, as  
22 applicable, shall issue a quarterly report on the progress of the  
23 development of the toll project. The report shall be made available  
24 to the public.

25           Sec. 373.060. ENVIRONMENTAL REVIEW. (a) The department  
26 or the local toll project entity may begin any environmental review  
27 process that may be required for a proposed toll project before

1 initiating the process under this subchapter.

2 (b) If a local toll project entity initiates the process for  
3 development of a toll project under Section 373.051(a) and has not  
4 begun the environmental review of the project, the local toll  
5 project entity shall begin the environmental review within 180 days  
6 of exercising the option.

7 Sec. 373.061. PROJECT LOCATED IN TERRITORY OF MORE THAN ONE  
8 LOCAL TOLL PROJECT ENTITY. If a toll project is in the territory of  
9 more than one local toll project entity, only the local toll project  
10 entity that was first to be authorized by law to construct toll  
11 projects in that territory may exercise the options and other  
12 rights under this subchapter. A local toll project entity  
13 exercising an option or other right under this section:

14 (1) may do so only with respect to the portion of the  
15 project located in the territory of that local toll project entity;  
16 and

17 (2) may do so on behalf of another toll project entity  
18 in whose territory the project will be located.

19 [Sections 373.062-373.100 reserved for expansion]

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

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

22 (a) Consistent with federal law, the commission and the department  
23 shall assist a local toll project entity in the development,  
24 financing, construction, and operation of a toll project for which  
25 the local toll project entity has exercised its option to develop,  
26 finance, construct, and operate the project under Subchapter B by  
27 allowing the local toll project entity to use state highway

1 right-of-way and to access the state highway system as necessary to  
2 construct and operate the toll project.

3 (b) Notwithstanding any other law, the local toll project  
4 entity and the commission may agree to remove the toll project from  
5 the state highway system and transfer ownership to the local toll  
6 project entity.

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

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

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

16 (b) A local toll project entity shall reimburse the  
17 department for the department's actual costs to acquire the  
18 right-of-way in the manner provided in the payment schedule agreed  
19 to by the department and the local toll project entity. If the  
20 department cannot determine that amount, the amount must be  
21 determined based on the average historical right-of-way  
22 acquisition values for comparable right-of-way located in  
23 proximity to the project on the date of original acquisition of the  
24 right-of-way.

25 (c) In lieu of reimbursement, the local toll project entity  
26 may agree to pay to the department a portion of the revenues of the  
27 project, in the amount and for the period of time agreed to by the

1 local toll project entity and the department.

2 (d) Money received by the department under this section  
3 shall be deposited in the state highway fund and, except for  
4 reimbursement for costs owed to a third party, used to fund  
5 additional projects in the department district in which the toll  
6 project is located.

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

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

18 Sec. 373.104. LIABILITY FOR DAMAGES. (a) Notwithstanding  
19 any other law, the commission and the department are not liable for  
20 any damages that result from a local toll project entity's use of  
21 state highway right-of-way or access to the state highway system  
22 under this subchapter, regardless of the legal theory, statute, or  
23 cause of action under which liability is asserted.

24 (b) An agreement entered into by a local toll project entity  
25 and the department in connection with a toll project that is  
26 financed, constructed, or operated by the local toll project entity  
27 and that is on or directly connected to a highway in the state

1 highway system does not create a joint enterprise for liability  
2 purposes.

3 Sec. 373.105. COMPLIANCE WITH FEDERAL LAW. Notwithstanding  
4 an action taken by a local toll project entity under this  
5 subchapter, the commission or department may take any action that  
6 in its reasonable judgment is necessary to comply with any federal  
7 requirement to enable this state to receive federal-aid highway  
8 funds.

9 SECTION 16. Section 228.012, Transportation Code, as  
10 amended by this Act, applies only to payments received by the Texas  
11 Department of Transportation under that section on or after the  
12 effective date of this Act. Payments received by the department  
13 under Section 228.012, Transportation Code, before the effective  
14 date of this Act are governed by the law in effect immediately  
15 before the effective date of this Act, and that law is continued in  
16 effect for that purpose.

17 SECTION 17. The changes in law made by this Act to Sections  
18 371.101 and 371.103, Transportation Code, do not apply to a project  
19 described in Subdivision (1), (4), (5), (7), (8), or (11),  
20 Subsection (b), Section 373.002, Transportation Code, as added by  
21 this Act. A project described in those subdivisions is governed by  
22 Sections 371.101 and 371.103, Transportation Code, as those  
23 sections existed immediately before the effective date of this Act,  
24 and those laws are continued in effect for that purpose.

25 SECTION 18. (a) Section 371.101, Transportation Code, as  
26 amended by this Act, does not apply to a comprehensive development  
27 agreement for:

1           (1) a project located south of Refugio County on the  
2 ISTEA High Priority Corridor identified in Sections 1105(c)(18) and  
3 (20) of the Intermodal Surface Transportation Efficiency Act of  
4 1991 (Pub. L. No. 102-240), as amended by Section 1211 of the  
5 Transportation Equity Act for the 21st Century (Pub. L. No.  
6 105-178, as amended by Title IX, Pub. L. No. 105-206), if the  
7 project is part of the highway corridor designated by those laws;

8           (2) the following projects to be developed in  
9 connection with the projects described under Subdivision (1):

10           (A) the Corpus Christi Southside Mobility  
11 Corridor;

12           (B) the State Highway 358 managed lanes project  
13 and the State Highway 286 managed lanes project in Nueces County;  
14 and

15           (C) the State Highway 550 spur project and the  
16 West Loop project in Cameron County; or

17           (3) a project on the IH 69 corridor in Bowie County.

18           (b) A project described by this section is governed by  
19 Section 371.101, Transportation Code, as it existed immediately  
20 before the effective date of this Act, and the former law is  
21 continued in effect for that purpose.

22           SECTION 19. The change in law made by this Act to Section  
23 223.208, Transportation Code, does not apply to a project described  
24 in Subdivision (1), (4), (5), (7), (8), or (11), Subsection (b),  
25 Section 373.002, Transportation Code, as added by this Act. A  
26 project described in those subdivisions is governed by Section  
27 223.208, Transportation Code, as it existed immediately before the

1 effective date of this Act, and that law is continued in effect for  
2 that purpose.

3 SECTION 20. (a) The repeal of Section 228.0111,  
4 Transportation Code, by this Act does not affect any project  
5 described in Subsection (b), Section 373.002, Transportation Code,  
6 as added by this Act. A project described in that subsection is  
7 governed by Section 228.0111, Transportation Code, as it existed  
8 immediately before the effective date of this Act, and that law is  
9 continued in effect for that purpose.

10 (b) For the purposes of the application of Subdivision (1),  
11 Subsection (g), Section 228.0111, Transportation Code, or  
12 Subdivision (1), Subsection (i), Section 228.0111, Transportation  
13 Code, under Subsection (a) of this section to the State Highway 99  
14 (Grand Parkway) project, the local toll project entity or the  
15 department, as applicable, must enter into a contract for the  
16 construction of at least one segment of the project in the two-year  
17 period described by Subdivision (1), Subsection (g), Section  
18 228.0111, Transportation Code, or Subdivision (1), Subsection (i),  
19 Section 228.0111, Transportation Code. For each of the remaining  
20 segments, if the department and a local toll project entity have  
21 entered into an agreement for the advance funding of the initial  
22 segment, a local toll project entity or the department, as  
23 applicable, is not required to enter into a construction contract  
24 for any remaining segment before the second anniversary of the date  
25 a construction contract for a segment contiguous to that remaining  
26 segment has been entered into.

27 SECTION 21. The following sections are repealed:

1           (1) Section 228.0111, Transportation Code; and

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

5           SECTION 22. 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, 2009.